



Government of **Western Australia**
Department of **the Attorney General**

Enduring Power of Guardianship in Western Australia Information Kit

Enduring Power of Guardianship Information Kit

This information kit has been designed to give people a basic understanding of Enduring Powers of Guardianship and to assist them in completing the form. For more detailed information on Enduring Powers of Guardianship and the role of an enduring guardian, including a comprehensive guide to Enduring Powers of Guardianship visit the Office of the Public Advocate's website www.publicadvocate.wa.gov.au or call the Telephone Advisory Service 1300 858 455.



Office of the Public Advocate
PO Box 6293, East Perth WA 6892
T: 1300 858 455
F: (08) 9278 7333
E: opa@justice.wa.gov.au
W: www.publicadvocate.wa.gov.au

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Disclaimer

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1. What is an Enduring Power of Guardianship?

An Enduring Power of Guardianship (EPG) is a legal document which enables you (the appointor) to appoint a person of your choice to make **personal, lifestyle and treatment decisions** on your behalf if you lose the ability to make these decisions for yourself because of an illness or injury. This person (the appointee) becomes your enduring guardian.

An Enduring Power of Guardianship **cannot** be used to appoint someone to make property and financial decisions. If you want someone to manage your financial affairs you should make an Enduring Power of Attorney (EPA). For more information about EPAs visit the Office of the Public Advocate's website www.publicadvocate.wa.gov.au.

You also have the option of completing an Advance Health Directive (AHD). This tool enables you to make decisions about the health care you receive in the future.

For information about Advance Health Directives, contact the Department of Health via telephone (08) 9222 2300, via email advancehealthdirective@health.wa.gov.au or visit their website www.health.wa.gov.au/advancehealthdirective.

2. Why appoint an enduring guardian?

By appointing an enduring guardian you will be giving a person you know and trust the authority to make personal, lifestyle and treatment decisions on your behalf, if you become unable to do so in the future due to a decision-making disability.

When choosing an enduring guardian, the Public Advocate recommends that you give careful consideration to the following questions:

- Is the person trustworthy and likely to always act in your best interests?
- Is the person willing to take on the responsibilities of the role and are they aware of your personal beliefs and lifestyle preferences?
- Will the person be easily available to make decisions as required?
- Could the choice of enduring guardian cause conflict within your family? If so, is there someone else more suitable for the role?

Consulting family members to ensure they are aware of your wishes is recommended as it may help avoid potential difficulties if/when your Enduring Power of Guardianship comes into effect.

You can appoint a sole enduring guardian (one person) or joint enduring guardians (more than one person). It is important to note however, that joint enduring guardians **must** always make decisions together and agree on any decision they make.

You can also appoint a substitute enduring guardian to act in certain circumstances, for example if your enduring guardian is not available.

3. When does an EPG come into operation?

An Enduring Power of Guardianship would come into effect only if you (the appointor) are no longer able to make reasonable judgements about personal, lifestyle or treatment matters.

Any decisions made by your enduring guardian(s) have the same legal status as a decision made by you.

4. How is an enduring guardian appointed?

To appoint an enduring guardian you must complete an Enduring Power of Guardianship form. To be legally enforceable, your EPG form must be in the form, or substantially in the form, specified in Schedule 1 of the *Guardianship and Administration Regulations 2005*.

The form at the back of this kit meets these requirements and the step-by-step instructions will help you complete the form.

The form must be completed and witnessed correctly, and the person or people whom you wish to appoint as your enduring guardian(s) must accept the appointment by completing the acceptance section of the form.

5. Who should be given a copy of the EPG?

It is recommended that all enduring guardians and substitute enduring guardians are given a certified copy of your EPG. To ensure that people are aware you have made an EPG and consult your enduring guardian as required, it is also recommended that a certified copy is given to your GP and relevant health professionals. You may also wish to provide a copy to family members.

For details on how to certify copies of your EPG see Appendix A.

6. Can an EPG be cancelled?

While a person has legal capacity, they may revoke their EPG at any time. Although revocation in writing is not a legal requirement, the Public Advocate recommends that written notification is given to all enduring and substitute enduring guardians and that they are asked to return all copies of the EPG to the appointer, to be destroyed.

It is also recommended that all relevant persons and organisations, including the appointor's general practitioner, other health professionals and family members are informed in writing of the revocation.

If an enduring guardian wants to resign from the role:

- if the appointor has capacity, the enduring guardian may resign at any time.
- if the appointor has lost capacity, the enduring guardian must apply to the State Administrative Tribunal for an alternative arrangement to be put in place.

7. Completing an Enduring Power of Guardianship Form

These instructions refer to the form at the back of this kit.

In the spaces provided insert:

- the date (day, month and year) that you are filling out your EPG form
- your full name and residential address
- your date of birth (day, month and year).

1 Appointment of enduring guardian(s)

If you want to **appoint one person** as your sole enduring guardian, write their name and address in the space provided under clause 1A then cross out and initial clause 1B.

OR

If you want to **appoint two or more people** as joint enduring guardians, write their names and addresses in the spaces provided under clause 1B then cross out and initial clause 1A.

If you want to appoint more than two people as joint enduring guardians, write their names and addresses on another piece of paper and attach it to this form. This page will need to be signed by yourself and the witnesses.

2 Appointment of substitute enduring guardian(s)

If you want to **appoint one or more substitute** enduring guardian(s) complete clause 2. In the space provided, write the circumstances in which you want your substitute enduring guardian(s) to act.

For example:

- If either of my joint enduring guardians are unable to continue in the role for any reason, then the substitute enduring guardian named here is to take the place of either enduring guardian.
- If my sole enduring guardian is overseas for periods of three months or more at any time, my substitute enduring guardian is to act in his/her place.

If you only want to appoint one substitute enduring guardian cross out and initial the space for the second substitute guardian.

OR

If you **do not want to appoint a substitute** enduring guardian cross out and initial clause 2.

3 Death of a joint enduring guardian

If you are **not appointing joint enduring guardians**, cross out and initial clauses 3A and 3B.

If you are **appointing joint enduring guardians**:

If you want your surviving joint enduring guardian(s) to continue acting if one or more joint enduring guardian(s) die, cross out and initial clause 3B.

OR

If you do not want your surviving joint enduring guardian(s) to continue acting if one or more joint enduring guardian(s) die, cross out and initial clause 3A.

4 Functions of the enduring guardian(s)

The functions of an enduring guardian are limited to personal, lifestyle and treatment decisions. You can give your enduring guardian(s) the authority to make all of these decisions OR you can limit their authority to specific functions.

If you want your enduring guardian(s) to be able to perform **all of the functions** of an enduring guardian, cross out and initial clause 4B.

OR

If you want to **limit the functions** that your enduring guardian(s) may perform, cross out and initial clause 4A and cross out and initial any of the functions listed under clause 4B which you do not want your enduring guardian(s) to perform.

For example:

- If you do not want your enduring guardian(s) to have a role in deciding accommodation issues on your behalf, paragraphs (a) and (b) should be crossed out and initialled.
- If you do not want your enduring guardian(s) to have the authority to consent or refuse treatment on your behalf, paragraph (d) should be crossed out and initialled.

If you would like your enduring guardian(s) to perform one or more functions that are not listed on the form, write these additional functions on another piece of paper and attach it to this form. This page will need to be signed by the witnesses.

You may not authorise your enduring guardian(s) to make financial or property decisions. An Enduring Power of Attorney form must be completed to appoint someone to perform this function.

5 Circumstances in which enduring guardian(s) may act

If you want your enduring guardian(s) to be able to act in **all circumstances**, cross out and initial clause 5.

OR

If there are **certain circumstances** in which you want your enduring guardian(s) to act, write these circumstances in the space provided in clause 5.

For example:

- My enduring guardian is only to act while they live in the same town as me.
- I have a diagnosed mental illness and my enduring guardian is to act only at times when my doctor states I am unwell and do not have capacity.

6 Directions about how enduring guardian(s) are to perform functions

If you **do not have any specific directions**, cross out and initial clause 6.

OR

If you **have directions** for your enduring guardian, write these in full in clause 6.

For example:

- If I need to move into residential care, I want to live in a facility located near my current home.
- I would prefer to continue seeing my current GP, Dr X, for my general medical needs as she has been my GP for many years.
- If possible, all of my children are to be consulted before any major decisions are made on my behalf.

Signing the form

You, the appointor must sign with your normal signature in front of two witnesses in the space provided on page 3. The signing and witnessing of your EPG form completes the making of the power. You should therefore complete the form, sign it and have it witnessed on the same day.

It is also recommended that you sign or initial in the space provided on pages 1 and 2 to safeguard against pages of your EPG being substituted.

The role of the two witnesses is to confirm that the person signing the form is the person making the Enduring Power of Guardianship.

The Public Advocate recommends that legal advice is sought to ensure the EPG is completed correctly if you use a marksman or readover clause.

Optional statement about Advance Health Directive

If you have made an Advance Health Directive, it is recommended that you indicate this in the space provided on the EPG form. This will alert health professionals and service providers to its existence.

Your EPG will still be valid if you choose not to complete this box.

If you have not made an Advance Health Directive at the time of making your EPG, but do so at a later date, you can mark the box at that time.

Acceptance by appointee(s)

Appointee(s) do not need to be present when the appointor signs the form, but the EPG will not become valid until the acceptance of appointment as enduring guardian has been signed by all appointees and their signatures have been witnessed as required.

Substitute enduring guardians must also sign the acceptance of appointment as substitute enduring guardian which must also be witnessed as required.

Each appointee must sign that he/she accepts the appointment in the presence of two witnesses. The role of the witnesses is to confirm that the person accepting the appointment, is the person (the appointee) nominated as enduring guardian. Different witnesses can witness each appointee's signature.

Witnessing requirements

Signatures of both the appointor and appointee(s) must be witnessed by two people.

The witnesses must be at least 18 years of age and one of the two witnesses must be a person authorised to witness statutory declarations under the *Oaths, Affidavits and Statutory Declarations Act 2005* (see Appendix B).

The appointor, any person who has signed on behalf of the appointor, or any person named as an enduring guardian or substitute enduring guardian cannot be a witness.

There is no requirement for the witnesses to confirm that the appointor has full legal capacity. If there is any doubt about capacity, a witness may suggest professional medical advice be sought prior to the document being signed.

When providing name and address details of the witness, it is preferred that a street address, rather than a post office box is given. This address can be the business, place of employment or residential address.

Witnesses must:

- sign the EPG form with their usual signature
- include their full name and address
- state their qualifications to be a witness (for example, a teacher or a person over 18 years of age)
- write the date on which they are witnessing the signature.

Have I got it right? My final checklist for completing an EPG

To ensure you have completed your EPG correctly you must:

- be at least 18 years of age and have full legal capacity
- have nominated only people as enduring guardian(s) and substitute enduring guardian(s) who are at least 18 years of age and have full legal capacity
- have used the form at the back of this kit or a form which meets the legislative requirements
- have provided the full names and current residential addresses of your enduring guardian(s) and substitute enduring guardian(s)
- have completed all sections of the form as required and crossed out and initialled clauses that do not apply to your situation
- have indicated the functions you wish your enduring guardian(s) to perform by carefully completing clause 4
- have set out the circumstances in which your enduring guardian(s) may act OR crossed out and initialled clause 5 if you do not want to specify particular circumstances
- have given directions about how your enduring guardian(s) are to perform their role OR crossed out and initialled clause 6 if you do not want to make any directions

- have signed the form, including any pages you have added to your EPG with your usual signature or have followed the terms of a marksman or readover clause
- have considered signing and having witnessed, the first two pages of the EPG in the space provided (optional)
- have had two eligible witnesses (see Appendix B) present when you signed the EPG or when it was signed using a marksman or readover clause
- have had two eligible witnesses sign and date the form, including any additional pages you have added to your EPG
- have had one witness state their qualifications as an authorised witness
- have had all enduring and substitute enduring guardian(s) accept the appointment by completing the acceptance section of the form
- have had each acceptance witnessed by two eligible witnesses who were both present when the enduring guardian(s) signed the acceptance of appointment
- have considered completing the optional statement to advise if you have also made an Advance Health Directive.

Appendix A

Certifying copies of documents

What is a certified copy?

A certified copy is a photocopy of a document which has been certified as a direct copy of the original document.

Who can certify a copy?

There is no legislation in Western Australia that stipulates either how to certify a copy of a document or who can do it. However, it is usual for documents to be certified by a person who is authorised as a witness for statutory declarations under the *Oaths, Affidavits and Statutory Declarations Act 2005* (see Appendix B).

How do I certify a copy?

Before certifying a document, you must ensure that the copy to be certified is an identical copy of the original. A suggested wording for the certification is as follows:

I certify that this appears to be a true copy of the document produced to me on <date>.

Signature

Name

Qualification (e.g. Justice of the Peace, Doctor)

The person certifying the document is stating their opinion that the document is a true copy, not that the original document is authentic. Certifying a copy does not in any way 'authenticate' either the copy or the original document.

Documents in languages other than English

You should not certify a document in a language other than English unless you can be sure that the original and the copy are identical. A solution to this is to have the original photocopied in your presence.

Multiple-page documents

If the original is a multiple-page document, each page must be checked against the copy to ensure that it is correct. You can then proceed as follows:

- sign or initial each page
- number each page of the copy as 'page 1 of 40', 'page 2 of 40' and so on
- certify the last page as follows:

I certify that this <number of pages> page document, each page of which I have numbered and signed/initialled, appears to be a true copy of the document produced to me on <date>.

Signature

Name

Qualification (e.g. Justice of the Peace, Doctor)

Appendix B

List of persons authorised to witness Enduring Powers of Guardianship

Please note one of your witnesses must be from this list.

Schedule 2 of the *Oaths, Affidavits and Statutory Declarations Act 2005* lists the people who are authorised to witness declarations in Western Australia.

These are:

- Academics (post-secondary institution)
- Accountants
- Architects
- Australian Consular Officers
- Australian Diplomatic Officers
- Bailiffs
- Bank managers
- Chartered secretaries
- Chemists
- Chiropractors
- Company auditors or liquidators
- Court officers
- Defence force officers
- Dentists
- Doctors
- Engineers
- Industrial organisation secretaries
- Insurance brokers
- Justices of the Peace
- Lawyers
- Local Government CEOs or deputy CEOs

Local government councillors
Loss adjusters
Marriage celebrants
Members of Parliament
Ministers of religion
Nurses
Optometrists
Patent attorneys
Physiotherapists
Podiatrists
Police officers
Post office managers
Psychologists
Public notaries
Real estate agents
State & Commonwealth public servants
Settlement agents
Sheriffs or Deputy Sheriffs
Surveyors
Teachers
Tribunal officers
Veterinary surgeons
and anyone authorised under the *Commonwealth Statutory Declarations Act 1959* to take a statutory declaration.

NOTE: No person under the age of 18 years is qualified to witness any Statutory Declarations or instruments.

Different criteria apply for execution of an EPG by witnesses in places other than Western Australia. If the EPG is signed elsewhere you should seek legal advice.

If you need more information about a person's eligibility to be a witness, see the Office of the Public Advocate's website www.publicadvocate.wa.gov.au or call the Telephone Advisory Service 1300 858 455.

Enduring Power of Guardianship

This Enduring Power of Guardianship is made under the *Guardianship and Administration Act 1990* Part 9A on the _____ day of _____ 20____ by (*appointor's full name*) _____ of (*appointor's residential address*) _____ born on (*appointor's date of birth*) _____

This Enduring Power of Guardianship has effect, subject to its terms, at any time I am unable to make reasonable judgments in respect of matters relating to my person.

1 Appointment of enduring guardian(s)

1A Sole enduring guardian

I appoint (*appointee's full name*) _____ of (*appointee's residential address*) _____ to be my enduring guardian.

OR

1B Joint enduring guardians

I appoint (*appointee's full name*) _____ of (*appointee's residential address*) _____ and (*appointee's full name*) _____ of (*appointee's residential address*) _____ to be my joint enduring guardians.

2 Appointment of substitute enduring guardian(s)

I appoint (*appointee's full name*) _____ of (*appointee's residential address*) _____ to be my substitute enduring guardian in substitution of (*enduring guardian's name*) _____

I appoint (*appointee's full name*) _____ of (*appointee's residential address*) _____ to be my substitute enduring guardian in substitution of (*enduring guardian's name*) _____

My substitute enduring guardian(s) is (are) to be my enduring guardian(s) in the following circumstances:

Signing each page is not compulsory but may provide a safeguard against pages being substituted. Signature of (appointor) _____ (witness 1) _____ (witness 2) _____

3 Death of joint enduring guardian

3A Surviving joint enduring guardians to act

If one or more of my joint enduring guardians die, I want the surviving enduring guardian(s) to act.

OR 3B Surviving joint enduring guardians not to act

If one or more of my joint enduring guardians die, I do not want the surviving enduring guardian(s) to act.

4 Functions of enduring guardian(s)

Note: An enduring guardian cannot be authorised to make decisions about financial or property matters.

4A All functions authorised

I authorise my enduring guardian(s) to perform in relation to me all of the functions of an enduring guardian, including making all decisions about my health care and lifestyle.

OR 4B Only specified functions authorised

I authorise my enduring guardian(s) to perform in relation to me only the following functions:

- a decide where I am to live, whether permanently or temporarily
- b decide with whom I am to live
- c decide whether I should work and, if so, any matters related to my working
- d consent, or refuse consent, on my behalf to any medical, surgical or dental treatment or other health care (including palliative care and life sustaining measures such as assisted ventilation and cardiopulmonary resuscitation)
- e decide what education and training I am to receive
- f decide with whom I am to associate
- g commence, defend, conduct or settle on my behalf any legal proceedings except proceedings relating to my property or estate
- h advocate for, and make decisions about, which support services I should have access to
- i seek and receive information on my behalf from any person, body or organisation
- j _____
- k _____

Signing each page is not compulsory but may provide a safeguard against pages being substituted. Signature of
(appointor) _____ (witness 1) _____ (witness 2) _____

5 Circumstances in which enduring guardian(s) may act

My enduring guardian(s) may act only in the following circumstances:

6 Directions about how enduring guardian(s) to perform functions

My enduring guardian(s) is (are) to perform his/her (their) functions in accordance with the following directions:

Signed by:

(appointor's signature) _____

Witnessed by a person authorised to witness statutory declarations:

(authorised witness's signature) _____

(authorised witness's full name) _____

(authorised witness's address) _____

(occupation of authorised witness) _____ on (date) _____

And by another person:

(other witness's signature) _____

(other witness's full name) _____

(other witness's address) _____

_____ on (date) _____

I have made an Advance Health Directive If yes, tick or cross the box

Acceptance of appointment as enduring guardian

I, *(name of appointee)* _____
accept the appointment as an enduring guardian
(appointee's signature) _____ on *(date)* _____

Witnessed by a person authorised to witness statutory declarations:

(authorised witness's signature) _____
(authorised witness's full name) _____
(authorised witness's address) _____

(occupation of authorised witness) _____ on *(date)* _____

And by another person:

(other witness's signature) _____
(other witness's full name) _____
(other witness's address) _____
_____ on *(date)* _____

Acceptance of appointment as enduring guardian

I, *(name of appointee)* _____
accept the appointment as an enduring guardian
(appointee's signature) _____ on *(date)* _____

Witnessed by a person authorised to witness statutory declarations:

(authorised witness's signature) _____
(authorised witness's full name) _____
(authorised witness's address) _____

(occupation of authorised witness) _____ on *(date)* _____

And by another person:

(other witness's signature) _____
(other witness's full name) _____
(other witness's address) _____
_____ on *(date)* _____

Acceptance of appointment as substitute enduring guardian

I, *(name of appointee)* _____
accept the appointment as substitute enduring guardian
(appointee's signature) _____ on *(date)* _____

Witnessed by a person authorised to witness statutory declarations:

(authorised witness's signature) _____
(authorised witness's full name) _____
(authorised witness's address) _____

(occupation of authorised witness) _____ on *(date)* _____

And by another person:

(other witness's signature) _____
(other witness's full name) _____
(other witness's address) _____
_____ on *(date)* _____

Acceptance of appointment as substitute enduring guardian

I, *(name of appointee)* _____
accept the appointment as substitute enduring guardian
(appointee's signature) _____ on *(date)* _____

Witnessed by a person authorised to witness statutory declarations:

(authorised witness's signature) _____
(authorised witness's full name) _____
(authorised witness's address) _____

(occupation of authorised witness) _____ on *(date)* _____

And by another person:

(other witness's signature) _____
(other witness's full name) _____
(other witness's address) _____
_____ on *(date)* _____



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