

ENDURING GUARDIANSHIP

in New South Wales:
your way to plan ahead



**Office of the
Public Guardian**
Attorney General's
department of nsw

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Appointing someone to make personal and lifestyle decisions for you when you can't do this for yourself.

The information provided in this book is not intended to be legal advice.

The Office has carefully prepared this document so that it is as accurate and relevant as possible, however the document should not be used as the only source of information and advice.

If you have a legal question you should talk to a lawyer before making a decision about what to do.

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1. WHY plan for the future by appointing an enduring guardian?

If you cannot make your own lifestyle decisions because of an accident, illness or disability, you cannot always be sure that informal support networks or people important to you will be available or recognised when significant decisions need to be made on your behalf.

Sometimes there can be conflict among family members and friends about what is in your best interests or what your wishes would be. An enduring guardian, legally appointed by you, can consider your thoughts and opinions (past and present), the views of professionals and other people important in your life, take into account the circumstances at the time and make decisions on your behalf should the need arise.

There is a growing awareness in the community of the important need to plan ahead for a time when we may be unable to make our own decisions. Many people are familiar with a will as a means of forward planning. A will enables you to set out your intentions as to what will happen with your assets and estate after you die.

For some time it has been possible to plan ahead and appoint a person under an enduring power of attorney to manage your financial affairs and make decisions about your money and property. Until recently there has been no similar way for you to appoint someone with legal authority to make personal, health or lifestyle decisions on your behalf.

The Guardianship Act 1987 (NSW) was amended in 1997 to make it possible for you to appoint an enduring guardian. That is, a substitute decision-maker of your choice to make lifestyle and health care decisions should you lose the capacity to make your own decisions at some time in the future.

2. RAISING community awareness

The Public Guardian is committed to raising community awareness about enduring guardianship and ensuring that people have the necessary information to plan ahead and appoint an enduring guardian of their choice should they wish to do so.

The Public Guardian has a statutory responsibility to provide information to the community about the Guardianship Act and the role of guardians.

ENDURING GUARDIANSHIP: WHAT IS IT AND HOW DO YOU DO IT?

1. WHO

can appoint an enduring guardian?

If you are an adult, that is a person 18 years or older, and you have the necessary legal capacity, then you can appoint an enduring guardian.

2. WHAT

is capacity?

To have the legal capacity to appoint an enduring guardian, you must be able to understand the nature and effect of the document you are signing. This means that you understand you are appointing someone to make decisions on your behalf should you, at some time in the future, lose capacity. It is important that you understand that the enduring guardian's powers come into effect and continue while you are incapacitated. It is also important that you understand that you can revoke the appointment and make another appointment at any time provided you continue to have capacity.

CASE STUDY

Millie is an elderly woman with early dementia. **She has concerns about who will make decisions about where she will live and her medical treatment when she loses capacity to do this for herself. She wishes to appoint her son James as her enduring guardian. Millie is able to understand that she is appointing James to make decisions about where she should live and to consent to medical treatment on her behalf. Millie talks over the appointment of her enduring guardian with her doctor and decides to give James the authority to consent to what services she should have to help her stay in her own home as long as possible.**

Millie understands that the authority she gives James will come into effect when she loses capacity to make these decisions for herself and that James will continue to have this authority as long as she remains unable to make her own personal and lifestyle decisions.

You can change or revoke the appointment and make a new appointment at any time provided you continue to have capacity.

3. WHO

can you appoint?

You can appoint a person who is an adult, that is someone 18 years or over. Given the important nature of this decision-making role, it is essential that the person you are considering appointing understands the responsibilities of an enduring guardian as a substitute decision-maker. The person you are appointing will be making lifestyle decisions on your behalf and it is important that you trust the person to be able to take into account your views and make decisions in your best interests.

There are some people who are not eligible to be appointed as your enduring guardian. Where a person is involved in a professional or administrative way in providing services to you for a fee or payment, or is a relative of that person, they are not eligible to be appointed as your enduring guardian. This would include people providing medical services, accommodation or other support services to you, for example your GP, community nurse or a nursing home proprietor.

If the person you are considering appointing as your enduring guardian cares for you and receives a Carers Allowance, you can still appoint him or her as your enduring guardian.

Some of the other issues you might consider in deciding who to appoint as your enduring guardian include:

- the willingness of the person to take on the role
- the person's availability
- their age and health.

CASE STUDY

George and Fran are a married couple. **George has been unwell for some time and Fran has been receiving the Carers Allowance to care for him at home. George decides to appoint Fran as his enduring guardian. Although Fran receives the carers allowance to provide support to George this does not make her ineligible to be his enduring guardian.**

4. H O W

do you appoint an enduring guardian?

If you wish to appoint an enduring guardian, you must sign a form of appointment. A form of appointment of an enduring guardian is at the back of this booklet.

This form can be used for the appointment of one person as an enduring guardian, or the appointment of two or more people as enduring guardians with the same functions.

If you want to appoint two or more enduring guardians with different functions you can use separate forms for each enduring guardian appointed.

The person or people you appoint as your enduring guardian or enduring guardians must also sign the form to show that they have agreed to be your guardian.

ELIGIBLE WITNESS

- A NSW solicitor, NSW barrister, Clerk of a Local Court, interstate legal practitioner or prescribed person must witness your signature and the signatures of the people you appoint.
- The witness must not be someone you will be appointing as an enduring guardian.
- All signatures on the form must be witnessed.
- The same witness can witness all signatures or different witnesses at different times and in different places can witness different signatures. This can be done on different days, at different times or in different locations. This enables you to consider appointing a family member or friend who lives in another State or Territory.
- The witness or witnesses must complete a certificate/certificates at the end of the form certifying that each person signed the form voluntarily and appeared to understand its effect. Depending on how many enduring guardians you choose to appoint, it may be necessary to alter the form of appointment to include the number of witness certificates required.

ELIGIBLE SIGNER

If you are unable to sign the form, you can instruct someone called an eligible signer to sign the form for you. This must be done in the presence of the witness.

An eligible signer must be:

- 18 years or over
- not a person you will be appointing as an enduring guardian
- not a witness to the appointment.

5. W H A T

should you do with the form of appointment?

Enduring guardianship can be a private arrangement between you and the person or persons that you appoint as your enduring guardian or enduring guardians.

It makes good sense, however, for other relevant people to be informed that you have appointed an enduring guardian. This may include notifying other family members, friends or your doctor.

There is no requirement to lodge the form with any agency or office. There is no register of people who have appointed an enduring guardian.

The enduring guardianship form is an important legal document. The original should be kept in a safe place, possibly where you keep other important legal documents such as your will and your enduring power of attorney.

It is important that your enduring guardian has a copy of the form of appointment. Where possible this should be a certified copy, that is a copy signed by the legal practitioner as being a true copy of the original. Your enduring guardian may be required at some time in the future to produce evidence of his or her appointment. The enduring guardian might need to know where the original is kept and be able to access it if needed.

Check with the Clerk of your Local Court to see if you need to make a time to have the appointment of your enduring guardian witnessed.

A certified copy of a document includes a statement written on the copy to say that it is a true and accurate copy of the original. Clerks of the Local Court or legal practitioners can provide a certified copy of your enduring guardianship form of appointment.

6. WHAT

decisions can your enduring guardian make?

Your enduring guardian is appointed to make personal and lifestyle decisions on your behalf should you lose the capacity to make these decisions for yourself. You must choose the decision-making areas you give to your enduring guardian. These decision-making areas are called functions.

You'll find the common decision-making areas or functions already included on the form of appointment.

They are:

ACCOMMODATION – TO DECIDE WHERE YOU LIVE

An accommodation function gives your enduring guardian the authority to decide:

- where you should live, or stay, temporarily, this might include decisions about respite (in an aged-care facility or hospital);
- where you should live permanently.

HEALTH CARE – TO DECIDE WHAT HEALTH CARE YOU RECEIVE

This function enables your enduring guardian to consent to health care services and treatments to promote and maintain your health and wellbeing.

With this authority your enduring guardian may:

- decide, for example, which GP, dentist, specialist or health care professional you will see;
- make decisions to change a health service provider.

SERVICES – TO DECIDE WHAT PERSONAL SERVICES YOU SHOULD HAVE TO SUPPORT AND ASSIST YOU

With this authority your enduring guardian can consent to and make decisions about the services and agencies that you may need, including:

- case management
- direct personal or attendant care
- house cleaning, shopping and other home support services
- the assessment and review of service plans
- counselling and therapy services
- employment, training, vocational or educational services
- social and recreational services.

CONSENT TO MEDICAL AND DENTAL TREATMENT – TO GIVE OR WITHHOLD CONSENT TO MEDICAL AND DENTAL TREATMENT ON YOUR BEHALF

This does not mean that you have to give your enduring guardian these functions. You can delete the decision-making areas you do not want your enduring guardian to have. You can add other decision-making areas if you wish.

ACCESS FUNCTION

For example, you may want to give your enduring guardian authority to decide who you should have contact with. This is called an **access function**. Including an access function in an enduring guardianship appointment will not be relevant to everyone. It may, however, be useful where you are aware that there may be a need to set some limits on your contact with particular family members or friends.

An access function would give your enduring guardian authority to decide:

- who you should have contact with (including written or telephone contact);
- when visits or contact should occur, for how long, and in what circumstances.

RESTRICTIVE PRACTICES FUNCTION

You may want to give your enduring guardian a restrictive practices function. Again this may not be relevant for all enduring guardian appointments. A restrictive practices function gives an enduring guardian authority to consent to the use of physical restraint, for a limited period of time, in order to protect a person from self-harm. This type of intervention can only be consented to where it is in the person's best interests, only as a last resort and with the involvement of appropriate professional staff.

YOU CAN GIVE YOUR ENDURING GUARDIAN DIRECTIONS

It is also possible to give directions about how to exercise the particular decision-making functions you have given your enduring guardian.

For example, in your directions to your enduring guardian you may state 'where possible I would like to continue to receive medical services from my current general practitioner, Dr White'.

CASE STUDY

June had a difficult relationship with her friend Alan for many years. **June was concerned that if she lost capacity she would no longer be able to set limits with Alan about when and how often he visited her. After talking over her views and wishes with her sister Brenda, June decided that Brenda would be the best person to make these decisions on her behalf. For this reason June appointed her sister Brenda with the authority to make decisions about the nature and frequency of contact she would have with Alan.**

7. WHY

a decision-making area rather than a decision?

Enduring guardianship is the appointment of a person you trust to be your substitute decision-maker should you lose capacity to make your own decisions at some time in the future.

There is a difference between identifying the decision-making areas you wish to give your enduring guardian, and setting out a list of specific decisions you would like your enduring guardian to make in a range of circumstances.

To enable your enduring guardian to take into account unforeseen future circumstances, and to give your enduring guardian scope to make the most appropriate decisions given the circumstances and options available at the time, it may be better to identify the decision-making areas in general terms.

CASE STUDY

Kim who is 40 years of age has seen the XYZ Nursing Home **and thinks it is the only nursing home she would ever want to live in. Kim decides to appoint Mike as her enduring guardian. She gives Mike an accommodation function stating 'in the event that I need nursing home care I authorise you to consent to the XYZ Nursing Home only'.**

30 years into the future...

Kim now has advanced dementia, complex care needs, wandering behaviour and requires a high level of nursing care. Mike, her enduring guardian, has been asked to make a decision about nursing home accommodation. Mike is concerned that the XYZ Nursing Home is not a suitable option as it is not secure, cannot provide the nursing care Kim requires and is an old facility and somewhat run down. As Kim's enduring guardian he does not want to consent to Kim living there, as it is not the most appropriate option and will not meet her current needs. Mike is concerned that the wording of the accommodation decision-making function is limiting him in making what he believes to be the best decisions on Kim's behalf in these circumstances.

Mike may choose to apply to the Guardianship Tribunal for the Tribunal to consider making changes to the enduring guardianship appointment so that he can make the best possible accommodation decision for Kim.

8. WHAT

decisions can't your enduring guardian make?

Your enduring guardian can only consent to medical and dental treatment that will promote or maintain your health and wellbeing.

You cannot appoint your enduring guardian to make any decisions that are contrary to the law. For example, euthanasia is illegal in all States and Territories of Australia.

Your enduring guardian can't make a will or alter your will on your behalf. An enduring guardian can't vote or consent to marriage on your behalf.

It is not possible for your enduring guardian to consent to medical or dental treatment on your behalf where you are objecting to that treatment.

Your enduring guardian cannot consent to treatment that is defined as special medical treatment. Only the Guardianship Tribunal can consent to special treatment.

9. C A N

you appoint more than one enduring guardian?

Yes, you can appoint more than one enduring guardian. There are a number of ways you can do this.

ENDURING GUARDIANS APPOINTED JOINTLY

You may appoint a number of people jointly to be your enduring guardians. This means that the enduring guardians you appoint have the same decision-making areas. In making decisions on your behalf they must agree and act together.

It is important to think about what you would like to happen if one of the joint enduring guardians dies, resigns or becomes incapacitated. If you want the enduring guardianship to continue, then you must state this on the form. If you do not specify this then the appointment of the remaining guardians is terminated and the enduring guardianship automatically ends.

ENDURING GUARDIANS APPOINTED SEVERALLY

You may appoint a number of people severally to be your enduring guardians. This means that the enduring guardians you appoint have the same decision-making functions and that you intend that each enduring guardian can make decisions without needing to agree and act together.

The death, resignation or incapacity of one of the enduring guardians does not automatically terminate the appointment of the other enduring guardians.

ENDURING GUARDIANS APPOINTED JOINTLY AND SEVERALLY

You may appoint a number of people jointly and severally to be your enduring guardians. This means that the enduring guardians you appoint have the same functions and can act either together or independently at their discretion in making decisions on your behalf.

The death, resignation or incapacity of one of the enduring guardians does not automatically terminate the appointment of the other enduring guardians.

ENDURING GUARDIANS APPOINTED SEPARATELY

You can appoint a number of people separately to be your enduring guardians. This means that the enduring guardians you appoint have different decision-making areas. If you choose to appoint enduring guardians separately you should use separate forms of appointment for each person you appoint.

While the death, resignation or incapacity of one of the enduring guardians does not terminate the appointment of the other enduring guardians, it will mean that there will no longer be an enduring guardian with authority to make decisions in the areas you gave to that guardian.

ALTERNATIVE ENDURING GUARDIANS

You may appoint an alternative enduring guardian. The alternative enduring guardian steps in as guardian only if an original enduring guardian, or all the joint enduring guardians, die, resign or become incapacitated. The alternative enduring guardian must sign the form of appointment as an indication of his or her acceptance of the appointment. An eligible witness must witness his or her signature.

WHAT IF YOUR ONLY ENDURING GUARDIAN DIES, RESIGNS OR BECOMES INCAPACITATED AND YOU HAVE NOT APPOINTED AN ALTERNATIVE ENDURING GUARDIAN?

Your enduring guardian may die or become incapacitated leaving you with no one in this role. In these circumstances, where it is recognised that you are a person who is in need of a guardian, an application may be made to the Guardianship Tribunal for the Tribunal to consider the appointment of a guardian under a guardianship order. This application can be made by anyone who has a genuine concern for your welfare.

THE GUARDIANSHIP TRIBUNAL MAY APPOINT A SUBSTITUTE ENDURING GUARDIAN

If your enduring guardian has died, resigned or become incapacitated, the Guardianship Tribunal may appoint a person who has a close personal relationship with you and who is capable of acting as an enduring guardian to replace that enduring guardian.

CASE STUDIES

Jim wants to appoint Trevor and Nancy jointly as his enduring guardians. **He wants to appoint them jointly to make decisions about where he should live, and to consent to medical and dental treatment on his behalf should he lose capacity some time in the future to make these decisions for himself. To do this Jim will use only one form of appointment setting out the decision-making areas and naming Trevor and Nancy as his enduring guardians. This means that should Jim have a need for a guardian in the future, Trevor and Nancy must agree and act together in making decisions on Jim's behalf.**

Rita wants to appoint Tony, Alicia and Lisa separately as her enduring guardians. **She wants Tony to make decisions about where she should live. She wants Alicia to make decisions about what services she should receive and she wants Lisa to have authority to consent to medical and dental treatment on her behalf. Rita will use three forms of appointment to do this, one for each enduring guardian appointed.**

Charles is thinking about appointing an alternative enduring guardian. **Charles, who is in his fifties, wants to appoint his wife Barbara to be his enduring guardian. Charles is aware that Barbara is of a similar age and state of health as he is and thinks it would be wise to appoint an alternative enduring guardian in case Barbara dies or loses capacity herself and can't act as his enduring guardian. Charles decides to appoint their daughter Harriet as his alternative enduring guardian. Harriet will only act as Charles' guardian if Barbara dies, resigns or becomes incapacitated.**

CASE STUDIES

Lael appointed Joe and Greg as her enduring guardians jointly **with the authority to make decisions about accommodation, health care and to consent to medical and dental treatment on her behalf. Lael included a statement in the form of appointment that she would like the enduring guardianship to continue even if one of the joint enduring guardians were to die, resign or become incapacitated. Two years later Joe was killed in a car accident. There was no need for Lael to make a new enduring guardianship appointment, as she was happy that Greg would be her only enduring guardian should this be needed in the future.**

Gabriel appointed Don and Bruce as his enduring guardians separately. **He gave Don the authority to make decisions about where he should live. He gave Bruce the authority to make decisions about what services he should receive. Don had a stroke and was severely incapacitated. Gabriel realised that Don would no longer be able to make accommodation decisions on his behalf should the need arise. This event does not affect Gabriel's appointment of Bruce or the authority given to him.**

Recognising that no one now had formal authority to make future accommodation decisions should the need arise, Gabriel needs to consider whether or not he should appoint another enduring guardian or appoint Bruce with this function.

10. WHAT

are some of the things you need to consider in deciding whether to appoint more than one enduring guardian?

There are a number of things you may wish to consider in deciding whether to appoint more than one enduring guardian.

- Decisions made by one enduring guardian may impact on the decisions made by another enduring guardian.
- There may be potential for disagreement among enduring guardians appointed jointly (that is enduring guardians appointed with the same decision-making areas).
- The people you are appointing need to be able to communicate well with each other in making decisions on your behalf.
- Consider who you have appointed, or are considering appointing, under an enduring power of attorney, as lifestyle decisions can have financial implications and financial decisions can have lifestyle implications.

CASE STUDY

Sophie is considering appointing Robin and Eric as her enduring guardians. **Sophie has a great relationship with Robin and Eric, but Robin and Eric don't really like each other and don't communicate well with each other. Sophie should consider the impact that possible future conflict and disagreement between Robin and Eric might have on this appointment and any decisions that they may need to make on her behalf in the future.**

Guardianship involves making personal and lifestyle decisions on behalf of someone else.

11. W H E N

can your enduring guardian start making decisions?

The appointment of your enduring guardian takes effect only if you lose the capacity to make your own personal or lifestyle decisions.

A person in need of a guardian means a person who, because of a disability, is totally or partially incapable of making decisions.

CASE STUDY

Jake is 25 years of age. **He appointed Bill four years ago to be his enduring guardian to make decisions about his health care, medical treatment and services. For several years there was no need for Bill to make any decisions on Jake's behalf. About one year ago Jake was involved in a serious car accident and sustained a severe brain injury. Jake is now not able to make his own personal and lifestyle decisions. Over this last 12 months Bill has been active in his role as Jake's enduring guardian, making decisions about health care, medical and dental issues and services on Jake's behalf.**

If Jake were to regain his capacity to make his own decisions, then his appointment of Bill as his enduring guardian would no longer be in effect.

12. W H O

decides when you have lost capacity and need a guardian?

In some cases, the issue of loss of capacity is clear. For example, in Jake's situation where he has suffered a severe brain injury, it may be unlikely that there would be differences of opinion as to whether Jake could make his own decisions.

In other cases the decision about whether a person has lost capacity to make his or her own decisions and therefore needs the involvement of his or her enduring guardian may be less clear. For example, where a person has dementia and is slowly losing his or her capacity to make his or her own decisions, or where a person has a mental illness and has periods when he or she is unwell and unable to make his or her own decisions. If there is concern or disagreement over a person's capacity to make his or her own decisions, the Guardianship Act provides that a medical certificate may be sought to establish whether the person has partially or totally lost capacity to make his or her own decisions and is in need of a guardian. Some situations may be more complex. There may be strong disagreement about the person's capacity to make decisions which is not resolved through seeking a thorough medical assessment and certificate, or the enduring guardian may not want to act hastily or before it is necessary for him or her to be involved. In these circumstances it is possible for the enduring guardian to apply to the Guardianship Tribunal for an order declaring that the appointment of the enduring guardian has effect.

CASE STUDY

Mrs Griffin appointed her daughters Jean and Susan as her enduring guardians.

Three years ago Mrs Griffin developed dementia. Jean and Susan disagree about their mother's capacity to make her own decisions in relation to the services that she receives at home. Jean believes her mother's dementia has progressed so far that her appointment as her mother's enduring guardian should now take effect and she should start making decisions on her mother's behalf. Susan is concerned that they don't act hastily, and while she acknowledges that her mother's condition is getting worse she feels her mother can still make her own decisions. Jean and Susan request that Mrs Griffin's doctor assess her capacity to make her own decisions. Following the assessment the doctor is satisfied that Mrs Griffin lacks capacity to make her own decisions about what services she needs. Susan is happy that the issue of Mrs Griffin's capacity to make her own decisions has been properly investigated, and she and Jean begin making decisions as Mrs Griffin's enduring guardians.

Harry has a mental illness. **Harry appointed his cousin Wassim as his enduring guardian. Wassim believes Harry is unwell at the moment and not able to make decisions about what services he needs. Wassim has discussed this with Harry. Harry has told Wassim he is fine.**

Wassim is concerned about Harry and is unsure whether or not he should start making decisions on Harry's behalf. Wassim applies to the Guardianship Tribunal for an order declaring his appointment as Harry's enduring guardian take effect. The Guardianship Tribunal holds a hearing to consider information gathered from Harry, Wassim, the doctor and service providers. The Tribunal is satisfied that Harry is in need of guardianship and makes an order declaring the appointment of Wassim as Harry's enduring guardian has effect.

13. WHAT

guides the decision-making of enduring guardians?

An enduring guardian is responsible for making important personal and lifestyle decisions in the decision-making areas that have been identified on the form of appointment. Guardians are responsible for ensuring that decisions are made giving consideration to the general principles of the Guardianship Act 1987.

These principles aim to promote the independence and choice of the person with the disability, as well as ensuring the person's care and protection from neglect or exploitation.

Making decisions which are in keeping with the principles may not be as easy as it looks. In practice, some principles may conflict with others. For example, it may be difficult to ensure that someone has freedom of action to do what he or she wants, and yet at the same time ensure he or she is protected from abuse, neglect and exploitation. Finding a balance is the key, and this will require the enduring guardian to think carefully about the consequences of a decision, to weigh up alternatives and to ask many questions in order to be satisfied about the options available, and the decisions made, on

A decision to consent to treatment made under Part 5 of the Guardianship Act can only be made where the decision-maker (enduring guardian, person responsible or Guardianship Tribunal appointed guardian) is satisfied that the proposed treatment will promote and maintain the person's health and wellbeing

behalf of the person.

The general principles of the Guardianship Act are:

- the welfare and interests of the person should be given paramount consideration;
- the freedom of decision and the freedom of action of the person should be restricted as little as possible;
- the person should be encouraged as far as possible to live a normal life in the community;
- the views of the person should be taken into consideration;
- it is important to preserve family relationships and the cultural and linguistic environment of the person should be recognised;
- the person should be encouraged as far as possible to be self-reliant in matters relating to personal, domestic and financial affairs;
- the person should be protected from abuse, neglect and exploitation;
- the community should be encouraged to apply and promote these principles.

When making decisions, the enduring guardian should gather information as to the current situation, the details of the decisions required and the opinions of the person under their guardianship and those of other people involved. Issues may arise that are specific to the situation and the relationships of the person with the disability. These may include differing views of service providers and professionals involved and external pressures to make a decision. A guardian must weigh up all of the available options, the authority given in the enduring guardianship appointment, the Guardianship Act 1987 and its principles in the process of making a decision.

Sometimes, in order to achieve the most appropriate and acceptable outcome for the person, the enduring guardian may need to identify alternative options and highlight to service professionals and other family members the person's ongoing needs for services, accommodation or other support.

14. DOES

anyone supervise enduring guardians?

Your appointment of your enduring guardian and the decision-making role your enduring guardian has is not subject to supervision, and there is no requirement that the enduring guardian report on his or her role in making decisions on your behalf.

While there is no system of supervision of the actions of enduring guardians, there may be situations where there is a need to review the appointment of an enduring guardian.

If someone has a genuine concern for your welfare because of the action or inaction of your enduring guardian, that person can request the Guardianship Tribunal to review the appointment of your enduring guardian. In reviewing the appointment of an enduring guardian, the Guardianship Tribunal may revoke or confirm the appointment, or vary the functions of the appointed enduring guardian.

If the Guardianship Tribunal decides to revoke the appointment of your enduring guardian it can appoint a guardian under a guardianship order and/or a financial manager under a financial management order to make decisions on your behalf.

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

Contact the Guardianship Tribunal to get the form to apply for a review of the appointment of an enduring guardian.

15. HOW

will your enduring guardian get access to information to make decisions on your behalf?

For the purpose of making decisions on your behalf, your enduring guardian has the same right of access to information about you as you do.

An enduring guardian will need certain information to make informed guardianship decisions on your behalf, which are in your best interests. For example, an enduring guardian will require information about your health, medical condition, medication and so on to make a health care decision or consent to medical treatment on your behalf.

A public sector agency, for example a hospital or disability service, should give your enduring guardian information about you if it is satisfied that the information would assist the enduring guardian in making decisions on your behalf.

16. IS

enduring guardianship the same as an advance directive?

No, enduring guardianship is about the legal appointment of a substitute decision-maker in the personal and lifestyle area. An advance directive is a document that sets out your wishes about future medical treatment if you lose the capacity to make these decisions for yourself.

WHAT IS THE LEGAL EFFECT OF AN ADVANCE DIRECTIVE?

Advance directives may not be legally binding.

An advance directive, however, can provide a clear statement of your views about medical intervention and treatment at a particular point in time. This may assist family members, enduring guardians, health care providers and others by giving them some insight into your views and preferences for treatment.

An advance directive may be strongly persuasive if it is current and up to date. In these circumstances the person writing the advance directive has had the opportunity to consider current treatments and medical technologies and to discuss the matter with treating medical practitioners.

For example, an advance directive written by a 20-year-old setting out her views about medical intervention in the event that she develops dementia may be less persuasive to health care professionals, guardians and family members than an advance directive written by a person who has recently been diagnosed with cancer. In this case, the person will have the opportunity to prepare an advance directive in consultation with the treating doctor.

17. IS

enduring guardianship the same as an enduring power of attorney?

No, enduring guardianship is about personal and lifestyle decision-making while a power of attorney is about financial decision-making.

WHAT IS A POWER OF ATTORNEY?

A power of attorney is a legal document that appoints one person (the attorney) to act on behalf of another (the principal or donor) in relation to the principal's property and financial affairs. For example, the attorney may be appointed with authority to buy and sell property and operate your bank accounts.

An ordinary power of attorney generally commences at the time it is signed and the attorney can start acting straight away. It ceases to have any effect, and therefore cannot be used, after you lose capacity.

An enduring power of attorney also commences at the time it is signed. This means that the attorney can start using the power of attorney immediately before you suffer any loss of capacity.

An enduring power of attorney continues to have effect after you lose capacity.

OTHER THINGS TO CONSIDER

An enduring power of attorney and an ordinary power of attorney cannot be used to appoint and authorise someone to make medical, personal or lifestyle decisions.

You may choose to appoint the same person as both your enduring guardian, under an enduring guardianship appointment, and your attorney, under an enduring power of attorney. You may choose to appoint different people in these roles.

In either case, it will be helpful if each knows of the other's appointment. They may need to talk to each other and cooperate to make decisions on your behalf.

It's important to remember that the lifestyle decisions made by your enduring guardian may have financial implications and the financial decisions made under an enduring power of attorney may have lifestyle implications.

Although you may have appointed someone to be your attorney under an enduring power of attorney, this does not mean that you have given away your own right to make decisions in this area. You can continue to make your own financial decisions, operate your bank accounts, deal with your property and so on.

18. WHO

is the person responsible?

The term person responsible is found in the Guardianship Act and replaces the common term 'next of kin' in relation to providing or withholding consent to treatment.

The Guardianship Tribunal does not appoint persons responsible. A person responsible is identified by virtue of his or her relationship to the person who is incapable of giving consent to the proposed treatment. The Guardianship Act sets out the hierarchy of who could be considered the person responsible. This guides doctors and dentists when they are looking for someone to provide consent on behalf of a person who is not able to give an informed consent for himself or herself.

PERSON RESPONSIBLE HIERARCHY

- A person who has been appointed as a guardian or enduring guardian with a medical and dental consent function.
- A spouse or de facto spouse who has a close and continuing relationship with the person. This includes same-sex partners.
- The carer or person who arranges care on a regular basis and is unpaid (payment does not include receipt of the Carers Allowance) or the carer of the person before they went into residential care.
- If there is no one in this category, the person responsible is a close friend or relative of the person.

Same-sex partners are recognised in the category of spouse or de facto partner *Property (Relationships) Legislation Amendment Act, 1999 (NSW)*.

WHAT DECISIONS CAN A PERSON RESPONSIBLE MAKE?

A person responsible can provide or withhold consent to a range of medical or dental treatment on behalf of a person who cannot consent for himself or herself.

If you are a person responsible for someone who cannot consent for himself or herself you have a right and a responsibility to know and understand:

- what the proposed treatment is;
- what the risks and alternatives are;
- that you can say yes or no to the proposed treatment;
- that you can seek a second opinion.

CASE STUDY

Albert had been thinking about appointing an enduring guardian with a medical and dental consent function. **He didn't get around to it. Albert later had an accident at work on a building site that left him unconscious. An ambulance was called and Albert received urgent treatment at hospital. Because of the urgent nature of this treatment the doctor did not need to seek consent. Albert made some improvement and was no longer dangerously ill. The injuries he received, however, meant that he was unable to provide his own consent to ongoing treatment. The doctor recognised the need to seek consent from Albert's person responsible and her legal responsibilities to give Albert's person responsible the same information she would give any competent patient. Albert's wife Salmah advised the doctor that Albert had not appointed an enduring guardian. Therefore Salmah, as Albert's person responsible, could provide or withhold consent to the proposed treatment.**

The practitioner has a responsibility to give you this information and seek your consent to the treatment before treating the person.

IS THERE ANYTHING THE PERSON RESPONSIBLE CANNOT DO?

A person responsible cannot consent to:

- treatment that is for a purpose other than to promote and maintain the person's health and wellbeing;
- special medical treatment, such as sterilisation procedures, termination of pregnancy and experimental treatments;
- treatment to which the patient is objecting.

URGENT TREATMENT

Substitute consent does not have to be obtained if, in the opinion of the practitioner, medical or dental treatment is necessary as a matter of urgency to:

- save a person's life;
- prevent serious damage to a person's health;
- alleviate significant pain and distress.

WHAT HAPPENS IF THINGS CHANGE?

1. WHAT

happens if you change your mind?

It is possible to change your mind about whether you still want an enduring guardian or who you have appointed as your enduring guardian or the decision-making areas you have given the enduring guardian.

In order to revoke the appointment of an enduring guardian, alter the functions given to the enduring guardian or appoint a different person you must have the legal capacity to do this. This means you must understand the nature and effect of the document you will sign to revoke the appointment.

The revocation of an enduring guardian's appointment must be made in writing. There is a form that you can use to do this. This form must be signed by you or by an eligible signer, see page 6. Your signature must be witnessed by a NSW solicitor, NSW barrister, Clerk of a Local Court, interstate legal practitioner or prescribed person. There is no need for the person whose appointment you are revoking to sign this form. To complete the process you must notify the person in writing that you have revoked his or her appointment.

There is a copy of the form of revocation at the back of this booklet.

CASE STUDY

Neil and Elisabeth were friends. **Neil appointed Elisabeth as his enduring guardian. Five years later Elisabeth is living permanently in Paris. Over time Neil and Elisabeth have lost touch with each other. Neil decides it would be better to have Gary, his new partner, as his enduring guardian. To do this Neil must sign a form of revocation. His solicitor or the Clerk of the Local Court must witness Neil's signature on this form. Elisabeth doesn't need to sign the form. Neil must then advise Elisabeth in writing that her appointment has been revoked.**

He sends her a letter telling her this and attaches a photocopy of the form of revocation.

Neil then completes a new form of appointment appointing Gary as his new enduring guardian.

2. WHAT

happens if you get married?

The appointment of your enduring guardian is automatically revoked if you marry after the date on which you appointed your enduring guardian. This does not apply if you marry the person you appointed.

3. CAN

your enduring guardian resign?

Yes, your enduring guardian can resign from this role. If you still have capacity to make your own decisions and do not need a guardian, the enduring guardian can resign by giving you written notice.

There is a form of resignation that the enduring guardian should use to do this. There is a copy of the form of resignation at the back of this booklet. The enduring guardian must sign this form and an eligible witness must witness his or her signature. If the enduring guardian cannot sign, he or she may direct an eligible signer to sign on his or her behalf in the enduring guardian's presence.

The same requirements apply if an alternative enduring guardian wants to resign.

If you have lost capacity, then your enduring guardian can only resign with the approval of the Guardianship Tribunal.

4. WHEN

does enduring guardianship end?

Enduring guardianship ends when the person who appointed the enduring guardian dies.

Enduring guardianship ends when it is revoked by:

- the person who made the appointment
- the Guardianship Tribunal
- or the Supreme Court.

A joint enduring guardianship appointment will end if one of the joint enduring guardians dies, resigns or becomes incapacitated unless you have stated clearly in the form of appointment that you intend it to continue beyond these events.

Enduring guardianship may end when an enduring guardian resigns.

5. CAN

the Guardianship Tribunal review the appointment of your enduring guardian?

Yes, the Guardianship Tribunal can review the appointment of your enduring guardian at the request of any person who has a genuine concern for your welfare or the Tribunal may hold a review even though there has been no request made. This may be necessary where there is a significant change in your circumstances, or because someone is concerned for your wellbeing due to the action or inaction of your enduring guardian.

If the Guardianship Tribunal reviews the appointment of your enduring guardian it may:

- confirm the appointment
- revoke the appointment
- vary the functions of the enduring guardian
- make a guardianship order and/or a financial management order.

In certain circumstances the Guardianship Tribunal can confirm the appointment of an enduring guardian even if all the formal requirements for appointment have not been met or where a person has announced his or her intention to appoint an enduring guardian but loses capacity before the form can be executed.

Only the Guardianship Tribunal can make changes to the appointment if you have lost capacity.

Where the Guardianship Tribunal has made a guardianship order, the authority of the enduring guardian is suspended for the duration of the guardianship order.

WHAT IS AVAILABLE FOR A PERSON WHO ALREADY HAS A DISABILITY?

1. WHAT

is available for a person who needs a guardian to make medical, personal and lifestyle decisions but doesn't have the capacity to appoint an enduring guardian?

Guardianship is not always necessary for someone with a decision-making disability. There are a large number of people in NSW who have a disability affecting their capacity to make their own decisions and who don't require the formal appointment of a guardian by the Guardianship Tribunal. There are many people with disabilities who can be assisted by family members and friends to make their own decisions, or where these supportive networks make necessary decisions on behalf of the person with the disability. These informal arrangements are important and should be given appropriate recognition.

2. WHAT

decisions can be made without the need for a guardian?

If you are unable to make your own personal and lifestyle decisions you may be helped to make these decisions by family and friends, or may have family members and friends make these decisions on your behalf. This is called informal decision-making, that is assisted or substitute decision-making by someone who has not been appointed as your guardian. This works well where you are not objecting to the decisions being made for you and where the decisions are believed to be in your best interests. These decisions must not be the types of decisions that mean someone needs more formal authority, such as a guardianship order, to make.

Some decisions about medical and dental treatment can be made on behalf of a person who is incapable of providing his or her own consent to medical or dental treatment by that person's person responsible.

CASE STUDY

Bill has an intellectual disability. He has family and friends who are supportive and involved in his life. **Bill wishes to move to a new flat that is closer to the shops and his work. Bill's case manager helps him to find a suitable flat. Bill's sister Molly assists him to make the decision about whether he should take the new flat or not. Bill moves to the new flat with the support of his case manager and his family. This informal support assisted Bill to make his own accommodation decision without the need for guardianship.**

3. WHEN

is there a need to apply for a guardianship order for a person who does not have an enduring guardian?

There's only a need to apply to the Guardianship Tribunal for the appointment of a guardian when a significant decision needs to be made in the life of a person with a disability who cannot make decisions for himself or herself. It may be that decisions are unable to be made with the informal support of advocates, friends and family members, or there may be conflict or dispute over what is in the best interests of the person.

There are a number of circumstances where a guardianship order might be necessary.

For example:

- medical treatment where the person is objecting;
- other circumstances where the person is objecting.

Certain decisions cannot be made without the appointment of a guardian. For example, a decision to consent to the use of restrictive practices to restrain someone.

HOW IS A GUARDIAN APPOINTED?

An application is made to the Guardianship Tribunal and information provided about the person's disability, his or her incapacity to make their own decisions and the person's need for a guardian. Anyone who has a genuine concern for the welfare or wellbeing of the person with the disability can make this application. The Guardianship Tribunal will hold a guardianship hearing. This will involve the person with the disability, the applicant and others important in the person's life.

The Tribunal considers, where possible, the appointment of a family member or friend as the person's guardian. The Public Guardian is only appointed as a person's guardian if there is no one available or suitable to be appointed as guardian, or where there is significant conflict over who should be appointed as guardian.

MORE

information

1. WHERE CAN I GET MORE INFORMATION?

For more information or additional copies of this guide you can contact the Public Guardian's Information and Support Branch.

Telephone (02) 9265 1441
 Tollfree 1800 451 510
 Postal address PO Box A 231
 Sydney South NSW 1235
 Website <http://www.lawlink.nsw.gov.au/opg>

For more information about making a guardianship application to the Guardianship Tribunal you can contact the Tribunal on:

Telephone (02) 9555 8500
 Tollfree 1800 463 928
 TTY (02) 9552 8534
 Postal address Locked Bag 9, Balmain NSW 2041

2. WHERE CAN I GET LEGAL ADVICE AND ASSISTANCE?

For legal advice and assistance with making an enduring guardianship appointment you can contact:

- A solicitor
- The Clerk of a Local Court
- Community Legal Centres

To find your closest Community Legal Centre look up legal centre (community) in the White Pages phone book.

3. WHAT IS THE PRIVATE GUARDIAN SUPPORT UNIT (PGSU)?

Making decisions and choices is something we all do every day. Some decisions are easier to make than others.

Making personal, health and lifestyle decisions on behalf of someone else can be a big responsibility. In making decisions your enduring guardian may need to have regular contact with professionals and service providers. There may be conflict or disagreement about what will be in your best interests, or your enduring guardian may feel that he or she needs more information but doesn't know where to go for that.

The Private Guardian Support Unit (PGSU) provides an information, support and referral service to legally appointed guardians. This includes enduring guardians.

Staff of the Unit are able to assist enduring guardians with queries they may have concerning their role as legally appointed guardians.

The PGSU does not supervise the actions of guardians or tell them what decisions to make, but aims to provide support, general information and referral to appropriate agencies. The details of any conversations between guardians and staff of the Unit are strictly confidential. However, it can be appreciated that the Unit cannot guarantee confidentiality if someone threatens or discloses something that indicates that a person under guardianship is at risk.

The unit is funded and staffed by the NSW Public Guardian. The PGSU is independent of the Guardianship Tribunal.

Private Guardian Support Unit
 Level 15, Piccadilly Tower
 133 Castlereagh Street
 Sydney NSW 2000
 Telephone (02) 9265 1443
 Tollfree 1800 451 510
 Facsimile (02) 9283 2645

4. HOW CAN I CONTACT THE NSW PUBLIC GUARDIAN?

Telephone (02) 9265 3184
 Tollfree 1800 451 510
 Address Level 15, Piccadilly Tower
 133 Castlereagh Street
 Sydney NSW 2000
 Postal address PO Box A 231
 Sydney South
 NSW 1235

5. OTHER PUBLICATIONS AVAILABLE FROM THE OFFICE OF THE PUBLIC GUARDIAN

- Substitute Consent – What the law says
- Private Guardian Support Unit brochure
- What is a Guardian?
- The Role of the Public Guardian
- Person Responsible information sheet

FORMS

FORM of appointment of enduring guardian

FORM of revocation of appointment of enduring guardian

FORM of notice of resignation of appointment of enduring guardian or alternative enduring guardian

Form of appointment of enduring guardian

1

Appointment of enduring guardian or enduring guardians

I, Name _____

Address _____

Occupation _____

appoint

Name _____

Address _____

Occupation _____

and

Name _____

Address _____

Occupation _____

to be my enduring guardian or enduring guardians if because of a disability I am partially or totally incapable of managing my person.

NOTE: You may appoint one or more than one enduring guardian.

If you want to appoint more than one enduring guardian and you want your enduring guardians to have the same functions, then you should fill out this form by inserting the names of all your proposed enduring guardians in the place indicated. Each person must sign this form to show that he or she accepted the appointment. However, if you want to appoint more than one enduring guardian and want your enduring guardians to have different functions and act separately, you should fill out a different form for each enduring guardian appointed.

I appoint my enduring guardians to act jointly OR severally OR jointly and severally.

NOTE: This relates to the appointment of two or more enduring guardians. If you are only appointing one enduring guardian, then cross out this section and put your initials beside any writing you have crossed out. If you want to appoint more than one enduring guardian and you want your enduring guardians to have the same functions, then you should also indicate whether you want them to act jointly, severally or jointly and severally. If you specify that they are to act jointly, they will only be able to act if they all agree on the course of action. If you specify that they are to act severally or jointly and severally, they will be able to act independently of each other. (Cross out whichever does not apply and put your initials beside any writing you have crossed out.)

The death, resignation or the incapacity of one or more of my joint enduring guardians does not operate to terminate the appointment of any other of my joint enduring guardians.

NOTE: If you appoint one enduring guardian, or if you appoint more than one enduring guardian and direct that they act severally or jointly and severally, then cross out this section and initial it. If you appoint two or more enduring guardians jointly, you may state that the death, resignation or incapacity of one enduring guardian will not terminate the appointment of the other enduring guardians. However, if you cross the section out and one of your joint enduring guardians dies, resigns or becomes incapacitated, the appointment of the other joint enduring guardian(s) will be terminated.

2

Functions

I AUTHORISE MY ENDURING GUARDIAN OR EACH OF MY ENDURING GUARDIANS TO EXERCISE THE FOLLOWING FUNCTIONS:

- (a) to decide where I live
- (b) to decide what health care I receive
- (c) to consent to the carrying out of medical or dental treatment on me (in accordance with Part 5 of the Guardianship Act)
- (d) to decide what other kinds of personal services I receive.

NOTE: Your enduring guardian or enduring guardians will automatically exercise all of the functions listed above unless you cross out the functions you do not want your enduring guardian to exercise. You can cross out any or all of the above functions. You need to put your initials beside any writing you have crossed out. If you cross out all the functions, you need to list the functions that you want your enduring guardian or enduring guardians to exercise. If you would prefer, you can give your enduring guardian or enduring guardians power to exercise only part of any function.

3 Additional Functions

I ALSO AUTHORISE MY ENDURING GUARDIAN OR EACH OF MY ENDURING GUARDIANS TO EXERCISE THE FOLLOWING ADDITIONAL FUNCTIONS:

NOTE: You can add any additional functions here or leave this blank by crossing it out and putting your initials beside it.

4 Directions

I REQUIRE THAT MY ENDURING GUARDIAN (OR EACH OF MY ENDURING GUARDIANS) EXERCISE HIS OR HER FUNCTIONS SUBJECT TO THE FOLLOWING DIRECTIONS:

NOTE: You can add any specific requirements or limitations here or leave this blank by crossing it out and putting your initials beside it.

5 Alternative enduring guardian

I ALSO APPOINT

Name _____

Address _____

Occupation _____

to be an alternative enduring guardian.

NOTE: You can choose to appoint an alternative enduring guardian to exercise the functions of your enduring guardian if the enduring guardian dies, resigns or becomes incapacitated. An alternative enduring guardian is not authorised to exercise these functions until (or unless) that happens. If you do not want to appoint an alternative enduring guardian, cross this out and put your initials beside any writing you have crossed out.

6 Your signature to make the appointment

Signature _____ Date _____

I DIRECTED

Name _____

Address _____

to sign this document on my behalf.

NOTE: If needed, you can direct a person to sign the document on your behalf. This person must be at least 18 years of age, not a witness to this form of appointment, and not someone you are appointing as your enduring guardian or alternative enduring guardian. You should give this direction to sign on your behalf in the presence of the person who is witnessing the signatures. If you are signing this document yourself, then this statement does not apply. Cross it out and put your initials beside any writing you have crossed out.

7 Acceptance of appointment

I ACCEPT MY APPOINTMENT AS ENDURING GUARDIAN/ALTERNATIVE ENDURING GUARDIAN

Signature _____

Name _____

Date _____

I ACCEPT MY APPOINTMENT AS ENDURING GUARDIAN/ALTERNATIVE ENDURING GUARDIAN

Signature _____

Name _____

Date _____

I ACCEPT MY APPOINTMENT AS ENDURING GUARDIAN/ALTERNATIVE ENDURING GUARDIAN

Signature _____

Name _____

Date _____

NOTE: Each enduring guardian and alternative enduring guardian needs to sign here in the presence of the witness. Cross out and initial whatever does not apply.

8 Certificate of witness

I, _____ of _____

being a NSW solicitor/NSW barrister/Clerk of a Local Court/interstate legal practitioner/prescribed person certify that:

(a) I witnessed the execution of this instrument by or for (*name of appointor*)

and by (*name of appointee or appointees*)

and

(b) this/these person(s) executed the instrument voluntarily and each appeared to understand the effect of the instrument, and

(c) the appointor in my presence instructed the person named in this instrument to sign the instrument on the appointor's behalf.

NOTE: A person may witness both the signatures of the appointor and the appointee or appointees. Where the signatures of the appointor and appointee are witnessed by different persons, each witness should sign a certificate in respect of the signatures witnessed.

If an appointor has instructed another person to sign the instrument on his or her behalf, the witness must certify the matter referred to in (c). Cross out and initial if this does not apply.

Signature of witness _____

State or Territory where signature witnessed (if witnessed outside New South Wales) _____

Date _____

Form of revocation of appointment of enduring guardian

I, Name _____

Address _____

Occupation _____

revoke the appointment of (insert the name of your enduring guardian or enduring guardians)

Name _____

I UNDERSTAND THAT THIS REVOCATION WILL NOT BE EFFECTIVE UNLESS THE ENDURING GUARDIAN OR ENDURING GUARDIANS HAVE BEEN GIVEN WRITTEN NOTICE OF THIS REVOCATION.

Signature _____ Date _____

I DIRECTED

Name _____

Address _____

to sign this document on my behalf.

NOTE: If needed, you can direct a person to sign the document on your behalf. This person must be at least 18 years of age, not a witness to this instrument, and not your enduring guardian or alternative enduring guardian. You should give this direction to sign on your behalf in the presence of the person who is witnessing the signatures. If this statement does not apply, cross out and put your initials beside any writing you have crossed out.

Certificate of witness

I, _____ of _____

being a NSW solicitor/NSW barrister/Clerk of a Local Court/interstate legal practitioner/prescribed person certify that:

- (a) I witnessed the execution of this instrument by or for the appointor revoking the appointment in my presence, and
- (b) the appointor executed the instrument voluntarily and appeared to understand the effect of the instrument, and
- (c) the appointor in my presence instructed the person named in the instrument to sign the instrument on his or her behalf.

NOTE: If the appointor (the person appointing an enduring guardian) has instructed another person to sign the instrument on the appointor's behalf, the witness also needs to certify the matter referred to in (c). The witness should also cross out any other matter that is not applicable to the witness. (You need to put your initials beside any writing that you have crossed out.)

Signature of witness _____

State or Territory where signature witnessed (if witnessed outside New South Wales) _____

Date _____

Form of notice of resignation of appointment of enduring guardian or alternative enduring guardian

I, Name _____

Address _____

Occupation _____

resign my appointment as an enduring guardian or alternative enduring guardian of

Name of appointor _____

Address _____

NOTE: You may resign your appointment as an enduring guardian or alternative enduring guardian by giving written notice to the person who appointed you. However, you can only do this if that person is not in need of a guardian at the time you give this notice. If the person is in need of a guardian at that time, you may resign only with the approval of the Guardianship Tribunal.

Signature _____ Date _____

I DIRECTED

Name _____

Address _____

to sign this document on my behalf.

NOTE: If needed, you can direct a person to sign the document on your behalf. This person must be at least 18 years of age and not a witness to this instrument. You should give this direction to sign on your behalf in the presence of the person who is witnessing the signature. If this statement does not apply, cross out and put your initials beside any writing you have crossed out.

Certificate of witness

I, _____ of _____

being a NSW solicitor/NSW barrister/Clerk of a Local Court/interstate legal practitioner/prescribed person certify that:

- (a) I witnessed the execution of this instrument by or for the person resigning the appointment in my presence, and
- (b) the person in my presence instructed the person named in this instrument to sign the instrument on his or her behalf.

NOTE: If an appointee (enduring guardian or alternative enduring guardian) has instructed another person to sign the instrument on his or her behalf, the witness also needs to certify the matter referred to in (b). The witness should also cross out any other matter that is not applicable to the witness. (You need to put your initials beside any writing that you have crossed out.)

Signature of witness _____

State or Territory where signature witnessed (if witnessed outside New South Wales) _____

Date _____

