



Introduction

In April 2024, the Hon John Quigley MLA, Attorney General, directed the Law Reform Commission of Western Australia (the Commission) to review the *Guardianship and Administration Act 1990* (the Act).

The scope of the review has been set by the Attorney General in the Commission's terms of reference. The Commission will consider how the Act can be enhanced and updated, taking into account several important pieces of work, including the report from the recent Royal Commission into the Violence, Abuse, Neglect and Exploitation of People with Disability. It will also consider the report of an inquiry into elder abuse in WA, proposed new national aged care laws and information on guardianship and administration laws from the Australian States and Territories and other countries.

The Commission will provide a Final Report on its review with recommendations to the Attorney General in 2025.

The review (and any recommendations arising out of it) will aim to support changes to improve the guardianship and administration system.

It may include ideas on the best ways to help people who experience challenges in making decisions, as well as what is culturally suitable and safe for our different communities across Western Australia.

The Commission will take into account the need for the Act to respect people's rights to make decisions for themselves, if possible, and to be treated with dignity.

Who is affected by guardianship and administration law in Western Australia?

There is a long history of Western Australian laws which provide that in certain circumstances, people can make decisions for other people. These laws have applied where it is believed a person is not able to, or capable of, making decisions for themselves. The Act is the most recent of these laws.

People affected by the Act include people with disability, older people experiencing dementia or other forms of mental impairment, people with acquired head injuries and people with mental illness.

The Act provides for the State Administrative Tribunal to appoint guardians and administrators to act as substitute decision-makers for people who do not have decision-making capacity. It outlines who can be appointed as a guardian or administrator and their roles and responsibilities. Examples of who can be guardians or administrators are family members, friends or the Public Advocate.

Under the Act, the decisions that can be made on behalf of people by guardians and administrators can range from limited parts of their life through to almost all areas. They include decisions on a person's lifestyle or way of living (for example - where to live, who to live with), health and financial decisions (for example – selling and buying property, spending money).

Since the Act started operating in 1992, there have been significant shifts in the way in which society and the law interact with vulnerable people. The Commission's review will consider whether these shifts ought to be reflected in the Act. It will also consider whether recent changes to guardianship and administration laws in other Australian States and Territories ought to be incorporated into the Western Australian Act.

In line with the scope of the review, some of the key areas that the Commission will consider include: how decision-making capacity is defined and assessed, whether the Act should adopt a supported decision-making model, the roles and responsibilities of guardians and administrators, and whether there are adequate safeguards for represented people.

Why do we want to talk with people?

It is important for the Act to meet the needs of all Western Australians. We understand that the law can have many different and overlapping impacts for each individual.

The Commission's review provides an important opportunity for people's voices to be heard and for service providers to share their ideas for a modern, respectful and effective guardianship and administration system for Western Australia.

Importantly, stories and viewpoints can highlight what the law means for people in their everyday lives, how they can be safe and engaged in their communities, and how they can live to their full potential.

The Commission would like to talk with as many people and service providers as possible who have been involved in, or have a connection to, guardianship and/or administration matters and who can speak to issues within the terms of reference.

Next steps

In the next 6 months, the Commission will release a Discussion Paper in two volumes. This will outline the current law in Western Australia and possible ideas for change based on information already received from people with lived experience of guardianship and administration laws, government and non-government service providers and agencies.

The Commission aims to make the Discussion Paper available in easy to access formats and languages.

The Discussion Paper will include an invitation to people and service providers to send us written submissions or to talk with us about their ideas and opinions. The invitation will also be circulated through newspaper and on-line advertisements, community communication channels such as newsletters and through our stakeholder networks.

The Commission is committed to meeting with people and families to listen to their stories. This will be in the first half of 2025 when we will also visit regional and rural areas. In addition, there will be -

- Expert reference groups. The Commission aims to conduct 2-3 sessions with specific topics for discussion at each session.
- Sessions where individual service providers, community members and people with lived experience can share their unique experiences.
- An online survey and the option to upload written submissions on the Commission's website.

For further information, including the terms of reference for the review, please send an email to the Law Reform Commission of Western Australia - lrcwa@justice.wa.gov.au, call (08) 9264 1600 or visit the website at <https://www.wa.gov.au/organisation/law-reform-commission-of-western-australia>.