

(The Gender Centre advise that this article may not be current and as such certain content, including but not limited to persons, contact details and dates may not apply. Where legal authority or medical related matters are cited, responsibility lies with the reader to obtain the most current relevant legal authority and/or medical publication.)

The Enduring Guardian

Roles and Responsibilities

by Nush

Article appeared in Polare magazine: May 2015 Last Update: May 2015 Last Reviewed: May 2015



... it is possible to appoint in advance someone to make certain decisions for you when you don't have the capacity to do so yourself

Many people create wills as a form of forward planning but often they fail to make provision for the contingency that they might reach a stage

where they are unable to make decisions for themselves as a result of an illness or accident although they are still living. In such cases it is possible to appoint in advance someone to make certain decisions for you when you don't have the capacity to do so yourself. This person is known as an Enduring Guardian.

People often assume you can turn to your next of kin in scenarios that demand this kind of action, but this is not always the case.

Why is this something to consider?

People often assume you can turn to your next of kin in scenarios that demand this kind of action, but this is not always the case. Your next of kin might be estranged, or may not have your best interests at heart. Your next of kin may

not be supportive of your gender expression or your transition and, given the capacity, could make decisions that would compromise these. They could, for example, make the decision to place you in a nursing home under your birth sex and assigned gender, rather than your identifying gender.

Who are they?

It's up to you. You should choose carefully and understand the roles and responsibilities involved, and trust your nominee to make decisions in accordance with your best interests. A person is not eligible to be your Enduring Guardian if he or she is involved, in a professional or administrative capacity, in your medical services, accommodation, or any services that support your daily living. Neither can an Enduring Guardian be a relative of someone providing these services to you. It can be more than one person, working together or having discrete areas for decision-making.

What decisions can they make?

Again, it's up to you. Keeping in mind that your Enduring Guardian can only make decisions that relate to your health, lifestyle and medicine, he or she takes on the role of a 'substitute decision maker'. You're able to choose what areas of decision-making you feel comfortable in entrusting to another person. Most commonly, it's where you live, the health care you receive, the personal services you receive, and consent to treatment.

The Enduring Guardian cannot create nor alter a will, manage your finances, consent to your marriage, vote on your behalf, or give consent to medical treatment to which you have already objected.

How do I appoint someone?

In N.S.W., a legal form of appointment needs to be completed. This is obtainable from the [Lawlink](#) website. Once you and the person(s) concerned have completed the Enduring Guardian Appointment form, it will need to be signed off by you in front of a witness to ensure that the Enduring Guardian fully understands her/his role. The witness can be a legal practitioner, Registrar of the Local Court, or approved officer from N.S.W. Trustee and Guardian. This original form should be stored in a safe place, generally with other legal documents.

Polare Magazine is published quarterly in Australia by The Gender Centre Inc, which is funded by the Department of Family & Community Services under the S.A.A.P. program and supported by the N.S.W. Health Department through the AIDS and Infectious Diseases Branch. Polare provides a forum for discussion and debate on gender issues. Unsolicited contributions are welcome, the editor reserves the right to edit such contributions without notification. Any submission which appears in Polare may be published on our internet site. Opinions expressed in this publication do not

necessarily reflect those of the Editor, The Gender Centre Inc., the Department of Family & Community Services or the N.S.W. Department of Health.

The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.