



New South Wales

Guardianship Amendment (Enduring Guardians) Regulation 1998

under the

Guardianship Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Guardianship Act 1987*.

Faye Lo Po´

Minister for Disability Services

Explanatory note

The *Guardianship Amendment Act 1997* amended the *Guardianship Act 1987* so as to provide for the appointment of enduring guardians and set out their functions. The Act also amended the *Guardianship Act 1987* so as to provide for the recognition of guardians and managers appointed under a corresponding law of another State, a Territory, another country or a part of another country that is declared by the regulations to be a corresponding law.

The objects of this Regulation are to:

- (a) prescribe the form of instrument by which a person is appointed as an enduring guardian and the instrument that revokes a person's appointment as an enduring guardian, and
- (b) declare certain laws to be corresponding laws for the purposes of the new Part about reciprocal arrangements.

This Regulation is made under the *Guardianship Act 1987*, including sections 6C, 6H and 48A (inserted by the *Guardianship Amendment Act 1997*) and section 108 (the general regulation-making power).

Guardianship Amendment (Enduring Guardians) Regulation 1998

1 Name of Regulation

This Regulation is the *Guardianship Amendment (Enduring Guardians) Regulation 1998*.

2 Commencement

This Regulation commences on 2 February 1998.

3 Amendment of Guardianship Regulation 1995

The *Guardianship Regulation 1995* is amended as set out in Schedule I.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Part 1A

Insert after clause 4:

Part 1A Enduring guardians**4A Appointment of enduring guardian**

For the purposes of section 6C (a) of the Act, the form set out in Schedule 1 is the prescribed form of instrument appointing a person as an enduring guardian.

4B Revocation of appointment of enduring guardian

For the purposes of section 6H (2) (b) (i) of the Act, the form set out in Schedule 2 is the prescribed form of instrument revoking the appointment of a person as an enduring guardian.

[2] Part 2A

Insert after clause 11:

Part 2A Reciprocal arrangements**11A Corresponding laws**

For the purposes of the definition of *corresponding law* in section 48A of the Act, the following laws are declared to be corresponding laws for the purposes of Part 5A of the Act:

- (a) *Guardianship and Administration Board Act 1986* of Victoria,
- (b) *Guardianship and Administration Act 1993* of South Australia,
- (c) *Adult Guardianship Act 1988* of the Northern Territory,

- (d) *Aged and Infirm Persons' Property Act 1979* of the Northern Territory,
- (e) *Guardianship and Administration Act 1990* of Western Australia,
- (f) *Guardianship and Administration Act 1995* of Tasmania,
- (g) *Guardianship and Management of Property Act 1991* of the Australian Capital Territory,
- (h) *Protection of Personal and Property Rights Act 1988* of New Zealand.

[3] **Schedules 1 and 2**

Insert after clause 12:

Schedule 1 Form of appointment of guardian

(Clause 4A)

Appointment of one person as a guardian (or appointment of two or more people as guardians with the same functions)

I [*insert your name, address and occupation*], appoint [*insert the name, address and occupation of your proposed guardian or, if you want to appoint more than one guardian with the same functions, insert the name, address and occupation of each of your proposed guardians*] to be my guardian (or guardians) if because of a disability I am partially or totally incapable of managing my person.

If that happens. I authorise my guardian (or each of my guardians) to exercise the following functions:

- to decide where I live,
- to decide what health care I receive,
- to decide what other kinds of personal services I receive,

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- to consent to the carrying out of medical or dental treatment on me (in accordance with Part 5 of the *Guardianship Act 1987*).

Note. You can cross out any or all of the above functions if you do not want your guardian or guardians to perform any or all of them.

(You need to put your initials beside any writing that you have crossed out. If you cross out all of the functions, you need to list the functions that you want your guardian or guardians to perform.)

If you would prefer, you can give your guardian or guardians power to perform part only of any function.

I also authorise my guardian (or each of my guardians) to exercise the following additional functions: *[you can add any additional functions here or leave this blank by crossing it out and putting your initials beside it]*.

I require that my guardian (or each of my guardians) exercise his or her functions subject to the following directions: *[you can add any specific requirements or limitations here or leave this blank by crossing it out and putting your initials beside it]*.

Signature:

Date:

Acceptance of appointment

I accept my appointment as enduring guardian.

Signature of guardian (or of each guardian):

Date:

Certificate of witness

I of being a solicitor/barrister/Clerk of a Local Court certify:

- that I witnessed the signing of this instrument by both the person making the appointment and the appointee/appointees in my presence, and
- that each person signed the instrument voluntarily and that each appeared to understand the effect of the instrument.

Signature of witness:

Date:

Note: Appointment of two or more people as guardians

If you want to appoint more than one guardian and you want your guardians to have the same functions and so act jointly, then you should fill out this form by inserting the names of all your proposed guardians in the place indicated. Each person must sign this form to show that he or she accepts the appointment.

However, if you want your guardians to have different functions and to act separately, you should fill out a different form for each proposed guardian.

Schedule 2 Form of revocation of appointment of guardian

(Clause 4B)

Revocation of appointment of guardian

I, *[insert your name, address and occupation]* revoke the appointment of *[insert the name of your guardian or guardians]* as my guardian.

I understand that this revocation will not be effective unless the guardian is or has been given written notice of the revocation.

Signature:

Date:

Certificate of witness

I of being a solicitor/barrister/Clerk of a Local Court certify that:

- (a) I witnessed the signing of this instrument by the person revoking the appointment in my presence, and
- (b) that he/she signed the instrument voluntarily and appeared to understand the effect of the instrument.

Signature of witness:

Date: