

Western Australia

## **Guardianship and Administration Regulations 2005**

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Western Australia

## **Guardianship and Administration Regulations 2005**

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Western Australia

Guardianship and Administration Act 1990

## **Guardianship and Administration Regulations 2005**

### **1. Citation**

These regulations are the *Guardianship and Administration Regulations 2005*.

### **2. Commencement**

These regulations come into operation on the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 56 comes into operation or on the day of their publication in the *Gazette*, whichever is the later.

### **3. Information as to administrator and estate**

An administrator must, within 4 weeks of being appointed, provide the Public Trustee with information as to the administrator, the represented person and the estate in a duly completed form approved by the Public Trustee.

Penalty: \$1 000.

### **4. Examination of accounts**

- (1) Unless the Public Trustee otherwise allows, an administrator must lodge with the Public Trustee accounts in relation to an estate administered by the administrator set out in a form approved by the Public Trustee within 4 weeks of the due date approved by the Public Trustee.

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Penalty: \$1 000.

- (2) An administrator must retain documents relating to the financial transactions of the estate and submit them to the Public Trustee if so required.

Penalty: \$1 000.

- (3) Unless the Public Trustee otherwise allows, if a person ceases to be the administrator of the estate of a represented person upon —

- (a) the making of an order by the State Administrative Tribunal under the Act; or  
(b) the death of the represented person,

that person must, within 4 weeks of the day on which the order was made or the represented person died, lodge with the Public Trustee accounts in a form approved by the Public Trustee.

Penalty: \$1 000.

**5. False or misleading information**

A person who provides information under regulation 3 or 4(1) or (3) which the person knows to be false or misleading in a material particular commits an offence.

Penalty: \$1 000.

**6. *Guardianship and Administration Regulations 1995 repealed***

The *Guardianship and Administration Regulations 1995* are repealed.

## **Notes**

- <sup>1</sup> This is a compilation of the *Guardianship and Administration Regulations 2005*<sup>1a</sup>. The following table contains information about those regulations.

### **Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Guardianship and Administration Regulations 2005</i>	21 Jan 2005 p. 268-9	24 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### **Provisions that have not come into operation**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Guardianship and Administration Amendment Regulations 2009 r. 3-7</i> <sup>2</sup>	15 Sep 2009 p. 3583-97	On commencement of the <i>Acts Amendment (Consent to Medical Treatment) Act 2008</i> s. 4)

- <sup>2</sup> On the date as at which this compilation was prepared, the *Guardianship and Administration Amendment Regulations 2009 r. 3-7* had not come into operation. They read as follows:

**3.     Regulations amended**

These regulations amend the *Guardianship and Administration Regulations 2005*.

**4.     Part 1 heading inserted**

Before regulation 1 insert:

## **Part 1 — Preliminary matters**

**5.     Part 2 heading inserted**

Before regulation 3 insert:

## **Part 2 — Estate administration**

**6. Regulation 6 deleted**

Delete regulation 6.

**7. Part 3 and Schedules 1 and 2 inserted**

At the end of the regulations insert:

**Part 3 — Enduring powers of guardianship and advance health directives**

**6. Enduring power of guardianship (Schedule 1)**

The form prescribed for an enduring power of guardianship is the form in Schedule 1.

**7. Advance health directive (Schedule 2)**

The form prescribed for an advance health directive is the form in Schedule 2.

**8. Status of notes in forms**

Notes in, and footnotes at the end of, a form in Schedule 1 or 2 are provided to assist in the completion of the form and are not part of the form.

**Schedule 1 — Enduring power of guardianship form**

[r. 6]

**Enduring Power of Guardianship**

*Notes:*

- *To make an enduring power of guardianship, you must be 18 years of age or older and have full legal capacity.<sup>1</sup>*
- *A person who makes an enduring power of guardianship is called "the appointor".*

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)**

*Notes for section 1:*

- You can only appoint a person to be your enduring guardian if that person is 18 years of age or older and has full legal capacity.<sup>2</sup>
- If you want to appoint only one person to be your enduring guardian, complete section 1A and cross out and initial section 1B.<sup>3</sup>
- If you want to appoint 2 people to be your joint enduring guardians, cross out and initial section 1A and complete section 1B.<sup>4</sup>
- If you want to appoint more than 2 people to be your joint enduring guardians, cross out and initial section 1A, complete section 1B for 2 of the people and include the details of the additional people in an attachment to this form.
- Joint enduring guardians must make unanimous decisions.<sup>5</sup>

**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)**

*Notes for section 2:*

- You may appoint one or more people (called "substitute enduring guardians") to act instead of your sole enduring guardian or to act instead

*of one or more of your joint enduring guardians.<sup>6</sup>*

- *You can only appoint a person to be a substitute enduring guardian if that person is 18 years of age or older and has full legal capacity.<sup>2</sup>*
- *You must specify the circumstances in which the substitute enduring guardian(s) is (are) to act. For example —*
  - (a) *if my sole enduring guardian A dies or becomes incapacitated, my substitute enduring guardian X is to be my sole enduring guardian;*
  - (b) *if one of my joint enduring guardians B and C dies or becomes incapacitated, the remaining enduring guardian and my substitute enduring guardian Y are to be my joint enduring guardians.*
- *If you do not want to appoint any substitute enduring guardians, cross out and initial section 2.*

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:

.....  
.....  
.....

### **3. Death of joint enduring guardian**

*Notes for section 3:*

- *If you are appointing only one person to be your enduring guardian, cross out and initial sections 3A and 3B.*
- *If you are appointing 2 or more people to be your joint enduring guardians and you want the surviving enduring guardian(s) to act if a joint enduring*

*guardian dies, cross out and initial section 3B.* <sup>7</sup>

- *If you are appointing 2 or more people to be your joint enduring guardians but you do not want the surviving enduring guardian(s) to act if a joint enduring guardian dies, cross out and initial section 3A.* <sup>7</sup>

**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)**

*Notes for section 4:*

- *If you do not want to limit the functions that your enduring guardian(s) can perform, cross out and initial section 4B.* <sup>8</sup>
- *If you want to limit the functions that your enduring guardian(s) can perform, cross out and initial section 4A and complete section 4B.* <sup>9</sup>
- *If you do not want your enduring guardian(s) to perform a function specified in paragraphs (a) to (i) of section 4B, cross out and initial the paragraph.*
- *If you want your enduring guardian(s) to perform a function that is not specified in paragraphs (a) to (i) of section 4B, specify the function in another paragraph.*
- *Your enduring guardian(s) cannot perform any of the following functions on your behalf—<sup>10</sup>*
  - (a) *make decisions about your property or estate;*
  - (b) *vote in an election;*
  - (c) *make or change your will without an order from the Supreme Court;*
  - (d) *consent to an adoption;*
  - (e) *consent to your sterilisation without the State Administrative Tribunal's consent;*
  - (f) *consent to the marriage of a person who is under 18 years of age.*
- *If you make an advance health directive that applies to any treatment, your enduring guardian(s) cannot consent or refuse consent on your behalf to that treatment.* <sup>11</sup>

**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);<sup>12</sup>
- (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) .....
- .....

**5. Circumstances in which enduring guardian(s) may act**

*Notes for section 5:*

- *If you do not want to limit the circumstances in which your enduring guardian(s) may act, cross out and initial section 5.*
- *If you want to limit the circumstances in which your enduring guardian(s) may act, you must specify the circumstances.<sup>13</sup> For example, for as long as my enduring guardian(s) live(s) in the same city or town as me.*

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

.....  
.....

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

*Notes for section 6:*

- *If you do not want to include any directions about how your enduring guardian(s) is (are) to perform his/her (their) functions, cross out and initial section 6.*
- *If you want to include any directions about how your enduring guardian(s) is (are) to perform his/her (their) functions, you must specify the directions.<sup>14</sup> For example —*
  - (a) *if I need to be moved into a residential care facility, do not move me into XYZ Nursing Home;*
  - (b) *I would prefer to continue seeing my current GP, Dr C.D., for my general medical needs because she has been my GP for many years;*
  - (c) *if possible, all of my children are to be consulted before any major decisions are made on my behalf.*

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

.....  
.....  
.....

*Notes for appointor about signing and witnessing:*

- *If you are physically incapable of signing this enduring power of guardianship, you can ask another person to sign for you. You must be present when the person signs for you.<sup>15</sup>*
- *Two (2) witnesses must be present when you sign this enduring power of guardianship or when another person signs for you.<sup>16</sup>*
- *Each of the witnesses must be 18 years of age or older and cannot be you, the person signing for you (if applicable) or an appointee.*
- *At least one of the witnesses must be authorised to witness statutory declarations. For a list of people who are authorised to witness statutory declarations, see the Oaths, Affidavits and Statutory Declarations Act 2005.<sup>17</sup>*
- *The witnesses must also sign this enduring power of guardianship. Both witnesses must be present when each of them signs. You and the*

person signing for you (if applicable) must also be present when the witnesses sign.<sup>16</sup>

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 residential address)*

.....  
*(occupation of authorised witness)*

.....  
*(date)*

and by another person:

.....  
*(other witness's signature)*

.....  
*(other witness's full name)*

.....  
*(other witness's residential address)*

.....  
*(date)*

**Optional statement about advance health directive**

*Notes about statement:*

- If you wish to indicate that you have made an advance health directive, put a tick (✓) or cross (✗) in the box next to the statement.
- You do not have to say anything in this enduring power of guardianship about whether or not you have made an advance health directive. You can leave the box next to the statement blank.

I have made an advance health directive

*Notes for appointee(s) about signing and witnessing:*

- Each appointee must sign an acceptance to indicate the appointee's acceptance of the appointment.<sup>18</sup>

- Two (2) witnesses must be present when an appointee signs the acceptance.<sup>19</sup>
- The appointor does not have to be present when an appointee signs the acceptance.
- Each of the witnesses must be 18 years of age or older and cannot be the appointor, the person signing for the appointor (if applicable) or an appointee.
- At least one of the witnesses must be authorised to witness statutory declarations. For a list of people who are authorised to witness statutory declarations, see the Oaths, Affidavits and Statutory Declarations Act 2005.<sup>17</sup>
- The witnesses must also sign the acceptance. Both witnesses must be present when each of them signs. The appointee must also be present when the witnesses sign.<sup>19</sup>
- The appointees can sign at the same time or at different times. Different witnesses can witness each appointee's signature.

**Acceptance of appointment as enduring guardian**

I, .....  
(name of appointee)

accept the appointment as an enduring guardian.

Signed by:

.....  
(appointee's signature)  
.....  
(date)

Witnessed by a person authorised to witness statutory declarations:

.....  
(authorised witness's signature)  
.....  
(authorised witness's full name)  
.....  
(authorised witness's residential address)  
.....  
(occupation of authorised witness)  
.....  
(date)

and by another person:

.....

(other witness's signature)

.....  
(other witness's full name)

.....  
(other witness's residential address)

.....  
(date)

**Acceptance of appointment as enduring guardian**

I, .....  
(name of appointee)

accept the appointment as an enduring guardian.

Signed by:

.....  
(appointee's signature)

.....  
(date)

Witnessed by a person authorised to witness statutory declarations:

.....  
(authorised witness's signature)

.....  
(authorised witness's full name)

.....  
(authorised witness's residential address)

.....  
(occupation of authorised witness)

.....  
(date)

and by another person:

.....  
(other witness's signature)

.....  
(other witness's full name)

.....  
(other witness's residential address)

.....  
(date)

**Acceptance of appointment as substitute enduring guardian**

I, .....  
(name of appointee)

accept the appointment as a substitute enduring guardian.

Signed by:

.....  
*(appointee's signature)*

.....  
*(date)*

Witnessed by a person authorised to witness statutory declarations:

.....  
*(authorised witness's signature)*

.....  
*(authorised witness's full name)*

.....  
*(authorised witness's residential address)*

.....  
*(occupation of authorised witness)*

.....  
*(date)*

and by another person:

.....  
*(other witness's signature)*

.....  
*(other witness's full name)*

.....  
*(other witness's residential address)*

.....  
*(date)*

**Acceptance of appointment as substitute enduring guardian**

I, .....  
*(name of appointee)*

accept the appointment as a substitute enduring guardian.

Signed by:

.....  
*(appointee's signature)*

.....  
*(date)*

Witnessed by a person authorised to witness statutory declarations:

.....  
*(authorised witness's signature)*

(authorised witness's full name)

.....  
(authorised witness's residential address)

.....  
(occupation of authorised witness)

.....  
(date)

and by another person:

.....  
(other witness's signature)

.....  
(other witness's full name)

.....  
(other witness's residential address)

.....  
(date)

---

<sup>1</sup> *Guardianship and Administration Act 1990 (GAA Act) s. 110B*

<sup>2</sup> GAA Act s. 110D

<sup>3</sup> GAA Act s. 110B(a)

<sup>4</sup> GAA Act s. 110B(b)

<sup>5</sup> GAA Act s. 53(a) as applied by s. 110H(b)

<sup>6</sup> GAA Act s. 110C

<sup>7</sup> GAA Act s. 54 as applied by s. 110H(c)

<sup>8</sup> GAA Act s. 110G(1)

<sup>9</sup> GAA Act s. 110G(2)

<sup>10</sup> GAA Act s. 110G(1)

<sup>11</sup> GAA Act s. 110ZJ

<sup>12</sup> GAA Act s. 3(1), definitions of ***life sustaining measure, palliative care and treatment***

<sup>13</sup> GAA Act s. 110G(3)

<sup>14</sup> GAA Act s. 110G(4)

<sup>15</sup> GAA Act s. 110E(1)(b)

<sup>16</sup> GAA Act s. 110E(1)(c) and (d) and (2)

<sup>17</sup> *Oaths, Affidavits and Statutory Declarations Act 2005* s. 12(6) and Sch. 2

<sup>18</sup> GAA Act s. 110E(1)(e)

<sup>19</sup> GAA Act s. 110E(1)(f) and (g) and (2)

## Schedule 2 — Advance health directive form

[r. 7]

**Advance Health Directive**

*Notes:*

- *To make an advance health directive, you must be 18 years of age or older and have full legal capacity.<sup>1</sup>*
- *A person who makes an advance health directive is called "the maker".*

This advance health directive is made under the *Guardianship and Administration Act 1990 Part 9B* on

the ..... day of ..... 20.....

by .....  
*(maker's full name)*

of .....  
*(maker's residential address)*

born on .....  
*(maker's date of birth)*

This advance health directive contains treatment decisions in respect of my future treatment.

A treatment decision in this advance health directive operates in respect of the treatment to which it applies at any time I am unable to make reasonable judgments in respect of that treatment.

*Notes about treatment decisions:*

- *Treatment is any medical, surgical or dental treatment or other health care (including palliative care and life sustaining measures such as assisted ventilation and cardiopulmonary resuscitation).<sup>2</sup>*
- *A treatment decision is a decision to consent or refuse consent to the commencement or continuation of any treatment.<sup>3</sup>*
- *A treatment decision operates only in the circumstances that you specify.<sup>4</sup>*
- *Treatment to which you consent in this advance health directive can be provided to you.*
- *Treatment to which you refuse consent in this advance health directive cannot be provided to you.*
- *Your enduring guardian or guardian or another person cannot consent or refuse consent on your behalf to any treatment to which this advance health directive applies.<sup>5</sup>*

**1. Treatment decision**

In the following circumstances:

.....  
.....  
.....  
.....

I consent / refuse consent (cross out and initial one of these)  
to the following treatment:

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

**2. Treatment decision**

In the following circumstances:

.....  
.....  
.....  
.....  
.....

I consent / refuse consent (cross out and initial one of these)  
to the following treatment:

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

**3. Treatment decision**

In the following circumstances:

.....  
.....

I consent / refuse consent (cross out and initial one of these)  
to the following treatment:

*Notes for maker about signing and witnessing:*

- *If you are physically incapable of signing this advance health directive, you can ask another person to sign for you. You must be present when the person signs for you.<sup>6</sup>*
- *Two (2) witnesses must be present when you sign this advance health directive or when another person signs for you.<sup>7</sup>*
- *Each of the witnesses must be 18 years of age or older and cannot be you or the person signing for you (if applicable).*
- *At least one of the witnesses must be authorised to witness statutory declarations. For a list of people who are authorised to witness statutory declarations, see the Oaths, Affidavits and Statutory Declarations Act 2005.<sup>8</sup>*
- *The witnesses must also sign this advance health directive. Both witnesses must be present when each of them signs. You and the person signing for you (if applicable) must also be present when the witnesses sign.*

Signed by:

.....  
(maker's signature)

Witnessed by a person authorised to witness statutory declarations:

.....  
(authorised witness's signature)

.....  
(authorised witness's full name)

(authorised witness's residential address)

.....  
(occupation of authorised witness)

.....  
(date)

and by another person:

.....  
(other witness's signature)

.....  
(other witness's full name)

.....  
(other witness's residential address)

.....  
(date)

**Optional statement about legal or medical advice**

*Notes about statement:*

- You are encouraged (but are not required) to seek legal or medical advice before making this advance health directive.<sup>9</sup>
- If you wish to indicate that you have obtained legal or medical advice and wish to identify the person who gave you the advice, complete the relevant part of the statement.
- If you wish to indicate that you have obtained legal or medical advice but do not wish to identify the person who gave you the advice, cross out and initial the relevant part of the statement.
- If you do not wish to indicate whether or not you have obtained legal or medical advice, you may (but do not have to) cross out and initial the statement.
- If you do not wish to obtain legal or medical advice, you may (but do not have to) cross out and initial the statement.
- You do not have to say anything in this advance health directive about whether or not you have sought or obtained legal or medical advice. You can leave the statement blank and do not have to cross out or initial any part of it.

Before making this advance health directive, I obtained legal advice about making it.

I obtained that legal advice from .....

.....  
(Details of person who provided legal advice)

Before making this advance health directive, I obtained medical advice about making it.

I obtained that medical advice from .....

.....  
*(Details of person who provided medical advice)*

**Optional statement about enduring power of guardianship**

*Notes about statement:*

- *If you wish to indicate that you have made an enduring power of guardianship, put a tick (✓) or cross (✗) in the box next to the statement.*
- *You do not have to say anything in this advance health directive about whether or not you have made an enduring power of guardianship. You can leave the box next to the statement blank.*

I have made an enduring power of guardianship.

- 
- 1 *Guardianship and Administration Act 1990 (GAA Act) s. 110P*
  - 2 *GAA Act s. 3(1), definitions of **life sustaining measure, palliative care and treatment***
  - 3 *GAA Act s. 3(1), definition of treatment decision*
  - 4 *GAA Act s. 110S(2)*
  - 5 *GAA Act s. 110ZJ*
  - 6 *GAA Act s. 110Q(1)(c)*
  - 7 *GAA Act s. 110Q(1)(d) and (e) and (3)*
  - 8 *Oaths, Affidavits and Statutory Declarations Act 2005 s. 12(6) and Sch. 2*
  - 9 *GAA Act s. 110Q(1)(b) and (2) and 110QA*