

ENDURING GUARDIANSHIP INFORMATION BROCHURE

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S O L I C I T O R S

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What is an Enduring Guardian?

An Enduring Guardian is a trusted person, chosen by you, to make decisions about your lifestyle and health if you lose the capacity to make these decisions yourself. These decisions may include:

- Where you live (e.g. your own home, a relative's home, or a residential care facility)
- What medical or dental treatment you receive, including consent to or refusal of life-sustaining treatment and palliative care
- What personal services you receive (e.g. physiotherapy, home care)

Important: An Enduring Guardian cannot make decisions about your property, finances, or legal affairs. For these matters, you should consider appointing an Enduring Power of Attorney.

Why Make an Enduring Guardianship Appointment?

Appointing an Enduring Guardian allows you to:

- Choose who will make important personal and health decisions for you if you lose capacity
- Express your wishes and values regarding your care and lifestyle
- Avoid default arrangements where a "person responsible" (not necessarily your next of kin) may be appointed to make medical and dental decisions for you

If you do not appoint an Enduring Guardian and lose capacity, the law provides that a "person responsible" (such as a spouse, unpaid carer, or close family member/friend) may make certain decisions, but their authority is limited to medical and dental treatment.

Who Should I Appoint as My Enduring Guardian?

You may appoint any adult (over 18 years) who has capacity and whom you trust to act in your best interests. You can appoint:

- One or more guardians (jointly, severally, or jointly and severally)
- An alternative (substitute) guardian, who will act only if your first choice(s) cannot

Jointly: All guardians must agree on decisions

Severally: Any guardian can act independently

Jointly and Severally: Guardians can act together or separately

What Decisions Can My Guardian Make?

You control the scope of your guardian's authority. You may:

- Authorise your guardian to make all or only specific types of decisions (e.g. only health care, not accommodation)
- Direct your guardian to consult with a particular person before making a decision
- Specify or limit the types of medical treatment you do or do not wish to receive (e.g. refusal of certain treatments, religious or cultural preferences, dietary requirements, end-of-life wishes)

Duties and Responsibilities of an Enduring Guardian

Your Enduring Guardian must act in accordance with the *Guardianship Act 1987* and the following principles:

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

When Does an Enduring Guardianship Take Effect?

Your Enduring Guardian's authority only begins if you lose capacity to make your own decisions. Capacity is determined by a medical practitioner, who will assess whether you can understand, retain, and weigh up information relevant to the decision at hand.

How is Capacity Assessed?

A medical practitioner will assess your ability to:

- Understand the nature and effect of decisions
- Retain and weigh up relevant information
- Communicate your decision

If you are found to lack capacity, your Enduring Guardian may act on your behalf.

What if I Only Temporarily Lose Capacity?

If you only temporarily lose capacity, your Enduring Guardian's authority to make decisions on your behalf will apply only during the period in which you are unable to make your own personal and/or lifestyle decisions. Once you regain capacity, you resume making your own decisions, and your guardian's authority is suspended until or unless you lose capacity again. This ensures that your autonomy is respected and that your Enduring Guardian only acts when you are genuinely unable to make decisions for yourself.

Advance Care Directives

An Advance Care Directive is a separate document in which you can record your wishes about medical treatment and end-of-life care. It is recommended to have both an Enduring Guardianship and an Advance Care Directive to ensure your wishes are respected.

Recognition in Other States and Territories

Enduring Guardianship documents made in NSW may not be automatically recognised in other states or territories. If you have assets or expect to reside elsewhere, seek legal advice in that jurisdiction to ensure your wishes are upheld.

Registration

Registration of an Enduring Guardianship is not required, but it can provide a public record of the document. Be aware that registration makes the document accessible to anyone searching the register, and a fee applies.

Revocation and Changes

You may revoke your Enduring Guardian appointment at any time while you have capacity. This requires:

- Completing the relevant revocation form, witnessed by an eligible witness (e.g. solicitor)
- Notifying your guardian in writing

Your appointment is automatically revoked if you marry someone other than your appointed guardian. Divorce or separation does not revoke the appointment.

After you lose capacity, only the NSW Civil and Administrative Tribunal (Guardianship Division) can make changes to your appointment.

Guardian Resignation

Your guardian may resign at any time while you have capacity by:

- Completing the relevant resignation form, witnessed by an eligible witness
- Notifying you in writing

If you have lost capacity, your guardian can only resign with the consent of the Tribunal.

Dispute Resolution and Oversight

If there is a dispute about your care or the actions of your guardian, or if concerns arise about your guardian's conduct, the Tribunal can review, vary, or revoke the appointment. The Tribunal can also resolve disputes between multiple guardians or between guardians and family members.

Safeguards

The law provides safeguards to protect you, including:

- Oversight by the Tribunal
- The ability to specify directions and limitations in your appointment
- The requirement that your guardian act in your best interests

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