

DEFINITIONS

Legal Capacity means the ability of a person to make legally binding decisions about themselves and their property. It is the capacity to make reasoned decisions based on information, which you need to understand.

A **Guardian** is a person appointed by you or the State Administrative Tribunal (SAT) to make decisions about your living arrangements, support services and/or medical treatment on your behalf.

An **Administrator** is a person appointed by SAT to make decisions about your financial and/or property matters on your behalf. The Administrator can access bank accounts, pay bills, and sell or purchase your property.

Attorney means a person who is appointed by you under an Enduring Power of Attorney to manage your financial and property matters (also known as 'donee').

State Administrative Tribunal is the Tribunal, which has the power to review WA government administrative decisions including guardianship and administration decisions.

Office of the Public Advocate is a government department, which provides Guardians.

Public Trustee is a government department, which provides Administrators.

Advanced Health Directive (AHD) (Living Will) An AHD is a written record about your wishes for your future medical treatment. It is a document in which you say how you want to be treated by doctors if you cannot say so yourself, for example if you are unconscious or because of a mental illness.

Will means a legal document that states how you want your assets to be distributed after your death. You should choose an Executor who will ensure your wishes are met.

Crisis Card is a card, which tells anyone who reads it including police, ambulance and hospital staff about your illness, who to contact, where to find documents and about your medication.

CONTACT

Mental Health Law Centre

Address: 255 Hay Street, Subiaco WA 6008

Mail: PO BOX 8078, Subiaco East WA 6008

Telephone: (08) 9328 8012

FREE CALL STATEWIDE: 1800 620 285

Facsimile: (08) 6323 3382

Website: www.mhlcwa.org.au

Email: reception@mhlcwa.org.au



@MHLCWA



<https://www.facebook.com/MHLCWA/>



<https://au.linkedin.com/company/mental-health-law-centre>

ABOUT THE MENTAL HEALTH LAW CENTRE

The MHLC is a state-wide Community Legal Centre specialising in mental health law. We are not a government body. We are an independent community based charity, funded to provide specialised legal services throughout Western Australia.

Our primary purpose is to provide confidential legal advice and representation to people who are involuntary patients in the mental health system. We may also be able to assist with other legal problems, but only if the problem relates directly to mental illness.

For further information about legal issues facing people subject to the Mental Health Act, please also refer to the Mental Health Law Centre's "Patients' Rights Guide".

Disclaimer of Liability:

The writer, publisher and the Mental Health Law Centre (WA) Inc. disclaim liability as to the reliability and completeness of the information in this publication and disclaim any liability for action taken or not taken as result of this content or for any errors and omissions. It is emphasised that the reader may need legal advice in relation to their particular circumstances. Current as at **November 2015**

mental health

LAW CENTRE

ADMINISTRATION (POWER OF ATTORNEY)

*Guardianship and Administration
Act 1990 (WA)*

What is Administration?

Administration orders are made to help people manage their financial affairs/estate when they cannot do so themselves, for example because of mental illness.

Administrators can only make decisions that the Administration Order made by the State Administrative Tribunal (SAT) authorises. An Administration Order may be either plenary or limited. A **plenary order** is one which authorises the administrator to make decisions about any aspect of the represented person's property or finances, permitted by the *Guardianship and Administration Act 1990* (WA). A **limited order** is one which authorises decisions about some things, but not others.

The SAT will appoint an Administrator for you if you are:

- unable, for example by reason of a mental impairment, to make reasonable judgments about all or any part of your property or finances; and
- in need of an Administrator. When deciding who should be your Administrator, the SAT must take into account:
 - compatibility of the Administrator with you;
 - your wishes; and
 - the suitability of the person to undertake the role.
- The Administrator can be a friend, family member or the Public Trustee. The Administrator must do what they can to encourage and assist you to become capable of taking care of your own property and finances, in the long term.

For more information and/or application forms go to: www.publictrustee.wa.gov.au

Managing My Affairs in the Future: How Should I Plan?

A number of steps can be taken to prepare for any future incapacity.

1. Make an Enduring Power of Attorney

An Enduring Power of Attorney (EPA) allows you to give another person the legal authority to make financial and/or property decisions on your behalf. An EPA does not authorise making any decisions about your lifestyle or medical treatment.

You may appoint someone as your Attorney if you:

- are over 18 years of age; and
 - can make informed decisions at the time you sign the EPA.
- Your Attorney must:
- be over 18 and have legal capacity;
 - consent to act as your Attorney; and
 - be willing to take on the responsibility.

The Attorney power can be activated when you specify; immediate and ongoing; or operative only when you cannot make reasoned decisions.

A document appointing your Attorney(s) **must be witnessed by two people** and does not have to be registered. Ensure your Attorney(s) understand(s) what you want, otherwise they may have to decide for you when you cannot tell them. If you are an involuntary patient, under the *Mental Health Act*, you may not be able to make an EPA while the involuntary order is current.

Your doctor may decide whether or not you have capacity to appoint an Attorney.

You can revoke your Attorney's powers at any time when you have legal capacity.

For more information about how to make an Enduring Power of Attorney go to www.publicadvocate.wa.gov.au

2. Make an Advanced Health Directive (AHD) (Living Will)

An AHD is a document for recording your directions about future medical treatment. Treatment means medical, surgical or dental treatment, or other health care. Your decision or preference can relate to commencing/refusing and commencing/continuing treatment.

The AHD records your directions about your future health treatment if you later become incapable of making those decisions (for example: life-support, palliative care).

An AHD is different from an EPA or an Enduring Power of Guardianship (EPG) because you make specific directions about your treatment before the need for decisions arises. An AHD generally prevails over the direction of a Guardian. You cannot direct the doctors to give you specific treatment by an AHD, only that you want or refuse certain treatment.

You may wish to discuss with a doctor about treatment options available. Your AHD can be cancelled if you have capacity. It should be reviewed regularly.

It is undecided whether or not your AHD could override an involuntary treatment order under the *Mental Health Act*, but it may be helpful and/or persuasive to the psychiatrist making decisions about your treatment to know about your preferred treatment and why.

3. Make a Crisis Card

You can make a crisis card to carry with you to tell people about your illness in the event that you cannot communicate clearly. It could contain information about who to contact if you need help and where they can find documents. You should always carry your crisis card with you.

For example:

"My name is John Smith. I have schizophrenia. If I am distressed contact Mary Smith on

My medications are

Side effects of my medication are

My AHD for my mental and physical health care is held at

On my medication I may appear

If I am not on my medication I may appear"

Review of Your Administration Order

If you have or are recovering from a mental illness the Mental Health Law Centre can assist you with legal advice and representation, if resources permit, in a State Administrative Tribunal review of your Administration order.