

Enduring Guardianship in New South Wales

APPOINTMENT OF ENDURING GUARDIAN FORM

Revised March 2018

Appointment of Enduring Guardian

For New South Wales

(Guardianship Regulation 2016, Schedule 1)

Important information to read before completing the Enduring Guardianship appointment form

- An Enduring Guardianship appointment is an important document. It allows someone else to make medical and lifestyle decisions on your behalf. You should get legal or medical advice (or both) before you sign it.
- It is important that you trust the person you appoint as your Enduring Guardian to make appropriate lifestyle decisions on your behalf. It is recommended you inform this person of your wishes about lifestyle decisions and involve them in discussions about your views or goals. If these change, it is important to let your Enduring Guardian know.
- An Enduring Guardian can only make lifestyle decisions such as health decisions. You should make an Enduring Power of Attorney if you want someone to make financial decisions on your behalf if you lose capacity.
- If you appoint more than one Enduring Guardian, you should indicate whether the Enduring Guardians are to act jointly, severally or jointly and severally. Enduring Guardians who are appointed jointly are only able to make decisions if they all agree about the decision. Enduring Guardians who are appointed severally or jointly and severally are able to make decisions independently of each other.
- If you appoint a substitute Enduring Guardian*, they will only have authority to act as your guardian if the first appointed enduring guardian/s dies, resigns or becomes incapacitated.
- Each Enduring Guardian must sign their acceptance on the appointment for it to be effective.
- If someone signs the appointment on your behalf, they must be at least 18 years old. They must not be the person being appointed as an Enduring Guardian. They cannot also witness the execution of the appointment.
- If you marry after you appoint an Enduring Guardian then the appointment will automatically be revoked (unless you married your Enduring Guardian).
- Your Enduring Guardian can resign at any time, by giving you notice in writing. If you have lost capacity to make decisions at that time then your Enduring Guardian can only resign with the approval of the NSW Civil & Administrative Tribunal.
- Enduring Guardianship appointments are not automatically accessible on any public register. Therefore, it is important that key people are aware of the appointment so they can contact the Enduring Guardian if required. You should provide a copy of the Enduring Guardianship appointment to your Enduring Guardian and keep a copy in a safe place. You should also let close friends or family know about it and give a copy to your solicitor, doctor and health service provider.
- Further information:
The Office of the Public Guardian can provide information on guardianship, call **02 8688 6070**.
NSW Trustee & Guardian can prepare and witness your Enduring Guardianship, call **1300 364 103**.
NSW Civil & Administrative Tribunal Guardianship Division should be contacted if a person does not have legal capacity or there are concerns about whether someone had capacity when an Enduring Guardianship or Power of Attorney was prepared, call **1300 006 228**.

*previously referred to as alternate guardian

Appointment of Enduring Guardian

For New South Wales

(Guardianship Regulation 2016, Schedule 1)

Complete your details in the space provided.

Appointor – The person who makes an Enduring Guardian appointment is known as the appointor.

Enduring Guardians – You may appoint one or more people to be your Enduring Guardian/s.

If you are appointing more than one Enduring Guardian complete details for each guardian.

Note: an Enduring Guardian must be 18 years of age and not have any connection with those who provide you with accommodation, health care or services for a fee.

1. Appointment of Enduring Guardian/s

I, *[your full name]*: _____

Of *[your address]*: _____

Occupation: _____

Phone number: _____

Date of birth: _____

Appoint *[guardian's name]*: _____

Of *[guardian's address]*: _____

Phone number: _____

Occupation: _____

Appoint *[guardian's name]*: _____

Of *[guardian's address]*: _____

Phone number: _____

Occupation: _____

Appoint *[guardian's name]*: _____

Of *[guardian's address]*: _____

Phone number: _____

Occupation: _____

to be my Enduring Guardian/s.

Complete this section if you wish to appoint a substitute guardian.

A substitute guardian is someone you appoint to be your Enduring Guardian if your Enduring Guardian/s dies, resigns or becomes incapacitated.

Note: Cross out this section if you do not wish to appoint a substitute guardian.

2. Optional - substitute guardian

I appoint *[substitute Enduring Guardian's name]*: _____

Of *[address]*: _____

Phone number: _____

Occupation: _____

to be my substitute Enduring Guardian.

Tick applicable box/es to indicate how you wish your Enduring Guardians to make decisions on your behalf.

Jointly

This means the Enduring Guardians must agree and make all decisions together.

If you have appointed your Enduring Guardians to act jointly your Enduring Guardianship appointment will automatically terminate if one of your Enduring Guardians dies, resigns or becomes incapacitated. If you do not want the appointment to terminate but want the remaining Enduring Guardian/s to continue in their role then tick the appropriate box.

Severally

This means the Enduring Guardians can make decisions separately of each other.

If you have appointed your Enduring Guardians to act severally your Enduring Guardianship appointment will automatically continue if one of your Enduring Guardians dies, resigns or becomes incapacitated.

Jointly and severally

This means the Enduring Guardians can either make decisions together or separately.

If you have appointed your Enduring Guardians to act jointly and severally your Enduring Guardianship appointment will automatically continue if one of your Enduring Guardians dies, resigns or becomes incapacitated. If you do not want the appointment to continue but want it to terminate then tick the appropriate box.

3. How I wish my Enduring Guardians to act

[Complete only if more than one Enduring Guardian has been appointed]

Tick the applicable box below to indicate whether you are appointing your Enduring Guardians to act jointly, severally or jointly and severally.

Also indicate by ticking the appropriate box whether you want your jointly/ jointly and severally appointed Enduring Guardian/s to continue in their role in the event of death, resignation or loss of capacity.

3a) Joint appointment

I appoint my Enduring Guardians to act jointly and
[tick applicable box below]

I want the appointment to be terminated if one of my Enduring Guardians dies, resigns or loses capacity.

OR

I do not want the appointment to be terminated if one of my Enduring Guardians dies, resigns or loses capacity.

3b) Several appointment

I appoint my Enduring Guardians to act severally.

3c) Joint and several appointment

I appoint my Enduring Guardians to act jointly and severally and
[tick applicable box below]

I want the appointment to be terminated if one of my Enduring Guardians dies, resigns or loses capacity.

OR

I do not want the appointment to be terminated if one of my Enduring Guardians dies, resigns or loses capacity.

Enduring Guardian/s can only make health and lifestyle decisions. You should make an Enduring Power of Attorney if you want someone to make financial decisions on your behalf.

Select what functions you wish your Enduring Guardian/s to have should you lose capacity to make decisions yourself.

You may place limits on these functions. If you wish to place a limit on the function provide details in the space below each function.

Note:

Your Enduring Guardian/s can only exercise these functions if you have lost the capacity to make decisions yourself.

You may add any additional functions you wish your Enduring Guardian/s to exercise on your behalf.

For example other functions could include:

- access (making decisions about who you should have contact with).
- restrictive practices (deciding whether to consent to the use of physical restraint for a limited period to protect you from self harm).

4. Functions and limits of my Enduring Guardian/s

Should I become incapable of making my own personal decisions I authorise my Enduring Guardian/s to exercise the following functions:

[tick any one or more boxes below]

to decide where I live

Limits on authority of Enduring Guardian: _____

to decide what health care I receive

Limits on authority of Enduring Guardian: _____

to decide what other kinds of personal services I receive

Limits on authority of Enduring Guardian: _____

to consent to the carrying out of medical or dental treatment on me
(in accordance with Part 5 of the Guardianship Act 1987)

Limits on authority of Enduring Guardian: _____

to decide:

You may give your Enduring Guardian/s directions about how you want them to carry out their functions.

For example, you can direct them to consult other family members before making a decision or give details about the kind of place you would like to live if you lost capacity.

Note: An Enduring Guardian must exercise their functions according to any directions you give them.

You can only give lawful directions. You cannot give directions to your Enduring Guardian/s to do something which is against the law.

You may wish to direct your Enduring Guardian to refer to your Advance Care Directive when making medical and health care decisions.

5. Optional – directions to my Enduring Guardian/s

The functions of my Enduring Guardian/s must be exercised in accordance with the following directions:

You and your Enduring Guardian can sign this page at the same time, in front of the same witness.

If your Enduring Guardian's signature is witnessed at a different time or by a different witness, they will need a separate witness certificate. Complete additional signature and witness certificate pages.

Note:

Before you sign here you must arrange for a witness to watch you sign this appointment and certify that you appear to understand this appointment. Your witness needs to complete their details in section 6d) below.

If you are physically unable to sign ask the person signing for you to sign and complete their details opposite. The person must be over 18 years and must not be the person being appointed or the witness as described below.

The witness cannot be the Enduring Guardian, or a substitute Enduring Guardian.

The witness must be an Australian legal practitioner/ Registrar of the NSW Local Court/overseas-registered foreign lawyer or approved employee of NSW Trustee & Guardian. Only these persons can witness the execution of this appointment.

Each Enduring Guardian must sign their acceptance on the appointment for it to be effective.

6. Appointor's signature and witness certificate

(Option – for Enduring Guardian signature/witness)

6a) My signature

Signature _____ Date _____

6b) Optional – signature on my behalf

The appointor instructed me to sign this appointment on their behalf.

Signature on behalf of appointor _____

Date _____

Signer's full name _____

Signer's address _____

Signer's phone number: _____

6c) Acceptance by Enduring Guardian

[Complete only if witnessed at the same time and by the same witness as appointor. Cross out if this does not apply]

I accept my appointment as Enduring Guardian.

Full name _____

Signature _____ Date _____

6d) My witness certificate

I, *[your full name]*: _____

Of *[your address]*: _____

Phone number: _____

- Occupation: Australian legal practitioner
 Registrar of the NSW Local Court
 Overseas-registered foreign lawyer
 Approved employee of NSW Trustee & Guardian

Certify that *[Tick applicable boxes below, cross out those which do not apply]*

The appointor appeared to understand the effect of this instrument and voluntarily executed the instrument in my presence.

The appointor voluntarily instructed *[insert signer's full name]*

_____ to sign the instrument on their behalf and that person executed the instrument in my presence.

[insert name of person accepting appointment as Enduring Guardian] appeared to understand the effect of this instrument and voluntarily executed the instrument in my presence.

Signature _____ Date _____

Note:

Before the substitute Enduring Guardian signs here they must arrange for a witness to watch them sign this form. The witness needs to complete their details in section 7b) below.

The witness cannot be the Enduring Guardian, or a substitute Enduring Guardian/s.

The witness must be an Australian legal practitioner/ Registrar of the NSW Local Court/overseas-registered foreign lawyer or approved employee of NSW Trustee & Guardian. Only these persons can witness the execution of this appointment.

7. Optional – substitute Enduring Guardian’s acceptance and witness certificate

7a) Acceptance by substitute Enduring Guardian

[Complete only if substitute Enduring Guardian appointed]

I accept my appointment as Enduring Guardian.

Full name _____

Signature _____ Date _____

7b) Substitute Enduring Guardian’s witness certificate

I, *[full name]*: _____

Of *[address]*: _____

Phone number: _____

- Occupation: Australian legal practitioner
 Registrar of the NSW Local Court
 Overseas-registered foreign lawyer
 Approved employee of NSW Trustee & Guardian

Certify that _____

[insert name of person accepting appointment as substitute Enduring Guardian]

appeared to understand the effect of this instrument and voluntarily executed the instrument in my presence.

Signature _____ Date _____

Note:

Before the Enduring Guardian signs here they must arrange for a witness to watch them sign this form. The witness needs to complete their details in section 8b) below.

The witness cannot be the Enduring Guardian, or a substitute Enduring Guardian/s.

The witness must be an Australian legal practitioner/ Registrar of the NSW Local Court/overseas-registered foreign lawyer or approved employee of NSW Trustee & Guardian. Only these persons can witness the execution of this appointment.

Your Enduring Guardian/s can resign at any time by giving you notice in writing. If you have lost capacity at that time, then your Enduring Guardian/s can only resign with the approval of the NSW Civil & Administrative Tribunal.

8. Enduring Guardian's acceptance and witness certificate

8a) Acceptance by Enduring Guardian

[Cross out if Enduring Guardian has already signed and Enduring Guardian's witness certificate has been completed]

I accept my appointment as Enduring Guardian.

Full name _____

Signature _____ Date _____

8b) Enduring Guardian's witness certificate

I, *[full name]*: _____

Of *[address]*: _____

Phone number: _____

- Occupation: Australian legal practitioner
 Registrar of the NSW Local Court
 Overseas-registered foreign lawyer
 Approved employee of NSW Trustee & Guardian

Certify that _____

[insert name of person accepting appointment as Enduring Guardian]
appeared to understand the effect of this instrument and voluntarily executed the instrument in my presence.

Signature _____ Date _____

Note:

Before you sign here you must arrange for a witness to watch you sign this form. The witness needs to complete their details in section 9b) below.

The witnesses cannot be the Enduring Guardian, or a substitute Enduring Guardian/s.

The witness must be an Australian legal practitioner/ Registrar of the NSW Local Court/overseas-registered foreign lawyer or approved employee of NSW Trustee & Guardian. Only these persons can witness the execution of this appointment.

9. Additional Enduring Guardian’s signature and witness certificate/s

.....
[Cross out if Enduring Guardian has already signed and Enduring Guardian’s witness certificate has been completed]

9a) Acceptance by Enduring Guardian

I accept my appointment as Enduring Guardian.

Full name _____

Signature _____ Date _____

9b) Enduring Guardian’s witness certificate

[Cross out if Enduring Guardian’s signature already witnessed]

I, *[full name]*: _____

Of *[address]*: _____

Phone number: _____

- Occupation: Australian legal practitioner
 Registrar of the NSW Local Court
 Overseas-registered foreign lawyer
 Approved employee of NSW Trustee & Guardian

Certify that _____

[insert name of person accepting appointment as Enduring Guardian]
appeared to understand the effect of this instrument and voluntarily executed the instrument in my presence.

Signature _____ Date _____

Note:

Before you sign here you must arrange for a witness to watch you sign this form. The witness needs to complete their details in section 9bb) below.

The witnesses cannot be the Enduring Guardian, or a substitute Enduring Guardian/s.

The witness must be an Australian legal practitioner/ Registrar of the NSW Local Court/overseas-registered foreign lawyer or approved employee of NSW Trustee & Guardian. Only these persons can witness the execution of this appointment.

9aa) Acceptance by Enduring Guardian

[Cross out if Enduring Guardian has already signed and Enduring Guardian's witness certificate has been completed]

I accept my appointment as Enduring Guardian.

Full name _____

Signature _____ Date _____

9bb) Additional Enduring Guardian's witness certificate

[Cross out if Enduring Guardian's signature already witnessed]

I, *[full name]*: _____

Of *[address]*: _____

Phone number: _____

- Occupation: Australian legal practitioner
- Registrar of the NSW Local Court
- Overseas-registered foreign lawyer
- Approved employee of NSW Trustee & Guardian

Certify that _____

[insert name of person accepting appointment as Enduring Guardian]
appeared to understand the effect of this instrument and voluntarily executed the instrument in my presence.

Signature _____ Date _____

Enduring Guardianship Checklist

CHECKLIST

Please read below and tick to ensure you have completed all details of your Enduring Guardianship appointment correctly.

- 1. I have spoken to my proposed Enduring Guardian/s and discussed this appointment with them to ensure they are willing and able to take on this role and exercise the functions I wish to give them as described in sections 3 and 4.
- 2. I trust my Enduring Guardian/s and have spoken to them about the kind of lifestyle decisions I wish them to make on my behalf should I lose capacity. If these change, I understand it is important to let my Enduring Guardian/s know.
- 3. I have discussed the appointment of my Enduring Guardian/s with my close friends/family to let them know of my decision to appoint an Enduring Guardian.
- 4. I have considered the option in section 2 of appointing a substitute guardian should my first appointed Enduring Guardian die, resign or become incapacitated.
- 5. I have indicated how I wish my Enduring Guardians to act (i.e. jointly, severally or jointly and severally) by completing section 3.
- 6. I understand I can ask someone to sign this appointment on my behalf in section 6 if I am physically unable to sign. This person must be over the age of 18 and cannot be my Enduring Guardian/s or a witness to this appointment.
- 7. I understand the certificate of witness needs to be completed by an eligible witness, i.e. an Australian legal practitioner/Registrar of the NSW Local Court/overseas-registered foreign lawyer or approved employee of NSW Trustee & Guardian.
- 8. I understand my Enduring Guardian/s need to sign their acceptance of the Enduring Guardian appointment before it can operate.
- 9. I understand it is important to give a copy of this Enduring Guardianship appointment to my Enduring Guardian/s and other relevant people, such as my GP and attorney, and I will keep a copy in a safe place. There is no public register for Enduring Guardianship appointments.
- 10. I understand that if I marry, the Enduring Guardianship appointment will be revoked unless I am marrying my Enduring Guardian.
- 11. I understand it is advisable to get medical and legal advice before signing my Enduring Guardianship appointment.