



ADLV LAW
FIERCELY ON YOUR SIDE

SOLUTION BRIEF

Enduring Guardian (NSW)



Who would you prefer to make decisions about your health and welfare if you become ill and can no longer make those decisions for yourself? A trusted friend or relative, or a government appointed administrator?

What is an Enduring Guardian?

An Enduring Power of Guardianship is a legal document in which you appoint a person (your 'Enduring Guardian') to make personal lifestyle decisions on your behalf when you are not capable of doing this yourself.

Your Enduring Guardian can make decisions as to where you will live, for example in a hostel or nursing home, what health care you will receive, who will be your treating doctor, and what other personal services you may receive, (for example, home nursing support). Certain medical treatment can only be approved by the Guardianship Tribunal, and your Enduring Guardian cannot override your wishes in refusing medical treatment (without the approval of the Tribunal).

Why appoint one?

Obviously, you will prefer to make decisions for yourself. However, sometimes that is not possible. You may become sick, be injured in an accident, suffer a stroke or have a condition which makes it impossible for you to make informed decisions on your own behalf.

Many people think that if they are ill or injured, then the appointment of an Enduring Guardian can take place at that time. Unfortunately, this is not possible. If you have already lost the capacity to make decisions about your own welfare and medical treatment, you have also lost the capacity to make a decision to appoint an Enduring Guardian.

If you do not appoint a Guardian and the circumstances arise where one is needed, it could be necessary for someone to make application under the Guardianship and Administration Act to be appointed your Guardian. The Guardianship Tribunal might agree to this appointment, or alternatively, might appoint the Protective Commissioner (a Government Official) to act as your Guardian. The application to the Guardianship Tribunal is more complicated and potentially more costly for you than making your own appointment now. The Protective Commission will charge a fee for administering your affairs.

What can't your Enduring Guardian do?

There are certain things an Enduring Guardian cannot do for you. For example, they cannot make a Will for you, vote on your behalf, consent to marriage, manage your finances, transfer your property, or override your objections to medical treatment.

Who can be your Enduring Guardian?

The person you appoint must be over 18 years of age. They should be someone who you trust and someone who will have an interest in making decisions in your best interest. Your Enduring Guardian must act within the law, and within the principles of the Guardianship and Administration Act. Your Enduring Guardian cannot be a person providing treatment or care to you at the time of the appointment.

We can provide you with an appointment of Enduring Guardian. The Guardianship and Administration Act prescribes certain specific information that must be contained within the document for it to be valid. Additional instructions can be inserted, for example you can choose what decisions you want your Enduring Guardian to make and give directions to your Enduring Guardian as to how you wish them to perform their functions.

When does the appointment take effect?

The appointment of an Enduring Guardian only takes effect when you are unable to make your own personal or lifestyle decisions. It will be up to your Enduring Guardian to consult with a medical practitioner about your capacity to make decisions before taking any steps on your behalf.

At the appropriate time your Enduring Guardian would approach your doctor for a certificate under the Guardianship and Administration Act to the effect that you are totally or partially incapable of managing your person. The certificate, along with a copy of the appointment, provides evidence to others of the fact that a Guardian is then entitled to make decisions on your behalf.

The appointment of an Enduring Guardianship commences when you lose your capacity and continues until you die or the appointment is revoked.

Who should consider appointing one?

Anyone who has any risk of suffering a disability, injury or illness should seriously consider appointing a Guardian. Once you pass the age of 40 years you are in a higher risk age bracket for strokes and heart attacks. These often occur without warning. The existence at that time of an Appointment of an Enduring Guardian will make the day-to-day management of your lifestyle and care a lot easier for your family.

Enduring Guardian vs Power of Attorney

A Power of Attorney is someone who manages your financial affairs, property, and assets. The Enduring Guardian is the person who manages your medical and personal issues. Most of us should consider appointing both.



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TALK TO US

What next?

If you would like to speak to someone about putting in place an Enduring Power of Guardianship, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.

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