

# Enduring Guardianship

*We all prefer to decide for ourselves where we live, what medical and personal services we receive. Unfortunately, this is not always possible. Every day people are involved in accidents or become sick, which may lead to not being able to make decisions for themselves.*

*You can appoint an enduring guardian to make lifestyle and medical decisions for you if you lose the capacity to do so for yourself.*

## What is an enduring guardian?

An enduring guardian is someone you choose to make lifestyle and medical decisions on your behalf when you are not capable of deciding for yourself. You choose which decisions you want your enduring guardian to make and you can direct your enduring guardian on how to carry out the functions.

## Who can appoint an enduring guardian?

If you are over 18 years, you can appoint one or more enduring guardians. At the time you appoint an enduring guardian, you must have the capacity to understand the effect of the appointment.

## Who can be an enduring guardian?

The person you appoint as your enduring guardian **must be:**

- at least 18 years old; and
- someone you trust to make decisions in your best interests.

The appointed enduring guardian **cannot be** a person who, at the time of appointment:

- provides medical treatment or care to you on a professional basis,
- provides accommodation services or support services for daily living on a professional basis; or
- is a relative of one of the above.

## How many guardians can I appoint?

You can appoint one or more persons as an enduring guardian. You can appoint enduring guardians to act jointly (the enduring guardians must agree on all decisions), severally (each enduring guardian can make decisions separately from the others), or jointly and severally (the enduring guardians can act together or separately).

You can also appoint one or more alternative enduring guardian who can act only if the original enduring guardian dies, resigns or becomes incapacitated.

## What sort of decisions can an enduring guardian make?

The usual functions given to an enduring guardian are:

- deciding where you live,
- arranging health and personal services, and
- consenting to dental and medical treatment.

You can give your enduring guardian as many or as few functions as you like. You can delete the functions you do not want your enduring guardian to have and add others if you wish. For example, you can give them the power to decide on your health care but not where you live.

You may give the enduring guardian directions about how to exercise the decision making

functions you give them. For example, you can direct your enduring guardian to consult with a particular close friend before making a decision.

If your enduring guardian has a health care function, they will be able to see your medical records to help make decisions for you.

### **What decisions can't an enduring guardian make?**

An enduring guardian cannot consent to anything unlawful and cannot make a will for you, vote on your behalf, consent to marriage, manage your finances, or override your objections, if any, to medical treatment.

### **When does it take effect?**

The appointment of your enduring guardian takes effect only if you become unable to make your own personal or lifestyle decisions. Your enduring guardian may wish to seek the opinion of a medical practitioner about your capacity to make decisions before acting on your behalf. If there is any doubt about your capacity to make decisions, a medical practitioner may have to assess your capacity.

### **What if someone is concerned about what my enduring guardian is doing?**

Anyone with a general concern for your welfare can apply to the Tribunal for a review of the appointment if they feel that your enduring guardian is not making appropriate decisions on your behalf. The Tribunal can revoke the appointment or confirm it. It may also change the functions in the appointment or make a guardianship order.

### **What happens if I get married?**

If you marry after appointing an enduring guardian, the appointment is automatically revoked or cancelled, unless you marry your enduring guardian.

### **What happens if my enduring guardian cannot continue?**

If the person you have appointed dies, resigns or becomes incapacitated, you can appoint another guardian. If you are incapacitated, the Tribunal can,

in limited circumstances, order another person to be appointed as enduring guardian on your behalf.

### **When does enduring guardianship end?**

Enduring guardianship ends when you die, or when you revoke the appointment. A joint enduring guardianship will also end if one of the guardians dies, resigns or becomes incapacitated unless you provide otherwise in the form. An enduring guardianship appointment is suspended if the Tribunal makes a guardianship order. The Tribunal may revoke the appointment.

### **Can I change my mind?**

While you are capable of making your own decisions, you can revoke the appointment of an enduring guardian. To do this you will need to complete a Revocation of Appointment of Enduring Guardian form. This form will also need to be witnessed by an eligible witness, such as a solicitor. You have to advise the enduring guardian in writing that their appointment has been revoked.

You can appoint a new person as your enduring guardian, or change the functions or directions given to your enduring guardian. You will need to complete a new form of appointment to achieve any of these things.

Only the Tribunal can make changes to the appointment if you have lost the capacity to do this for yourself.

#### **AREAS OF LAW**

Criminal Law  
Apprehended Violence Orders & Apprehended Domestic Violence Orders (AVO's)  
Civil Litigation (Local Court)  
Driving matters at court  
Conveyancing & Property Law  
Buying & Selling Businesses  
Family Law  
Will & Estate Planning  
Power of Attorney & Appointment of Enduring Guardian  
Probate  
Estate Litigation

#### **BELMONT**

24 Macquarie St, Belmont NSW 2280  
PO Box 21 Belmont  
02 4945 4484  
belmont@halyburtonlegal.com.au

#### **WARNERS BAY**

10A/478 The Esplanade, Warners Bay NSW 2282  
PO Box 328 Warners Bay  
02 4948 9311  
warnersbay@halyburtonlegal.com.au

#### **TORONTO**

20 The Boulevard, Toronto NSW 2283  
PO Box 234 Toronto  
02 4935 8600  
info@halyburtonlegal.com.au