Carers WA Policy Submission – May 2025

The Law Reform Commission of WA

Project 114

Guardianship and Administration Act 1990 (WA)

Discussion Papers Volumes 1 & 2

About Carers WA

Carers WA is the peak body representing the needs and interests of carers in Western Australia and is part of a national network of Carers Associations. Carers provide unpaid care and support to family members and friends with disability, mental health challenges, long term health conditions (including a chronic condition or terminal illness), have an alcohol or drug dependency, or who are frail aged. The person they care for may be a parent, partner, sibling, child, relative, friend or neighbour.

Caring is a significant form of unpaid work in the community and is integral to the maintenance of our aged, disability, health, mental health, and palliative care systems.

Some important facts about carers include:

- There are currently 3.04 million unpaid carers in Australia.
- There are more than 320,000 families and friends in a caring role in Western Australia.
- The replacement value of unpaid care, according to a report undertaken by Deloitte, Access Economics, "The economic value of unpaid care in Australia in 2020" is estimated at $77.9 billion per annum.

Acknowledgement of Country

Carers WA acknowledges the Wadjuk Noongar Nation's lands, water, customs, and culture of which the Carers WA Head Office is located. Carers WA recognises our services reach beyond the Perth (Boorlo) region, and so we also acknowledge the cultural diversity of First Nation Peoples across our state and throughout Australia.

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1.0 Recommendations

These are recommendations in relation to amendments to the *Guardianship and Administration Act 1990* (WA). Additional recommendations regarding other aspects of the WA guardianship and administration system, resulting from consultations with WA carers, are available in Appendix 1 of this submission.

1. The revised *Guardianship and Administration Act 1990* (WA) include a clear definition of the term 'primary carer' and differentiate it from the role of a paid care worker, as per the definitions under the *Guardianship and Administration Act 2000* (Qld).
2. Recognition of carers be included within the overarching Principles within the revised *Guardianship and Administration Act 1990* (WA), as per General Principle 4 of the *Guardianship and Administration Act 2000* (Qld).
3. The overarching statutory principles (General and Health) included in section 11(B) of the *Guardianship and Administration Act 2000* (Qld), and accompanying sub-sections, be adopted within the revised *Guardianship and Administration Act 1990* (WA).
4. The revised *Guardianship and Administration Act 1990* (WA) include, under the 'presumption of capacity' principle, that just because someone does not currently manage an area of their life, does not mean they are not capable of doing so.
5. Under the revised *Guardianship and Administration Act 1990 (WA)*, measures are included to enact:
    - Mandatory, periodic reviews of guardianship and administration arrangements.
    - Establish independent oversight mechanisms to investigate complaints and ensure compliance.
    - Provide advocacy and legal support for carers navigating the system.
    - Mandatory education for decision makers and service providers on the roles and rights of represented persons, families and carers.
    - Ensure carers and represented persons are consulted and heard in tribunal processes.
    - Ensure full transcripts and other documentation are available upon request by interested parties (including family members and carers).
    - Review and simplify Freedom of Information processes.

6. The removal of the 'best interests' principle and reconsideration of the 'least restrictive' principle, in favour of principles which align with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and supported decision making principles as outlined in recommendation 6.6 of Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
7. The implementation of substantial public education which covers what the SAT is; what guardianship and administration is; when an application should be made; and provides increased clarity around what occurs in a SAT hearing.
8. Independent advocates be legislatively required to contact the represented person, their family and carers upon notification of a SAT application being made, similar to how mental health advocates must do so under the *Mental Health Act 2014* (WA).
9. The revised *Guardianship and Administration Act 1990* (WA) clearly state that represented persons, their families and carers must be notified at least 14 days prior to a SAT hearing; with all documentation for a SAT hearing be made fully available in its entirety to the represented person, their family and carer at least seven days prior to a hearing, to allow sufficient time for interested parties to review the documentation and prepare.
10. The applicant, current guardian and/or administrator, proposed guardian or administrator, representative, carer and the represented individual (or proposed represented person) be able to request and receive equal access to documents involved in proceedings under the revised Guardianship and Administration Act 1990, be able to obtain copies of these documents, and have these copies provided in an accessible and timely fashion (online and/or by mail, with enough time to properly review and formulate a response).
11. The revised Guardianship and Administration Act 1990 (WA) include Cultural considerations specific to the needs of First Nations Peoples, including:
    - Notice of an application and hearing.
    - Inclusion of maintenance of Culture in an overarching Principle in the Act – Maintenance of adult's cultural and linguistic environment and values.
    - Legislated mandatory cultural competency training and training in trauma-informed practice for all employees and decision makers in the SAT, Office of the Public Advocate, Public Trustee and related agencies.
    - Legislated establishment of an Aboriginal Advisory Group for the WA guardianship and administration system.
    - Legislated 50D positions within the State Administrative Tribunal, the Office of the Public Advocate and the Public Trustee, including in decision-making positions.

2.0 Introduction

Carers WA (CWA) appreciates the opportunity to provide feedback to the Law Reform Commission of Western Australia, in response to its discussion papers on *Project 114: Guardianship and Administration Act 1990* (WA).

CWA endorses the United Nations Convention on the Rights of Persons with Disabilities (CRPD), of which Australia is a signatory, and believe that families and informal carers play an important role in supporting the rights of people with disability in line with the CRPD, where they have been nominated to do so. Human rights-based approaches should be upheld and enforced in all human service systems, including the WA guardianship and administration system and Act.

For the purposes of this submission, the term 'carer' is defined as per the meaning under the *Carer Recognition Act 2004* (WA), this being an individual who provides care and assistance to another person/s who has disability, chronic illness, mental illness, or who because of frailty requires assistance with carrying out everyday tasks[1]. A carer does not include someone who provides care or assistance as part of a contract for services or community work. A carer may include a friend, family member, neighbour or other contact[2]. Carers can be aged under 25 (young carers) or be older carers.

This submission is informed by ongoing feedback from WA carers, a targeted online carer survey, and three consultation sessions with WA carers (one online session; one hybrid session; and an in-person session for First Nations carers). Specific feedback and demographic information from these sessions is summarised in Appendix One and Appendix Two of this submission.

[1] (Government of Western Australia, 2004)

[2] (Government of Western Australia, 2004)

3.0 General Feedback

3.1 Context

'My mental health has been impacted dramatically. I have nearly ended my life due to the amount of stress and issues they have done to me.' – feedback from a carer from their experience with the WA guardianship and administration system.

WA has more than 320,000 carers[3], who provide $6.6 billion dollars of unpaid care per year and on average provide 104 hours of care per week[4]. The demand for informal care is spiking and is projected to increase 23% by 2030, however the number of carers available is only projected to increase by 16% over this timeframe[5], leaving a shortfall of 22,400 carers at a cost of over $600 million for replacement care.

Carers play a crucial role in supporting the people they care for, working tirelessly to advocate for their loved ones, provide personal care and emotional support, attend and organize appointments, and any other task which may be required of them by their loved ones. However, where carers are not recognized, supported and connected, this significantly impacts their ability to survive and thrive in their caring role, and substantially impacts the longevity of this role.

In the 2024 National Carer Survey, WA carers were found to have a personal wellbeing score of 55.88%, significantly below that of the average Australian population at 74.7%[6]. This gap can be significantly reduced through changes to carer recognition and social factors – lifting levels of personal wellbeing for WA carers as high as 68.07%[7]. However, should carers further experience social isolation, their personal wellbeing level can drop even further to as low as 46.97%[8].

WA carers feel significantly unrecognized by government bodies, community, service providers and formal services, which does little to help them feel valued[9]. This lack of acknowledgement impacts on carers' level of wellbeing and on their ability to perform their caring role, have longevity in this role, and thrive outside of their caring role. Increasing levels of formal carer recognition can lift carer wellbeing and positively impact other related areas of their lives, including levels of recognition of their caring role from family, friends and those they care for – which in turn further boosts carer wellbeing[10].

[3] (Government of Western Australia, 2018)
[4] (Deloitte Access Economics, 2020)
[5] (Deloitte Access Economics, 2020)
[6] (SAGE Design and Advisory, 2025)
[7] (SAGE Design and Advisory, 2025)
[8] (SAGE Design and Advisory, 2025)
[9] (SAGE Design and Advisory, 2025)
[10] (SAGE Design and Advisory, 2025)

3.2 Carers within the Guardianship and Administration System

Some carers in WA have had positive experiences with the WA guardianship and administration system, describing the system as straightforward and the State Administrative Tribunal (SAT) and Tribunal Members as being positive to deal with, particularly in cases involving difficult family disputes. Other carers had mixed experiences with the system, dependent on the guardian assigned to their loved ones, beginning as collaborative and working well together, ending with disagreements, aggressiveness and concerns being dismissed upon a change of guardian.

In contrast, other carers had no positive experiences with the system from their first contact with it, trying their best to ensure their loved ones rights were upheld. In short, while there are some positive elements within the current system which merit retention, there are also many opportunities to contemporise and improve the system and processes, including the experience of carers within these.

The role of a carer within the constraints of the *Guardianship and Administration Act 1990* (WA) is not defined, recognised or formalised, and as such it is also not formally recognised within the systems governed by this Act. i.e. The State Administrative Tribunal (SAT), the Office of the Public Advocate (OPA) and the Public Trustee. Within these systems, carers could take on roles such as guardian, administrator and/or a family member or friend who supports someone within and outside of the system. The recognition provided by the *Carer Recognition Act 2004* (WA) and WA Carers Charter is likewise not referred to, recognised or embedded within these systems and services. Hence, due to carers not being formally recognised within these systems, support and recognition of carers is also not embedded in these systems. The review of the *Guardianship and Administration Act 1990* (WA) is the opportune time for this to change.

This recognition of carers in the guardianship and administration system has already been established in other Australian jurisdictions. In the *Guardianship and Administration Act 2000* (Qld), carers have been defined, carers have been clearly differentiated from paid care workers, and recognition of carers has been included in the overarching Principles within this Act. Carers WA recommends these measures also be applied within the revised *Guardianship and Administration Act 1990* (WA).

In particular, it is recommended that the following components of the Queensland Act be adopted within the revised *Guardianship and Administration Act 1990* (WA):

<u>Primary Carer Definition</u>

'Primary carer, for a person, means a person who is primarily responsible for providing support or care to the other person.'

<u>Paid Carer Definition</u>

'Paid carer, for an adult, means someone who –

(a) performs services for the adult's care; and

(b) receives remuneration from any source for the services, other than –

(i) *a carer payment or other benefit received from the Commonwealth or a State for providing home care for the adult; or*

(ii) *remuneration attributable to the principle that damages may be awarded by a court for voluntary services performed for the adult's care.'*

Overarching General Principle 4: Maintenance of adult's existing supportive relationships

'(1) The importance of maintaining an adult's existing supportive relationships must be taken into account.'

(2) Maintaining an adult's existing supportive relationships may, for example, involve consultation with –

(a) the adult, to find out who are the members of the adult's support network; and

(b) any persons who have an existing supportive relationship with the adult; and

(c) any members of the adult's support network who are making decisions for the adult on an informal basis.

(3) The role of families, carers and other significant persons in an adult's life to support the adult to make decisions should be acknowledged and respected.'

Carers WA recommends:

1. The revised *Guardianship and Administration Act 1990* (WA) include a clear definition of the term 'primary carer' and differentiate it from the role of a paid care worker, as per the definitions under the *Guardianship and Administration Act 2000* (Qld).
2. Recognition of carers be included within the overarching Principles within the revised *Guardianship and Administration Act 1990* (WA), as per General Principle 4 of the *Guardianship and Administration Act 2000* (Qld).

3.3 Embedding Human Rights in the WA Act

'formally recognizing supported decision-making (SDM) in legislation can be a powerful step toward upholding the rights, autonomy, and dignity of people with cognitive disabilities, mental health conditions, or other support needs' – response from a carer

Carers WA strongly supports the use of a human rights approach within the *Guardianship and Administration Act 1990* (WA), in addition to use of defined supported decision-making principles to enact this approach, and measures to empower represented persons to make these decisions.

In carer experiences of the WA guardianship and administration system (the system) working well, the wishes and preferences of the represented person were well defined through methods such as an advanced health directive, EPA or EPG. This enabled the best interests principle within the current Act to be well informed by the wishes and preferences of the represented person. Carers with this experience were in favour of these elements of the system being retained, or for similar methods where decisions concerning the represented person are made with the represented person. i.e. such as the supported decision making and structured decision-making processes established through the *Guardianship and Administration Act 2000* (Qld). It was also important to carers that decisions made would not place the represented person in a situation where they were worse off.

However, where the will and preferences of the person being represented were not so clearly stated, carers raised that the best interests of the person were not necessarily in line with their wills and preferences. Cases were raised where decisions outright contradicted the wishes and needs of the represented person, and some cases in which the need for a guardianship and/or administration order at all was strongly opposed by the carer. In these cases, carers felt the rights of those they cared for had been taken away, with significant barriers in the system to reverse guardianship and/or administration orders. Carers raised that it was far too easy for a SAT application to be made, that they felt forced into making an application by a health or other provider, and that they had been ignored by providers as a carer or they felt a SAT application had been made to remove the carer from the equation.

3.3.1 Principles

Carers supported the development of Principles within the Act which were overarching, applicable to all decision makers under the Act, and which embedded human rights and supported decision-making principles.

Carers considered the current statutory principles within section 4 of the *Guardianship and Administration Act 1990* (WA) to be inadequate and limited. The limited nature of these principles, in that they are only applicable to the SAT and do not guide the legislation as a whole, represents a significant gap in having a clear and defined legislative basis to guide all decision makers under the Act. Further, the current principles within the WA Act do not sufficiently uphold the human rights of people with disability as per the United Nations CRPD, or clearly define actionable principles of supported decision-making.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Commission) recommended (6.6) within its Final Report, the adoption of specified supported decision-making principles within state and territory guardianship and administration legislation. These included:

1. Recognition of the equal right to make decisions
2. Presumption of decision-making ability
3. Respect for dignity and dignity of risk
4. Recognition of informal supporters and advocates
5. Access to support
6. Decisions directed by will and preferences
7. Inclusion of safeguards
8. Co-designed processes
9. Recognition of diversity
10. Cultural safety[11]

The recently updated *Guardianship and Administration Act 2000* (Qld) included overarching General Principles and Health Principles which give effect to the supported decision-making principles as recommended by the Commission. Carers strongly supported the inclusion of these Principles within the amended *Guardianship and Administration Act 1990* (WA).

[11] (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023)

These General Principles within the *Guardianship and Administration Act 2000* (Qld) include:

1. Presumption of capacity
2. Same human rights and fundamental freedoms
3. Empowering adult to exercise human rights and fundamental freedoms
4. Maintenance of adult's existing supportive relationships
    - Including principle 4(3) – '*the role of families, carers and other significant persons in an adult's life to support the adult to make decisions should be acknowledged and supported.'*
5. Maintenance of adult's cultural and linguistic environment and values
6. Respect for privacy
7. Liberty and security
8. Maximising an adult's participation in decision-making
9. Performance of functions and exercise of powers
10. Structured decision making

The Health Care Principles include:

1. Application of general principles
2. Same human rights and fundamental freedoms
3. Performance of functions and exercise of powers
4. Substituted judgement

Carers WA recommends:

3. The statutory principles (General and Health) included in section 11(B) of the *Guardianship and Administration Act 2000* (Qld), and accompanying sub-sections, be adopted within the revised *Guardianship and Administration Act 1990* (WA).

3.3.2 Application of 'presumption of capacity'

The current *Guardianship and Administration Act 1990* (WA) outlines in Part 2, Section 4(3), what every person under the Act should be presumed to be capable of by the State Administrative Tribunal. These include:

- *'Looking after his own health and safety;*
- *Making reasonable adjustments in respect of matters relating to his person;*
- *Managing his own affairs; and*
- *Making reasonable adjustments in respect of matters relating to his estate'.*

Gendered language aside, carers have raised experiences in which these elements were used as a checklist by the State Administrative Tribunal in their determinations. In one case, which is outlined in Case Study 3 in section 3.6 of this submission, a carer from a linguistically and diverse background describes how her friend's decision to have another family member take care of his finances is used as evidence that he could not do so himself. The carer raised that while her friend was capable of managing his own finances, his family member had taken care of the family finances for so long that he was not able to immediately give detailed information about the finances. The carer raised that this did not mean he was not capable, just that he had made a decision about his finances a long time ago, one which was not understood or respected in his SAT hearing. The carer described the SAT member running through the list of elements like a checklist to determine if her friend could continue to have legal capacity.

While it is understood that SAT hearings and subsequent decisions can be complex, it is also important to recognise a person's right to have others involved in the management of their lives, and that this person can still be fully capable. The areas in which a person must be presumed to be capable should not and cannot form a simple checklist of areas to prove a person is not capable. The lack of recognition of differing arrangements as described in Case Study 3 also does not recognise the differing reasons someone may get another person or party to help them to manage areas of their lives. i.e. family arrangements; cultural considerations; or simply because they want to.

Carers WA recommends:

4. The revised *Guardianship and Administration Act 1990* (WA) include, under the 'presumption of capacity' principle, that just because someone does not currently manage an area of their life, does not mean they are not capable of doing so.

3.3.3 Review of a Guardianship or Administration order

In Case Studies One, Two and Three in section 3.6 of this submission, carers' experiences are outlined in which a guardianship order has been put on the represented person for various reasons, and the carer has wanted to have the order removed for various reasons.

In Case Study One, one carer described their experience with their mother being labelled as 'mute' and having a guardianship application made for her, due to his mother not wanting to talk to strange white men in a mental health facility after her experience in being part of the Stolen Generation. This guardianship order took the carer seven years to revoke, and he said it should have never been made in the first place. After being placed on a guardianship order, the carer's mother lived in a locked care home, which for her was like being back in what she experienced when she was a child. The guardianship order was eventually removed, and the carer's mother is now living independently in the community and is a home owner capable of making her own decisions.

In Case Study Two, the carer described feeling forced into doing a SAT application for her daughter when she left school, strongly encouraged into this action by the school. Upon having the guardianship and administration order given (for a five-year term), the carer described her feelings upon realisation that she had just taken her daughter's human rights away, and created a lot of work for herself in the process. While wanting to have the order revoked, the carer described that the process to do so seemed so hard and overwhelming she was hesitant to even begin. In the meantime, she tries to preserve her daughter's human rights as much as possible under the order, and continues to deal with the paperwork and red tape.

In Case Study Three, the carer describes her experience with her friend being put on a guardianship and administration order based on a mental health assessment made while her friend was taking a medication known to have cognitive impacts. She fought to have the order reversed, upon the instruction of her friend, but hit barriers everywhere she turned or made complaints to. Eventually her friend was placed on palliative care while in hospital, which his doctor recommended, and the public guardian agreed to. This involved stopping all medications, including a long-term blood thinner medication that her friend needed to stop from having life-threatening blood clots. This was communicated to the public guardian, but nothing was done. Her friend died three days later. The carer was not granted an autopsy to determine cause of death, and was not granted access to SAT hearing transcripts to help tell her friend's overseas family how he died (even through freedom of information processes).

In all of these cases, the carers described facing extreme barriers to having SAT orders reviewed and revoked. Had these processes been simpler, with embedding of supported decision making, these cases may have had very different outcomes and not taken so long.

Carers WA recommends:

5. Under the revised *Guardianship and Administration Act 1990 (WA)*, measures are included to enact:
    - Mandatory, periodic reviews of guardianship and administration arrangements.
    - Establish independent oversight mechanisms to investigate complaints and ensure compliance.
    - Provide advocacy and legal support for carers navigating the system.
    - Mandatory education for decision makers and service providers on the roles and rights of represented persons, families and carers.
    - Ensure carers and represented persons are consulted and heard in tribunal processes.
    - Ensure full transcripts and other documentation are available upon request by interested parties (including family members and carers).
    - Review and simplify Freedom of Information processes.

3.3.4 SAT Applications

Carers have reported applications for guardianship and administration being made to the SAT, the need for which could have been easily clarified through discussion with the represented person, their family and carers. Many of these applications have been reported as having no grounds at hearings and being subsequently dismissed. Moreover, every application made unnecessarily also represents significant strain and stress on the person the hearing is about, their family and carers. This is demonstrated in Case Studies 5, 6 and 7 within section 3.6 of this submission.

The prevalence of this issue around unnecessary SAT applications being made is also noted in Discussion Paper One, which stated that the Disability Royal Commission viewed the increasing number of applications were not being made as a last resort or in the least restrictive manner, representing a disparity between the least restrictive principle and its application in practice. The discussion paper further notes early submissions which have stated this as their experience.

Carers have also stated the pressure put on them by health practitioners in times of crisis to make an application to the SAT, or being encouraged to make an application just in case they needed it in the future. This practice does not reflect a 'least restrictive' principle, and highlights the operation of the undefined, unclear and subjective 'best interests' principle which presently exists in the *Guardianship and Administration Act 1990* (WA).

In the absence of opportunity for legislative change, Carers WA has previously advocated for the development of a checklist and formal guidelines to clarify when a SAT application may be appropriate, and beneficial actions to take to clarify a situation before jumping to a SAT application. i.e. such as discussing the situation with the person, their family and carer. With the opportunity for legislative change now present, Carers WA recommends the removal of the 'best interests' principle and reconsideration of the 'least restrictive' principle, in favour of principles which align with the United Nations CRPD and supported decision making principles as outlined in recommendation 6.6 of Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

While carers have reported some positive experiences with the best interests principle when combined with clearly stated wills and preferences of the represented person, the inconsistent outcomes associated with these principles in practice (especially where wills and preferences are not clearly stated) indicate the need for increased clarity and structure, especially when it comes to someone's human rights.

Further, Carers WA also recommends the implementation of substantial public education which covers what the SAT is; what guardianship and administration is; when an application should be made; and provides increased clarity around what occurs in a SAT hearing.

In addition, to further uphold the human rights of the represented person and reduce the strain of the SAT process on them, their family and carers – Carers WA also recommends the adoption of independent advocates as per the process under the *Mental Health Act 2014* (WA). This Act requires that a person and their identified person must be visited or contacted by a mental health advocate within a certain timeframe (dependent on applicable section of the Act and nature of treatment order). Carers WA recommends that independent advocates also be legislatively required to contact the represented person, their family and carers upon notification of a SAT application being made.

Carers WA recommends:

6. The removal of the 'best interests' principle and reconsideration of the 'least restrictive' principle, in favour of principles which align with the United Nations CRPD and supported decision making principles as outlined in recommendation 6.6 of Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
7. the implementation of substantial public education which covers what the SAT is; what guardianship and administration is; when an application should be made; and provides increased clarity around what occurs in a SAT hearing.
8. Independent advocates be legislatively required to contact the represented person, their family and carers upon notification of a SAT application being made, similar to how mental health advocates must do so under the *Mental Health Act 2014* (WA).

3.3.5 Terms of Notice and Documentation Availability

Carers report significant discrepancies in timeframes for notification of SAT hearings and availability of documentation and reports from government agencies for SAT hearings, with these often becoming available only the day prior or same day as a hearing. In addition, 'matter books' for review hearings are only made available three days prior to the hearing.

The *Guardianship and Administration Act 1990* (WA) states under section 41(1) that notice of a hearing regarding a guardianship or administration order must be given at least 14 days prior, in every case, to the applicant; person in respect of whom the application is made; the nearest relative of that person; the Public Advocate; and any other person with a proper interest in the proceedings. Carers WA recommends retention of this 14-day notification requirement, with the addition of the following to the list of required notice - primary carer; current guardians, administrators and attorneys for the adult; and relevant family members.

This legislative amendment will bring the WA Act in line with Section 118 of the *Guardianship and Administration Act 2000* (Qld), which requires that the Tribunal must, at least 7 days prior, advise persons concerned of the hearing of an application about a matter, including (but not limited to) the applicant; primary carer; current guardians, administrators and attorneys for the adult; and relevant family members. The retention of the 14-day notification period which is currently in the WA Act will increase the amount of time available for the represented person, their family and carer, to prepare for what is a legal process which has significant impact on the represented person's human rights. This is in conjunction with Carers WA's recommendation for compulsory contact with an individual advocate for all involved in a SAT case.

Further, Carers WA recommends that documentation for a SAT hearing be made fully available in its entirety to the represented person, their family and carer at least seven days prior to a hearing, to allow sufficient time for interested parties to review the documentation and prepare.

Carers WA recommends:

9. The revised *Guardianship and Administration Act 1990* (WA) clearly state that represented persons, their families and carers must be notified at least 14 days prior to a SAT hearing; with all documentation for a SAT hearing be made fully available in its entirety to the represented person, their family and carer at least seven days prior to a hearing, to allow sufficient time for interested parties to review the documentation and prepare.

3.3.6 Documentation Access

Carers have raised that the impact of short timeframes in notifications of SAT cases, are further exacerbated by inconsistent and often stringent document viewing practices, which differ between different types of hearings.

This discrepancy in access practices which has been noted in feedback from carers, between lawyers and other parties involved in a hearing. Evidence of this discrepancy is that while lawyers are able to obtain copies of the documentation they are approved to access, most other parties approved to access the documentation – are not. These other parties from the feedback received include the person whom the hearing is about, their advocate, informal carer, family, etc.

While access to documents in any Guardianship & Administration Act proceedings is governed by Section 112 of this Act, there is no mention of only lawyers being able to obtain copies of documentation. In fact, under Section 112 of this Act the wording *'entitled to inspect or otherwise have access to'* is consistent regardless of if referring to a person representing the individual involved in proceedings, such as a lawyer or any other party involved. Section 112 also does not prescribe how or where any documentation is to be inspected.

Feedback from carers, some of which is demonstrated in the case studies within this section, further indicates that copies of these documents have occasionally been provided by the Tribunal, particularly during lockdown periods in 2020. Further, cases involving the Full Tribunal also provide relevant parties copies of a booklet of documents pertaining to the proceedings. These examples indicate that changes to current document access practices are possible and effective. These changes could be of great positive impact to carers and for parties from low socioeconomic backgrounds in particular. i.e. those who have caring responsibilities, who cannot take a day off work to view the documents in the Tribunal office, etc.

Carers in particular are more likely to have a greater need to not only have equal access to and provision of copies of relevant documentation, but are also likely to find it harder to deal with any distress associated with preparing for and attending a Tribunal hearing, as well as experience greater difficulty in formulating an appropriate response than a legal professional. This is demonstrated in Case Study 4 in section 3.6 of this submission.

Carers WA recommends

10. The applicant, current guardian and/or administrator, proposed guardian or administrator, representative, carer and the represented individual (or proposed represented person) be able to request and receive equal access to documents involved in proceedings under the revised Guardianship and Administration Act 1990, be able to obtain copies of these documents, and have these copies provided in an accessible and timely fashion (online and/or by mail, with enough time to properly review and formulate a response).

3.4 First Nations Peoples and carers

'This is like an adult Stolen Generation' – feedback from a First Nations carer

In Volume One of the Discussion Paper, the overrepresentation of First Nations Peoples in the guardianship system is noted. Indeed, it is stated in this paper that in 2023-24, 17% of new appointments for the Public Advocate were for First Nations Peoples, and in the preceding 5 years First Nations Peoples made up 18% of people under guardianship of the Public Advocate[12]. This means that nearly 1 in 5 people who are under a public guardianship order are from a First Nations background – in a state where only 3.3% of its population is of a First Nations background[13].

Due to the prevalence of First Nations Peoples and families in the WA guardianship and administration system, Carers WA held a separate consultation session to examine the experiences of First Nations carers and people providing care for a First Nations person.

'Don't let the OPA be a guardian to your family members' - feedback from a First Nations carer

When asked what they had found to be positive about their experience with the WA guardianship and administration system, some of the carers involved in Carers WA's First Nations consultation could not identify positive parts during their experience. Rather, the group described their relief of the experience being over, and that they knew the system better.

Some group members had experience with the State Administrative Tribunal's Aboriginal Liaison Officer, which for them had improved their experience somewhat with the WA guardianship and administration system. The group said that 'at the end of the day, we just need cultural safety, cultural understanding and knowledge; and we need Aboriginal workers working for Aboriginal people'. Carers in the consultation called for increased staff positions for First Nations Peoples in all agencies in the system (SAT, Public Trustee and Office of the Public Advocate). They also called for the creation of legislated 50D positions within these agencies, including Tribunal Members within the State Administrative Tribunal. In addition, carers in the consultation called for the establishment of an Aboriginal Advisory Group for the system, and for this group to be established through legislation in the Act.

[12]

[13] (ABS, 2022)

3.4.1 Legislative measures for First Nations Peoples in the *Guardianship and Administration Act 1990* (WA)

In its present form, the *Guardianship and Administration Act 1990* (WA) does not have any measures or mention of First Nations Peoples, Aboriginal Peoples or Torres Strait Islander Peoples. To support the human rights, culture and connection to Country of the one in five people under a public guardianship order in WA, and their families and carers, the following legislative amendments are recommended for inclusion in the revised version of the *Guardianship and Administration Act 1990* (WA).

Notice of application and hearings

As per section 118 of the *Guardianship and Administration Act 2000* (Qld), the Tribunal be required to give notice of an application and hearings to stated persons, including:

> *(f) if the adult is an Aboriginal person or a Torres Strait Islander – any person who is regarded under Aboriginal tradition or Island custom as a child, parent or sibling or the adult, and who is in a close and continuing relationship with the adult;*

Inclusion in Principles of the Act

As per Principle 5 in Chapter 2A(11B) of the *Guardianship and Administration Act 2000* (Qld):

> 5 *Maintenance of adult's cultural and linguistic environment and values*
> *(1) The importance of maintaining an adult's cultural and linguistic environment and set of values, including religious beliefs, must be taken into account.*
> *(2) Without limiting subsection (1), for an adult who is an Aboriginal person or a Torres Strait Islander, the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment and set of values, including Aboriginal tradition or Island custom, must be taken into account.*

First Nations carers also raised a prevalence in assumptions that represented persons from a First Nations background did not have capacity. In Case Study One in section 3.6 of this submission, one carer described their experience with their mother being labelled as 'mute' and having a guardianship application made for her, due to his mother not wanting to talk to strange white men in a mental health facility after her experience in being part of the Stolen Generation. This guardianship order took the carer seven years to revoke, and he said it should have never been made in the first place. After being placed on a guardianship order, the carer's mother lived in a locked care home, which for her was like being back in what she experienced when she was a child.

Situations such as the one above highlight the substantial need for the guardianship and administration system in WA to be heavily shaped by trauma-informed practice, and for significantly increased cultural competence of all agencies involved in the system. Carers WA recommends that cultural competency training and training in trauma-informed practice be mandated under legislation for all employees and decision makers in the SAT, Office of the Public Advocate, Public Trustee and related agencies.

Legislated establishment of an Aboriginal Advisory Group

First Nations carers recommend the revised *Guardianship and Administration Act 1990* (WA) include the legislated establishment of an Aboriginal Advisory Group within the State Administrative Tribunal, Office of the Public Advocate and the Public Trustee. This Group will advise on matters of relevance to First Nations peoples, their families and carers across the WA Guardianship and Administration system.

Legislated 50D positions within the State Administrative Tribunal, the Office of the Public Advocate and the Public Trustee

First Nations carers spoke positively of their experience with an Aboriginal Liaison Officer at the SAT, and recommended that more First Nations Peoples be employed in the SAT, OPA and Public Trustee, especially given the prevalence of represented persons from a First Nations background in the system. To ensure that this occurred, there were calls for these positions to be required under legislation.

Carers WA recommends:

11. The revised Guardianship and Administration Act 1990 (WA) include Cultural considerations specific to the needs of First Nations Peoples, including:
    - Notice of an application and hearing.
    - Inclusion of maintenance of Culture in an overarching Principle in the Act – Maintenance of adult's cultural and linguistic environment and values.
    - Legislated mandatory cultural competency training and training in trauma-informed practice for all employees and decision makers in the SAT, Office of the Public Advocate, Public Trustee and related agencies.
    - Legislated establishment of an Aboriginal Advisory Group for the WA guardianship and administration system.
    - Legislated 50D positions within the State Administrative Tribunal, the Office of the Public Advocate and the Public Trustee, including in decision-making positions.

3.5 Case Studies – Voices of WA Carers

**Names changed for confidentiality purposes.*

Case Study 1

Brian is a First Nations man who provides care for his mother, Carina*, and two brothers. Brian described his experience over seven years of dealing with the guardianship and administration system– with the overall aim of getting Carina off a public guardianship order.*

Carina had been placed under public guardianship after being admitted to a mental health facility. At the time, Carina could not read or write, and did not speak to the people at the mental health facility. She was labelled as 'mute' and an application for guardianship was made by the mental health facility. Brian explained that his mother had been part of the Stolen Generation, and wasn't going to talk to strange white men. Carina was placed in a locked care home, which for her was like going full circle, first through her experience as a kid as part of the Stolen Generation, and now being locked up again. Brian was not notified of the guardianship order and only found out about it much later.

As soon as he found out about the guardianship order, Brian began a journey of seeking services, fighting the system, learning and gaining qualifications; with the goal of getting his mother off the guardianship order. This included providing evidence on his and his mother's experience at the Disability Royal Commission. Brian said that the public guardian assigned to his mother never even met her, and only spoke to her twice in five years. To get the guardianship order dropped, Brian had to first get assigned as Carina's guardian, then applied for a review of the order. While on the public guardianship order, Brian also described how Carina used to get a psychotic injection every month, which was stopped once Brian was able to become guardian.

Carina is now a homeowner who lives independently in the community, who is healthy, happy and who no longer has a guardianship order applied to her – and who has the capacity to make her own decisions. Brian said that the application and guardianship order should have never happened. He said he doesn't know where Carina would be now had he not intervened on her behalf. He said the only positive thing about his experience with the guardianship and administration system was the relief he felt at the end of the experience, and at knowing the system better.

Case Study 2

Ruby is a carer for her daughter Stella*, who has autism. Ruby said that when her daughter turned 18, her school strongly encouraged her to submit a SAT application for guardianship, convincing her through using her fears of not being able to have input.*

Ruby followed the school's advice and did a SAT application, through which she was appointed as her daughter's guardian. As soon as the order was made, Ruby described feeling like she had just taken her daughter's rights away, and created a lot of extra work for herself in the process. Ruby said that although her daughter is capable of everything, the work involved to get off the system is twice as much as that to get on it. Ruby says she tries to preserve her daughter's rights as much as she can under the order, and just monitors. Her daughter must keep all receipts and then Ruby has to do all the paperwork and filing, etc. Ruby said if she knew more about the process, what it meant and what it involved to be a guardian she would have not gone through with the application. She also raised that the school should have found out more as well, instead of trying to scare her into it.

Case Study 3

Rose is a carer from a culturally and linguistically diverse background who provided care to her friend Mark*. Mark had been admitted to hospital due to a fall, for which he had an operation and was in hospital for three months. Following the operation, Mark was put on a pain relief medication known to have cognitive side effects. While on this medication, Mark had mental health assessments at the hospital which were used by the hospital to make a SAT application for public guardianship.*

Rose described the hospital as not being a safe place, outlining experiences such as her friend not having pants for over four hours. She asked for a transfer to a different hospital on behalf of her friend, but Mark's doctors would not release him and by this time the SAT application was in progress. Rose had borrowed money to fund treatment at a private hospital, and had even gotten a referral from Mark's GP for a proper mental health assessment when he was no longer on the pain relief medication that was known to have cognitive impact. Rose described being ignored by everyone at the hospital, even when she tried to submit complaints, and said she thought part of the reason for the SAT application was to get rid of her as Mark's carer. Rose said she thought this because the hospital started to hide her friend's medical file from her, locking it in the medicines room (restricted area). This also resulted in hospital staff not being able to find Mark's file and just walking away when they came to check on him. She said some nurses had told her that at staff meetings the hospital team were told they did not want her to have anything to do with their patient.

The SAT hearing went ahead with the initial mental health assessment, and Mark was appointed a public guardian. Rose said that during the hearing she fought to represent Mark's wishes, which were that he could go home. She said that during the hearing, she felt ignored, and that Mark was not presumed to be capable as per the Principles in the WA Act. Rose described the SAT member running through the sub-sections of the presumption of capacity principle like a checklist. She said that because Mark had a family member manage the family finances rather than doing it himself, this was taken to mean he was not capable of doing so, especially because he did could not immediately tell them detailed information about the finances. His decision to have someone else manage the family finances was not respected.

Rose further outlined how not long after the public guardianship order was put in place, the guardian approved a recommendation from Mark's doctor to put him on palliative care. This involved removing all the medicines he was on, including a blood thinner medication he needed to stop life-threatening blood clots. Rose raised this with the public guardian, who said they were not aware this would happen, but nothing changed. Three days later Mark died. Rose was not granted an autopsy request to determine cause of death, and was not granted access to full SAT hearing transcripts to help tell her friend's overseas family how he died (even through freedom of information processes). Rose said she still has not been able to get anywhere with this, and her friend's family overseas still do not know the extent of what happened. She said she cries every time she goes past the hospital where this happened.

Case Study 4

Tracy cares for her elderly mother and her and her sister are estranged. They were in conflict over their mother's care and accommodation needs, and management of a substantial estate. Tracey requested to view the documents for the preparation for a guardianship and administration hearing, which was granted. However, she had to take time off work (as a teacher) to attended SAT to view the documents and was only allowed to take handwritten notes. Tracy, who was already time poor and stressed was concerned she had missed something crucial in the documents and her note taking. This process caused additional pressure and stress to her situation and caring role, and she constantly worried about the hearing outcome. Tracy, who was nearing carers burnout, could not afford to hire a lawyer to help her, and when she approached agencies for legal or advocacy support, was advised they were at capacity and could not assist. However, Tracy's sister who had the financial means to hire a lawyer, asked him to request the documents, and SAT then emailed them to him. She was able to view these at a time and frequency that suited her, and she and her lawyer had continued access to them up to the hearing day.*

An advocate from Carers WA was granted access to view the documents to assist her client in preparing for a hearing. However, the week of the hearing and allocated time to view the documents at SAT, the advocate was in mandatory isolation due to COVID-19. She made a request to SAT to view the documents and have them emailed to her, however her request to view the documents was refused based on the Tribunal being unable to send documents by email as requested in the application (though this has occurred previously with other matters and is standard practice if a lawyer requests documents). The carer had to go and read the documents by herself and try to make what she thought were the most relevant notes to help her prepare for the hearing. The carer said she felt under pressure and overwhelmed and commented on several occasions that she wished she had the advocates support to be able to better understand and recall the information in the documents.

Case Study 5

A carer, Janet, had an experience where an aged care provider had filed an application for guardianship and administration for her mum, citing the issue as carers stress. Janet was only made aware of the application being made when she received an email from SAT with the hearing date. The Carers WA advocate who was working with Janet described her as a resilient, capable person, for whom the pressure of the application being made was almost too much. The advocate advised Janet that as the medical report said that her mother had capacity, SAT could not appoint a guardian or administrator. The advocate showed Janet the relevant legislation supporting this and advised that she should ask for a dismissal of the application. The advocate helped Janet prepare for the hearing, and said that at the hearing this usually strong woman was obviously nervous, shaking and unable to string a sentence together.*

Case Study 6

Jim helps cares for his 22-year-old brother, Phil*, who has autism. Phil's service provider asked his NDIS support coordinator to do an application to SAT for guardianship and administration, as they felt he was potentially at risk and vulnerable to financial exploitation. Phil lives with his parents and brother, who all provide care, advocacy, and support for Phil. They all regularly speak with team members of his service provider, and Jim speaks regularly with Phil's support coordinator, and is always available when required. However, at no time were they asked by the service provider or support coordinator how Phil's finances were managed, or how more complex lifestyle decisions were made with Phil. While there had been historic differences of opinion and approach between the family and service provider in Phil's care, these had not been in relation to financial matters. There was no meeting or communication regarding their concerns. The first Phil and his family knew of the guardianship and administration application was when Phil was served the SAT notification papers, a process which Phil found very traumatic. After several weeks of worry and stress at having to attend the hearing, and not understanding the purpose and process of it, the member found no grounds for the application, and the application was dismissed.*

Case Study 7

Don was the informal guardian and administrator for his elderly mother, Emma, and these arrangements had been working well for several years. When decisions needed to be made, he would explain it in a way that she understood and would explain her options and potential consequences of any decisions she made. They would discuss the "pros and cons" and from here, Emma was able to decide what best suited her needs and wishes.*

However, Don took his mother to hospital after she suffered a seizure due to a medication change (which was clearly documented as the cause). During this admission, the hospital social worker did a SAT application for guardianship and administration for Emma, without discussing or advising either of them. The first they became aware of the SAT application was when Don received notification of the hearing in the mail. Don and his mother both said they felt blindsided and powerless. They were unaware of the purpose or process of SAT, and felt totally unprepared for the hearing, which caused anxiety and stress for them both.

4.0 Conclusion

Should any further information be required regarding the comments included within this submission, or assistance from the perspective of WA carers, Carers WA would be delighted to assist. Please contact the Carers WA Policy Team at policy@carerswa.asn.au.

Appendix One: Consultation Summary

To assist in informing this submission, Carers WA conducted a range of consultative methods, including:

- A targeted carer survey
- Group consultation sessions with carers
- Analysis of ongoing feedback from carers and carer experiences with the WA guardianship and administration system.

Thematic analysis of the data from these feedback sources was conducted, in addition to assisting in the formulation of specific recommendations and provision of case studies to support these recommendations.

Carer Survey

Carers WA analysed the questions which were asked within Discussion Paper One and Two to determine which may be most applicable to improving the carer experience within the WA guardianship and administration system.

The questions determined to be most applicable were asked of carers through a targeted online carer survey. This determination was informed through ongoing feedback from carers regarding their experiences with the WA guardianship and administration system.

Demographics

Forty-nine people responded to the survey, 66.67% of which identified as having experience with the State Administrative Tribunal.

Nearly half (47.83%) of the respondents were providing care to their adult child; 19.57% provided care to a parent or parent-in-law; and 17.39% provided care to a spouse. The remainder of the respondents provided care to a friend or other person or relative.

The majority of survey respondents were aged over 45 years old (76.06%), with 30.43% aged 45-54 years, 34.78% aged 55-64 years and 10.87% 65 years or over. The remaining respondents were aged between 18-44 years old (23.91%), with 4.35% aged 18-24, 6.52% aged 25-34, and 13.04% aged 35-44 years.

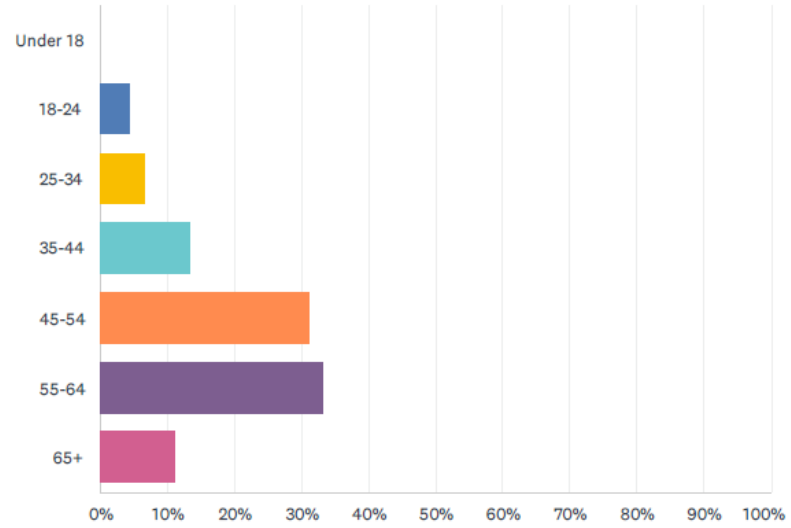


Figure 1 Age of survey respondents

Amongst the respondents, 12.77% were from a culturally and linguistically diverse background; 12.77% were from a First Nations background; and 4.26% identified as being LGBTQI+.

Findings

Areas important to carers

When asked what areas were important to maintain or increase, survey participants' responses included the following areas: education for families and carers on SAT and related processes (75.00%); informing families/carers (63.64%); supported decision making (61.36%); and early engagement (38.64%).

Other areas which were identified as being important to maintain or increase included:

- Making it easier to get a person off the system.
- Helping carers with older people.
- Education.

Some respondents felt there were not any elements of the system which should be retained, and that all areas of the system needed improvement.

Awareness of related supports

Many respondents were not aware of key support services and resources. Of those listed, only 55.56% were aware of the Office of the Public Advocate Helpline; 66.67% were aware of individual advocacy agencies; and only 16.67% reported being aware of HaDSCO.

Awareness and use of enduring instruments

Survey respondents had a high awareness of tools such as Advanced Health Directives (AHD), Enduring Power of Attorney (EPA), Enduring Power of Guardianship (EPG), and wills and estate planning.

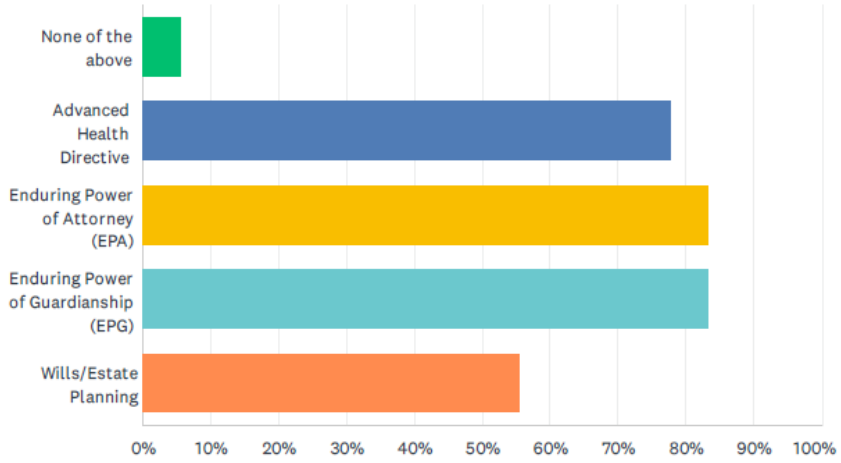


Figure 2 Awareness of AHD, EPA, EPG, wills and estate planning

However, the percentage of survey respondents who had these themselves was far lower than the percentage of those aware of them.

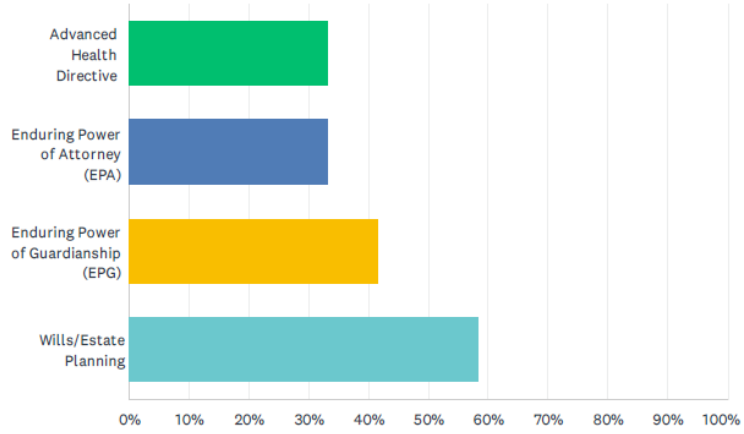


Figure 3 Use of AHD, EPA, EPG, wills and estate planning by survey respondents

The use of AHD, EPA, EPG, wills and estate planning by the person being cared for was reported to be higher than that of the survey respondents, but was still somewhat considering their usage of demonstrating wills and preferences. Of those reported, 66.67% had an AHD, 58.33% had an EPA, 50% had an EPG, and 50% had wills and estate planning.

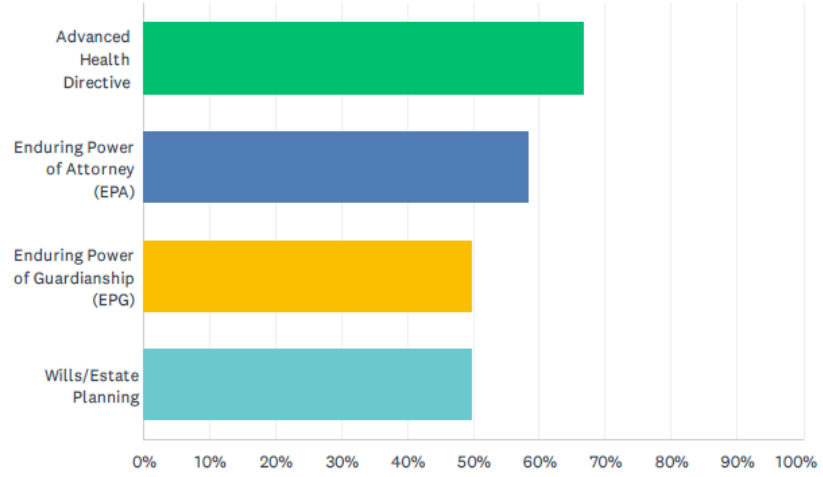


Figure 4 Use of AHD, EPA, EPG, wills and estate planning by the person being cared for

Terms and Definitions

Guardian and Administrator

Most of the people responding to the survey felt that the terms 'guardian' and 'administrator' should remain the same. Some other terms which were suggested included:

- Nominee – as this term is used in other systems and government departments.
- Supported decision maker
- Other terms which provide increased clarity.

Survey respondents raised that more education was needed around what these terms mean and their legal responsibilities. It was also raised that people even with these terms are often ignored by hospitals and other organisations.

Additional terms

Survey respondents reported that additional terms needed to be included and defined in the Act, including: carer (77.78% of respondents); advocate (72.22%); decisional capacity (66.67%); and family (61.11%).

Other terms which survey respondents felt needed to be included and defined in the Act were:

- Supported decision-making
- Clear definition of how capacity is assessed, with consideration to fluctuating and supported decision-making.
- Substituted decision-making - When necessary, define when and how decisions can be made on someone's behalf while prioritizing their rights.
- Least restrictive option - Ensure any intervention respects the individual's freedom as much as possible.
- Guardian (or alternative term) – Define their role in personal and lifestyle decisions, ensuring it is supportive rather than controlling.
- Administrator (or alternative term) – Clarify their financial and legal responsibilities, emphasizing accountability and transparency.
- Advocate – Include the role of independent advocates in supporting individuals to navigate the system.
- Rights and Safeguards
- Dignity of Risk – Recognize a person's right to take reasonable risks and make choices, even if others may not agree.
- Informed Consent – Clearly outline what is required for consent to be valid, particularly in medical and financial matters.
- Safeguards Against Abuse – Strengthen protections against financial exploitation, neglect, and undue influence.
- Review and Appeals Process – Define the mechanisms available to challenge decisions and seek independent review.

Name of the Act

The majority of survey respondents felt that the name of the Act should be retained.

Some participants recommended the name be updated to reflect modern principles of autonomy, dignity and supported decision-making. i.e. Supported Decision-Making and Personal Administration Act; Personal Rights and Decision-Making Act; Capacity, Rights and Administration Act; Decision-Making Support and Administration Act; and Personal Decision and Financial Administration Act.

Formal recognition of supported decision-making
Most respondents believed that supported decision-making should be formally recognised, as it aligns with human rights principles and the UNCRPD.

However, there was concern that this could further confuse the system and widen the grey areas, presenting legal risk for all involved. Respondents raised that measures needed to be in place to ensure supported decision making was implemented in practice, including: education; having an advocate present; and framework for different levels of substitute decision making.

Reasons put forward for recognition of supported decision making included:

- Promotes autonomy & dignity – Individuals should have the right to make their own decisions with appropriate support rather than having decisions made for them.
- Reduces overuse of substitute decision-making – Formal recognition of supported decision-making would ensure guardianship and administration are last resorts, used only when absolutely necessary.
- Reflects contemporary best practices – Other Australian states and territories, as well as international jurisdictions, are shifting toward supported decision-making models.
- Protects against abuse & exploitation – A structured approach to supported decision-making could include safeguards to prevent undue influence while maintaining an individual's right to choose.
- Culturally safe & inclusive – Recognising supported decision-making allows for approaches that respect Aboriginal and Torres Strait Islander cultural decision-making practices and diverse communities.

Criteria for a guardian or administrator

Survey respondents were strongly supportive of legislated criteria being in place for guardians and administrators, these included:

- The represented person's wills and preferences.
- Preference for family members and friends before the Public Trustee.
- Time that they have known the person.
- Guardianship as a last resort, due to the impact on the represented person's human rights.
- Whether an actual need exists for guardianship/administration, or if it could be done informally.
- Knowledge of supported decision making.
- Capacity to perform the role.
- Take into account extenuating circumstances.
- Cultural background.
- Safeguards and oversight.

Issues for consideration when appointing guardians and administrators
Participants in the survey raised a number of issues they felt needed to be considered when appointing guardians and administrators. These included:

- Consulting with all family members to find a suitable guardian or administrator before turning to a public option.
- All parties to be fully informed on legal and other requirements of the role/s, with sufficient time for the carer and family to seek advice.
- Ensuring the process is ethical, person-centred and rights-respecting.
- Making it easier to exit from a SAT order or change terms of the order.

Survey participants also raised additional considerations and arrangements which should be available, including:

1. Cultural and linguistic sensitivity
2. Language barriers
3. Consideration of family dynamics:
4. Views and preferences of the individual
5. Ability to make independent and informed decisions
6. Transparency and involvement
7. Monitoring and oversight, potentially through an independent oversight body
8. Legal and advocacy support (for families, carers and the represented person)
9. Financial Management Skills (for Administrators)
10. Training and Support for Guardians and Administrators
11. Capacity for Long-Term Planning
12. Dispute Resolution Mechanisms
13. Geographic Considerations for Rural or Remote Areas

Public Advocate as both guardian and administrator of last resort
Most survey respondents were supportive of keeping the Public Advocate as both guardian and administrator of last resort, as long as the following conditions were met:

- Significantly improved cultural competence.
- Accountability and oversight.
- Sufficient expertise and resourcing.
- Last resort mechanism – only when guardianship/administration is the least restrictive option for the represented person; there are no other suitable family or friends; and the guardianship/administration is actually needed.
- Need for a supported decision making function within the Public Advocate.
- Addressing current workload and resourcing issues.

Alternatively, survey respondents also suggested the Public Advocate could act as more of an oversight body to ensure guardianship and administration orders are carried out appropriately, with protection of the represented person's human rights.

Things the Act should specify
Survey respondents were asked whether certain things that should be specified within the Act. This included:

- Guardians be required to keep records and undergo audits (70.59%).
- A guardian's authority (like an administrator's) automatically ceases on the death of a represented person (64.71%).
- An administrator is permitted to access a represented person's medical records and information (58.82%).
- An administrator is permitted to access a represented person's will (41.18%).
- Additional oversight measures be included (41.18%).

Requirement for an advocate
The majority of survey respondents were in support of the Public Advocate being required to arrange legal representation or an advocate for all people who are the subject of a SAT application, and their families and carers.

However, it was raised that this needed to be carefully planned and resourced to ensure that it is sustainable and that the right level of support is provided to those who need it most.

Responsibilities of the Public Advocate
In addition to the Public Advocate having responsibilities for provision of information and advice, and promotion of public awareness and understanding through education, survey respondents believed they needed additional responsibilities. This included:

- To undergo cultural awareness training.
- To ensure people understand the role of a guardian and administrator and the legal requirements, before a decision is made on this.
- Ensuring processes protect the represented person and upholds their wishes.
- Better promotion and education.
- With the increasing recognition of supported decision-making and the shift towards empowering individuals with disabilities or impairments, there may be a need for the Public Advocate's responsibilities to include a greater emphasis on supporting autonomy and decision-making rights. While promoting public awareness is important, it's also essential that this awareness supports the rights of individuals to make decisions about their own lives to the greatest extent possible.
- Strengthening educational initiatives (training for families, service providers, and legal professionals on emerging decision-making models and their legal implications).
- Information for vulnerable populations

- An enhanced role in advocacy for legal reform.
- Monitoring and evaluation.
- Engagement with service providers.
- Training for guardians and administrators.
- Promoting supported decision-making and alternatives to guardianship.
- An independent oversight role in reviewing decisions made by guardians and administrators to ensure they align with the best interests and wishes of the represented person.

Consultation Sessions with Carers

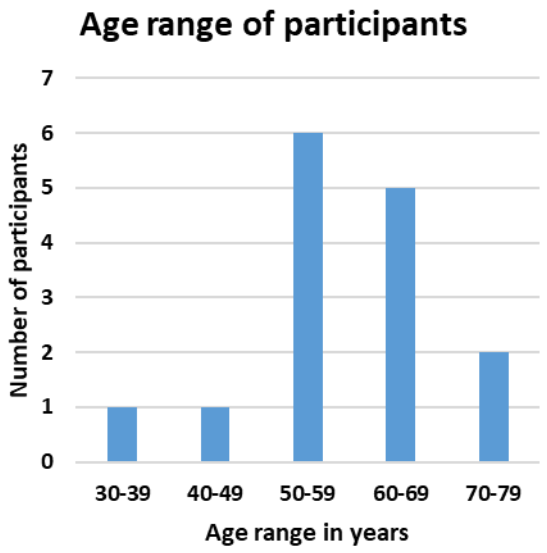
Carers WA conducted three targeted group consultations with carers, which were held in-person and online. At these consultations, semi-structured questions were asked of the participants to guide discussions. These included asking carers to consider, within their experience with the WA guardianship and administration system:

1. What worked or is working in their experience with the system? What should stay?
2. What isn't working in their experience with the system? How could this be improved?
3. Consideration of:
   - The Principles within the *Guardianship and Administration Act 1990* (WA);
   - Examples of recently updated Principles in Guardianship and Administration Acts in other jurisdictions; and
   - Supported decision making principles as recommended in the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Demographics

Seventeen carers were involved in these consultations, fifteen of which were from metropolitan Perth and two of which were from regional WA. Fifteen carers were female, and two were male. Six of the carers were from a First Nations background, and one carer was culturally and linguistically diverse.

Carers WA Consultation Sessions - Participant Demographics					
Gender		**Region**		**Diversity**	
Male	Female	Metropolitan	Regional	First Nations	CALD
2	15	15	2	6	1



The participants in the consultation sessions were from a wide range of ages. One carer was aged 30-39 years; one was aged 40-49 years; six carers were between 50-59 years old; five carers were aged between 60-69 years; and two carers were between 70-79 years old.

Findings

Themes:

Key themes that emerged from the consultation sessions conducted by Carers WA included:

- Person-Centred Decision-Making:
  - Strong support for decisions that reflect the known wishes and values of the represented person.
- Transparency and accountability:
  - Participants called for clearer processes, access to full tribunal records, and better communication from decision-makers.
- Carer recognition and inclusion:
  - Carers want formal recognition in legislation, including definitions and rights, similar to Queensland's model.
  - Carers also called for formal recognition, participation rights, and respect for their lived expertise.
- Education, support and awareness:
  - A strong need for pre-guardianship education, plain-English resources, and ongoing training.
  - Participants also raised the need for better training for service providers and carers on legal rights and responsibilities.
  - Need for legislated training requirement for decision makers in cultural competence, disability and carer awareness, and being trauma informed.
- Cultural Inclusion:
  - The system must better reflect the needs of Aboriginal and multicultural communities, including language access and cultural competence.
- System Navigation:
  - Carers described the system as fragmented and overwhelming, with inconsistent support and unclear pathways.
- Legal Reform:
  - Participants advocated for aligning WA's laws with national best practices, especially Queensland's guardianship reforms.
- Elder Abuse and Exploitation:
  - Several stories highlighted financial abuse and neglect by family members with legal authority.
- Systemic inconsistency and bureaucratic barriers:
  - Excessive red tape, especially in financial and legal processes, burdens carers.
  - Disparities in how different agencies interpret and apply guardianship requirements.

What works? What should stay?
Participants shared positive experiences with the SAT (State Administrative Tribunal), particularly when members were respectful, person-centred, and upheld the wishes of the represented person. Some praised the accessibility of SAT staff and the informal, supportive tone of hearings.

Some participants also appreciated the existing structure and principles (e.g., best interest, presumption of capacity), which provided guidance and legitimacy to their roles. This was especially seen when the application of the current principles in the WA Act were informed by tools such as an advanced health directive.

Carers expressed a strong willingness to educate themselves and adapt, despite the complexity of the system. This was raised as being a necessity, with some participants describing the relief felt upon knowing the system better, although this knowledge took significant time to acquire.

Carers also raised having an Aboriginal Liaison Officer within the SAT as a positive initiative, and called for more First Nations employees within the SAT and related agencies.

What doesn't work?

Carers highlighted significant systemic and procedural issues, which impacted on the experience of the represented person, their family and carers with the WA guardianship and administration system.

- **Abuse of human rights**: carers raised experiences in which decisions made directly contradicted the wills and preferences of the represented person, as well as guardianship and administration orders which carers felt were not needed in the first place, unnecessarily depriving the represented person of their human rights. Carers described applications being able to be made all too easily, with no communication to the represented person, their family or carers, without regard to the impact on the person's human rights; as well as the mental, emotional and physical impact on everyone involved.
- **Lack of Informed Consent**: Several carers felt pressured or misled into applying for guardianship without fully understanding the implications.
- **Administrative Burden**: Guardianship and administration roles were described as overly bureaucratic, with complex paperwork and unclear processes.
- **Inaccessibility of Support**: Participants reported difficulty accessing timely help, legal aid, or advocacy—especially during urgent situations.
- **Inadequate Recognition of Carers**: Carers felt their insights and lived experience were often dismissed by professionals, particularly in tribunal or hospital settings.
- **Opaque Tribunal Processes**: Concerns were raised about lack of transparency, inability to access full transcripts, and decisions made without proper consultation with carers or the represented person.
- **Cultural and Linguistic Barriers**: The system was seen as lacking cultural safety, especially for Aboriginal and multicultural communities.
- **Overreliance on Medical Authority**: Decisions were often based solely on medical assessments, ignoring the person's will, preferences, and lived experience.
- **Lack of awareness of trauma-informed practice, and awareness of disability and carer rights.**

How can the system be improved?

Legislative Reform

- Expand the Act's principles to align with Queensland's model, including:
  - Recognition of informal carers and supporters
  - Cultural and linguistic safety
  - Supported decision-making over substituted decision-making
  - Maintenance of existing supportive relationships
  - Explicit inclusion of human rights and dignity of risk
- Adopt a unified statement of principles that applies to all decision-makers.
- Replace the "best interest" principle with a "will and preferences" model.
- Include formal recognition of carers, distinguishing between paid and unpaid roles.
- Mandate cultural safety and diversity principles, including specific provisions for Aboriginal and Torres Strait Islander peoples.
- Legislated creation of an Aboriginal Advisory Group for the WA guardianship and administration system.
- Legislated 50D positions within the State Administrative Tribunal, Office of the Public Advocate and the Public Trustee, and related agencies, including at a decision-making level.
- Required training in cultural competence, disability and carer awareness, and trauma informed practice for all decision makers under the Act.

Education & Onboarding

- Require a mandatory pre-guardianship briefing session for applicants.
- Develop plain-English guides and multilingual resources.
- Provide a "trial period" or hybrid guardianship model to ease carers into the role.

Systemic Support

- Fund independent advocates for guardianship matters.
- Establish a dedicated helpline or office for guardianship queries.
- Provide financial support or stipends for unpaid guardians.

Tribunal & Administrative Improvements

- Ensure carers and represented persons are consulted and heard in tribunal processes.
- Provide full transcripts upon request, especially for family members.
- Review and simplify Freedom of Information (FOI) processes.

Cross-Jurisdictional Learning

- Benchmark WA's system against Queensland's guardianship framework.
- Incorporate best practices from the Disability Royal Commission's recommendations.

Accountability and Oversight

- Extend the application of statutory principles beyond SAT to include public guardians, administrators, and service providers.

- Introduce mandatory, periodic reviews of guardianship and administration arrangements.
- Establish independent oversight mechanisms to investigate complaints and ensure compliance.

Carer Recognition and Support

- Define “carer” in the Act and distinguish between informal and paid carers.
- Ensure carers are notified of SAT proceedings and have standing to participate.
- Provide advocacy and legal support for carers navigating the system.
- Educate decision-makers and service providers on the role and rights of carers.

Systemic Improvements

- Streamline nominee and consent processes across agencies to reduce the need for formal guardianship.
- Introduce a mid-tier legal instrument between nominee arrangements and full guardianship.
- Improve inter-agency consistency in recognising legal authority (e.g., banks vs. Centrelink).

Trauma-Informed Practice

- Acknowledge the emotional toll on carers and represented persons.
- Ensure respectful communication and transparency in decision-making.
- Avoid unnecessary institutionalisation and prioritise home-based care when aligned with the person’s wishes.

Principles

The group reviewed the current four principles in the WA Act and compared them with Queensland's more contemporary, human rights-based framework. There was strong support for expanding and updating the principles to reflect supported decision-making, cultural safety, and recognition of informal carers.

- **Support for Expanded Principles**: There was strong consensus that WA should adopt a broader, more inclusive set of principles, including:
    - Recognition of informal carers and advocates
    - Cultural safety and diversity
    - Structured decision-making frameworks
    - Presumption of capacity and supported decision-making
- **Critique of "Best Interest" Principle**: Seen as vague and paternalistic, with calls to replace it with a "will and preferences" model.
- **Need for a Single Statement of Principles**: Participants supported having a unified set of principles that apply across all decision-makers, not just the State Administrative Tribunal.

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