

Planning Ahead

Enduring Guardian



Many of us don't consider what might happen to us as we grow older or become unwell. However, planning ahead and getting legal help while you are fit and healthy, allows you to choose who makes decisions for you well into the future.

As you get older, you will need to prepare legal documents for:

- **Legal and financial decisions** (e.g. paying your bills, managing your bank accounts)
- **Health and lifestyle decisions** (e.g. where you live, medical treatment you receive)
- How you want **your property** to be divided after you pass away.

What is an Appointment of Enduring Guardian?

It is a legal document that allows another person to make health and lifestyle decisions for you when you can no longer make these decisions for yourself. In legal terms, this means when you no longer have capacity.

The person you appoint to make these decisions for you is called an **Enduring Guardian**. You are called the **Appointor**.

The Enduring Guardian can only start making decisions for you once you lose capacity.

Other factsheets to help you plan ahead:

- Planning Ahead: **Enduring Power of Attorney**
- Planning Ahead: **Advanced Care Directives**
- Planning Ahead: **Wills**

justicesupportcentre.org.au/free-services/factsheets-and-resources/

What decisions can my Enduring Guardian make?

An Enduring Guardian can make decisions about:

- where you live
- the health care you receive
- other types of personal services you receive
- consent to medical or dental treatment.

Disclaimer: This factsheet gives general information only. It is not legal advice. If you have a legal problem, always get advice from a lawyer. This information only applies in New South Wales. Information accurate as of Jan 2023.

When should I appoint an Enduring Guardian?

If you want to choose the person who makes health and lifestyle decisions for you, you must appoint an Enduring Guardian **before you lose mental capacity**. That means, while you are still healthy enough to understand and make decisions for yourself.

If you do not appoint an Enduring Guardian before you lose capacity, a family member or other person will need to apply to the court or the NSW Civil and Administrative for permission to make these decisions for you.

Will I lose my rights if I appoint an Enduring Guardian?

As long as you have capacity, you will always have the right to make your own decisions.

An Enduring Guardian is legally required to act in your best interests at all times.

Also, **you can choose what your Enduring Guardian can and cannot do**, and they must follow those instructions. For example, in the Appointment of an Enduring Guardian document, you could give instructions that your Guardian:

1. must talk to your doctor or other person before they can make a decision about your treatment
2. may choose where you live, but the location must be within 10km of where one of your children lives.

Who should I appoint as my Enduring Guardian?

An Enduring Guardian must be at least 18 years old and should be **someone you trust**, for example, your spouse, partner or relative.

Your Enduring Guardian should also be someone who will always act in your best interests. If someone's interests conflict with yours, they may not be suitable.

These people **cannot** be your Enduring Guardian:

1. A professional providing medical treatment or care for you.
2. A professional providing accommodation services or support services for daily living, for example, an Aged Care worker.
3. Anyone who is a relative of the above.

You should talk to a lawyer about what is best for you.

Can I appoint more than one Enduring Guardian?

Yes. If you appoint more than one Enduring Guardian, you can:

1. require them to make decisions 'jointly' (they must make decisions together); or
2. allow them to make decisions 'severally' (they can make decisions on their own without having to talk to the other Attorney/s); or
3. allow them to make decisions 'jointly and severally' (they can make decisions together or on their own without having to talk to the other Enduring Guardians).

You can also appoint another person as a substitute Enduring Guardian who only makes decisions for you if your original Enduring Guardian/s is no longer able to or dies.

How do I appoint an Enduring Guardian?

You can use the [Appointment of Enduring Guardian form](#) prepared by the NSW Trustee and Guardian.

Once the form is completed, you should keep it in a safe place. You should also give a copy to your family, doctor, carer or other people you think should know.

It is best to ask a lawyer or the NSW Trustee and Guardian for help to complete the form.

What if I change my mind?

You can cancel (revoke) the appointment of an Enduring Guardian at any time, as long as you still have capacity.

You can fill out the [Revocation of Appointment of Enduring Guardian form](#) prepared by the NSW Trustee and Guardian and give a copy to your previous Enduring Guardian/s. You should also give a copy to your family, doctor, carer or other people you think should know.

You should always get legal advice before you cancel an appointment of an Enduring Guardian.

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What if my Enduring Guardian does not act in my best interests?

The NSW Civil and Administrative Tribunal can decide to review the appointment of an Enduring Guardian if it believes that your Enduring Guardian has not acted in your best interests.

How does the Tribunal get involved?

- The Tribunal may decide to hold an investigation **if it receives a complaint or allegation** that you are being exploited, abused or neglected.
- The Tribunal may decide to review an appointment of an Enduring Guardian **where no complaint has been made**, but it has received information that causes it to believe that a review would be in your best interests.
- Any person who has a “genuine concern for your welfare” may ask the Tribunal to review the appointment by submitting an [Application for Review of an Enduring Guardian form](#).





Checklist

- Who do I want to be my Enduring Guardian?
- Do I want more than one Enduring Guardian to act together?
- Have I thought about what my Enduring Guardian can and cannot do?

Who can help?

Justice Support Centre

We can support you with free legal advice over the phone.

When to call:

If you call at the following times and give your details, a lawyer will aim to call you back within 7 working days:

Tuesday: 11.30 am – 1.30 pm

Thursday: 11.30 am – 1.30 pm

Phone: (02) 9601 7777

Email:

info@justicesupportcentre.org.au

Seniors Rights Service

1800 424 079 | 02 9281 3600

NSW Trustee and Guardian

02 8688 2600

You can also contact LawAccess for legal help in NSW: 1300 888 529

You can contact the NSW Law Society for referrals to private solicitors: 9926 0300