

## **FACT SHEET: ENDURING GUARDIANSHIP**

### **What is an Enduring Guardian?**

An enduring guardian is a person legally appointed to make personal and/or lifestyle decisions on behalf of the 'appointor' when they are no longer capable of managing their own affairs.

### **Who can be appointed as an Enduring Guardian?**

Person appointed as enduring guardian must be over 18 year of age. The following persons are not eligible to be appointed, if at the time of appointment, they provide, or a related to someone who provides:

- Medical services;
- Accommodation; or
- Any other services supporting activities of daily living in a professional capacity.

### **What are the functions of an Enduring Guardian?**

The appointed guardian/s may make the following decisions under the guardianship:

- where the appointor is to live;
- health care the appointor is to receive;
- any other kinds of personal services the appointor is to receive;
- give consent to the carrying out of medical or dental treatment; and
- any other function specified in the instrument.

The enduring guardianship may limit or exclude the authority of the guardian.

### **What are the requirements for appointing a valid Enduring Guardian?**

An enduring guardianship will not be valid unless:

- it is in the prescribed form (available from Post Office or Guardianship Tribunal)
- signed by the appointor or an eligible signer under the appointors instructions and in their presence
- it is endorsed with the appointee's acceptance of appointment
- the signing of the document is witnessed by lawyer or Local Court Registrar
- the witness certifies that the instrument was entered into voluntarily and the appointor appeared to understand
- if signed for the appointor by an 'eligible signer', the witness certifies that the appointor, in their presence, instructed the signer to sign the instrument.

### **When will the appointment have effect?**

An enduring guardianship, unless revoked or suspended, will have effect during the period of time that the appointor is in need of a guardian.

### **How many enduring guardians can be appointed?**

An appointor may appoint one or more enduring guardians. If more than one is appointed, the enduring guardians may act:

- jointly – meaning they must agree on all decisions;
- severally – meaning that any one of the enduring guardians may make decisions independently of the others;
- jointly and severally – meaning the enduring guardians may make decisions together or independently:

### **What will cause the Enduring Guardianship to end?**

An enduring guardianship will end if:

- the appointor dies
- the appointor revokes the appointment
- the appointor marries
- a guardian resigns (must give written notice & in the appointor is in need of guardian – must have approval from the Guardianship Tribunal)
- If several guardians appointed jointly and one dies or is no longer willing to perform their duties – this will automatically end the appointment (appointor can prevent this by specifically stating in the instrument that the occurrence of such an event will not cause termination of enduring guardianship)
- Guardianship Tribunal revokes or makes an order suspending appointment of an enduring guardian

### **Appointer wishes to revoke Enduring Guardianship**

For revocation to be effective, the appointer will need to:

- Have legal capacity
- complete a 'Revocation of Appointment of Enduring Guardianship' form
- Application is signed by appointor or an eligible signer in their presence
- Application witnessed & certified by 'eligible witness' (eg lawyer)
- Written notice of the revocation provided to the enduring guardian

### **Reviewing appointment of Enduring Guardian**

The Guardianship Tribunal may review appointment either on its own initiative or on application by person who has a genuine concern for the welfare of the appointor.

The Tribunal may confirm, revoke or vary the appointment or confirm that the appointment has effect

The Supreme Court may also review the appointment of an enduring guardian

### **Contacts**

**Guardianship Tribunal ([www.gt.nsw.gov.au](http://www.gt.nsw.gov.au))** Ph: 1800 463928