



Enduring Guardian

If you lose the capacity to make your own decisions, an enduring guardian can make personal decisions on your behalf, such as where you should live and what medical treatment and services you should receive.

There are legal and formal requirements that must be met in order to ensure that your enduring guardian appointment is valid.

You may wish to consult a solicitor about making an enduring guardian appointment.

When does your Enduring Guardian start making decisions?

The appointment of your enduring guardian takes effect only if you lose the capacity to make your own health or lifestyle decisions.

For example; in the future if you start to suffer from:

- Alzheimer's disease or dementia;
- Brain injury as a result of an accident; or
- An intellectual or mental condition that impairs your ability to make important decisions.

What can an enduring guardian do for me?

An enduring guardian, within the limits of the guardianship arrangements that you have specified, may:

- make decisions for your benefit concerning your medical care and lifestyle choices;
- seek professional advice on your behalf concerning medical treatment;
- monitor your health and wellbeing, and refer you to treatment and support services such as home care and medical practitioners; and
- make a decision regarding any life support you may be utilising.

Can anyone be my Enduring Guardian?

Your guardian may be any person or persons over the age of 18 years provided they meet a number of legal requirements and restrictions.

Whether you intend to appoint a guardian or have been asked to be a guardian yourself, it is vital that you seek legal advice to ensure the arrangement will be valid and in the best interests of all concerned.

Is there anything an Enduring Guardian cannot do?

An enduring guardian is not authorised to:

- make a will for you
- manage your financial affairs
- override any objections you may have to medical treatments
- vote on your behalf
- consent to a marriage on your behalf
- make any decisions that could lead to abuse, neglect or illegal acts

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- make decisions for their own benefit rather than for your benefit

What happens if you change your mind?

It is possible to change your mind about whether you still want an enduring guardian, who you have appointed, or the functions you have given your enduring guardian.

To do this you must still have the capacity to revoke the enduring guardian.

The revocation of an enduring guardian appointment must be made in writing; there is a set form you can use to do this.

This form must be signed by you and your signature must be witnessed by an approved person.

This form is then required to be served on the enduring guardian you originally appointed.

Can your Enduring Guardian resign and when does it end?

An enduring guardian can resign at any time by giving written notice by the set form to the person who appointed the enduring guardian.

However, an enduring guardian for a person who has already lost the capacity to make personal decisions may only resign with the approval of the Guardianship Tribunal.

An enduring guardianship can end when:

- The person who appointed the enduring guardian dies
- It is revoked by the person who made the appointment
- The only enduring guardian resigns, dies or becomes incapacitated
- It is revoked by the Guardianship Tribunal or the Supreme Court

Interstate recognition of appointment of Enduring Guardian

NSW automatically recognises the appointments of enduring guardians or their equivalents made under the law of other states and territories of Australia so that they can make decisions in NSW for people who appointed them.

Other states and territories of Australia have their own legislation governing enduring guardianship.

Some, but not all, of the other Australian states and territories automatically recognise a NSW enduring guardianship appointment as legally valid in those states. This means the enduring guardian will be able to use it in those states.

If you are planning to be in another state or move around Australia, you should find out whether the law in the other state to which you are planning to move will recognise a NSW enduring guardianship appointment.

At Adams & Partners Lawyers, we value our clients.

We work hard for our clients and we are committed to ensuring we obtain the best results for you.

Contact us today for any legal assistance you may need.

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