

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 does mental capacity mean?

The law requires that we have mental capacity when making certain decisions during our life for them to be valid. A person can go to a doctor if there is a question about that person's mental capacity.

Having mental capacity means that we can:

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

A person cannot be assessed as not having capacity to make a decision unless reasonable steps have been taken to provide the person with appropriate support to make and communicate their decision.

Why was there a change in the law in 2024 about guardians?

Changes to the law took place in September 2024. These changes were made to promote the personal and social wellbeing of someone under a guardianship order. This includes:

- Respect the rights, freedom and dignity of the person
- Promote the person's decisionmaking ability
- Enable positive risk taking, learning and growth (dignity of risk)
- Respect individual lifestyle choices
- Respect sexual orientation and/or gender identity
- Ensure access to support to be independent
- Respect and maintain religious and cultural values, rights and connections
- Respect and maintain important relationships
- Prevent abuse, neglect and exploitation.

Who can be my guardian?

There are certain conditions to appointing a guardian. These are:

- the guardian must be over the age of 18 years
- the guardian cannot be involved in your medical care or treatment (e.g. your doctor)
- you can appoint single or joint guardians

- you cannot appoint the public guardian.

What can the guardian do – what are the guardian's 'powers'?

There are many powers and duties that your guardian will have. For example, your guardian can:

- consent to any health care (both medical and dental) that is in your best interests
- withdraw consent to health care
- make decisions as to what support services you have
- sign documents related to your health care or personal care on your behalf
- decide where you live either permanently or temporarily
- decide with whom you live
- decide whether you should work
- apply restrictions to your visitors if required.

Your guardian **cannot** make financial or property decisions for you. See our [Enduring Power of Attorney page](#) for information about financial and property decisions.

What does a guardian need to consider when making a decision for someone under guardianship?

People under guardianship are encouraged to make their own decisions, with support where necessary. Changes to the law in September 2024 means now that:

- The views, wishes and preferences of a person under a guardianship are to be respected and used to inform the decisions that a guardian may make on their behalf
- the role of close family members, carers and other significant persons in the life of a person under a guardianship is to be recognised
- the cultural and linguistic environment of the person under a guardianship is to be recognised
- the personal and social wellbeing of a person under a guardianship is to be promoted
- the means which is the least restrictive of a person's freedom of decision and action as possible in the circumstances is to be adopted.

When choosing a guardian, what should I consider?

It is important to choose a guardian carefully. Your guardian should be someone you trust and who knows your wishes. If the relationship with your guardian deteriorates, you can revoke the guardianship and appoint someone else who you do trust as a new guardian.

Your guardian should act in your best interests at all times and promote your dignity. Your guardian should support you in your also make sure you have as much freedom with your actions and decisions as possible. Your guardian should be someone who is decisive and is able to advocate clearly on your behalf to medical staff, care providers and to other members of your family.

Your guardian must exercise their power responsibly and in a manner that promotes the personal and social wellbeing of someone under a guardianship.

Should I consider appointing more than one guardian?

Appointing 2 or more guardians is a good way to ensure decisions that are being made for you are in your best interests. All guardians have to act jointly and cannot make decisions independently from the other guardians. Therefore, if you are appointing more than one guardian 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 absent or if they no longer have mental capacity themselves.

Can I provide conditions?

You can specify conditions or directions for your guardian on the enduring guardianship form. Examples of conditions could be where you live, the type of medical treatment you wish to receive, or whether you want life-prolonging treatment or not. If you do not specify any conditions or directions, the guardian has what is known as 'full guardianship' and they can do everything a guardian can legally do.

When can my guardian consent to medical treatment?

Your guardian can only consent to medical or dental treatment for you when you are incapable of giving consent. You are considered incapable of giving consent when you are not able to understand the general nature and effect of the proposed treatment, or you are not able to show whether or not you agree to the proposed treatment.

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

To be legally valid and enforceable, the enduring guardianship must be registered by lodging it at a Service Tasmania outlet and paying the required [fee](#). The [enduring guardianship form](#) can be found on the [Tasmanian Civil and Administrative Tribunal](#) (Guardianship Stream) website.

What if I need more help?

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

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.