

ENDURING GUARDIANSHIP  
INFORMATION  
BROCHURE

**Clark** | Rideaux  
S O L I C I T O R S

## What is an Enduring Guardian?

---

A trusted person, chosen by you to make decisions on a variety of lifestyle and health decisions such as:

- Where you live (e.g. a nursing home or your own home)
- Medical treatment you'll receive
- Other personal services you receive (e.g. physiotherapy)

An enduring guardian can only make decisions on your behalf if you lose mental capacity and are unable to make your own personal and/or lifestyle decisions.

You have the power to choose the decisions (known as functions) your enduring guardian is empowered to make.

An enduring guardian cannot make decisions relating to your property or assets.

## Why make an Enduring Guardianship?

---

An enduring guardianship allows you to choose who is able to make decisions on your behalf. It also allows you to express your wishes in relation to how those decisions should be made.

If you do not grant an enduring guardian and you lose capacity, the law states that the “person responsible” for you has the power to make decisions about your medical and dental treatment only. The “person responsible” for you is not necessarily your next of kin, and could be

- A spouse or de facto spouse
- An unpaid carer
- A close family member or friend

Appointing an enduring guardian means that decisions are made in accordance with your wishes by a person or people you trust.

## Who should I appoint as my Enduring Guardian?

---

You can appoint anyone of your choice who meets the following criteria:

- Is over 18 years of age and has capacity
- Is someone you trust and will act in your best interests

You are able to appoint more than one person to be your guardian. If you choose to appoint more than one guardian you can appoint them

- Jointly—Your guardians must agree on and make all decisions together
- Severally—Your guardians are able to make independent decisions without consulting one another
- Jointly and Severally—Your guardians are able to make decisions together or separately

You can also appoint an alternate guardian. An alternative guardian will only act in the event that your first choice(s) are unable to. This could be because they have died, resigned or lost capacity themselves.

## **Can I control the decisions my Guardian makes?**

---

It is up to you as to how general or specific the powers given are. You are able to remove or add as many functions from your enduring guardianship document. Some examples include:

- You can authorise your guardian to act only in relation to healthcare, not where you live
- You can direct your guardian to consult a preferred particular person before making a decision
- You can direct your guardian that you do not want to receive a particular type of treatment

## **What are the duties and responsibilities of an enduring guardian?**

---

An enduring guardians duties and responsibilities are set out in the *Guardianship Act 1987* and include the following general principles:

- Your welfare and interest should be a main consideration
- Your freedom of decision and action should be limited as little as possible
- You should be encouraged, within reason, to live a normal life in the community
- The importance of maintaining family relationships and cultural environments should be recognised
- You should be encouraged, within reason, to be self-reliant in personal, domestic and financial matters
- You should be protected from neglect, abuse and exploitation , including financially.

## **When does an Enduring Guardianship become effective?**

---

The appointment of your enduring guardian takes effect only after you lose capacity. Your enduring guardian will need to seek the opinion of a medical practitioner about your capacity before they are able to act on your behalf.

## **Will my appointment of my enduring guardian be effective in other states?**

---

Some jurisdictions in Australia may recognise Enduring Guardianship documents made in NSW however, this is not always the case. If you have assets elsewhere you should check with a solicitor in that jurisdiction to see if your Enduring Guardianship made in NSW will be recognised in that jurisdiction.

## **Should the appointment be registered?**

---

It is not necessary to register an Enduring Guardianship. However, registering an Enduring Guardianship is a way of keeping a public record of the document. Bear in mind this will make the document available for anyone to access if they are searching for this record. There is a fee for registering the document.

## Can I revoke my Enduring Guardianship appointment?

---

You can revoke your enduring guardian provided you still have capacity. You must complete the relevant form and must have your signature witnessed by a eligible witness (a solicitor). You then have to advise your enduring guardian, in writing, that you have revoked their appointment.

Your appointment will also be revoked if you marry someone, other than the appointed guardian. It will not be revoked if you divorce or separate.

After you lose capacity only the Guardianship Tribunal can make changes to your appointment.

## Can my Guardian resign?

---

If you have capacity your guardian can resign by completing the relevant form and having their signature witnessed by an eligible witness (a solicitor). They then have to advise you in, in writing, that they have resigned.

Once you lose capacity your guardian can only resign with the consent of the Guardianship Tribunal.

# CLARK RIDEAUX SOLICITORS



86 Gipps Street  
Bega NSW 2550

(02) 6491 6900  
[admin@clarkrideaux.com.au](mailto:admin@clarkrideaux.com.au)

[www.clarkrideaux.com.au](http://www.clarkrideaux.com.au)

Liability limited by a scheme approved under Professional Standards Legislation

Clark Rideaux Solicitors is a trading name of Clark Rideaux Pty Ltd (ACN 105 114 814)

This document was prepared by Clark Rideaux Solicitors. It contains information of a general nature only and is not intended to be used as specific advice.