

Enduring guardianship

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

An enduring guardianship is a legal document in which one person appoints another person to make personal and medical decisions for them.

What is enduring guardianship?

Enduring guardianship is a legal document where you appoint another person, or people, to be your guardian to make decisions about your personal matters if you are unable to. Personal matters is discussed more below. The Tasmanian Civil and Administrative Tribunal (TASCAT) can also appoint a guardian for adults if they can't appoint an enduring guardian themselves and need one. This is called a guardianship order.

The law about enduring guardianship is the [Guardianship and Administration Act 1995](#) (the Act). This sets out the way that guardians must do things, and this applies to both enduring guardians and guardians appointed by TASCAT.

Enduring guardianship does not include financial decisions. These are dealt with by administrators or powers of attorney.

It is called *enduring* because it continues even if you lose your decision-making ability. Decision-making ability is discussed more below.

All enduring guardians need to follow the new law even if the document is dated before September 2024.

Can I appoint an enduring guardian?

Yes, if you:

- are 18 years or older
- use the [form](#) from TASCAT's website
- understand what the **nature and effect** (see below) of the document is (decision-making ability)
- ensure there are two witnesses to your signature (the witnesses can't be the people being appointed as your enduring guardians or their close family members)
- the form is signed by each person appointed – who declares, when signing the document, that they have read and understood your advance care directives and that they undertake to exercise their powers honestly and in accordance with the Act)
- appoint people who are 18 years or older to be your guardian(s).

TASCAT can declare that the document is invalid if you do not have decision-making ability to make or revoke it, that it is contrary to the Act, or you were induced to make it through dishonesty or undue influence.

You can't:

- appoint a person involved in, or responsible for, your medical care or treatment

What does 'understanding the nature and effect' mean?

- you can specify or limit the powers of your enduring guardian and provide instructions about what you want the guardian to do and how you want them to do it
- you can specify when you want the guardian to start making decisions for you
- once the guardian can make decisions for you, they have to do so in a certain way (set out in the document and the Act)
- you can revoke it at any time if you have decision-making ability (see below)
- it continues after you lose decision-making ability
- you can't oversee what the guardian does after you lose decision-making ability

What can my enduring guardian do?

- If you have **impaired decision-making ability**, your guardian can make decisions about **personal matters** on your behalf
- They must follow your directions in the enduring-guardianship document (as long as they are lawful)
- They must follow the Act in making decisions (discussed more below)
- They can get a copy of your will
- They can get any information from others that you are entitled to (e.g your medical records or to speak to your doctor)

What does impaired decision-making mean?

Impaired decision-making is where, even with support from your friends or family, you can't:

- understand information about the decision that you need to make
- remember the information long enough to be able to make a decision
- weigh up the information available to make the decision
- communicate the decision to other people.

All adults are considered to have decision-making ability as a starting point. Also, if you can make decisions about your personal matters with appropriate supports from your friends, family or others, you **have** decision-making ability. Reasonable steps must be taken to provide you with appropriate support to make and communicate your decision. If your decision-making ability is in doubt, a doctor is often asked to assess your ability to make a particular decision as there can be a medical condition that causes a decline in our ability to make decisions.

What are personal matters?

Personal matters are things like:

- where you live
- who you can visit and who can visit you
- what care services you need
- what work, study or training courses you can do
- most medical and dental treatment (not mental health)
- any legal matters that relate to your personal affairs

Your guardian cannot make financial or property decisions for you. See our Enduring Power of Attorney page for information about financial and property decisions. All enduring guardians must make decisions about you following the [law](#). You can seek legal advice if you are unhappy about the decisions your enduring guardian is making. Guardians can also seek advice if they are unsure about what they can or cannot do.

What does my enduring guardian need to consider when making a decision for me?

Your enduring guardian has to observe the principles of the Act when making decisions by:

- Respecting and promoting your decision-making ability
- Providing access to support for you to make and participate in decisions, express your will and preference and develop your decision-making ability
- Respecting your views, wishes and preferences
- Recognising the role of your close family members, carers and other significant people in your life
- Preserving your cultural and linguistic environment
- Promoting your personal and social well-being (discussed further below)
- Adopting a position that is least restrictive of your freedom of decision and action as possible

Your enduring guardian promotes your personal and social well-being by:

- respecting your dignity and autonomy including the freedom to make your own choices and to be independent
- respecting and promoting your decision-making ability and ensuring you are free from neglect, abuse, exploitation and other forms of harm
- allowing you to take risks (called dignity of risk)
- respecting your right to be treated without discrimination
- respecting your individuality including the things that give you pleasure, purpose and fulfillment
- having regard to your existing supportive relationships, religion, values, gender identity, gender expression, sexual orientation and cultural and linguistic environment
- respecting the right of Aboriginal and Torres Strait Islander people to enjoy their culture, including with other people who share that culture
- respecting your right to privacy and to have contact with and correspond privately with others
- recognising the importance of, and facilitating access to, the provision of supports that enable you to exercise your autonomy
- recognising the importance to you of any companion animal that you have and having regard to the benefits for you of having a companion animal.

Your guardian has to do certain things when making decisions for you including:

- considering whether you have made an advance care directive about the decision
- considering whether you might regain decision-making capacity and if so whether to delay the decision
- follow your views, wishes and preferences if known including from your advance care directive
- if they can't determine your views, wishes and preferences they have to act in a way that reasonably believe aligns based on the information available
- act in a way that promotes your personal and social well-being and is least restrictive on your human rights
- not doing something that would cause a conflict of interests, unless it is specified in the document appointing them
- keep an accurate record of all decisions they make and there is a potential fine if they don't do this
- keep records for at least 7 years after ceasing to be your enduring guardian and there is a potential fine if they don't do this.

When choosing my enduring guardian, what should I consider?

It is important to choose carefully. Your enduring guardian(s) should be someone you trust and who knows your wishes. If the relationship with them deteriorates, you can revoke in writing using this [form](#) and appoint someone else. You need 2 witnesses to the form to revoke and neither can be a party or a relative of a party to it.

Your guardian should be someone who is decisive and is able to advocate clearly on your behalf about your personal matters to medical staff, care providers and to other members of your family.

Should I consider appointing more than one enduring guardian?

Appointing 2 or more people is a good way to ensure decisions that are being made for you are in your best interests. Your enduring guardians have to act jointly and cannot make decisions independently from each other. Therefore, if you are appointing more than one person it is important that they will be able to cooperate with each other.

You can also appoint a person who is an 'alternative guardian.' This person can act as your guardian when your first-named guardian is away or if they no longer have decision-making ability themselves.

Can I provide conditions?

You can specify conditions or directions for your enduring guardian in the document. Examples of conditions could be where you want to live, what types of activities you want to do, whether you like to spend time in the garden, what music you like to listen to, who you are close to and want to see. If you do not specify any conditions or directions, your enduring guardian can make decisions about any of your personal matters but they must do so in a way that promotes your personal and social well-being.

Is my enduring guardianship legally valid once I have signed it?

To be legally valid and enforceable, the document must be registered by lodging it at a [Service Tasmania outlet](#) (there is a form to fill out to lodge it) and paying the required fee or applying for a fee waiver.

What if I need more help?

For more information go to the [Tasmanian Civil and Administrative Tribunal](#) website.

You can also call Tasmania Legal Aid on 1300 366 611.

What if I am an enduring guardian and need help?

Enduring guardians can read about their obligations under [the Act](#).

Enduring guardians can apply to TASCAT for advice or direction regarding the scope of their appointment or the exercise of powers.

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.