

# Guardianship Amendment (Enduring Guardians) Act 2002 No 89

[2002-89]



New South Wales

## Status Information

### Currency of version

Repealed version for 20 November 2002 to 5 July 2004 (accessed 23 December 2024 at 9:58)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2004 No 55](#), Sch 3 with effect from 6.7.2004.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 6 July 2004

# Guardianship Amendment (Enduring Guardians) Act 2002 No 89



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
3 Amendment of Guardianship Act 1987 No 257 .....	3
4 Amendment of Guardianship Regulation 2000 .....	3
<b>Schedule 1 Amendment of Guardianship Act 1987</b> .....	3
<b>Schedule 2 Amendment of Guardianship Regulation 2000</b> .....	13

# Guardianship Amendment (Enduring Guardians) Act 2002 No 89



New South Wales

An Act to amend the *Guardianship Act 1987* with respect to enduring guardians; to make consequential amendments to the *Guardianship Regulation 2000*; and for other purposes.

## 1 Name of Act

This Act is the *Guardianship Amendment (Enduring Guardians) Act 2002*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3 Amendment of *Guardianship Act 1987 No 257*

The *Guardianship Act 1987* is amended as set out in Schedule 1.

## 4 Amendment of *Guardianship Regulation 2000*

The *Guardianship Regulation 2000* is amended as set out in Schedule 2.

## Schedule 1 Amendment of *Guardianship Act 1987*

(Section 3)

### [1] Section 5 Definitions

Insert in alphabetical order:

**eligible signer**, in relation to a notice or other instrument, means a person who:

- (a) is at least 18 years of age, and
- (b) is not a witness to the notice or other instrument, and
- (c) in the case of an instrument appointing an enduring guardian or revoking an appointment—is not an appointee or alternative enduring guardian.

**eligible witness** means a person who:

- (a) is any of the following:
  - (i) a barrister or solicitor within the meaning of the [Legal Profession Act 1987](#) who is a local legal practitioner within the meaning of that Act,
  - (ii) an interstate legal practitioner,
  - (iii) a Clerk of a Local Court,
  - (iv) a person (or a person belonging to a class of persons) prescribed by the regulations for the purposes of this subparagraph, and
- (b) in the case of an instrument appointing an enduring guardian or revoking an appointment—is not an appointee or alternative enduring guardian.

***interstate legal practitioner*** means a natural person:

- (a) who has been admitted to legal practice in another State or a Territory, and
- (b) who holds a certificate or other form of authorisation that confers an authority to practise in that State or Territory that corresponds to the authority conferred by a practising certificate issued under Part 3 of the [Legal Profession Act 1987](#), and
- (c) whose sole or principal place of legal practice is that State or Territory.

**[2] Section 6B Eligibility for appointment**

Omit section 6B (2). Insert instead:

- (2) A person is not eligible to be appointed as an enduring guardian if:
  - (a) the person is, in a professional or administrative capacity, directly or indirectly responsible for, or involved in, the provision of any of the following services for fee or reward to the person making the appointment:
    - (i) medical services (whether provided in a hospital, at home or otherwise),
    - (ii) accommodation,
    - (iii) any other services to support the person making the appointment in his or her activities of daily living, or
  - (b) the person is the spouse, parent, child, brother or sister of a person of the kind referred to in paragraph (a).

**[3] Section 6B (3)**

Omit “in the medical care or treatment of the appointor”.

Insert instead “in the provision for fee or reward of a service to the appointor of the kind

referred to in subsection (2) (a)".

**[4] Section 6C**

Omit the section. Insert instead:

**6C Method of appointment**

- (1) An instrument does not operate to appoint a person as an enduring guardian unless:
  - (a) it is in or to the effect of the form prescribed by the regulations, and
  - (b) it is signed:
    - (i) by the appointor, or
    - (ii) if the appointor instructs—by an eligible signer who signs for the appointor in the appointor's presence, and
  - (c) it is endorsed with the appointee's acceptance of the appointment, and
  - (d) the execution of the instrument by the appointor and appointee is witnessed by one or more eligible witnesses, and
  - (e) each witness certifies that the person or persons whose execution of the instrument is witnessed executed the instrument voluntarily in the presence of the witness and appeared to understand the effect of the instrument, and
  - (f) if the instrument is signed for the appointor by an eligible signer—the person who witnesses the signature certifies that the appointor, in the witness's presence, instructed the signer to sign the instrument for the appointor.
- (2) Without limiting subsection (1) (b) (i), an instrument is signed by the appointor if the appointor affixes his or her mark to the instrument.
- (3) If an eligible signer signs an instrument on behalf of an appointor as provided by subsection (1) (b) (ii), the appointor is taken to have signed the instrument for the purposes of this Act (including subsection (1) (e)).
- (4) For the purposes of subsection (1) (d):
  - (a) the execution of the instrument by or for the appointor and by the appointee may be witnessed by the same person or by different persons, and
  - (b) the execution of the instrument by or for the appointor does not need to be witnessed at the same time and place as the execution of the instrument by the appointee.

**[5] Section 6D**

Omit the section. Insert instead:

**6D Appointment of 2 or more enduring guardians**

- (1) An instrument appointing an enduring guardian may appoint 2 or more such guardians to act jointly, severally or jointly and severally.
- (2) If an instrument appoints 2 or more enduring guardians to act both jointly and severally:
  - (a) the appointees are authorised to act jointly or severally at their discretion in relation to the appointor except as otherwise provided by the instrument of appointment, and
  - (b) a vacation in the office of one enduring guardian does not terminate the appointment of any other enduring guardian unless the instrument of appointment provides otherwise.
- (3) Without limiting subsection (1), an instrument appointing more than one enduring guardian may confer different functions on each appointee. In any such case:
  - (a) each appointee is taken to have been appointed to act severally, and
  - (b) a reference in this Act to the enduring guardian is a reference to whichever of the appointees has the relevant function.
- (4) An instrument appointing 2 or more enduring guardians to act jointly may provide that the death, resignation or incapacity of one or more appointees does not operate to terminate the appointment of any other appointee.
- (5) For the purposes of this Act, an instrument that makes provision of the kind referred to in subsection (4) is taken to have appointed an appointee to act severally if each other appointee has died, resigned or become incapacitated.
- (6) A person who was appointed by an instrument executed by an appointor as a joint enduring guardian where that instrument does not make provision of the kind referred to in subsection (4) may apply to the Tribunal for an order confirming his or her appointment as an enduring guardian if each other appointee has died, resigned or become incapacitated.
- (7) The Tribunal may confirm the appointment of a person as an enduring guardian under subsection (6) only if the Tribunal is satisfied that the appointor did not intend the appointment to terminate if one or more of the other joint enduring guardians died, resigned or became incapacitated.

- (8) If the Tribunal confirms the appointment of a person as an enduring guardian under subsection (6), the instrument appointing the person is taken to have appointed the person to act severally if each other appointee has died, resigned or become incapacitated.

**[6] Section 6DA**

Insert after section 6D:

**6DA Alternative enduring guardians**

- (1) An instrument of appointment of an enduring guardian (the ***original enduring guardian***) may appoint another person to be an alternative enduring guardian of the appointor.
- (2) The instrument of appointment does not operate to appoint a person as an alternative enduring guardian unless it is endorsed with the person's acceptance of the appointment.
- (3) An alternative enduring guardian has (and may exercise) the functions of an original enduring guardian only:
  - (a) if the original enduring guardian dies, or
  - (b) if the original enduring guardian resigns, or
  - (c) during any incapacity of the original enduring guardian.
- (4) If 2 or more original enduring guardians are appointed by the instrument of appointment, the alternative enduring guardian:
  - (a) is taken to have been appointed as an alternative enduring guardian for each of the original enduring guardians unless the instrument of appointment provides otherwise, and
  - (b) if the original enduring guardians were appointed jointly and all of them have died, resigned or become incapacitated—section 6D operates in relation to that alternative enduring guardian as if he or she had been appointed as an original enduring guardian by the instrument of appointment and was the only remaining original enduring guardian.
- (5) A reference in a provision of this Act (other than this section) to an enduring guardian is to be read as a reference to the alternative enduring guardian while that person has, and may exercise, the functions of an original enduring guardian.

**[7] Section 6E Functions of enduring guardians**

Insert after section 6E (2):

- (2A) For the purpose of exercising a function that an appointee is authorised to exercise by an instrument appointing the appointee as an enduring guardian, the appointee has the same right of access to information about the appointor as the appointor has.
- (2B) Nothing in the *Privacy and Personal Information Protection Act 1998* prevents a public sector agency (within the meaning of that Act) from disclosing information about an appointor to an appointee if the agency is satisfied that the disclosure of the information would assist the appointee to exercise his or her functions as an enduring guardian.
- (2C) Nothing in subsection (2A) affects the operation of the *Health Records and Information Privacy Act 2002* in relation to the disclosure of health information about an appointor to an appointee.

**Note—**

Section 7 of the *Health Records and Information Privacy Act 2002* (when read with section 8 of that Act) provides that a guardian of an individual may do any act authorised, permitted or required by that Act on behalf of an individual who is incapable of doing that act. An individual is incapable of doing an act for the purposes of section 7 if the individual is incapable, by reason of age, injury, illness or physical or mental impairment, of understanding the general nature and effect of the act or communicating the individual's intentions with respect to the act. If the individual is capable of doing the act, then the guardian may not do the act on behalf of the individual unless expressly authorised to do so.

**[8] Section 6H Revocation of appointment by appointor**

Omit section 6H (2) (b) and (c). Insert instead:

- (b) the instrument is in or to the effect of the form prescribed by the regulations, and
- (c) the instrument is signed:
- (i) by the appointor, or
  - (ii) if the appointor instructs—by an eligible signer who signs for the appointor in the appointor's presence, and
- (c1) the execution of the instrument is witnessed by an eligible witness, and
- (c2) the eligible witness certifies that the appointor executed the instrument voluntarily in the presence of the witness and appeared to understand the effect of the instrument, and
- (c3) if the instrument is signed for the appointor by an eligible signer—the eligible



witness certifies that the appointor, in the witness's presence, instructed the signer to sign the instrument for the appointor, and

**[9] Section 6H (3) and (4)**

Insert after section 6H (2):

- (3) Without limiting subsection (2) (c) (i), an instrument is signed by the appointor if the appointor affixes his or her mark to the instrument.
- (4) If an eligible signer signs an instrument on behalf of an appointor as provided by subsection (2) (c) (ii), the appointor is taken to have signed the instrument for the purposes of this Act (including subsection (2) (c2)).

**[10] Sections 6HA and HB**

Insert after section 6H:

**6HA Automatic revocation of appointment by marriage of appointor**

The appointment of a person as an enduring guardian is revoked if the appointor marries or remarries a person (other than the appointee) after the date on which the person was appointed as an enduring guardian.

**6HB Resignation of appointment by appointee**

- (1) An appointee may resign the appointee's appointment as an enduring guardian:
  - (a) if the appointor is not in need of a guardian—by giving written notice to that effect to the appointor, or
  - (b) if the appointor is in need of a guardian—with the approval of the Tribunal.
- (2) A written notice resigning an appointment as an enduring guardian must:
  - (a) be in or to the effect of the form prescribed by the regulations, and
  - (b) be signed:
    - (i) by the appointee, or
    - (ii) if the appointee instructs—by an eligible signer who signs for the appointee in the appointee's presence, and
  - (c) be witnessed by an eligible witness, and
  - (d) if the notice is signed for the appointee by an eligible signer—contain, or have annexed to it, a certificate signed by the eligible witness that certifies

that the appointee, in the witness's presence, instructed the signer to sign the notice for the appointee.

- (3) Without limiting subsection (2) (b) (i), a notice is signed by the appointee if the appointee affixes his or her mark to the notice.
- (4) If an eligible signer signs a notice on behalf of an appointee as provided by subsection (2) (b) (ii), the appointee is taken to have signed the notice for the purposes of this Act.
- (5) The provisions of this section apply to the resignation of an alternative enduring guardian appointed as provided by section 6DA in the same way as they apply to the resignation of an appointee.

**[11] Section 6K Action on review**

Insert after section 6K (3):

- (4) The Tribunal may confirm the appointment (or purported appointment) of a person as an enduring guardian under subsection (1) (b) even where:
  - (a) the instrument that purported to appoint the person as an enduring guardian was not executed in accordance with the requirements of this Part, or
  - (b) the person purporting to make the appointment announced his or her intention to make the appointment but became incapacitated before an instrument making the appointment could be executed in accordance with the requirements of this Part,if the Tribunal is satisfied that the confirmation of the appointment (or purported appointment) reflects the appointment that the person making the appointment intended to make at the time it was purportedly made.
- (5) The confirmation of the appointment of an enduring guardian under subsection (1) (b) has effect as if an instrument of appointment had been executed in accordance with the requirements of this Part by the appointor in the terms confirmed by the Tribunal.

**[12] Section 6MA**

Insert after section 6M:

**6MA Substitution of enduring guardians by Tribunal**

- (1) The Tribunal may, of its own motion or on the application of a person who, in the opinion of the Tribunal, has a genuine concern for the welfare of an appointor,

appoint a person to replace an appointee as an enduring guardian of the appointor if the appointee has died, resigned or become incapacitated.

- (2) The Tribunal may appoint a person to replace an appointee under subsection (1) only if:
  - (a) the person is eligible to be appointed as an enduring guardian under this Part, and
  - (b) the Tribunal is satisfied that:
    - (i) the appointor is in need of an enduring guardian, and
    - (ii) the person has a close personal relationship with the appointor, and
    - (iii) the person is capable of carrying out the functions of an enduring guardian.
- (3) An appointment of a person under this section has effect as if the appointor had appointed the person as an alternative enduring guardian as provided by section 6DA.
- (4) The provisions of sections 6J and 6K apply to an appointment made under this section in the same way as they apply to an appointment made under an instrument of appointment.

**[13] Section 6O**

Insert after section 6N:

**6O Recognition of enduring guardians appointed in other States and Territories**

- (1) An instrument appointing an interstate enduring guardian has effect in this State as if it were an instrument appointing an enduring guardian made under, and in compliance with, this Part, but only to the extent that the functions it confers under the law of the State or Territory in which it was made could validly have been conferred by an instrument appointing an enduring guardian made under this Part.
- (2) In particular, an instrument to which subsection (1) applies:
  - (a) has effect in this State subject to any limitations on the functions it confers that apply to it under the law of the State or Territory in which it was made, and
  - (b) does not operate to confer any function on an enduring guardian in this State that cannot be conferred on an enduring guardian by or under this

Part.

- (3) A document signed by a qualified interstate legal practitioner that certifies that an instrument appointing an interstate enduring guardian was made in accordance with the formal requirements of the law of the State or Territory in which it was made is admissible in any proceedings where the appointment is in issue and is prima facie evidence of the matter so certified.
- (4) Subsections (1)–(3) apply to an instrument appointing an interstate enduring guardian even if, at the time it was made, it was not an instrument appointing an enduring guardian within the meaning of this section.
- (5) In this section:

***interstate enduring guardian*** means a person who is appointed as a guardian by an instrument (or an instrument belonging to a class of instruments) prescribed by the regulations that is made under a law of a State or Territory (other than New South Wales).

***qualified interstate legal practitioner***, in relation to an instrument appointing an interstate enduring guardian, means an interstate legal practitioner who has been admitted to legal practice in the State or Territory in which the instrument was made.

#### **[14] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Guardianship Amendment (Enduring Guardians) Act 2002*

#### **[15] Schedule 3**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

## **Part Provisions consequent on enactment of [Guardianship Amendment \(Enduring Guardians\) Act 2002](#)**

### **Definitions**

In this Part:

***amending Act*** means the [Guardianship Amendment \(Enduring Guardians\) Act 2002](#).

***existing appointment*** means any appointment of a person as an enduring guardian that was in force immediately before the commencement of this Part.

### **Application of amendments to existing appointments of enduring guardians**

- (1) The following provisions of this Act (as inserted by the amending Act) extend to existing appointments:
  - (a) section 6D (6)–(8),
  - (b) section 6E (2A)–(2C),
  - (c) sections 6HA and 6HB,
  - (d) section 6K (4) and (5),
  - (e) section 6MA.
- (2) Section 6H (as amended by the amending Act) extends to the revocation of the appointment of enduring guardians made on or after the commencement of the amendments concerned even if the original appointment was made before that commencement.
- (3) Section 6O (as inserted by the amending Act) extends to instruments made under a law of another State or Territory that were made before the commencement of that section and were still in force immediately before that commencement.

### **Amendment of sections 6C and 6H**

The amendment of section 6C or 6H by the amending Act does not affect the continuing validity of any instrument executed in the form prescribed by the regulations for the purposes of section 6C (a) or 6H (2) (b) (i) of the Act as in force at the time the instrument was executed.

## **Schedule 2 Amendment of [Guardianship Regulation 2000](#)**

(Section 4)

### **[1] Clause 4 Appointment of enduring guardian**

Omit “section 6C (a)”. Insert instead “section 6C (1) (a)”.

### **[2] Clause 5 Revocation of appointment of enduring guardian**

Omit “section 6H (2) (b) (i)”. Insert instead “section 6H (2) (b)”.

### **[3] Clause 5A**

Insert after clause 5:

## **5A Resignation of appointment as enduring guardian**

For the purposes of section 6HB (2) (a) of the Act, the form set out in Schedule 3 is the prescribed form for a written notice of resignation of an appointment as an enduring guardian.

### **[4] Schedule 1**

Omit the Schedule. Insert instead:

## **Schedule 1 Form of appointment of enduring guardian**

(Clause 4)

### **Appointment of one person as an enduring guardian (or appointment of 2 or more people as enduring guardians with the same functions)**

I [*insert your name, address and occupation*], appoint [*insert the name, address and occupation of your proposed enduring 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 enduring guardians*] to be my guardian (or guardians) if because of a disability I am partially or totally incapable of managing my person.

I appoint my enduring guardians to act jointly/severally/jointly and severally.

The death, resignation or incapacity of one or more of my joint enduring guardians does not operate to terminate the appointment of any other of my joint enduring guardians.

#### **Note—**

The above 2 sentences relate to the appointment of 2 or more people as enduring guardians. They may be crossed out if you are appointing only one enduring guardian.

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

You should also indicate whether the enduring guardians are to act jointly, severally or jointly and severally. If you specify that they are to act jointly, they will only be able to act if they all agree on the course of action. If you specify that they are to act severally or jointly and severally, they will be able to act independently of each other. If you appoint the enduring guardians to act jointly, you may also specify that the death, resignation or incapacity of one of the joint enduring guardians will not terminate the appointment of the other joint enduring guardians.

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

(You need to put your initials beside any writing that you have crossed out.)

I authorise my enduring guardian (or each of my enduring guardians) to exercise the following functions:

- (a) to decide where I live,
- (b) to decide what health care I receive,

(c) to decide what other kinds of personal services I receive,

(d) 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 enduring guardian or enduring guardians to exercise 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 enduring guardian or enduring guardians to exercise).

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

I also authorise my enduring guardian (or each of my enduring 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 enduring guardian (or each of my enduring 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]*.

I also appoint *[insert the name, address and occupation of your proposed alternative enduring guardian]* to be an alternative enduring guardian.

**Note—**

If you appoint an alternative enduring guardian, he or she will be authorised to exercise the functions of your enduring guardian should the enduring guardian die, resign or become incapacitated. An alternative enduring guardian is not authorised to exercise those functions until (and unless) that happens. Cross the above statement out if you do not wish to appoint an alternative enduring guardian.

(You need to put your initials beside any writing that you have crossed out.)

Signature:

I directed *[insert the name and address of person signing on your behalf]* to sign this document on my behalf.

**Note—**

The above details should be completed if a person signs this document on your behalf. A person can sign on your behalf if the person is at least 18 years of age, is not a witness to this instrument and is not being appointed as an enduring guardian or alternative enduring guardian. You should direct the person to sign on your behalf in the presence of the person who witnesses the signature. You can cross out the above statement if it is not applicable to you.

(You need to put your initials beside any writing that you have crossed out.)

Date:

**Acceptance of appointment**

I accept my appointment as enduring guardian/alternative enduring guardian.

Signature of enduring guardian/alternative enduring guardian (or of each guardian):

Date:

**Note—**

Cross out anything that is not applicable to you.

(You need to put your initials beside any writing that you have crossed out.)

**Certificate of witness**

I

of ..... being a NSW barrister/NSW solicitor/interstate legal practitioner/Clerk of a Local Court/prescribed person certify that:

- (a) I witnessed the execution of this instrument by or for *[insert the name or names of the persons concerned]*, and
- (b) this/these person(s) executed the instrument voluntarily and that each appeared to understand the effect of the instrument, and
- (c) the appointor in my presence instructed the person named in this instrument to sign the instrument on the appointor's behalf.

Signature of witness:

State or Territory where signatures witnessed (if witnessed outside New South Wales):

Date:

**Note—**

A person may witness both the signatures of the appointor (the person appointing an enduring guardian) and appointees (the persons who are appointed as enduring guardians). However, where the signatures of the appointor and appointees are witnessed by different persons, each witness should sign a certificate in respect of the signatures they have witnessed. If an appointor has instructed another person to sign the instrument on the appointor's behalf, the witness also needs to certify the matter referred to in paragraph (c). The witness should also cross out any other matter that is not applicable to the witness.

(You need to put your initials beside any writing that you have crossed out.)

**[5] Schedule 2**

Omit the Schedule. Insert instead:

## **Schedule 2 Form of revocation of appointment of enduring guardian**

(Clause 5)

### **Revocation of appointment of enduring guardian**

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

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

Signature:

I directed *[insert the name and address of person signing on your behalf]* to sign this document on my behalf.

**Note—**



The above details should be completed if a person signs this document on your behalf. A person can sign on your behalf if the person is at least 18 years of age, is not a witness to this instrument and is not your enduring guardian or alternative enduring guardian. You should direct the person to sign on your behalf in the presence of the person who witnesses the signature. You can cross out the above statement if it is not applicable to you.

(You need to put your initials beside any writing that you have crossed out.)

Date:

**Certificate of witness**

I

of ..... being a NSW barrister/NSW solicitor/interstate legal practitioner/Clerk of a Local Court/prescribed person certify that:

- (a) I witnessed the execution of this instrument by or for the appointor revoking the appointment in my presence, and
- (b) the appointor executed the instrument voluntarily and appeared to understand the effect of the instrument, and
- (c) the appointor in my presence instructed the person named in this instrument to sign the instrument on his or her behalf.

Signature of witness:

State or Territory where signature witnessed (if witnessed outside New South Wales):

Date:

**Note—**

If an appointor (the person appointing an enduring guardian) has instructed another person to sign the instrument on the appointor's behalf, the witness also needs to certify the matter referred to in paragraph (c). The witness should also cross out any other matter that is not applicable to the witness.

(You need to put your initials beside any writing that you have crossed out.)

**[6] Schedule 3**

Insert after Schedule 2:

**Schedule 3 Form of notice of resignation of appointment as enduring guardian or alternative enduring guardian**

(Clause 5A)

**Notice of resignation of appointment of enduring guardian/alternative enduring guardian**

I, *[insert your name, address and occupation]* resign my appointment as an enduring guardian/alternative enduring guardian of *[insert the name and address of appointor]*.

**Note—**

You may resign your appointment as an enduring guardian or alternative enduring guardian by giving written notice to the person who appointed you. However, you may only do so if that person is not in need of a

guardian at the time you give this notice. If the person is in need of a guardian at that time, you may resign only with the approval of the Guardianship Tribunal. You can cross out any matter that is not applicable to you.

(You need to put your initials beside any writing that you have crossed out.)

Signature:

I directed [*insert the name and address of person signing on your behalf*] to sign this document on my behalf.

**Note—**

The above details should be completed if a person signs this document on your behalf. A person can sign on your behalf if the person is at least 18 years of age and is not a witness to this instrument. You should direct the person to sign on your behalf in the presence of the person who witnesses the signature. You can cross out the above statement if it is not applicable to you.

(You need to put your initials beside any writing that you have crossed out.)

Date:

**Certificate of witness**

I  
of ..... being a NSW barrister/NSW solicitor/interstate legal practitioner/Clerk of a  
Local Court/prescribed person certify that:

- (a) I witnessed the execution of this instrument by or for the person resigning the appointment in my presence, and
- (b) the person in my presence instructed the person named in this instrument to sign the instrument on his or her behalf.

Signature of witness:

State or Territory where signature witnessed (if witnessed outside New South Wales):

Date:

**Note—**

If an appointee (the person who is appointed as an enduring guardian) has instructed another person to sign the instrument on the appointee's behalf, the witness also needs to certify the matter referred to in paragraph (b). The witness should also cross out any other matter that is not applicable to the witness.

(You need to put your initials beside any writing that you have crossed out.)