



Enduring Power of Guardianship

Planning ahead for future personal and lifestyle decisions

What is an enduring power of guardianship?

An enduring power of guardianship is a legal document where you (the donor) appoint someone (the guardian) to make personal and lifestyle decisions for you – like where you live and the health care you receive. Enduring means it continues (endures) when you are unable to make these types of decisions for yourself.

How does it work?

You complete, sign, and have witnessed an enduring power of guardianship form – giving power of guardianship to someone you choose.

On the form you can specify the powers you are giving and place conditions on the decisions your guardian can make.

Your guardian agrees by signing the acceptance section of the form. Their power begins when you are unable to make decisions. Their decisions have the same legal force as if you had made them yourself.

Why would I give someone this power?

We recommend everyone have an enduring power of guardianship. It is the only way you can have control over who will make lifestyle decisions on your behalf if you are ever unable to do so yourself. You could lose the capacity to make

decisions permanently, such as through dementia or an acquired brain injury from a car accident, or temporarily, by becoming unconscious as a result of an illness.

What type of decisions can a guardian make?

You can give your guardian any lifestyle decision-making powers you like. For example, where you will live, how your health care should be maintained or who can visit you.

The form has examples of the types of powers you might want to choose. You can delete the powers you don't want your guardian to have, or give them unrestricted powers. You can also indicate any limitations on how they use those powers, or any wishes you want the guardian to take into account when making a decision on your behalf. You should discuss your wishes with them before making the appointment.

An enduring power of guardianship cannot be used to make financial and legal decisions. For further information about these powers see other fact sheets from the Office of the Public Advocate (OPA) – *Enduring Power of Attorney (Medical Treatment)* and *Enduring Power of Guardianship*. You can also access *Take Control*, a kit for making powers of attorney.

Are there health care/medical decisions that my guardian cannot agree to?

If you give your guardian the power to make health care decisions, they can agree to medical treatment but cannot refuse medical treatment. If you have also appointed someone with enduring power of attorney (medical treatment) they will take precedence over your guardian for all medical treatment decisions.

A guardian cannot agree (consent) to the following medical procedures:

- those likely to lead to infertility
- termination of a pregnancy
- removal of tissue for transplant.

Before any of these procedures can be carried out, the guardian must apply to the Victorian Civil and Administrative Tribunal (VCAT) for a decision.

Can my guardian decide that I participate in a medical research procedure?

Yes. See OPA's fact sheet *Medical Research for Patients Who Cannot Consent* for more information.

Who can appoint a guardian?

You can appoint a guardian if you are over 18 years of age and have the capacity to make the appointment.

Office of the Public Advocate

Level 5, 436 Lonsdale Street, Melbourne, Victoria 3000
PO Box 13175 Law Courts, Victoria 8010. DX 210293
Local Call: 1300 309 337 TTY: 9603 9529 Fax: 1300 787 510

www.publicadvocate.vic.gov.au

The Victorian Civil and Administrative Tribunal, Guardianship List
55 King Street, Melbourne, Victoria 3000
Tel: (03) 9628 9911 Fax: (03) 9628 9932
Toll Free: 1800 133 055
www.vcat.vic.gov.au



What is capacity?

You have capacity when you have the ability to:

- understand,
- retain,
- believe,
- evaluate (i.e. process), and
- weigh

the information relevant to appointing an enduring guardian. This includes understanding:

- the powers of the guardian
- that the power will operate if you lose the ability to make personal and lifestyle decisions
- that you can revoke these powers while you have capacity
- once you lose capacity you will not be able to supervise the use of the powers.

If you do not have sufficient capacity, VCAT can appoint a guardian who can make personal and lifestyle decisions for you, if necessary.

Choosing your guardian

A guardian must be over 18 years of age and have capacity. You can appoint any person you choose, as long as they agree to take on the role. They should be someone that you trust to respect your wishes. You can also choose to appoint a second person (an alternative guardian). They can only make decisions on your behalf when the guardian is unable to.

The guardian cannot be a person who, at the time of appointment,

provides you with professional care, treatment or accommodation.

Responsibilities of the guardian

The guardian must:

- take into account any wishes you have expressed
- act in your best interests
- wherever possible, make the same decisions that you would have made.

When the donor dies, the enduring power of guardianship ends.

How do I make an enduring power of guardianship?

An enduring power of guardianship is easy to make. It does not have to be prepared by a lawyer.

You can use *Take Control* – a kit for making powers of attorney and guardianship. This can be ordered from Victoria Legal Aid at www.legalaid.vic.gov.au, or downloaded from www.publicadvocate.vic.gov.au.

Forms for appointing an enduring power of guardianship can also be downloaded from www.publicadvocate.vic.gov.au.

These forms are also available from most newsagents and legal stationers.

Witnesses to the signing of the form have to be assured that you, as donor, know what you are doing (have capacity) in making the power of guardianship. There are restrictions on who can be a witness.

If there is any question about your

capacity, an independent medical assessment should be obtained.

What if I change my mind?

You can cancel (revoke) the appointment at any time as long as you understand the nature and effect of revoking the power. To do this, you must complete a Revocation of appointment of enduring guardian form and give a copy of this to your guardian.

Safeguards

You do not have to register or send the form anywhere. You should keep the original form in a safe place and keep a certified copy for everyday use.

If a guardian is not acting in your best interests, VCAT can revoke or suspend the enduring power of guardianship. Anyone who has a genuine interest in your welfare can ask VCAT to consider the actions of the guardian.

VCAT operates a 24-hour emergency service and can appoint a guardian to make lifestyle decisions if the enduring power of guardianship is cancelled. Contact the OPA Advice Service for further information.

Advice for guardians

If the guardian is unsure what to do in a particular situation, they can contact OPA's Advice Service or VCAT for assistance.