

Enduring Power of Guardianship



What is an Enduring Power of Guardianship?

On 15 February 2010 the Guardianship and Administration Act 1990 ("the Act") was amended to provide for Enduring Powers of Guardianship.

What is an EPG

An Enduring Power of Guardianship ("EPG") is a legal document that allows you, the Appointor, to appoint another person to make important personal, lifestyle and treatment decisions on your behalf if you ever become incapable of making such decisions yourself.

The person you appoint is known as an enduring guardian.

The types of matters which your enduring guardian can be authorised to make decisions on include such things as where you live (this includes temporarily or permanently), who you will live with, whether or not you will work, the support services you have access to and the medical treatment you receive.

Under the Act an enduring guardian is not permitted to vote for you in an election, consent to an adoption, consent to a marriage involving you or a person under 18 years of age, consent to you being sterilised without the approval of the State Administrative Tribunal or make or change your Will without an order from the Supreme Court.

Furthermore, an EPG cannot be used to make property and financial decisions. If you require someone to make property and financial decisions for you then you need to make an Enduring Power of Attorney.

Who can make an EPG?

Anyone who is over the age of 18 years and has full legal capacity can make an EPG which appoints one or more persons to be their enduring guardian. They can also appoint one or more persons to be their substitute enduring guardian.

Who is eligible to be appointed as an enduring guardian?

Anyone who is over the age of 18 years and has full legal capacity can be appointed as an enduring guardian.

When choosing an enduring guardian, it is essential that you appoint someone you can trust who will respect your wishes and always act in your best interests.

An enduring guardian does not need to reside in Western Australia although their ability to act and how readily available and contactable they are to assist in decision making should be considered when appointing the enduring guardian.

Why should you make an EPG?

Making an EPG enables you to appoint someone that you know and can trust to make personal, lifestyle and treatment decisions on your behalf if you ever become incapable of making those decisions yourself. It also enables you to determine the scope of decision-making authority that your enduring guardian will have by placing such conditions and/or restrictions on your enduring guardian in the EPG as you require thereby ensuring that your personal, lifestyle and treatment matters are handled as you would want them to be. In essence, making an EPG gives you control over who will make personal, lifestyle and treatment decisions for you and how they are required to act when making such decisions.

If you do not make an EPG and you lose the capacity to make personal, lifestyle and treatment decisions for yourself then an application will need to be made to the State Administrative Tribunal to have someone appointed to act for you as your guardian.

If this occurs you will have no control over the guardian appointed by the Tribunal and the person so appointed may not be the person that you would want to have making such decisions for you.

When does an EPG takes effect?

An EPG only comes into effect if you are no longer able to make reasonable judgments about your personal, lifestyle or treatment matters.

Can an EPG be terminated?

You may revoke your EPG at any time while you still have capacity. It is recommended that such notice of revocation be given in writing to all enduring guardians and substitute enduring guardians appointed under the EPG although this is not a legal requirement.

If your enduring guardian wants to resign from the role as your enduring guardian then provided you have capacity your enduring guardian may resign at any time. Otherwise, if you have lost capacity at the time your enduring guardian wants to resign, your enduring guardian must apply to the State Administrative Tribunal for an alternative arrangement to be put in place.

How do you make an EPG?

It is important that your EPG is drafted as a formal legal document in conformity with the requirements of the Act. Your EPG also needs to be executed correctly to ensure that it is valid. Lotus Legal can help you prepare your EPG and ensure that it accurately reflects your wishes.

For more information or to discuss how we may be able to assist you, contact our legal team on (08) 9305 9529



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