



Who to choose as your Enduring Guardian?

When people think about the future they generally take it for granted that they will be able to make their own decisions. Many people focus on planning ahead for their financial and business affairs on their death through a will but do not consider what will happen if they find themselves unable to make day to day decisions in other areas due to illness or accident.

If you're unable to make your own decisions because of a temporary or permanent loss of capacity, you cannot always be sure that informal support networks or people important to you will be able to make significant decisions on your behalf. Talking to important people in your life about what you want is helpful but not in situations where there is conflict or dispute about what should be decided in your best interests.

Appointment of Enduring Guardians & the Guardianship Act 1987 (NSW)

One of the most important things you need to consider in planning ahead is appointing an Enduring Guardian to make decisions about your health and lifestyle if you cannot. The Guardianship Act 1987 (NSW) makes it possible for you to appoint an Enduring Guardian. An Enduring Guardian is a substitute decision maker of your choice with legal authority to make health and lifestyle decisions on your behalf if needed. These types of decisions might include where you may live, the services you need, what health care you receive, or consenting to medical and dental treatment on your behalf.

Your Enduring Guardian's powers only come into effect and remain while you lack capacity to make decisions. The enduring nature of the power means that the Enduring Guardian's authority continues while you are incapacitated.

Some people may choose to appoint more than one Enduring Guardian. They can be appointed to act together (jointly), severally (independently) or both. If two or more guardians are appointed to act both jointly and severally they can use their own discretion when deciding whether one or both will make a particular decision for you, unless they are specifically appointed to act in a certain way. Enduring Guardians can also be appointed to act separately, so that each may be responsible for making decisions about different aspects of your care.

If Guardians are appointed jointly, and one Guardian dies or becomes unwilling or unable to continue to act as a Guardian, the appointment of all Guardians terminates, unless you have specified otherwise in the document appointing them. Usually, all appointments of Enduring Guardians are revoked if you subsequently marry.

The appointment of Enduring Guardians is a serious and formal undertaking and must be in writing. The Enduring Guardian must also endorse acceptance of their appointment in writing, and a NSW barrister or solicitor, a Clerk of the Local Court or an interstate legal practitioner must witness the document.



Who to choose as your Enduring Guardian

You need to carefully choose your Enduring Guardian taking into account the person's willingness to take on the role, their availability, age and health. An Enduring Guardian legally appointed by you should consider your views both past and present and should also consider the views of professionals and other people important in your life before making decisions on your behalf should the need arise.

The person you appoint as your Enduring Guardian should also understand their responsibilities as a substitute decision maker and be someone you trust to be able to take into account your views and previous lifestyle choices and be able to make decisions in your best interests.

Other things you should consider when choosing your Enduring Guardian are:

- What is their ability to make decisions in potentially difficult and emotional circumstances?
- How well does the person understand your needs, wishes, values and beliefs?
- How easy will it be to contact the person when a decision needs to be made?

Legal eligibility to be your Enduring Guardian

Only people aged 18 and over are eligible for appointment as your Enduring Guardian.

You cannot appoint the NSW Trustee and Guardian as your Enduring Guardian.

If someone receives the Carer's Pension only in caring for you, they can be appointed as your Enduring Guardian. However, a person is not otherwise eligible to be appointed as your Enduring Guardian if they are involved in a professional or administrative capacity in providing any of the following services to you for a fee:

- Medical services (or cares for you in a professional capacity);
- Accommodation;
- Any other services to support your daily living activities.

Also excluded is someone who is relative of a person providing these services.

Changing or revoking the appointment of an Enduring Guardian

The making of a new document of appointment of Enduring Guardianship revokes any prior Enduring Guardianship that you may have made. If you otherwise wish to change your Enduring Guardianship arrangements you may revoke the existing appointment at any time by completing a Revocation of Appointment of Enduring Guardian, having it legally witnessed and then served on the affected Enduring Guardian. An Enduring Guardian can also resign their appointment using a similar mechanism. However, if the Enduring Guardian wishes to resign, and you have already lost decision-making capacity, then the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) must approve the resignation.

If you or someone you know wants more information or needs help with making an Enduring Guardianship appointment or wants advice about an existing Enduring Guardianship please contact [John Bateman](#) or [Lisa Delalis](#) on 02 4731 5899 or email enquiries@batemanbattersby.com.au.