

BRIEFING PAPER

**IMPLEMENT
RECOMMENDATIONS
OF STATUTORY REVIEW
OF THE GUARDIANSHIP
& ADMINISTRATION ACT
1990**

**THE ESSENTIAL MEMBERSHIP FOR
THE LEGAL PROFESSION**

Prepared by the Law Society of Western Australia

lawsocietywa.asn.au

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IMPLEMENT RECOMMENDATIONS OF STATUTORY REVIEW OF THE *GUARDIANSHIP & ADMINISTRATION ACT 1990*

Background

On 2 December 2015 the report on the Statutory Review of the *Guardianship and Administration Act 1990* was tabled in the Western Australian Parliament. To date only 2 of the 86 recommendations directed at improving the operation and effectiveness of the Act have been implemented. Recommendations 6 and 7 were dealt with in the *Guardianship and Administration Amendment (Medical Research) Act 2020*

The Law Society of Western Australia provided a detailed submission to the Statutory Review in August 2013 addressing over 70 of the recommendations (WALS Review).

Following the tabling of the Statutory Review the Law Society provided a further detailed submission (2018 Review) dealing with the 86 recommendations and forwarded that to the Minister in March 2018

The Submission and 2018 Review can be accessed at <https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2018MAR09-Submission-Review-of-statutory-report-on-the-GA-Act-C4.pdf>

The key areas of legislative reform that the Law Society considers important to implement include:

- a) for an enduring power of attorney registered at Landgate, revocation should occur using the prescribed form, and for remaining instances destruction and striking through should remain valid acts of revocation;
- b) clarification of the status of an EPA or EPG where a later EPA or EPG comes into effect; and whether the later document should revoke the earlier;
- c) amendment to the definition of enduring power

of attorney;

- d) the areas of reform that relate to the jurisdiction of the State Administrative Tribunal;
- e) the updating of the forms used in relation to EPAs where donees act jointly and severally or jointly;
- f) estate administration;
- g) emergency provisions;
- h) powers of an administrator and the Public Advocate;
- i) review of orders;
- j) dealing with the issue of ademption ;
- k) the updating of the forms for Enduring Powers of Guardianship to address the issue of consent to treatment involving medical research;
- l) that marriage and divorce revoke an existing EPA or EPG; and
- m) the establishment of a register for advance health directives;

Policy Position

The Law Society supports the immediate introduction of amendments to the Guardianship and Administration Act 1990 to implement the recommendations in the Statutory Review of the Guardianship and Administration Act 1990 of December 2015 as a matter of priority.



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