

FACT SHEET

PLANNING AHEAD: APPOINTMENT OF AN ENDURING GUARDIAN and ADVANCE CARE DIRECTIVES

What is an Appointment of an Enduring Guardian?

It is a legal document that allows another person to make health and lifestyle decisions for you when you can no longer make these decisions for yourself. In legal terms, this means when you no longer have capacity.

The person you appoint to make these decisions for you is called an **Enduring Guardian**. You are called the **Appointor**.

An Enduring Guardian can make decisions about:

1. Where you live;
2. The health care you receive;
3. Other types of personal services you receive;
4. Consent to medical or dental treatment.

The Appointment of Enduring Guardian will **only** come into effect when you lose capacity.

When should I appoint an Enduring Guardian?

If you want to choose the person who makes health and lifestyle decisions for you, you must appoint an Enduring Guardian before you lose mental capacity.

If you do not appoint an Enduring Guardian before you lose capacity, a family member or other person will need to apply to the court or the NSW Civil and Administrative for permission to make these decisions for you.

Will I lose my rights if I appoint an Enduring Guardian?

As long as you have capacity, you will always have the right to make your own decisions.

An Enduring Guardian is legally required to act in your best interests at all times.

Also, you can also choose what your Enduring Guardian can and cannot do, and they must follow those instructions. For example, in the Appointment of an Enduring Guardian document, you can give instructions that your Guardian:

1. Must talk to your doctor or other person before they can make a decision about your treatment;
2. May choose where you live, but the location must be within 10km of where one of your children lives.

Who should I appoint as my Enduring Guardian?

An Enduring Guardian must be at least 18 years old and should be someone you trust, for example, your spouse, partner or relative.

Your Enduring Guardian should also be someone who will always act in your best interests. Therefore, someone who's interests conflict with yours, may not be suitable.

The following people **cannot** be your Enduring Guardian:

1. A professional providing medical treatment or care for you;
2. A professional providing accommodation services or support services for daily living, for example, an Aged Care worker;
3. Anyone who is a relative of the above.

You should talk to a lawyer about what is best for you.

Can I appoint more than one Enduring Guardian?

Yes. If you appoint more than one Enduring Guardian, you can:

1. Require them to make decisions '**jointly**' (they must make decisions together); or
2. Allow them to make decisions '**severally**' (they can make decisions on their own without having to talk to the other Attorney/s); or
3. '**Jointly and severally**' (they can make decisions together or on their own without having to talk to the other Attorney/s).

You can also appoint another person as a substitute Enduring Guardian who only makes decisions for you if your original Enduring Guardian/s is no longer able to or dies.

How do I appoint an Enduring Guardian?

You can use the [Appointment of Enduring Guardian Form](#) prepared by the NSW Trustee and Guardian.

Once the form is completed, you should keep it in a safe place. You should also give a copy to your family, doctor, carer or other people you think should know.

It is best to ask a lawyer or the NSW Trustee and Guardian for help to complete the form.

What if I change my mind?

You can cancel (revoke) the appointment of an Enduring Guardian at any time, **as long as you still have capacity**.

You can fill out the [Revocation of Appointment of Enduring Guardian](#) form prepared by the NSW Trustee and Guardian and give a copy to your previous Enduring Guardian/s. You should also give a copy to your family, doctor, carer or other people you think should know.

You should always get legal advice before you cancel an appointment of an Enduring Guardian.

What if my Enduring Guardian does not act in my best interests?

If it believes that your Enduring Guardian has not acted in your best interests, the NSW Civil and Administrative Tribunal can make its own decision (“own motion”) to review the appointment of an Enduring Guardian. It may decide to hold an investigation if it receives a complaint or allegation that you are being exploited, abused or neglected. It may also decide to review an appointment of an Enduring Guardian where no complaint has been made, but it has received information that causes it to believe that a review would be in your best interests.

Any person who has a “**genuine concern for your welfare**” may also ask the Tribunal to review the appointment by submitting an [Application for Review of an enduring guardian](#) form.

ADVANCE CARE DIRECTIVES

What is an Advance Care Directive?

An Advance Care Directive is a way for you to say what healthcare treatments you want (or do not want) if you ever become very ill or injured and you are unable to make or communicate your decisions about your care and treatment. For example, in an Advance Care Directive you can say that:

1. You do not want to go on life support if your doctor does not expect you to recover from a serious illness or injury;
2. You do not want a blood transfusion because of your religious beliefs

Your Advance Care Directive **must** be followed by health professionals, Enduring Guardian and family members.

You can only make an Advance Care Directive if you have mental capacity and you are over 18 years of age.

An Advance Care Directive may include the person you would like to make medical and lifestyle decisions for you if you are unable to and details of what is important to you, such as your values, life goals and preferred outcomes.

How can I make an Advance Care Directive?

In NSW, there is no specific form and an Advance Care Directive can be spoken or written. However, you should always try to have your Advance Care Directive in writing so as to avoid problems in the future, for example, if the person you told is not available when needed or if treatment providers do not accept instructions from that person without any written evidence that it is really what you wanted.

You can use the [NSW Health Advance Care Directive \(ACD\) form](#) prepared by NSW Health.

Since an Advance Care Directive concerns medical and treatment decisions, you should talk to your doctor about what would be best for you.

What is the difference between an Advance Care Directive and an Appointment of an Enduring Guardian?

An Advance Care Directive is something you should consider, **even if you have already appointed an Enduring Guardian**. This is because the powers given to an Enduring Guardian are quite broad. This allows an Enduring Guardian a wide discretion to make decisions about what they think is in your best interests, but which may not be what you want, in particular situations.

For example, if treatment is likely to result in you being permanently unable to communicate, you may not wish to have the medical treatment, even though it will prolong your life. However, your Enduring Guardian can still give consent for such treatments if he/she believes they are necessary for your wellbeing.

By making an Advance Care Directive, you decide what treatment you have or do not have.

You can also include your values, beliefs and wishes for treatment outcomes, to guide how decisions are made. These are sometimes called *value statements*. Some examples of these include:

- I don't want to be bedbound or placed in a chair all day, or be dependent on others to get around.
- I value my cultural identity and enjoy the company of those who speak my first language
- I prefer my pets to be near me or continue to be able to see them

This [link](#) is a good resource for value statements.

For more information about Advance Care Directives, see [NSW Health Making an Advance Care Directive](#).

Who can help- legal services?

1. [South West Sydney Legal Centre](#) (click [here](#) for our current free telephone legal advice times);
2. [Senior Rights Service](#) 1800 424 079
3. [NSW Trustee and Guardian](#) 02 8688 2600
4. Contact the [Law Society of NSW Solicitor Referral Service](#) on 02 9926 0300 for help to find a private lawyer