

Applying for an Enduring Guardianship

What is an enduring guardianship?

An enduring guardian is a person you appoint who would make decisions about your personal circumstances if you lost the capacity to make decisions due to the onset of a disability.

If you register an enduring guardianship instrument with the Tasmanian Civil and Administration Tribunal (the Tribunal), that document will give you certainty about who will make personal decisions for you if you should lose decision-making capacity.

If you lose decision making capacity but have not appointed an enduring guardian, decisions about medical treatment may be made on your behalf by a 'person responsible'. Alternatively, the Tribunal may appoint a guardian to make decisions for you such as where you live, what health care you have and who visits you. Generally, the Tribunal only appoints a guardian where there is a clear need.

An enduring guardian is not empowered to make decisions about your finances or your estate. Under Tasmanian law, that role is created by registering an enduring power of attorney. You should seek advice from a legal practitioner or a Trustee company about the appointment of an enduring power of attorney.

What decisions would my enduring guardian make?

If you lose decision making capacity, an enduring guardian with full powers can make decisions about your health care, where you are to live, who visits you or what support services you should receive.

Your enduring guardian is required to:

- take reasonable steps to ascertain whether you have given an advance care directive (ACD) and give effect to any ACD.
- act in accordance with any conditions or wishes expressed by you in the instrument of appointment;
- act in your best interests and promoting your dignity;
- ensure that you retain as much freedom of action and decision as is possible; and
- consider your wishes, directions, preferences and values before imposing any decisions upon you

How do I express any conditions?

The Instrument of Appointment can include particular directions or conditions that the guardian must comply with when making decisions on your behalf. You can appoint an enduring guardian with as many conditions as you wish, or you might not include any conditions at all. If you do not include any conditions, your guardian will have full power as set out in section 25 of the *Guardianship and Administration Act 1995*.

Please ensure that your conditions are as clear as possible, so that your guardian can be sure that he or she is following your wishes. You may wish to seek legal or medical advice about the way that you express the conditions.

Here are some examples of conditions:

- If I require long-term care in a facility outside my home, I would prefer to live close to my brother, [name].
- When my guardian assumes his or her role, I direct my guardian to notify my relative [name, address] of any serious medical issues that may arise.
- Because of my religious beliefs I do not wish to receive a blood transfusion or blood products under any circumstances.
- I would like life-prolonging treatments to be commenced and continued, including Cardio Pulmonary Resuscitation, while they are medically appropriate.
- When my guardian assumes his or her role, I direct my guardian to advise my attorney [name] of my condition so that they may arrange for my Enduring Power of Attorney to take effect.

Who can I appoint as my enduring guardian?

- Your guardian must be over 18 years of age.
- You cannot appoint a person who is directly or indirectly involved in an administrative or professional capacity in your medical care or treatment (e.g. your GP or your physiotherapist or their receptionists).
- You can appoint single or joint guardians.
- You can appoint an alternative guardian to make decisions on your behalf in circumstances where the original guardian is absent or incapacitated.
- You cannot appoint the Public Guardian as your enduring guardian.

Can I change my mind?

You may make the following decisions:

- revoke an enduring guardianship;
- amend your enduring guardianship conditions; or
- appoint a new enduring guardian.

However, if you lack capacity to make decisions at the time of making changes to an enduring guardianship, those changes may be found to be invalid. Any changes you make to an enduring guardianship must be registered and a new fee paid for registration.

If you have an existing enduring guardianship, your new appointment should clearly state that the new appointment revokes the existing appointment. (The Standard Form includes a paragraph that meets this requirement.)

What factors should I consider?

You need to appoint a person who you trust. Your guardian should be a person who knows your views, wishes and preferences. Your guardian must be a person who is decisive and is able to advocate clearly on your behalf to medical staff, care providers and to other members

of your family.

If you are considering appointing more than one person as your guardian, ensure that they will be able to cooperate in making decisions on your behalf.

Ensure that you have discussed the reasons for your appointment with your guardian. Appointing an enduring guardian is a good opportunity to discuss your end-of-life preferences with your friends and family and to explain your wishes, directions, preferences and values.

Consider seeking legal advice about appointing an enduring guardian.

Can my enduring guardian make decisions for me if I am out of Tasmania?

Most Australian States and Territories recognise a Tasmanian enduring guardianship. Please make appropriate enquiries of the relevant State or Territory if you require further information.

Who supervises my Enduring Guardian if I lose capacity?

Your enduring guardian does not need to report to any person or seek approval for his or her decisions.

However, if a person has a concern that your guardian is not acting in your best interests, an application can be made to the Tribunal to review the appointment. A review may result in the revocation of the enduring guardianship or an amendment (e.g. appointing a new guardian).

How do I register this document?

Please note that there are strict requirements for the witnessing of an enduring guardianship. The witnesses must be over 18 years of age and must not be related to you or to your guardians. Instruments of Appointment that are not appropriately witnessed may be rejected for registration or invalidated after a review by the Tribunal.

Your guardian must have signed the instrument to indicate that he or she accepts appointment as your guardian.

Your enduring guardianship instrument must be registered to have legal effect (i.e. to be valid)..

You will need to pay a registration fee. If you cannot afford to pay, you can complete a waiver of fees application form that will need to be submitted with the enduring guardianship document and coversheet.

More information

For further information see Enduring Guardians Handbook.