Carers WA Policy Submission

Inquiry into the guardianship and administration system in Western Australia

May 2026

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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Contents

1.0 Recommendations

1. Legislated recognition of carers, including definitions and participation rights;
2. Mandatory engagement requirements with carers and informal supporters in decision-making processes;
3. Adoption of human rights-based principles (including Queensland-style General Principles in the Act) to guide all decision-makers;
4. Mandatory workforce training in supported decision-making, cultural competence, and trauma-informed practice;
5. Improved information access and transparency to enable meaningful participation by carers;
6. Formal recognition of carers in legislation, embedding their role within decision-making frameworks;
7. Mandatory cultural safety and trauma-informed training for all decision-makers and staff;
8. Adoption of human rights-based, supported decision-making principles to shift organisational norms;
9. Legislated Aboriginal Advisory Groups and 50D positions to embed First Nations leadership and perspectives;
10. Strengthened accountability and transparency mechanisms, including improved access to information and review processes.
11. Establishment of independent oversight mechanisms with authority to investigate complaints and monitor decision-making;
12. Simplification and strengthening of information access processes, including FOI, to ensure timely and equitable access to documentation;
13. Improved access to advocacy and legal support for carers and families navigating complaints and review processes;
14. Mandatory periodic review of guardianship and administration orders to ensure continued necessity and proportionality;
15. Clear, accessible complaint pathways across all agencies within the system.
16. Guaranteed minimum notice periods: Introduce and enforce clear minimum notice requirements for hearings, ensuring that represented persons, their carers, and relevant family members receive timely and comprehensive information. Notice should include sufficient detail to support preparation and enable meaningful participation.
17. Equal and accessible access to documents: Establish consistent, legislated rights for carers and families to access all relevant documents involved in proceedings, subject to appropriate safeguards. This should include the ability to obtain copies in accessible formats and sufficient time to review and respond.
18. Provision of full transcripts upon request: Ensure that full hearing transcripts are available to interested parties, including carers and family members, in a timely and accessible manner. This is essential for transparency, accountability, and enabling informed follow-up or review.

19. Standardised and transparent information practices: Implement consistent protocols for notification, document access, and information sharing across tribunal processes to reduce variability and improve fairness.
20. Improved access to plain-English information: Provide clear, accessible information about tribunal processes, rights, and expectations to support informed participation by carers and unrepresented parties.
21. Strengthen supported decision-making: Embed supported decision-making as the default approach, ensuring that the will and preferences of the represented person guide all decisions and that substitute decision-making is used only where strictly necessary.
22. Mandate carer inclusion: Require carers and families to be recognised, notified, and meaningfully included in tribunal processes, with clear opportunities to contribute to decisions affecting the person.
23. Improve safeguards, oversight and review: Introduce stronger oversight mechanisms, accessible complaint pathways, and regular review requirements to ensure decisions are transparent, accountable, and subject to scrutiny.
24. Embed trauma-informed practice: Require all system actors to apply trauma-informed approaches, recognising the emotional impact of proceedings and ensuring respectful, supportive engagement.
25. Expand access to advocacy and support: Ensure represented persons, carers, and families have access to independent advocacy and support services to assist with system navigation and participation.
26. Strengthen recognition of will and preferences: Promote and support the use of advance planning instruments and processes that clearly document and uphold the person's wishes throughout proceedings
27. Mandatory, periodic reviews of orders: Introduce legislated requirements for regular and automatic review of all guardianship and administration orders to ensure they remain necessary, proportionate, and aligned with the person's circumstances and will and preferences.
28. Establish an independent oversight body: Create or strengthen an independent body with clear authority to monitor, investigate, and review the conduct and decisions of guardians and administrators, including public authorities. This body should be accessible to carers and families and have the power to take corrective action where required.
29. Strengthen continuous monitoring mechanisms: Implement systems for ongoing oversight of guardianship arrangements, including reporting requirements, check-ins, and mechanisms to identify risks or concerns early.
30. Expand accountability and reporting requirements: Require guardians and administrators to provide regular, transparent reporting on decisions made, actions taken, and how these align with the represented person's will and preferences.
31. Improve access to complaints and review processes: Simplify and promote complaint and review pathways, ensuring they are accessible, clearly communicated, and supported by advocacy services where needed.

32. Provide advocacy and legal support: Ensure carers and families have access to independent advocacy and legal assistance to support them in raising concerns, seeking review, and navigating oversight mechanisms.
33. Embed human rights and supported decision-making safeguards: Ensure that oversight frameworks explicitly assess whether decisions uphold human rights principles, including autonomy, participation, and the primacy of will and preferences.
34. Establish unified, legislated principles: Introduce a comprehensive set of statutory principles that apply to all decision-makers, ensuring consistent application of human rights, supported decision-making, and the primacy of will and preferences.
35. Strengthen the presumption of capacity: Require decision-makers to actively apply and document how the presumption of capacity has been considered in each case, including how capacity may be supported.
36. Reduce reliance on procedural checklists: Encourage decision-making frameworks that prioritise holistic assessment of the individual's circumstances, rather than rigid or checklist-based approaches.
37. Mandate training for Tribunal Members: Introduce mandatory and ongoing training in supported decision-making, human rights frameworks, trauma-informed practice, cultural safety, and carer inclusion.
38. Embed recognition of carers and informal supports: Require decision-makers to actively seek, consider, and give appropriate weight to the knowledge and perspectives of carers and informal support networks.
39. Strengthen procedural fairness and transparency: Improve access to information, ensure adequate time for participation, and provide clear explanations for decisions to support understanding and accountability.
40. Promote consistent, person-centred practice: Develop guidance, standards, and accountability mechanisms to support consistent, high-quality Tribunal conduct that is respectful, inclusive, and aligned with best practice principles.

2.0 Introduction

Carers WA welcomes the opportunity to provide this submission to the Committee's Inquiry into the guardianship and administration system in Western Australia, including how the Public Trustee and Office of the Public Advocate deliver services, and the role and conduct of the State Administrative Tribunal (SAT) as far as it relates to these matters.

Carers WA recognises that some carers report positive experiences of the system, including SAT members being respectful, person-centred and supportive. However, carers also report serious and persistent system failures that can undermine human rights and harm outcomes for represented persons and their families, including:

- inconsistent and non-transparent decision-making and communication;
- significant barriers to accessing documents, transcripts, and information needed to understand or challenge decisions;
- complaint pathways that carers do not experience as accessible, timely, fair, or independent;
- inadequate independent oversight and accountability mechanisms; and
- insufficient cultural safety and trauma-informed practice.

The impacts can be profound. Carers described:

"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."

"This is like an adult Stolen Generation"

"Don't let the OPA be a guardian to your family members"

Carers WA supports reforms that strengthen human rights and supported decision-making in practice, while also recognising carers appropriately and ensuring that agencies have the capability, culture, and accountability mechanisms necessary to protect all vulnerable people.

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, substance dependency, 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, and may care for more than one person.

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

Western Australia is home to more than 320,000 carers[3], who contribute an estimated $6.6 billion in unpaid care each year and provide, on average, over 100 hours of care per week[4]. This care is often provided to people who may also interact with the guardianship and administration system, including those with disability, cognitive impairment, or declining decision-making capacity. Demand for informal care is increasing and is projected to grow by 23% by 2030[5], while the number of available carers is only expected to increase by 16%, leaving a projected shortfall of 22,400 carers and creating significant additional pressure on formal substitute decision-making and service systems.

Carers play a critical role in supporting the autonomy, rights, and wellbeing of the people they care for. They frequently act as informal decision-supporters—advocating for preferences, coordinating services, attending appointments, and ensuring continuity of care. However, where carers are not recognised, included, or supported within formal decision-making frameworks, including guardianship and administration processes, this can undermine both the effectiveness of decision-making arrangements and the wellbeing of the person themselves.

Data from the 2024 National Carer Survey highlights the vulnerability of this cohort: WA carers have an average personal wellbeing score of 55.88%, significantly lower than the national population average of 74.7%[6]. This wellbeing gap has direct implications for the sustainability of informal decision-support roles. Strengthened recognition and inclusion of carers could lift wellbeing to 68.07%, while social isolation—often exacerbated by exclusion from formal systems—can reduce wellbeing to as low as 46.97%[7].

Carers in Western Australia report feeling significantly unrecognised by government bodies, service providers, and formal systems. Within the context of guardianship and administration, this lack of recognition can result in carers being excluded from decision-making processes, despite their deep knowledge of the person's will, preferences, and daily needs. This not only impacts carers' own wellbeing and capacity to sustain their role but can also lead to less informed or less person-centred decisions.

[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)

Strengthening carer recognition within the guardianship and administration system—including clearer pathways for involvement, supported decision-making approaches, and alignment with the Carers Recognition Act 2004 (WA)—would improve both carer wellbeing and decision-making outcomes[8]. Greater recognition of carers supports more consistent, least-restrictive, and person-centred approaches, ultimately reducing reliance on formal orders and improving system sustainability.

3.2 Organisational capability of the Public Trustee and the Office of the Public Advocate to represent and protect the human rights of vulnerable people

The organisational capability of the Public Trustee and the Office of the Public Advocate (OPA) to represent and protect the human rights of vulnerable people is intrinsically linked to their ability to meaningfully engage with carers as key sources of knowledge, continuity, and informal decision support.

Evidence across this submission demonstrates that this capability is currently inconsistent and, in many cases, insufficient. While some carers report collaborative relationships with decision-makers, these experiences are not systemic. Instead, engagement is often ad hoc, dependent on individual staff, and vulnerable to breakdown where personnel change or where carers raise concerns.

3.2.1 Carers as Critical Safeguards within Decision-Making Systems

Carers frequently act as the primary safeguard for the rights, preferences and wellbeing of the person they support. They hold detailed, longitudinal knowledge of the person's communication style, values, cultural context, informal decision-making arrangements, and support networks.

Despite this, carers are not formally recognised or embedded within the Guardianship and Administration Act 1990 (WA) or its operational systems. This creates a structural gap where decision-makers may lack access to the most relevant and nuanced information required to uphold a person's will and preferences.

In practice, this results in:

- Decisions being made without full understanding of the person's life history or informal supports;
- Increased reliance on formal assessments rather than lived experience knowledge;
- Reduced capacity to uphold supported decision-making approaches.

The absence of formalised carer engagement pathways therefore represents a significant capability limitation in protecting human rights.

[8] (SAGE Design and Advisory, 2025)

3.2.2 Inconsistent and Limited Engagement Practices

Carer experiences indicate that engagement with the OPA and Public Trustee is not consistently embedded as a core organisational function.

Feedback highlights:

- Exclusion from key decisions and processes, even where carers are primary supports;
- Dismissal or minimisation of carer input, particularly where it challenges institutional perspectives;
- Communication breakdowns, including failure to consult carers prior to major decisions or applications;
- Variability in practice depending on individual guardians or staff members.

This inconsistency reflects a broader capability gap: engagement with carers is not governed by clear standards, performance expectations, or legislative requirements.

Where engagement does occur effectively, carers report improved outcomes, including decisions that better reflect the person's preferences and reduced need for dispute or escalation. This demonstrates that capability exists in parts of the system but is not systematically applied.

3.2.3 Impact on Human Rights Outcomes

Limited engagement with carers has direct consequences for the human rights of represented persons. Without meaningful input from carers:

- The will and preferences of the person may not be accurately understood or represented;
- Decision-making may default to risk-averse or paternalistic approaches;
- Opportunities for supported decision-making may be missed;
- Decisions may result in outcomes that are inconsistent with the person's values, relationships, or cultural context.

Case study evidence within this submission demonstrates instances where carers felt that decisions contradicted the wishes of the person, or that applications were progressed without consultation, resulting in distress and loss of autonomy.

In this context, inadequate engagement with carers is not merely a process issue—it is a systemic capability gap that undermines compliance with human rights obligations, including those under the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

3.2.4 Workforce Capability and Training Gaps

Carers' experiences also point to underlying workforce capability gaps that affect engagement quality. These include:

- Limited understanding of the role of carers as partners in supported decision-making;
- Insufficient training in supported decision-making frameworks;
- Lack of skills in trauma-informed engagement, particularly in high-stress or crisis situations;
- Inadequate cultural competence, affecting engagement with First Nations and culturally diverse families.

These gaps contribute to practices where carers are either overlooked or engaged in ways that are procedural rather than meaningful.

3.2.5 System-Level Barriers to Effective Engagement

Beyond workforce capability, structural barriers also limit effective engagement, including:

- No legislated requirement to consult carers in decision-making processes;
- Lack of clear definitions distinguishing informal carers from paid providers;
- Absence of accountability mechanisms to ensure engagement occurs;
- Inconsistent access to information and documentation, limiting carers' ability to participate effectively.

These system-level issues reinforce a model where carers are treated as optional stakeholders rather than integral contributors to decision-making.

3.2.6 Implications for Organisational Capability Assessment

Taken together, the evidence demonstrates that current organisational capability is insufficient to consistently:

- Identify and engage carers as key decision-support partners;
- Incorporate lived experience into decision-making processes;
- Deliver person-centred and rights-based outcomes.

Strengthening capability in this area is critical to improving both decision quality and system legitimacy.

To assist in addressing these capability gaps, Carers WA recommends:

1. Legislated recognition of carers, including definitions and participation rights;
2. Mandatory engagement requirements with carers and informal supporters in decision-making processes;
3. Adoption of human rights-based principles (including Queensland-style General Principles in the Act) to guide all decision-makers;
4. Mandatory workforce training in supported decision-making, cultural competence, and trauma-informed practice;
5. Improved information access and transparency to enable meaningful participation by carers;

These reforms would move the system from a discretionary engagement model to a capability-driven, rights-based framework, ensuring that carers are consistently recognised as essential partners in protecting the human rights of vulnerable people.

3.3 Organisational culture of the Public Trustee and Office of the Public Advocate and its impact on service delivery

This submission examines the organisational culture of the Public Trustee and the Office of the Public Advocate (OPA) and its direct impact on service delivery and human rights outcomes within the WA guardianship and administration system.

Evidence from carers indicates that organisational culture is a critical determinant of how decision-making powers are exercised in practice. While legislative frameworks establish the parameters for decision-making, it is organisational culture—reflected in attitudes, behaviours, and everyday practices—that determines whether these powers are applied in a way that is genuinely person-centred, rights-based, and consistent with the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Carer evidence throughout this submission points to systemic cultural patterns characterised by exclusion, procedural imbalance, and risk-averse decision-making, which collectively undermine person-centred outcomes. These issues are explored further through detailed case studies and consultation findings in Appendix 1 and 2.

3.3.1 Culture of Exclusion and Marginalisation

A consistent theme across carer experiences is a culture in which carers are not recognised as legitimate partners in decision-making, despite their central role in supporting the person.

Carers report:

- Being excluded from key decisions affecting the person they support;
- Having their knowledge and insights undervalued or dismissed;
- Being treated as peripheral to formal decision-making processes, rather than essential contributors.

This reflects a broader cultural orientation where authority is concentrated within formal roles, and lived experience is not systematically valued as evidence.

The impact of this culture is twofold:

1. Reduced decision quality, due to the exclusion of critical contextual information;
2. Erosion of trust, resulting in adversarial relationships between carers and decision-makers.

In practice, this undermines supported decision-making principles and increases reliance on substituted decision-making, even where informal supports are already functioning effectively.

3.3.2 Procedural Imbalance and Power Dynamics

Carers describe a system in which decision-making processes are experienced as procedurally imbalanced, with significant power asymmetries between institutions and individuals.

Evidence from case studies highlights:

- Carers feeling intimidated or unable to meaningfully participate in tribunal processes;
- Disparities in access to information, particularly where legal representatives are involved;
- Situations where carers are required to navigate complex legal and administrative processes without adequate support.

This procedural imbalance contributes to a culture where:

- Institutional voices are prioritised over those of the person and their support network;
- Carers may feel compelled to comply rather than advocate;
- Outcomes are shaped by process rather than genuine consideration of will and preferences.

Such dynamics are inconsistent with a human rights-based approach, which requires equal participation and access to justice.

3.3.3 Risk-Averse and Institution-Centred Decision-Making

Carers frequently describe organisational culture as risk-averse and institution-centred, with a strong emphasis on compliance, liability management, and risk minimisation.

In practice, this manifests as:

- Decisions that prioritise perceived safety over autonomy;
- Default escalation to formal guardianship or administration rather than exploring supported alternatives;
- Reluctance to depart from standardised approaches, even where these conflict with the person's known preferences.

This cultural orientation is reinforced by:

- Heavy reliance on medical assessments;
- Limited use of supported decision-making frameworks;
- Lack of systemic mechanisms to operationalise "dignity of risk".

As a result, carers report situations where decisions directly contradicted the will and preferences of the person, or where guardianship arrangements were applied unnecessarily or excessively.

This reflects a system that is institutionally protective rather than person-centred, where the avoidance of risk to organisations may take precedence over the rights of the individual.

3.3.4 Defensive and Reactive Organisational Behaviour

Carer accounts also point to a culture that can be experienced as defensive and reactive, particularly when decisions are questioned or challenged.

This includes:

- Resistance to reconsidering decisions once made;
- Limited transparency in decision-making processes;
- Barriers to accessing information, documentation, or review mechanisms.

In several case studies, carers describe prolonged efforts to challenge or reverse decisions, encountering systemic resistance and complex procedural barriers.

This cultural defensiveness reduces accountability and limits opportunities for learning and improvement within the system.

3.3.5 Cultural Harm and the Impact on First Nations Peoples

Organisational culture has particularly significant impacts for First Nations peoples, families and carers, where failures in cultural competence intersect with historical and intergenerational trauma.

Evidence from carers highlights:

- Practices that replicate institutional trauma, including lack of trust, exclusion, and control over decision-making;
- Failure to recognise cultural decision-making practices and kinship systems;
- Cultural misunderstandings leading to incorrect assumptions about capacity or behaviour.

Case study evidence demonstrates how these issues can result in profound harm, including inappropriate guardianship orders, institutionalisation, and loss of autonomy.

Carers consistently identify the absence of:

- First Nations representation in decision-making roles;
- Culturally safe engagement practices;
- Structures to embed cultural knowledge into decision-making.

This represents a critical organisational culture gap, with direct implications for equity, human rights, and system legitimacy.

3.3.6 Implications for Service Delivery and Human Rights

The organisational culture described above has direct and measurable impacts on service delivery, including:

- Reduced person-centred outcomes, where decisions do not reflect the individual's will and preferences;
- Increased reliance on restrictive interventions, including unnecessary guardianship or administration orders;
- Heightened distress and trauma for represented persons, carers, and families;
- Erosion of confidence in the system.

From a human rights perspective, these outcomes indicate a gap between the intent of the legislation and its implementation in practice. Without cultural transformation, legislative reform alone will be insufficient to achieve sustained change.

To address these systemic cultural issues, Carers WA recommends:

6. Formal recognition of carers in legislation, embedding their role within decision-making frameworks;
7. Mandatory cultural safety and trauma-informed training for all decision-makers and staff;
8. Adoption of human rights-based, supported decision-making principles to shift organisational norms;
9. Legislated Aboriginal Advisory Groups and 50D positions to embed First Nations leadership and perspectives;
10. Strengthened accountability and transparency mechanisms, including improved access to information and review processes.

These reforms would support a transition from a risk-averse, institution-centred culture to one that is rights-based, culturally safe, and person-centred, ensuring that organisational practice aligns with legislative intent and human rights obligations.

3.4 Adequacy of mechanisms to resolve complaints, disputes and allegations

This submission examines the adequacy of existing mechanisms to resolve complaints, disputes, and allegations within the WA guardianship and administration system. Evidence from carers indicates that current mechanisms are insufficient, inaccessible, and often ineffective, particularly once guardianship or administration orders are in place. Carers report systemic barriers to raising concerns, challenging decisions, or obtaining independent review, resulting in gaps in accountability and oversight.

These limitations place a significant emotional, financial, and practical burden on carers, while also undermining the ability of the system to safeguard the rights, autonomy, and wellbeing of represented persons.

3.4.1 Barriers to Complaints and Dispute Resolution

Carers consistently report substantial barriers to progressing complaints or resolving disputes.

These include:

- Difficulty identifying the appropriate pathway for complaints across multiple agencies;
- Lack of clarity regarding rights, processes, and available remedies;
- Perceived reluctance within agencies to escalate or substantively respond to complaints;
- Complex, lengthy, and resource-intensive processes that deter engagement.

In practice, these barriers mean that many concerns are either not pursued or are abandoned before resolution. This limits the system's capacity to identify and address harmful practices.

3.4.2 Limited Accessibility and Effectiveness of Review Processes

Carers describe significant challenges in accessing review mechanisms, particularly when seeking to challenge decisions or actions taken under guardianship or administration arrangements.

Common issues include:

- High procedural complexity, particularly within tribunal or legal review processes;
- Limited access to advocacy or legal support to navigate these processes;
- Delays that can prolong harm or restrict timely resolution;
- A perception that review processes are not accessible to individuals without legal expertise.

These barriers are especially pronounced for carers who are already managing high levels of stress, time constraints, and financial pressure. As a result, review mechanisms are often experienced as theoretically available but practically inaccessible.

3.4.3 Difficulty Reviewing or Revoking Orders

Carers highlight that once a guardianship or administration order is established, it can be extremely difficult to have that order reviewed, amended, or revoked—even where circumstances have clearly changed.

Reported issues include:

- Complex and burdensome application processes for review;
- Lack of proactive or periodic reassessment of orders;
- Significant evidentiary thresholds to demonstrate change;
- Prolonged timeframes for decisions.

This creates a system where restrictive orders may persist longer than necessary, limiting autonomy and rights. Carers describe situations where considerable time, effort, and personal cost are required to challenge orders, even where the original basis for the order is no longer valid.

3.4.4 Lack of Independent Oversight and Accountability

A central concern raised by carers is the absence of robust, independent oversight mechanisms once orders are in place.

Key issues include:

- Reliance on internal review processes within the same agencies responsible for decision-making;
- Limited external scrutiny of decisions made by guardians or administrators;
- Lack of clear, accessible pathways for independent investigation of complaints;
- Perception of institutional bias in complaint handling.

This lack of independent oversight contributes to a perception that the system is not sufficiently accountable, particularly in cases involving serious concerns or allegations of harm.

Without strong external accountability, there is limited assurance that decisions are consistently aligned with human rights principles or the will and preferences of the person.

3.4.5 Limitations of FOI and Internal Review Mechanisms

Carers report that existing mechanisms such as Freedom of Information (FOI) processes and internal reviews are often inadequate to support meaningful accountability.

Specific concerns include:

- Complexity and administrative burden associated with FOI processes;
- Delays in accessing critical documents;
- Partial or restricted access to information;
- Emotional distress associated with repeatedly engaging with systems that are perceived as adversarial or opaque.

Rather than facilitating transparency, these processes can become an additional barrier, limiting carers' ability to understand decisions, advocate effectively, or pursue further action.

3.4.6 Emotional and Practical Impact on Carers

The limitations of complaints and review mechanisms have a significant cumulative impact on carers.

Carers describe:

- High levels of stress, anxiety, and emotional exhaustion associated with navigating the system;
- Financial strain resulting from legal costs, time off work, or accessing supports;
- Feelings of powerlessness and loss of trust in institutions.

In some cases, carers report that the process of seeking redress is itself retraumatising, particularly where there are prior experiences of exclusion, cultural harm, or institutional mistrust.

This burden not only affects carers' wellbeing but also reduces their capacity to continue in their caring role and to advocate effectively for the person they care for.

3.4.7 Implications for System Performance and Human Rights

Taken together, these issues indicate that existing mechanisms are not adequate to ensure:

- Timely and effective resolution of complaints and disputes;
- Accountability for decision-making and conduct;
- Protection of the rights and interests of represented persons;
- Accessible pathways to challenge or review decisions.

From a human rights perspective, this represents a critical gap in the system's ability to provide safeguards against inappropriate or overly restrictive decision-making.

Without accessible, independent, and effective review mechanisms, there is a risk that rights limitations may persist without appropriate scrutiny or remedy.

To address these issues, Carers WA recommends:

11. Establishment of independent oversight mechanisms with authority to investigate complaints and monitor decision-making;
12. Simplification and strengthening of information access processes, including FOI, to ensure timely and equitable access to documentation;
13. Improved access to advocacy and legal support for carers and families navigating complaints and review processes;
14. Mandatory periodic review of guardianship and administration orders to ensure continued necessity and proportionality;
15. Clear, accessible complaint pathways across all agencies within the system.

These reforms would strengthen accountability, improve access to justice, and ensure that the guardianship and administration system is capable of responding effectively to concerns, disputes, and allegations, while upholding the rights and dignity of vulnerable people.

3.5 Accessibility and transparency of information

This submission identifies systemic concerns relating to the accessibility and transparency of information provided by guardianship and tribunal system actors. These concerns encompass the timeliness and clarity of notification of hearings, equitable access to documents and transcripts, and the overall procedural fairness afforded to unrepresented parties and their supporters.

Carer experiences consistently demonstrate that information asymmetry is a structural barrier within the system, rather than an isolated administrative issue. Where carers are not provided with timely, complete, and accessible information, their capacity to support the represented person is significantly constrained. This includes limiting their ability to understand the issues under consideration, prepare evidence or submissions, support informed decision-making, and advocate effectively for the person's will and preferences.

In practice, carers frequently assume critical support and advocacy roles, particularly where the represented person has cognitive impairment, communication barriers, or psychosocial disability. Despite this, current information-sharing practices do not consistently recognise or support carers as key participants in proceedings. Instead, carers are often required to navigate complex legal processes with incomplete information, unclear guidance, and restrictive access arrangements.

These barriers have direct consequences for procedural fairness. Limited or delayed access to information reduces carers' ability to prepare, respond, and participate effectively, while also creating inequitable conditions between parties. Legal representatives benefit from greater access to documents and procedural knowledge, whereas carers and families must navigate the system without equivalent support. This imbalance risks decisions being made without full consideration of the represented person's circumstances, lived experience, and support networks.

The submission identifies consistent evidence of three interrelated issues. First, carers report late or inadequate notice of hearings, which restricts their ability to seek advice, gather evidence, organise attendance, and prepare emotionally and practically for proceedings. Given the high-stakes nature of guardianship matters, insufficient notice materially limits meaningful participation.

Second, access to key documents and transcripts is often inconsistent and restricted for carers and other non-legally represented parties. While legal representatives are routinely able to obtain and retain copies of documents, carers are frequently limited to restricted viewing arrangements or excluded entirely from access. This limits their ability to review information thoroughly, identify inaccuracies, and formulate a considered response. These impacts are particularly acute for carers with limited time, financial resources, or capacity to attend in-person processes.

Third, there is a clear procedural imbalance between represented and unrepresented parties. The lack of accessible information, combined with inconsistent communication and limited access to advocacy or legal support, places carers at a structural disadvantage. This not only affects individual participation but also limits the quality of information available to decision-makers.

Collectively, these issues reduce carers' ability to perform their support role and contribute to inequitable participation in proceedings. They also increase the risk that critical contextual information—often held by carers—is not adequately considered in decisions that have significant implications for autonomy, rights, and wellbeing.

Carers WA recommends the following reforms to address these systemic issues:

16. Guaranteed minimum notice periods: Introduce and enforce clear minimum notice requirements for hearings, ensuring that represented persons, their carers, and relevant family members receive timely and comprehensive information. Notice should include sufficient detail to support preparation and enable meaningful participation.
17. Equal and accessible access to documents: Establish consistent, legislated rights for carers and families to access all relevant documents involved in proceedings, subject to appropriate safeguards. This should include the ability to obtain copies in accessible formats and sufficient time to review and respond.
18. Provision of full transcripts upon request: Ensure that full hearing transcripts are available to interested parties, including carers and family members, in a timely and accessible manner. This is essential for transparency, accountability, and enabling informed follow-up or review.
19. Standardised and transparent information practices: Implement consistent protocols for notification, document access, and information sharing across tribunal processes to reduce variability and improve fairness.

20. Improved access to plain-English information: Provide clear, accessible information about tribunal processes, rights, and expectations to support informed participation by carers and unrepresented parties.

3.6 Outcomes experienced by represented persons and their families

Carers WA provides substantial evidence regarding the outcomes experienced by represented persons, their families, and carers within the guardianship and tribunal system, drawing on qualitative consultation, lived-experience accounts, and case study analysis. The evidence demonstrates that the impacts of current system design and practice are often significant, extending beyond procedural inconvenience to deeply affect autonomy, wellbeing, and human rights.

Across carer experiences, a consistent pattern emerges in which system processes—particularly where they are opaque, exclusionary, or insufficiently responsive to lived experience—produce adverse outcomes for both the represented person and those who support them. These outcomes reflect structural issues in how decisions are made, how information is shared, and how carers are recognised as participants in the process.

3.6.1 Loss of autonomy and human rights

A central outcome identified is the loss of autonomy and erosion of fundamental human rights. Guardianship and administration arrangements, particularly where they are applied without clear articulation of the person's will and preferences, can result in individuals being excluded from decisions about key aspects of their lives.

Carers report situations where decisions regarding living arrangements, healthcare, finances, and social participation are made without meaningful consultation or in direct contradiction to the person's known wishes. This can lead to reduced agency, diminished dignity, and disconnection from established support networks. These outcomes indicate a misalignment with contemporary human rights approaches, particularly where substituted decision-making displaces the voice of the person.

3.6.2 Psychological distress and trauma

The emotional and psychological impacts on both represented persons and carers are significant. Represented persons may experience confusion, disempowerment, and distress associated with proceedings they do not fully understand or meaningfully participate in.

Carers frequently report anxiety, frustration, and trauma arising from navigating complex processes, compounded by limited access to information and inconsistent engagement. These impacts are intensified where processes lack clarity, communication is inadequate, or outcomes appear inconsistent or unjustified, highlighting the absence of trauma-informed practice.

3.6.3 Carer burnout

Carers play a critical yet often unrecognised role in supporting represented persons through tribunal processes and ongoing arrangements. This role involves substantial administrative, emotional, and advocacy demands.

Carers must often navigate complex legal and bureaucratic systems without adequate guidance or support, while continuing to provide high levels of care. The cumulative pressure contributes to burnout, reduced wellbeing, financial strain, and disruption to employment and family life.

3.6.4 Risk of long-term and irreversible harm

In more severe cases, outcomes include long-term or irreversible harm. Decisions made under guardianship or administration arrangements may have profound consequences for the safety, health, or life trajectory of the represented person.

Particular concern arises where decisions occur without sufficient transparency, consultation, or accountability, and where review or complaint mechanisms are not accessible or effective. These cases expose critical gaps in safeguards and oversight.

3.6.5 Impact on families and system trust

The effects of these outcomes extend beyond individuals to impact family systems and support networks. Carers describe strained relationships, ongoing emotional distress, and a breakdown in trust with institutions following negative experiences.

Where carers are excluded or unsupported, informal support networks may weaken, reducing continuity of care and increasing reliance on formal systems, resulting in less sustainable and less person-centred outcomes.

3.6.6 Conditions associated with positive outcomes

Despite these challenges, the evidence demonstrates that significantly improved outcomes are achievable where inclusive and rights-based practices are applied. Positive experiences are associated with respectful and person-centred decision-making, where the will and preferences of the represented person are clearly identified and upheld.

Outcomes are improved where carers are actively included, supported to participate, and recognised as key contributors to decision-making. The application of supported decision-making approaches is particularly important, enabling individuals to make their own decisions with appropriate support. Clear documentation of will and preferences further strengthens alignment between decisions and the person's values.

3.6.7 Alignment in the submission

Carer evidence consistently demonstrates outcomes including loss of autonomy and human rights, emotional distress and trauma, carer burnout, and, in some cases, long-term or irreversible harm.

Positive outcomes are linked to respectful engagement by decision-makers, clear articulation of will and preferences, meaningful carer inclusion, and the application of supported decision-making approaches. These findings confirm that outcomes are shaped by the extent to which processes uphold transparency, inclusion, and human rights.

Carers WA recommends the following reforms to improve outcomes for represented persons, their families, and carers:

21. Strengthen supported decision-making: Embed supported decision-making as the default approach, ensuring that the will and preferences of the represented person guide all decisions and that substitute decision-making is used only where strictly necessary.
22. Mandate carer inclusion: Require carers and families to be recognised, notified, and meaningfully included in tribunal processes, with clear opportunities to contribute to decisions affecting the person.
23. Improve safeguards, oversight and review: Introduce stronger oversight mechanisms, accessible complaint pathways, and regular review requirements to ensure decisions are transparent, accountable, and subject to scrutiny.
24. Embed trauma-informed practice: Require all system actors to apply trauma-informed approaches, recognising the emotional impact of proceedings and ensuring respectful, supportive engagement.
25. Expand access to advocacy and support: Ensure represented persons, carers, and families have access to independent advocacy and support services to assist with system navigation and participation.
26. Strengthen recognition of will and preferences: Promote and support the use of advance planning instruments and processes that clearly document and uphold the person's wishes throughout proceedings

3.7 Adequacy of oversight mechanisms

This submission considers whether current oversight mechanisms are sufficient to hold guardians and administrators accountable for their decisions and actions. Evidence from carers indicates that monitoring, review and accountability arrangements are inconsistent, difficult to access, and, in some cases, ineffective in practice. This is particularly evident in relation to public guardianship and administration, where carers report limited transparency and minimal avenues for meaningful challenge or review.

Carer experiences suggest that oversight is not embedded as a continuous or systematic function of the guardianship system, but is instead reactive, fragmented, and highly dependent on individual circumstances. This creates a risk that decisions with significant impacts on autonomy, safety, and wellbeing may proceed without adequate scrutiny, and that issues are only identified after harm has occurred.

3.7.1 Gaps in monitoring and review

A key issue identified is the limited and inconsistent review of guardian and administrator conduct. While formal mechanisms for review may exist, carers report that these are often difficult to initiate, unclear in process, or inaccessible without legal support. As a result, decisions and actions taken under guardianship arrangements may not be routinely revisited or evaluated.

Once an order is made, there is frequently little ongoing oversight of how powers are exercised. Carers describe situations where arrangements continue for extended periods without reassessment, even where circumstances have changed or concerns have arisen. This absence of continuous monitoring reduces opportunities to identify risks, address issues early, or ensure that arrangements remain appropriate and proportionate.

3.7.2 Limited scrutiny of public guardianship

Concerns are particularly pronounced in relation to public guardianship and administration. Carers report that decisions made by public authorities are subject to limited external scrutiny, with few accessible mechanisms to question, review, or challenge those decisions.

This creates a perceived imbalance in accountability, where public guardians and administrators may exercise significant decision-making authority without a corresponding level of transparency or independent oversight. In some cases, carers report feeling excluded from processes and unable to obtain clear explanations for decisions or outcomes.

3.7.3 Barriers to accountability and redress

Even where concerns are identified, carers often face significant barriers to seeking accountability or redress. These include lack of awareness of complaint mechanisms, complexity of processes, resource constraints, and limited access to advocacy or legal support.

The emotional and administrative burden of pursuing complaints or reviews can be substantial, particularly for carers already managing high levels of responsibility. As a result, some issues may go unreported or unresolved, reducing the system's overall capacity to learn, improve, and prevent harm.

3.7.4 Consequences of inadequate oversight

The absence of robust and accessible oversight mechanisms has broader system implications. Without effective monitoring, review, and accountability, there is an increased risk of decisions that do not reflect the will and preferences of the represented person, or that may inadvertently contribute to harm.

It also undermines trust in the system. Carers who experience limited transparency or barriers to accountability may become disengaged or lose confidence in institutional processes, which can further weaken collaboration and participation.

3.7.5 Alignment in the submission

The submission identifies consistent oversight gaps across the system, including:

- Limited and inconsistent review of guardian and administrator conduct
- Minimal independent scrutiny of public guardianship and administration decisions
- Lack of continuous monitoring once orders are made, including limited reassessment over time

These findings highlight a systemic gap between the authority granted to guardians and administrators and the mechanisms in place to ensure that this authority is exercised appropriately, transparently, and in line with human rights principles.

Carers WA recommends the following reforms to strengthen oversight, accountability, and safeguards within the system:

27. Mandatory, periodic reviews of orders: Introduce legislated requirements for regular and automatic review of all guardianship and administration orders to ensure they remain necessary, proportionate, and aligned with the person's circumstances and will and preferences.
28. Establish an independent oversight body: Create or strengthen an independent body with clear authority to monitor, investigate, and review the conduct and decisions of guardians and administrators, including public authorities. This body should be accessible to carers and families and have the power to take corrective action where required.
29. Strengthen continuous monitoring mechanisms: Implement systems for ongoing oversight of guardianship arrangements, including reporting requirements, check-ins, and mechanisms to identify risks or concerns early.
30. Expand accountability and reporting requirements: Require guardians and administrators to provide regular, transparent reporting on decisions made, actions taken, and how these align with the represented person's will and preferences.

31. Improve access to complaints and review processes: Simplify and promote complaint and review pathways, ensuring they are accessible, clearly communicated, and supported by advocacy services where needed.
32. Provide advocacy and legal support: Ensure carers and families have access to independent advocacy and legal assistance to support them in raising concerns, seeking review, and navigating oversight mechanisms.
33. Embed human rights and supported decision-making safeguards: Ensure that oversight frameworks explicitly assess whether decisions uphold human rights principles, including autonomy, participation, and the primacy of will and preferences.

These reforms aim to ensure that guardianship and administration arrangements are subject to robust, transparent, and continuous oversight, supporting safer, more accountable, and rights-aligned outcomes.

3.8 Role and conduct of the State Administrative Tribunal

This submission examines the role and conduct of the State Administrative Tribunal in guardianship and administration matters, with a particular focus on how statutory principles are applied in practice and how decisions are experienced by represented persons, carers, and families. Evidence from carers indicates variability in Tribunal practice, including inconsistent application of key principles, limited recognition of carer knowledge, and uneven adherence to procedural fairness. At the same time, carers have identified that respectful, transparent, and genuinely person-centred Tribunal processes are achievable and lead to improved outcomes.

3.8.1 Application of statutory principles

A key issue identified is the inconsistent application of fundamental statutory principles, particularly the presumption of capacity. Carers report that, in practice, this principle is not always meaningfully upheld and may be applied in a narrow or procedural way rather than as a guiding principle.

In some cases, decision-making appears to default toward assumptions of incapacity, particularly where individuals require support in specific aspects of their lives. This risks undermining the principle that a person should be presumed capable unless demonstrated otherwise, and that capacity can be supported rather than substituted.

3.8.2 Over-reliance on procedural approaches

Carers also report an over-reliance on procedural or checklist-style approaches to decision-making. These approaches can prioritise administrative completeness or compliance with formal criteria over a holistic assessment of the person's circumstances.

Where decision-making is overly procedural, there is a risk that the complexity of a person's life is reduced to a set of indicators, rather than being understood in context. This can result in decisions that do not fully reflect the individual's will, preferences, or support arrangements, and may lead to unnecessarily restrictive outcomes.

3.8.3 Recognition of lived experience and informal supports

The submission highlights that insufficient weight is often given to the lived experience and knowledge of carers and informal supports. Carers frequently hold detailed, long-term knowledge of the person's preferences, communication style, history, and decision-making capacity when supported.

Despite this, carers report that their perspectives are sometimes treated as secondary to clinical or formal assessments, even where such assessments are limited in scope or based on short-term interactions. This can reduce the quality of evidence before the Tribunal and result in decisions that are less informed and less person-centred.

3.8.4 Procedural fairness and participation

Carers also raise concerns about procedural fairness, including limited opportunities to meaningfully participate in proceedings, constrained ability to present evidence, and lack of clarity in how decisions are reached.

Where processes are not transparent or accessible, both represented persons and carers may struggle to understand the basis for decisions or to challenge outcomes where appropriate. This undermines confidence in the Tribunal and reduces the perceived legitimacy of the process.

3.8.5 Variability in conduct and outcomes

There is notable variability in the conduct of Tribunal proceedings and the approach taken by individual decision-makers. Some carers report positive experiences where Tribunal Members demonstrate respect, active listening, and a commitment to understanding the person's circumstances.

In these cases, processes are more inclusive, decisions are better informed, and outcomes are more closely aligned with the person's will and preferences. However, this level of practice is not consistent, resulting in uneven experiences and outcomes across the system.

3.8.6 Conditions supporting positive practice

Carers identified several features that contribute to positive Tribunal experiences and outcomes. These include respectful engagement, clear communication, sufficient time for participation, and active efforts to involve carers and support networks.

Where decision-makers adopt a person-centred approach and prioritise understanding the individual's will and preferences, the process is more transparent, collaborative, and aligned with human rights principles. These examples demonstrate that improved practice is achievable within the existing system when these elements are prioritised.

Carers WA recommends the following reforms to strengthen the role and conduct of the Tribunal:

34. Establish unified, legislated principles: Introduce a comprehensive set of statutory principles that apply to all decision-makers, ensuring consistent application of human rights, supported decision-making, and the primacy of will and preferences.
35. Strengthen the presumption of capacity: Require decision-makers to actively apply and document how the presumption of capacity has been considered in each case, including how capacity may be supported.
36. Reduce reliance on procedural checklists: Encourage decision-making frameworks that prioritise holistic assessment of the individual's circumstances, rather than rigid or checklist-based approaches.
37. Mandate training for Tribunal Members: Introduce mandatory and ongoing training in supported decision-making, human rights frameworks, trauma-informed practice, cultural safety, and carer inclusion.
38. Embed recognition of carers and informal supports: Require decision-makers to actively seek, consider, and give appropriate weight to the knowledge and perspectives of carers and informal support networks.
39. Strengthen procedural fairness and transparency: Improve access to information, ensure adequate time for participation, and provide clear explanations for decisions to support understanding and accountability.
40. Promote consistent, person-centred practice: Develop guidance, standards, and accountability mechanisms to support consistent, high-quality Tribunal conduct that is respectful, inclusive, and aligned with best practice principles.

These reforms aim to ensure that Tribunal processes are consistent, transparent, and person-centred, and that they effectively uphold the rights, participation, and wellbeing of represented persons and their families

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

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.

Consultations with WA Carers

Carers WA undertook extensive consultation with WA carers to inform its submission to the WA Law Reform Commission's Project 114 Review of the *Guardianship and Administration Act 1990* (WA). These consultations included:

- 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 asked targeted questions of WA carers through an online survey as part of the consultation for the review of WA's guardianship laws, regarding their experiences within 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.

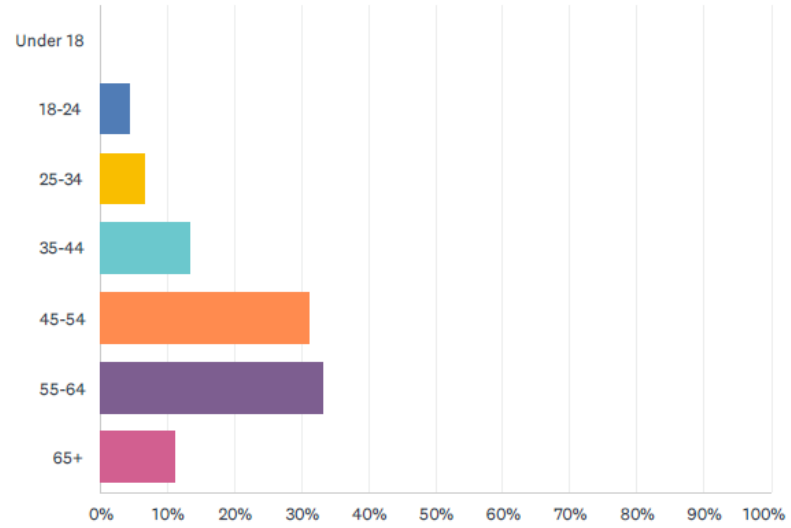


Figure 1 Age of survey respondents

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.

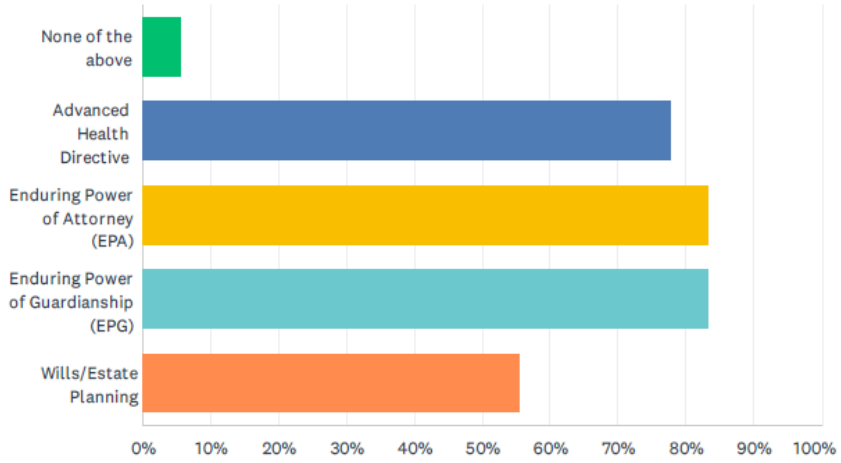


Figure 2 Awareness of AHD, EPA, EPG, wills and estate planning

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

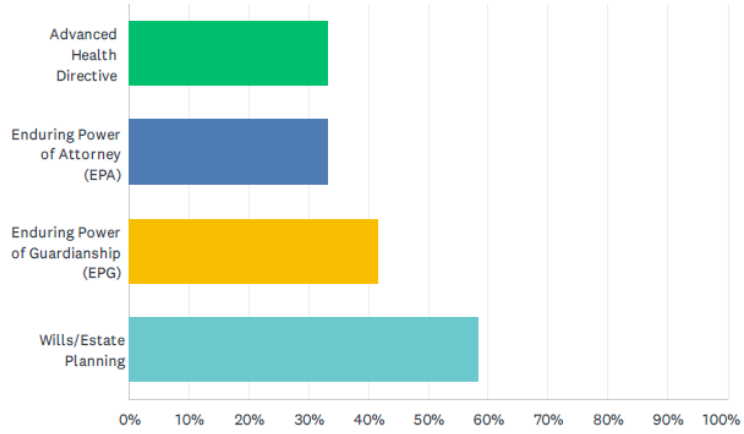


Figure 3 Use of AHD, EPA, EPG, wills and estate planning by survey respondents

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.

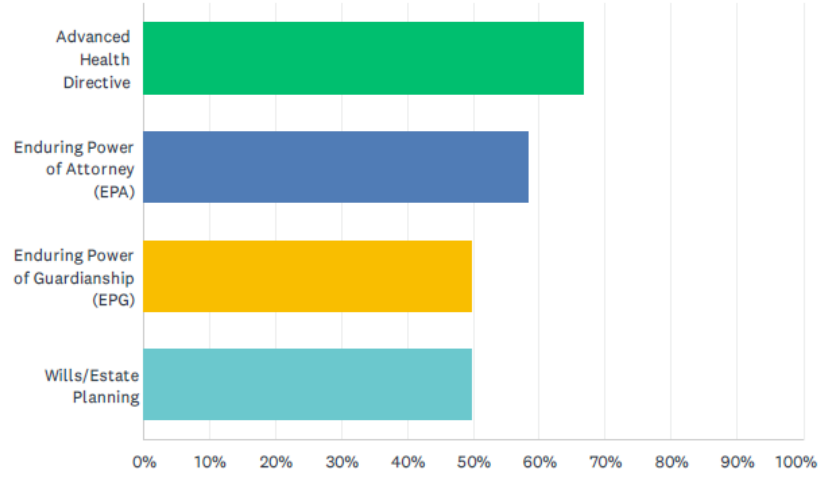


Figure 4 Use of AHD, EPA, EPG, wills and estate planning by the person being cared for

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

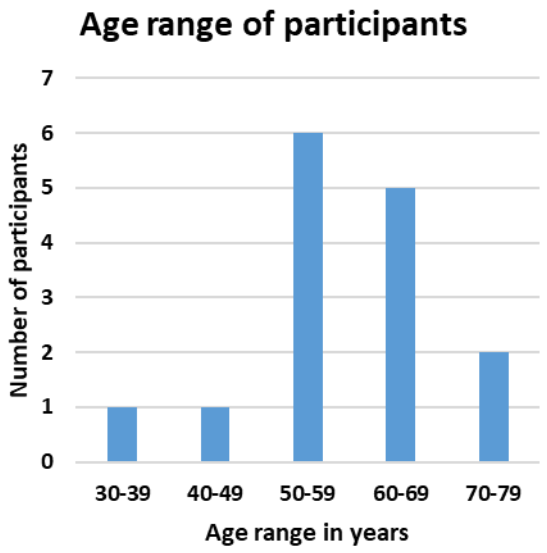
Carers WA conducted three targeted group consultations with carers, which were held in-person and online. At these consultations, semi-structured questions were asked of the participants to guide discussions. These included asking carers to consider, within their experience with the WA guardianship and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