



# Wills and Estates

## Information to Donors about Enduring Powers of Guardianship

[www.harwoodandrews.com.au](http://www.harwoodandrews.com.au)



### WHAT IS AN ENDURING POWER OF GUARDIANSHIP?

An enduring power of guardianship is a legal document which enables you to appoint a person to make decisions about your lifestyle on your behalf. The person you appoint is called your enduring guardian. The power is "enduring" because it continues to be effective even if you later lose legal capacity. The guardian you appoint is able to make lifestyle and personal choices for you. For example, your guardian can decide where you live and make decisions about your health care.

You cannot appoint more than one person at a time to be your guardian. You may name an alternate guardian if your original guardian cannot act for some reason such as death, incapacity or absence.

### WHY YOU SHOULD APPOINT AN ENDURING GUARDIAN

You should appoint an enduring guardian to ensure that if you become incapable of making any decisions about your lifestyle someone you trust can make these decisions on your behalf. If you do not make such an appointment and you lose capacity it may become necessary for the Victorian Civil & Administrative Tribunal (VCAT) to appoint someone as your guardian to make lifestyle decisions on your behalf. This selection process can be stressful for your family and can lead to dispute.

statutory declarations. They must both certify that you have signed freely and voluntarily and that you appear to understand the effect of the document you are signing.

The guardian must also sign an acceptance of appointment and that signature must also be witnessed by two adult witnesses, one of whom is authorised to witness statutory declarations. Those witnesses must also certify that the guardian has signed freely and voluntarily and that the guardian understands the effect of the document. The same witnessing requirements apply if there is an alternate guardian appointed.

### HOW YOU APPOINT AN ENDURING GUARDIAN

To appoint a guardian you must be over 18 years of age. You must also have capacity. That is, you must understand what you are doing by granting the power.

To understand the effect of the document you and the guardian must understand that the guardian can:

- ▶ Make decisions on your behalf about health care and lifestyle matters;
- ▶ Consent or withhold consent to medical and dental treatment; and

#### GEELONG

70 Gheringhap Street  
DX 22019 Geelong  
PO Box 101  
Geelong Vic 3220  
Tel: 03 5225 5225  
Fax: 03 5225 5222

#### MELBOURNE

Level 13  
15 William Street  
DX 30970 Stock Exchange  
PO Box 633 Collins Street West Vic 8007  
Melbourne Vic 3000  
Tel: 03 9620 9399  
Fax: 03 9620 9288

#### WERRIBEE

Suite 3  
10 Watton Street  
DX 30262 Werribee  
PO Box 208  
Werribee Vic 3030  
Tel: 03 9741 0077  
Fax: 03 9742 5483

- ▶ Decide where you are to live and with whom.

Your guardian's power to act on your behalf is only effective to the extent that you are unable by disability to make your own reasonable judgments.

### YOUR OPTIONS IN APPOINTING AN ENDURING GUARDIAN

When completing the form appointing a guardian, you have the option to specify the powers you are giving and place conditions on the decisions your guardian may make. The prescribed form lists some of the powers your guardian can be given. You can delete any of these if you wish.

The prescribed form also gives you the option to place limitations on your guardian's powers. For instance, in relation to medical treatment, you may have specific preferences and you may choose to confine your guardian's choices to particular types of treatment.

Your guardian cannot make decisions about your assets or your finances. These decisions can only be made by a financial attorney if one has been appointed.

If you appoint a guardian as well as a medical attorney there is some overlap in the powers given to both. In relation to medical treatment, your medical attorney can override your guardian. Your medical attorney can also elect to withdraw medical treatment to you. Your guardian cannot do this.

Your guardian cannot be a person who at the time of the appointment provides you with professional care, treatment or accommodation. Therefore if you are living with a son or daughter in their home, that child cannot be your guardian.

By signing the acceptance of the appointment your guardian undertakes to exercise his or her powers honestly and in accordance with the *Guardianship & Administration Act*. This Act says the guardian must act in your best interests, which includes acting as follows:

- ▶ As an advocate for you;
- ▶ To encourage you to participate in community life;
- ▶ To assist you to become capable of caring for yourself and to make reasonable judgments;
- ▶ To protect you from neglect, abuse or exploitation; and
- ▶ To take into account your wishes by consultation with you.

### CANCELLATION OF THE APPOINTMENT

You can cancel the appointment at any time by signing a revocation of appointment of enduring guardian. To do this you must have legal capacity. A copy of the form must be given to your guardian.

VCAT can cancel the appointment if it believes your guardian is not acting in your best interests.

There is no public register kept of appointments of enduring guardians, apart from appointments made by VCAT, and there is no requirement for enduring guardians to report to any authority about their decisions.

### IMPORTANT

This document is a guide only. It is not comprehensive legal advice. You should consult us about appointing an enduring guardian.