

Do I need an Enduring Guardian?

Yes. We believe it is an essential part of the estate planning exercise.

An Enduring Guardianship gives someone the power to act on your behalf in all matters pertaining to your lifestyle – including medical treatment, hospitalisation, institutionalisation and the like.

It is important to understand the differences between a power of attorney and guardianship. Guardianship relates to decisions about a person's lifestyle and other personal matters, such as where they live, what services they should receive, and what medical and dental treatment they receive. Financial management, covered by a power of attorney, relates to decisions about a person's money and assets.

The power given to the guardian only applies if you are incapable of managing your person.

The power can be given to one or more persons. They can have the power to act jointly (ie together) or severally (individually). The current NSW form also allows for the appointment of an alternate guardian in the event that the original nominees are unable to act.

The power can be given subject to certain limitations and conditions, or it can be given unconditionally.

In NSW, the document will need to be witnessed by a solicitor. A lawyer will also need to witness the signature on the document by the nominated guardians (and alternate guardians, if relevant).

The NSW legislation governing enduring guardianship is the *Guardianship Act 1987*.

Should I discuss the enduring guardianship with the nominee before I sign it?

Yes. You should make sure you have discussed the proposed guardianship with the nominee *before* you execute the document.

It is critical that the nominee is aware of the appointment, has a copy of the document (or is aware of its location and contents if the need arises to act pursuant to it), and accepts the appointment.

We would be happy to meet with your nominee and provide them with advice on the role and their responsibilities.

How do I revoke an Enduring Guardianship?

There may be times when you have appointed someone as an enduring guardian but now wish to withdraw the powers given to that person.

For instance:

- The nominee may have moved overseas permanently and as such it is not practical for them to retain the powers;
- There may have been a dispute with the nominee and you wish to revoke a current guardianship and appoint someone else instead for that role; or
- The nominee may have suffered some illness or incapacity and as a result the nominee is unable to continue to act in the role.

The process of withdrawing the guardianship is called a “revocation” of the guardianship. The revocation is done in writing and served on the nominee by the principal. It is critical that the nominee is formally notified of the revocation and the date the revocation takes effect.

Please contact us if this is required and we can advise you more fully on the procedural requirements.

For further information, contact:

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