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## DO YOU NEED AN ENDURING POWER OF GUARDIANSHIP?

### BACKGROUND

With effect from 15 February 2010 the State Government amended the *Guardianship and Administration Act 1990* (WA) to provide for Enduring Powers of Guardianship.

An Enduring Power of Guardianship ("EPG") is a legal document where you ("the appointor") appoint someone (called "the guardian(s)") to make personal and lifestyle decision on your behalf, should you become incapable of making such decision yourself, such as where you live, the support services you have access to and the medical treatment you receive.

Note that an enduring guardian cannot be authorised to make property or financial decisions on your behalf (see "*DO YOU NEED AN ENDURING POWER OF ATTORNEY?*").

### WHY WOULD I GIVE SOMEONE THIS POWER?

It is the only way you can have control over who will make personal lifestyle and medical treatment decisions on your behalf if you are ever unable to do so yourself. You could lose the capacity to make decisions permanently, such as through dementia or an acquired brain injury from a car accident, or temporarily, by becoming unconscious as a result of an illness.

### FUNCTIONS OF ENDURING GUARDIAN(S)

You may either:

- ❖ authorise your Enduring Guardian(s) to make the same range of decisions as a plenary guardian, who is appointed by the State Administrative Tribunal. This would enable your enduring guardian to:
  - decide where you live (whether permanently or temporarily) & who you live with;
  - decide whether or not you work and, if so, any matters related to that work;
  - make health care & treatment decisions on your behalf;
  - decide what education and training you receive;
  - determine who you associate with;
  - commence, defend, conduct or settle any legal proceedings on your behalf;
  - advocate for and make decisions about the support services you access; and
  - seek and receive information on your behalf; OR
- ❖ restrict or limit the decision making authority of your Enduring Guardian(s) (*e.g. your enduring guardian may make decisions where you live but not about any medical treatment you receive*).

### MAKING AN ENDURING POWER OF GUARDIANSHIP

To make an EPG both you and the person you appoint as your enduring guardian must:

- ❖ be 18 years of age or older;
- ❖ have full legal capacity.

It is important that your EPG is drafted as a formal legal document in conformity with the requirements of the *Guardianship and Administration Act 1990* (WA) and when signed be witnessed by two appropriately qualified witnesses.

Butcher Paull & Calder can assist you in preparing your EPG and we recommend it as an integral part of your estate planning.