

What are these documents?

You have been sent these documents because:

- you applied for a guardianship or administration order for someone else; or
- someone applied for a guardianship or administration order for you, or
- you are related to, or provide care to, a person for whom an application for a guardianship or administration order has been made.

These documents are important. You should read them carefully and ask for help if you do not understand them.

What is guardianship and administration?

The Tribunal can appoint a guardian or administrator for a person if they cannot make reasonable judgments about personal or financial matters and, for financial matters, that inability is due to a 'mental disability'.

An administrator makes decisions about the person's financial matters (their money and property).

A guardian makes decisions about the person's personal matters, such as where they live, what medical treatment and other services they receive, and with whom they can have contact.

Some people need either guardianship or administration orders and some people need both.

An appointment can cover all decisions of a particular type (a plenary appointment), or it can be limited to certain types of decisions (a limited appointment). So, for example, a person might have a limited guardian who can make decisions only about where they live and the medical treatment they receive. In that case the person is able to make all other decisions for themselves.

More information on guardianship and administration can be found here: www.publicadvocate.wa.gov.au.

Do I have to attend the hearing?

Whether you **must** attend the hearing depends on your role – see below for more details.

But **even if** you **do not need** to attend, we encourage you to do so because what you say might be important in the Tribunal's decision whether to appoint a guardian and/ or administrator.

Must the applicant attend the hearing?

The applicant **must** attend the hearing.

The applicant must also arrange for the person the subject of the application to attend.

The applicant should let the Tribunal know if they consider that it would harm the person the subject of the application to attend the hearing. The Tribunal might allow the hearing to go ahead without that person if they

cannot or should not attend the hearing. However, a person subject to an application must be given the opportunity to attend and must be supported to participate in a hearing if they want to do so.

Must the person who is the subject of the application attend the hearing?

The Tribunal must listen to the views and wishes of the person subject to an application unless it is not possible to do so or it would harm them in some way.

Attending a hearing is the best way for a person to express those views and wishes and they should attend if they want to and if it is possible for them to do so.

The Tribunal can help make it easier for a person subject to an application to attend a hearing if they want to. You should let us know how we can help best: please call (08) 9219 3111 or see our website [Help & Support \(justice.wa.gov.au\)](http://justice.wa.gov.au).

Must the proposed or current guardian or administrator attend the hearing?

The proposed or current guardian or administrator *must* attend the hearing and will not be appointed unless they do.

Must other interested parties (such as family members) attend the hearing?

Other interested parties do not *need* to attend but they are encouraged to do so. Attending the hearing allows the Tribunal to hear your views and for you to hear the views of others.

What happens at the hearing?

At the hearing the Tribunal member will decide whether a guardian and/ or administrator should be appointed.

The Tribunal's primary concern is the best interests of the person the subject of the application. At the hearing that person and people who know them can provide information, and listen to others do so, to help the Tribunal make a well-informed decision.

During the hearing, the Tribunal will:

- discuss the application and the written information on the Tribunal file,
- ask the people present about the person, and
- discuss the issues and information so that those present can comment.

Many hearings only take about one hour, but more complex cases will take longer.

Hearings are audio-recorded to create an official record.

At the hearing you will be able to speak. In addition, if you want to do so, you can file written material before the hearing.

When you speak you should focus on the five issues that the Tribunal must decide. Other material can distract the Tribunal from its proper role. By focusing on the five issues you will help the Tribunal make a decision that is in the best interests of the person the subject of the application.

The five issues are: Capacity; Need; Function (Scope of order); Identity (Who should be appointed) and Duration (Term of the order). These are described in more detail below.

1) 'Capacity'

Everyone over 18 years of age is presumed to be **capable** of making their own reasonable decisions in their own best interest.

That presumption can be overcome by contrary evidence.

You should come to the hearing with a view as to whether or not the person the subject of the application is capable of making reasonable judgments about their financial and/or personal matters. If possible, you should come with *examples* that show that the person either is, or is not, capable.

Only if the Tribunal is satisfied that there is clear evidence that the person does not have capacity will it consider 'Need' (below). The application for guardianship/ administration orders will be dismissed unless the Tribunal is satisfied that the person does *not* have capacity in some or all aspects of their personal or financial decision-making.

2) 'Need'

If the Tribunal finds the person does *not* have capacity, then (and only then) it will consider if there is a **need** to make guardianship or administration orders.

Sometimes there is no need for guardianship or administration orders because there is an Enduring Power of Attorney (**EPA**) or Enduring Power of Guardianship (**EPG**) in place or some other acceptable and sufficient way has been found for the person the subject of the application to make reasonable decisions or for reasonable decisions to be made for them.

If you are aware of it, you should tell the Tribunal about any EPA or EPG or any other way that the person the subject of the application is being supported to either make their own reasonable decisions or for those decisions to be made for them.

If and only if the Tribunal finds that the person does not have capacity and orders need to be made, will it consider and decide:

3) Function (Scope of the order)

If it is possible to do so consistent with the person's best interests, the Tribunal will make an order that is as limited as possible in the types of decisions that the guardian and/ or administrator can make.

A limited order must list what types of decision the guardian and/ or administrator can make.

A plenary order allows a person's guardian or administrator to make all of their decisions for them other than a few specific exceptions, such as marriage, adoption, voting, sterilisation, the making of a Will, an EPA or an EPG.

4) Identity (Who should be appointed)

Guardians and administrators must be over 18 years old, willing to be appointed and be suitable for the role.

Sections 44 and 68 of the *Guardianship and Administration Act 1990* set out the matters the Tribunal must consider in assessing suitability.

The wishes of the person the subject of the application will be considered but the Tribunal may appoint someone else, including the Public Advocate or the Public Trustee, if it considers that no one else is suitable.

5) Duration (Term of the order)

The Tribunal must set a time limit on any guardianship or administration orders that it makes. It cannot make orders that will operate for more than five years.

What happens at the end of the hearing?

Depending on what happens during the hearing, there are several possible outcomes.

- Usually, the Tribunal gives a decision at the end of a hearing by telling those present what the decision is and giving reasons for it.
- If more time is needed to consider the matter, the decision may be *reserved* and given later.
- Sometimes the Tribunal will decide that another hearing is necessary to hear more evidence, especially if an important person was not present to provide information. The Tribunal can order parties to provide documents for the next hearing.
- Sometimes the Tribunal will ask the independent Public Advocate to investigate the application and report to the Tribunal. If this happens, the Public Advocate will contact you to discuss the application. This usually happens before the first hearing, but can happen at any stage of the application.

In some cases the reasons are written down and published. However, in most cases, the reasons will be spoken at the end of the hearing and you will receive a document with the orders made, which describe the outcome. If the reasons were spoken, you can ask the Tribunal to provide written reasons. A request for written reasons must be made within 28 days of the decision.

If you are unhappy with the Tribunal's decision, you can ask for the decision to be 'reviewed' by the 'full Tribunal', which is a panel of three. Such a request should be made within 28 days of the decision.

What happens when a guardianship or administration order expires?

A guardian or administrator can be appointed for any period up to, but not longer than, five years.

When the period of the order is due to expire, the Tribunal will organise a review. A review process can confirm the order, revoke it, or replace it with an order on different terms. If confirmed or replaced, a new term (again for no longer than 5 years) will be set.

Can a guardianship or administration order be reviewed before it expires?

A review can also be requested at any time by:

- a guardian or an administrator,
- the person the subject of the order,
- the Public Advocate, or
- the Public Trustee.

Other people can request a review of an order if there has been a relevant change in circumstances or because they believe the order is not working well for the person, but SAT must approve the request.

Costs and fees

There are no fees for applying to the Tribunal for a guardianship or administration order.

Parties pay all their own costs of attending the hearing except in a very few circumstances.

Do I need a lawyer?

Most guardianship and administration hearings are conducted without legal representatives but you can be represented by a lawyer if you wish.

Also, if the Tribunal allows it, a non-lawyer can represent you. If the Tribunal believes legal representation is necessary for the person the subject of the application, it may apply for Legal Aid representation on their behalf.

No-one at the Tribunal is able to offer legal advice.

What do I need to do now?

You should think about the five issues described above and what you can say (or write down) about them. If there are relevant documents, you should file them with the Tribunal through its website.

The issues of capacity and need are particularly important.

- There should be relevant, up-to-date medical evidence about the capacity of the person the subject of the application. Doctors and other health providers can complete and file with the Tribunal a Medical Report or Service Provider Report, a template of which can be found on the Tribunal's website.
- If there is an EPA or EPG in place, a copy of that document should be filed with the Tribunal.

If you must, or want to, attend the hearing but are unable to attend the hearing in person, you should contact the Tribunal and ask to attend by videoconference or telephone.

Attending a hearing

The Tribunal is at 565 Hay Street, Perth, near the City of Perth Town Hall and the City of Perth Library.

There are display screens on the ground floor which will show the family name of the person the subject of the application next to the hearing room number. If you have any questions, you can ask for assistance at the front counter on level 6.

The Tribunal building is wheelchair accessible, and hearing assistance technology is available on request.

The Tribunal can help with interpreters if English is not your first language. Please tell the Tribunal if you think you or another party will need an interpreter.