

why you must have an enduring power of guardianship

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what is an enduring power of guardianship?

This is a legal document where you as donor appoint someone as guardian to make personal and lifestyle decisions for you. Decisions may include where you live, whether you work, who may visit you, what health care you can receive, etc. 'Enduring' means that the power continues when you are unable to make lifestyle and personal decisions for yourself.

In order to appoint someone of your choice as guardian, you as donor need to sign an enduring power of guardianship in the presence of two witnesses, one of whom can witness a statutory declaration. Your guardian and alternate guardian must also accept the role.

The form allows you to specify the powers that you want your guardian to have, and to place conditions on the decision making powers given to your guardian.

Your guardian will only be able to make personal and lifestyle decisions for you if and when you can no longer make these decisions for yourself.

should I make an enduring power of guardianship?

Yes, everyone over 18 years should appoint a guardian to ensure that you decide who will make personal and lifestyle decisions on your behalf in the event that you are unable to do so for yourself.

It is important to remember that anyone at any age (not just the elderly) can lose the capacity either temporarily (coma as a result of injury or illness) or permanently (dementia, brain injury as a result of an accident).

You can appoint an agent provided you are over 18 years of age and have the requisite capacity. This means you must understand

- the powers given to your guardian
- that the power will come into effect should you lose the ability to make personal and lifestyle decisions for yourself
- that you can revoke the power at any time, provided you have capacity
- that upon losing capacity, you will not be able to supervise your guardian's use of the power

what decision making powers will my guardian have?

The form allows you to elect which personal and lifestyle decisions your guardian will have. You may choose to give your guardian limited powers, or, you may choose to give your guardian unrestricted powers. You may indicate on the form factors that your guardian should consider when making a decision for you. It is advisable that you discuss these wishes with your guardian.

Please note that your guardian cannot make decisions about financial and legal decisions. You will need to make an enduring power of attorney (financial).



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what medical & healthcare decisions can't my guardian make?

If you empower your guardian to make healthcare decisions on your behalf, they may consent to medical treatment but cannot refuse medical treatment. If you have made an enduring power of attorney (medical treatment), the person you have appointed as your agent will take precedence over your guardian for all medical treatment decisions.

Your guardian cannot consent to the following without applying to the Victorian Civil and Administrative Tribunal (**VCAT**) for a decision

- medical procedures likely to render you infertile
- termination of a pregnancy
- removal of tissue for transplant
- your participation in medical research

what if I have not appointed someone?

If you have not appointed a medical agent, and no one has been appointed by VCAT, the 'person responsible' will make personal and lifestyle decisions on your behalf.

The person responsible is one of the following, in order of preference

1. a person appointed by VCAT
2. a guardian appointed by VCAT with health care powers
3. an enduring guardian appointed by the patient with health care powers
4. a person appointed by the patient in writing to make decisions about medical treatment including the proposed treatment
5. the patient's spouse or domestic partner
6. the patient's primary carer excluding paid carers or service providers
7. the patient's nearest relative over the age of 18, which means
 - a) son or daughter
 - b) father or mother
 - c) brother or sister (including adopted and step relationships)
 - d) grandfather or grandmother
 - e) grandson or granddaughter
 - f) uncle or aunt
 - g) niece or nephew

who should I appoint to be my guardian?

Your guardian must be over 18 years of age and have capacity to take on the role. You should appoint someone you trust will comply with your wishes. It is also advisable to appoint another individual to be your alternative guardian. Your alternative guardian will only act if your first appointed guardian is unable to.

Your guardian cannot be the person who, at the time you make the appointment, provides you with care, treatment or accommodation in a professional capacity.

what are my agent's responsibilities?

It is fundamental that you fully appraise your guardian of your wishes. This will ensure that your guardian will be acting on your instructions, rather than having to make difficult decisions him/herself.

Your guardian must

- act in your best interests
- as far as possible, make the same decision that you would make yourself

If your guardian is acting contrary to your best interests, VCAT has the authority to revoke or suspend the power.

call us to make
an appointment
9550 4600