

PLANNING FOR THE UNEXPECTED (Powers of Attorney, Guardianships & Advance Care Directives): Information Sheet

When it comes to planning for the unexpected, in addition to having a Will you ought to also think about whether you want to put in place the following:

1. Power of Attorney;
2. Enduring Guardian; and
3. Advance Care Directive.

This information sheet provides a general overview of these three instruments- each of which play an important and distinct role.

While you may complete these instruments yourself, it is strongly recommended that you seek independent legal advice when considering one or more of the above-mentioned instruments to ensure your specific needs and wishes are properly addressed and your documents are legally valid. The law is different between each State/Territory regarding these instruments - don't be caught out!

A brief overview of how they operate is as follows:

Instrument	When does it kick in?	Purpose?
<i>Enduring Power of Attorney</i>	Immediately once registered	To appoint someone to make financial / legal decisions both while the Donor has capacity and when capacity is lost
<i>Enduring Guardianship Appointment</i>	When registered and after capacity is lost	To appoint someone to make health / lifestyle decisions when the Donor's capacity is lost
<i>Advanced Care Directive</i>	Immediately when executed	To inform health practitioners of an individual's values and to exclude certain health treatments being administered (where possible)

If you need initial advice to set you on the right path, you should contact your local Community Legal Centre - that's us for North-West and Western based Tasmanians. However, if you would like to have these documents drafted for you (potentially alongside a Will), where necessary, we are able to refer you to legal practitioners in your local area.

The following pages set out the key points of each instrument.

1. Enduring Power of Attorney

An **Enduring Power of Attorney (EPOA)** allows you (the **donor**) to appoint another person or people (the **attorney/s**) to make **financial and property decisions** on your behalf. The power granted continues even if you lose the mental capacity to make these decisions yourself.

Key Points:

- **Purpose:** To ensure that your financial affairs can be managed by someone you trust if you become incapable of doing so yourself due to illness, injury or disability.
- **Scope of Powers:** An EPOA only covers financial and property matters. This can include managing bank accounts, paying bills and buying or selling property / investments.
- **When does it start?** For a General Enduring Power of Attorney, the instrument commences when registered with the *Land Titles Office* and endures (meaning continues without being revoked) when the Donor loses capacity. While Powers of Attorney commence on Registration, this does not mean an Attorney can override the wishes of a Donor who has capacity.
- **Appointment of Attorneys:**
 - You can appoint one or more attorneys.
 - You must specify if they are to act **jointly** (all attorneys must agree on every decision) or **jointly and severally** (any attorney can make decisions independently but may choose to do so jointly).
 - You can also appoint **substitute attorneys** who can act if the original attorney is unable or unwilling to do so.
- **Limitations and Conditions:** You can limit the powers given to your attorney or set specific conditions on how they can act. For example, you may wish to appoint an Attorney for a specific period while you travel overseas or only permit your attorney to handle matters relating to certain assets. There are several different types of Power of Attorney, such that if you are not sure what type you would like, seek legal advice.
- **Mental Capacity:** You must have the mental capacity to understand the nature and effect of the EPOA when you sign it. If there are doubts about your capacity, legal advice should be obtained. If you do not have capacity, you cannot make a Power of Attorney and an Application to the *Tasmanian Civil and Administrative Tribunal* (TASCAT) may be required to appoint an Administrator.
- **Formal Requirements:**
 - The EPOA must be in the prescribed form available from the *Department of Natural Resources and Environment Tasmania* (NRE) website- presently here: [Powers of Attorney | Department of Natural Resources and Environment Tasmania](#).

- Your signature must be witnessed by two independent adults who are not close relatives of you or the attorney(s) and are present at the same time. It does not need to be witnessed by a lawyer or Justice of the Peace.
- **Registration & Cost:** To be legally valid and enforceable in Tasmania, the EPOA must be registered with the Recorder of Titles at the *Land Titles Office* and a filing fee is payable (for the year 2025/26 this is **\$172.85**). The list of fees can be found here: [Brief Fee Schedule](#)
- **Responsibilities of an Attorney:** An attorney must (amongst other things):
 - Act in your best interests.
 - Act honestly and with care.
 - Keep accurate records of all transactions made on your behalf.
 - Avoid conflicts of interest including profiting/benefitting from their role.
- **Revocation:** You can revoke an EPOA at any time while you have mental capacity by signing a revocation document and having it witnessed and registered. An EPOA also ends upon your death. A fee is payable on lodgement.
- **Review by TASCAT:** The *Tasmanian Civil and Administrative Tribunal* (TASCAT) has the power to review, vary or revoke an EPOA and can provide advice and directions to attorneys. This may need to be considered if there are concerns an Attorney is acting improperly.

Where to Obtain Forms and Further Information:

- *Department of Natural Resources and Environment Tasmania* (Land Titles Office) website where a detailed fact sheet has been produced:

Forms: [Powers of Attorney | Department of Natural Resources and Environment Tasmania](#)

Fact Sheet: [Enduring Power of Attorney Fact Sheet.pdf](#)

2. Enduring Guardianship Appointment

An **Enduring Guardianship Appointment** allows you (the **appointor**) to appoint another person or people (the **enduring guardian/s**) to make **personal and lifestyle decisions** on your behalf if you lose the capacity to make these decisions yourself.

An Enduring Guardian cannot make decisions about your financial or property matters. These are covered by an Enduring Power of Attorney.

Key Aspects:

- **Purpose:** To ensure that someone you trust can make decisions about your personal well-being, care and lifestyle if you become incapable due to illness, injury or disability.
- **Scope of Decisions:** An Enduring Guardian can make decisions about matters such as:
 - Where you live.
 - Your daily care and support services.
 - Healthcare decisions.
 - Who you can have contact with.
 - Participation in activities and social interactions.
- **Commencement:** An Enduring Guardian's authority only comes into effect if and when you lose the capacity to make your own personal and lifestyle decisions. It is good practice for the guardian to obtain a written medical opinion confirming your loss of capacity.
- **Appointment of Guardians:**
 - You should choose someone you trust, who knows your wishes and values, and who will act in your best interests. It is important to discuss your preferences with them.
 - You can appoint one or more guardians to act **jointly** (they must agree on decisions). You can also appoint an **alternative guardian** to act if the primary guardian is unable or unwilling.
 - You **cannot** appoint a person who is directly involved in your medical care or their administrative staff.
 - The person(s) you appoint must be over 18 years of age.
- **Conditions and Directions:** You can include specific conditions or directions in the Enduring Guardianship instrument that your guardian must follow when making decisions.
- **Mental Capacity:** You must have the capacity to understand the nature and effect of the Enduring Guardianship instrument at the time of making the appointment. If you do not, a formal application to the *Tasmanian Civil and Administrative Tribunal* (TASCAT) can be made seeking the appointment of a Guardian.

- **Formal Requirements:**
 - The appointment must be in the prescribed form, available from the Tasmanian Civil and Administrative Tribunal (TASCAT) website- presently here: [Application forms | Guardianship Stream \(TASCAT\)](#).
 - Your signature must be witnessed by two independent adults who are not related to you or the appointed guardian(s). It does not need to be a lawyer or Justice of the Peace.
 - The appointed guardian(s) must also sign the form to acknowledge their acceptance of the role and that they have read and understood any Advance Care Directives you may have.
- **Registration & Cost:** The Enduring Guardianship instrument must be registered with TASCAT (via Service Tasmania) to have legal effect. A fee is payable for registration (presently **\$84.15** for FY 24/25) but a fee waiver can be sought subject to eligibility. The list of fees can be found here: [Fees charged by TASCAT](#).
- **Responsibilities of a Guardian:** An Enduring Guardian must (amongst other things):
 - Act in your best interests.
 - Promote your well-being and dignity.
 - Respect your autonomy and encourage your participation in decision-making as much as possible.
 - Consider your wishes, preferences, and values.
 - Avoid conflicts of interest.
- **Review by TASCAT:** TASCAT can review an Enduring Guardianship appointment if there are concerns that the guardian is not acting in your best interests and can provide advice and directions to guardians. This may need to be considered if there are concerns a Guardian is acting improperly.
- **Revocation:** You can revoke an Enduring Guardianship appointment at any time while you have the capacity to do so by completing a revocation form and having it witnessed and registered with TASCAT. A fee is payable on lodgement.

Where to Obtain Forms and Further Information:

- Tasmanian Civil and Administrative Tribunal (TASCAT) website where a detailed fact sheet has been produced:

Forms: [Application forms | Guardianship Stream \(TASCAT\)](#)

Fact Sheet titled 'Enduring Guardianship Instrument: [Fact sheets | Guardianship Stream \(TASCAT\)](#)

3. Advance Care Directives

An **Advance Care Directive (ACD)** is a legal document that allows you to record your **values, beliefs, and wishes regarding your future healthcare and medical treatment**. It provides guidance for when you are unable to make or communicate these decisions yourself. A key difference between this and an Enduring Guardianship instrument is that an ACD enables you to choose what healthcare you would like to opt out of if you can no longer choose, whereas an Enduring Guardianship appointment appoints someone else to make those choices for you.

Key Aspects:

- **Purpose:** To give you control over your medical treatment decisions in the future, even if you lose the capacity to communicate those decisions. This includes refusing specific treatments.
- **Scope of Decisions:** An ACD can include:
 - Medical treatments you refuse to have administered to you; and
 - Your values and preferences related to your care (e.g., religious or cultural beliefs, preferred place of care or death).
- **Legal Effect:** In Tasmania, a valid ACD is legally binding, and healthcare practitioners must follow your instructions, provided they are clear, legal, medically appropriate and apply to the current circumstances. However, there are limited exceptions to the binding nature of an ACD that you should be aware of before making one.
- **Mental Capacity:** You must have the capacity to understand the nature and effect of the ACD when you make it. If you do not, you cannot put in place an ACD.
- **Formal Requirements:**
 - The ACD must be in writing and in English.
 - It should include your full name, date of birth, and address, and be signed by you.
 - Your signature must be witnessed by two independent adults who meet specific criteria (e.g., not your carer, close relative or have a financial interest in your estate).
- **Who to talk with:** It is strongly recommended that you discuss your ACD with your Doctor. They will be best placed to advise you regarding your wishes and let you know if they have a personal objection to your healthcare wishes.
- **Registration:** While not mandatory for legal validity, you can (and should) register your ACD with TASCAT. You can also upload it to your *My Health Record* to ensure it is easily accessible to healthcare professionals.
- **Relationship with Enduring Guardian:** If you have appointed an Enduring Guardian, they must also follow the instructions in your ACD. It is important that your Enduring Guardian is aware of your ACD and understands its contents. If you have an effective Enduring Guardian appointment in place, you may not need an ACD.

- **Review and Amendment:** It is advisable to review and update your ACD regularly, especially if your health status or preferences change.
- **Validity of Interstate ACDs:** Generally, a valid ACD from another Australian state or territory will be recognised in Tasmania. You should seek specific advice if this is of concern to you.

Where to Obtain Forms and Further Information:

- Tasmanian *Department of Health* website (for the approved form and information sheet): [Advance care directive form | Tasmanian Department of Health](#)

All three of the above-mentioned instruments are of relatively low-cost where private law firms often have fixed fees for drafting and lodging these documents for you. While we cannot draft your Will and generally do not draft these instruments for you, we can provide you with advice and guidance with respect to them.

If you would like an appointment, you can contact us on (03) 6424 8720 or email office@nwclc.org.au for assistance.

We have also produced an Information Sheet on Wills and Estate Administration which is available on our website.

Published: May 2025

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The financial assistance provided to the NWCLC from both the State and Commonwealth Governments via the National Legal Assistance Partnership (NLAP) is gratefully acknowledged.