



YOU DECIDE WHO DECIDES

**Making an enduring power
for financial decisions**

September 2025



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AGAC member organisations have a role in protecting adults who have a disability that impairs their capacity to make decisions and manage their affairs. AGAC is comprised of Public Advocates and Guardians, Tribunals and Public or State Trustees throughout Australia.

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AGAC acknowledges First Nations communities and their rich culture. AGAC pays respect to their Ancestors, Elders and communities who are the custodians of the land on which we work.

Disclaimers

The legal information provided in this guide is of a general nature and readers may require legal advice for their specific circumstances. OPA expressly disclaims any liability howsoever caused to any person in respect of any action taken in reliance on the contents of this publication.

The examples included in this guide are hypothetical and any resemblance to any person is coincidental.

About the cover image

The cultural pattern that appears on the cover was created by the creative agency Gilimbaa. It represents an individual's path, the individual deciding to make an enduring power for financial decisions, decision sharing and a closing of the circle with decisions promoting the person's rights.

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Introduction

An enduring power for financial decisions is a way for adults in Australia to plan ahead. By making an enduring power for financial decisions, you can plan for your future decision-making.

An enduring power for financial decisions is a legal document. In it you can appoint a decision-maker to make decisions on your behalf about your finances and property (and related legal matters).

If you are thinking about making one, it can be hard to know where to start. It can also be hard to have conversations with those close to you about this.

This national guide has information and tips to help you get started.

If you decide to make an enduring power for financial decisions, the steps to get started are the same no matter where you live in Australia.

This guide has been put together by organisations in states and territories throughout Australia that provide information about the enduring power for financial decisions. These organisations are part of the Australian Guardianship and Administration Council (AGAC).

Information in your state or territory

The form and the law are different in different states and territories. Your state or territory has a role in helping you understand the enduring power for financial decisions and how to make one. The guide includes a section to help you quickly find information for your state or territory.

Things to think about before making an enduring power for financial decisions

The focus of this national guide is on the important things to think about **before** you make an enduring power for financial decisions.

We hope this guide helps you successfully plan for your future decision-making.

If you decide to make an enduring power for financial decisions, the information and tips in this guide are to:

- help reduce the risk of things going wrong, and
- help make sure your enduring power reflects what you want.



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What is an enduring power for financial decisions?

An overview

1. An enduring power for financial decisions is a way for adults in Australia to plan ahead. By making one, you can plan in case in the future illness or injury means that you do not have the ability to make some decisions.
2. It is a legal document.
3. In it you appoint a decision-maker, or more than one decision-maker.
4. The decision-maker/s you appoint will be able to make decisions on your behalf about your finances and property (and related legal matters), if you are unable to make these decisions. Examples are paying your expenses or selling a property.
5. To make one, you need to be able to understand what it means to make one and be making it voluntarily.
6. You can make one no matter where you live in Australia. In most states and territories it's called an 'enduring power of attorney'. In the Northern Territory it's called an 'Advance Personal Plan'.
7. Making an enduring power for financial decisions means whoever you appoint can step up to manage your financial affairs if there is a time when you don't have the decision-making capacity (ability) to make some financial decisions, even with support.
8. Unlike a non-enduring power (often called a general power of attorney), an enduring power can be used when you don't have the ability to make the decisions for yourself.
9. Depending on when the enduring power starts, whoever you appoint may also be able to step up to help you manage your finances, if and when you need this help.
10. If you make an enduring power for financial decisions, the person or people you appoint have significant power and responsibilities. To become your appointed decision-maker they need to agree to take on the role.

Different to a will

An enduring power for financial decisions is very different to a will, even though sometimes people go to a lawyer for help with both of these legal documents.

Why make one?

There may be a time when, even with support, you don't have the ability to make some decisions yourself. Having the ability to make your own decisions is often called having 'decision-making capacity'.

You may suddenly and unexpectedly lose the ability to make some decisions. For example, you may suddenly become unable to make some decisions because of a serious injury, stroke or car accident. Or you may be diagnosed with a condition, such as dementia, that gradually reduces your ability to make some decisions.

Many people mistakenly think that, if they do not have the ability to make some decisions, then a family member or close friend will automatically be able to make the decision for them and manage their affairs. This is not always legally the case.

For some decisions, the person helping you must have legal authority to do so. For example, making an enduring power for financial decisions is the only way that you can personally give someone legal authority to sell your home, if in the future, you become unable to make the decision to do so yourself.

Advantages of making an enduring power are that:

- you can choose a trusted person (or more than one person) who knows you and what you value in life
- you can choose a person (or people) who will involve you as much as possible
- you can discuss your views and wishes with the person (or people)
- it can help avoid family conflict if you make it clear who you want to make financial decisions for you
- you can seek legal or financial advice for your circumstances
- as soon as the enduring power is fully completed (and, if applicable, registered) the document is ready for use, if needed
- you may be able to 'tailor-make' the power, including by putting conditions or restrictions on the way it is used.

Registration

Registration is required in Tasmania and is required in some other states and territories, in some circumstances.



Your right to make decisions

You have the right to make your own decisions and to be supported to do so. As you become older, no one should assume you are unable to make your own decisions just because of your age. No one can make an enduring power for financial decisions on your behalf, and no one can force you to make one.

It is your choice whether to make one, your choice if you want to revoke (cancel) one, and your choice who to appoint (as long as the person or people agree to the appointment).

Keep in mind, you can only make an enduring power if you have decision-making capacity to do so.

What does ‘decision-making capacity’ mean?

All adults are presumed to have decision-making capacity. This should only be questioned if there is good reason to do so.

Generally, you have decision-making capacity if you can understand the nature and consequences of a decision after it is explained to you, and you can communicate your decision in some way.

You may have decision-making capacity for some types of decisions but not others, depending on how complex the decision is.

Your decision-making ability may also fluctuate. For example, you may be more alert in the morning and able to make decisions that you would struggle to make later in the day. Your ability to make decisions can also be temporarily affected by factors like medication, stress, illness or grief.

Thinking about who to appoint

It can be hard to decide whether to make an enduring power for financial decisions. Enduring powers can be very useful because they let the person you appoint look after your financial affairs. However, enduring powers can also be misused, either by accident or deliberately. There are things you can do to reduce the risk of things going wrong. The most important is thinking carefully about who you choose to appoint.

You may think about appointing a family member or family members. Family may include biological families, extended families, step-families, adoptive families and families of choice. Some family members may also be carers. You may also consider appointing a trusted friend or friends, or an independent public trustee or administrator.

If you have experience of decision-making in another country, some of this information might be new to you, or differ from how decisions are normally made in your family and your culture.

The option to make an enduring power for financial decisions to help plan for your future decision-making is available to all adults in Australia.

If you live in the Northern Territory, keep in mind that an enduring power for financial decisions is called an ‘Advance Personal Plan’. In other states and territories, it is called an ‘enduring power of attorney’.

Choose someone you trust and review

The most important decision is choosing who to appoint. Depending on the decisions you authorise the person to make, they will have considerable powers and access to your money and property.

It is also important to review your choice. Ask yourself, is the person (or people) still right for the role? Are there risks to you if they stay in the role? For example, this may be the case if they are experiencing a problem with gambling or substance abuse, or if you feel pressured by them. There may be risks if they are experiencing financial difficulties.

How to choose

It can be useful to start by identifying the characteristics and skills that are important to you.

Examples are:

- willingness to listen to, respect and act on your wishes and preferences, rather than their own
- trustworthiness
- the skill and time required to perform the role
- the ability to manage property and money well
- the ability to stay calm in a crisis
- the confidence to speak up on your behalf (for example, the confidence to talk to lawyers and government agencies)
- the ability to communicate effectively with others and resolve potential disagreements
- that the person lives close to you and would be able to do things in person, or is prepared to manage their responsibilities from further away
- that the person understands and respects your culture and connections to your community
- willingness to take on the role with all its responsibilities.

Once you have identified what is important to you, try to think objectively about the people close to you.

Be careful about appointing someone just to maintain harmony within the family now. It may be that the best way to have family harmony in the long-term is to talk about issues now.

Don't appoint someone if you are feeling pressured to do so. It is up to you to decide who to appoint.

Be careful about appointing someone experiencing their own difficulties. It is a risk to appoint someone experiencing gambling problems or substance addiction. It can be a risk to appoint someone experiencing financial problems.

The law in your state or territory may also have eligibility requirements for appointed decision-makers.

Keep in mind, the person who you appoint can do anything you can do with your finances and property (for example, sell a house or close a bank account), unless you limit this and, often, there is very little supervision.

One of the best ways of making sure that things don't go wrong is to involve other people. However, appointing two people because you are not sure that one of them can be trusted if acting alone, is not a good idea. Joint decision-makers are expected to work together and reach agreement on each decision that needs to be made.

What if I don't want to appoint someone that I know?

If there is no one who you trust to appoint, you can appoint an independent decision-maker, like a public or private trustee company, an accountant or a lawyer.

There are benefits to using independent decision-makers as they are regulated, insured, have experienced staff and you know they will be available when you need them. However, they usually charge fees for the services they provide. In addition to this, the person who will make decisions on your behalf might not know who you are, and what you would want and value, as well as someone in your family or community might.

You shouldn't make an enduring power if there is no one who you know who you want to appoint, and you do not want to appoint an independent decision-maker.

What happens if I don't appoint a decision-maker?

If you don't appoint anyone in an enduring power, and you are unable to make a financial decision when it needs to be made, the relevant tribunal in your state or territory can appoint someone to make the decision. The relevant tribunal may appoint the Public Trustee in your state or territory, or a private administrator.

What is the next step after I decide who to appoint?

When you have decided who you want to appoint:

- talk to the person, or people, you are thinking of appointing. They may want to get advice before agreeing to the appointment. They should take the time they need to understand the role and responsibilities (page 11).
- check that they take the time to listen to what you want.

Review your choice

You should regularly review your choice. Often these documents are completed years before they are needed, so reviewing the document is very important.

If it doesn't feel right, trust your instincts. You can revoke (cancel) the enduring power at any time, as long as you have decision-making capacity to do so.



EXAMPLE

IS THE PERSON RIGHT FOR THE ROLE?

Stella is worried that her appointed decision-maker might make her change her will or sell her house to a friend at a low price. The lawyer helping Stella reminds her that an appointed decision-maker cannot do either of these things. The lawyer suggests that if Stella doesn't trust the appointed decision-maker, she should choose a different person or organisation to be her appointed decision-maker.



Responsibilities of the people you appoint

The role of your appointed decision-maker is powerful. You can think of them as stepping into your shoes, to the extent the enduring power authorises this. This is why there are significant responsibilities that come with the role.

Your state or territory will have information about the responsibilities of your appointed decision-maker. It is important that the person (or people) you want to appoint has information about the responsibilities before they agree to the role.

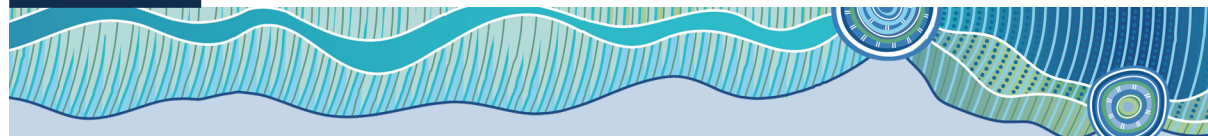
No matter where you live in Australia, your appointed decision-maker for financial decisions must:

- act to protect and promote your interests
- not profit from the appointment
- avoid conflicts between their interests and yours
- act honestly, with care and diligence
- keep accurate records of the financial decisions they make
- keep your money and property separate from their own. (This does not apply to property owned jointly by you and your appointed decision-maker.)

You and your appointed decision-maker should understand the responsibilities of the role.

Thinking about these responsibilities can help you choose who to appoint.

EXAMPLE



WHO TO APPOINT

Ana considers appointing her oldest adult daughter who lives with her in her home and pays board. Ana gets advice that this may be a difficult or unworkable arrangement unless Ana authorises some conflict transactions.

After some thought, Ana decides to appoint her younger adult daughter. She thinks doing this will help avoid misunderstandings. She explains her decision and her wishes for the future to both daughters. She wants them to understand her decision and know that they are both equally important to her.

Conflicts of interest

Your appointed decision-maker for financial decisions must not enter into a transaction where they have a conflict between their duty to you and their own interests. This is the case, unless the transaction is authorised by you (when you have decision-making capacity to do this), or by the relevant Tribunal. This type of transaction is known as a 'conflict transaction'.

How to make one in your state or territory

In your state or territory, there are options for how you make an enduring power for financial decisions. Options may include getting help from the public trustee or a lawyer, or completing the form yourself using a guide or kit.

This area of law can be complex. It can be helpful (and some organisations recommend) that you get legal advice for your circumstances.

Having the help of a lawyer means you can get advice for your specific circumstances and help to complete the form accurately and in a way that reflects your wishes. This may be particularly important if your financial or personal circumstances are complicated.

Look for a lawyer who understands this area of law. Keep in mind there will be a cost. Some lawyers speak languages other than English which may be helpful. If you need an interpreter, it is recommended that you use an independent and accredited interpreter. You will have to pay for this.

How to revoke (cancel) one in your state or territory

You can revoke an enduring power for financial decisions at any time, as long as you have the decision-making capacity to be able to do so.

If you had the help of a lawyer or public trustee to make the enduring power, going back to that lawyer or the organisation for help to cancel it can be a good idea. Having this help may be important, particularly if the enduring power has been registered. If you cancel the enduring power, you will need to tell the people you appointed. You may also need to let your bank, or other organisations know. Your state or territory will have more information.

In the following pages, find an overview and useful links for how to make an enduring power for financial decisions in your state or territory.

Quick Reference

Australian Capital Territory	page 13
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South Australia	page 17
Tasmania	page 19
Victoria	page 20
Western Australia	page 21

AUSTRALIAN CAPITAL TERRITORY



For residents of the Australian Capital Territory (ACT) and surrounding areas, see the Public Trustee and Guardian for the ACT website for information about:

- options for getting legal help to make an enduring power of attorney, or
- completing the form yourself using a kit developed by the Public Trustee and Guardian.

ptg.act.gov.au/enduring-powers-of-attorney/making-an-enduring-power-of-attorney

Your appointed decision-maker can only make decisions about real estate you own in the ACT (for example, to be able to sell your home), if the enduring power of attorney is registered at the ACT Land Titles.

You will find information about how to revoke an enduring power of attorney on the Public Trustee and Guardian website.

How to find a lawyer in the ACT

If you choose to have the help of a lawyer to make an enduring power of attorney, one option to find one is to use the ACT Law Society 'Find a Lawyer' webpage:

actlawsociety.asn.au/find-a-lawyer

Other enduring powers

In the ACT, if you make an enduring power of attorney for financial decisions you can also appoint someone (in the same enduring power of attorney document) who can make:

- lifestyle decisions for you (such as where you live or what services you need) if you don't have decision-making capacity to make these decisions and/or
- medical treatment/healthcare decisions for you if you don't have decision-making capacity to make these decisions.

If things go wrong

You can revoke (cancel) the enduring power for financial decisions at any time, if you have decision-making capacity to do so. If you don't have capacity to do this, someone else who is concerned can apply to the Civil and Administrative Tribunal (ACAT) to cancel it: acat.act.gov.au/case-types/guardianship-and-management-of-property-cases

NEW SOUTH WALES



For residents of New South Wales (NSW), the NSW Government recommends seeking independent legal advice from the NSW Trustee and Guardian or a lawyer before making an enduring power of attorney. For more information see: nsw.gov.au/family-and-relationships/planning-for-end-of-life/make-power-of-attorney

The NSW Trustee and Guardian provides an independent service at many locations throughout NSW. For eligible pensioners there are no fees. The NSW Trustee and Guardian has produced a guide which answers common questions.

You can also get help from the NSW Trustee and Guardian to revoke (cancel) an enduring power of attorney.

The enduring power of attorney form is found on the NSW Land Registry Services website (nswlrs.com.au/forms-guides/forms/)

In NSW, you need a particular person to witness you making the enduring power of attorney, which can be a solicitor or barrister, registrar of the NSW local court or an accredited employee of the NSW Trustee and Guardian.

Your appointed decision-maker can only make decisions about real estate you own in NSW (for example, to be able to sell your home), if the enduring power of attorney is registered with the NSW Land Registry Services.

How to find a lawyer in NSW

If you choose to have the help of a lawyer, you can find one through the Law Society of NSW 'Register of Solicitors': lawsociety.com.au/register-of-solicitors

Other enduring powers

In NSW, you can also make a separate document called an 'enduring guardianship' to appoint someone who can make:

- lifestyle decisions for you (such as where you live or what services you need) if you don't have decision-making capacity to make these decisions, and/or
- medical treatment/healthcare decisions for you if you don't have decision-making capacity to make these decisions.

If things go wrong

You can revoke (cancel) the enduring power for financial decisions at any time, if you have decision-making capacity to do so. If you don't have capacity to do this, someone close to you can apply to the NSW Civil and Administrative Tribunal (NCAT) to cancel it: ncat.nsw.gov.au/how-ncat-works/ncat-divisions-and-appeal-panel/guardianship-division.html

NORTHERN TERRITORY



For residents of the Northern Territory, an enduring power for financial decisions is called an Advance Personal Plan.

In an Advance Personal Plan you can appoint someone (or more than one person) who can make decisions for you if you don't have decision-making capacity to make these decisions.

This can include:

- financial decisions — such as managing your bank accounts, paying bills, or handling property and assets
- lifestyle decisions — such as where you live or what services or supports you receive and other day-to-day matters
- health decisions — such as consenting to medical treatment or choosing health care options.

The Northern Territory Government website explains how to make an Advance Personal Plan and includes a link to the form. Or you can have a copy posted to you by calling the Public Guardian and Trustee (1800 810 979 (free call)). For more information see: nt.gov.au/law/rights/advance-personal-plan

In the Northern Territory an Advance Personal Plan can only be used during periods when you don't have decision-making capacity.

You can register your Advance Personal Plan with the Public Guardian and Trustee for safe keeping without any fee.

Your appointed decision-maker can only make decisions about real estate you own in the Northern Territory (for example, to be able to sell your home), if the original Advance Personal Plan is registered with the Northern Territory Land Titles Office. There is a fee for this.

How to find a lawyer in the Northern Territory

If you choose to have the help of a lawyer, you can find one through the Law Society NT 'NT Law Firms by Area of Law' webpage: lawsocietynt.asn.au/index.php/nt-law-firms-by-area-of-law/

If things go wrong

You can revoke (cancel) the Advance Personal Plan at any time, if you have decision-making capacity to do so. If you don't have capacity to do this, someone close to you can apply to the NT Civil and Administrative Tribunal (NTCAT) to cancel it: ntcat.nt.gov.au

If your plan is registered with the Northern Territory Land Titles Office, it will also need to be formally revoked through that office as well.

QUEENSLAND



In Queensland you can make an enduring power of attorney for financial, personal and health matters.

Residents of Queensland must use the enduring power of attorney form (short form or long form) developed by the Queensland Government. There is also an explanatory guide. Find links to the forms and the guide on the Queensland Government website: publications.qld.gov.au/dataset/power-of-attorney-and-advance-health-directive-forms

The Queensland Public Guardian website has information about making an enduring power of attorney, including common questions: publicguardian.qld.gov.au/guardianship/planahead/the-forms/enduring-power-of-attorney

You can get help from the Queensland Public Trustee to make an enduring power of attorney. You can also get help from the Queensland Public Trustee to revoke (cancel) an enduring power of attorney. See their website for more information, including the cost: pt.qld.gov.au/wills-powers-of-attorney-estates/powers-of-attorney/services

Your appointed decision-maker can only make decisions about real estate you own in Queensland (for example, to be able to sell your home), if the enduring power of attorney is registered with Titles Queensland.

How to find a lawyer in Queensland

You can find a lawyer through the Queensland Law Society 'Register of Solicitors' webpage: qls.com.au/Register-of-solicitors

Other enduring powers

In Queensland, if you make an enduring power of attorney for financial decisions you can also appoint someone (in the same enduring power of attorney document) who can make:

- lifestyle decisions for you (such as where you live or what services you receive) if you don't have decision-making capacity to make these decisions, and/or
- medical treatment/healthcare decisions for you if you don't have decision-making capacity to make these decisions.

In Queensland, you also have the option of appointing someone who can make medical treatment/healthcare decisions for you in an 'advance health directive'.

If things go wrong

You can revoke (cancel) the enduring power at any time, if you have decision-making capacity to do so. If you don't have capacity to do this, someone close to you can apply to the Queensland Civil and Administrative Tribunal (QCAT) to cancel it. See: qcat.qld.gov.au/case-types/decision-making-for-adults-with-impaired-capacity/enduring-power-of-attorney

SOUTH AUSTRALIA



For residents of South Australia, you can make an enduring power of attorney using the 'Enduring Power of Attorney Kit', developed by the Legal Services Commission. This kit has the form and information about how to complete it. The form and an example copy of the kit can be downloaded for free.

lsc.sa.gov.au/cb_pages/power_of_attorney_kit.php

If you are uncertain after reading the kit, you may consider getting legal advice.

See the SA.GOV.AU website for more information:

sa.gov.au/topics/family-and-community/planning-ahead/make-a-power-of-attorney

A hard copy of the kit can be purchased through Service SA centres or online:
shop.service.sa.gov.au/legal-and-government/1203-enduring-power-of-attorney-kit.html

The Public Trustee in South Australia provides enduring power of attorney services to eligible concession holders if the Public Trustee is appointed as attorney:
publictrustee.sa.gov.au/planning-ahead/am-i-an-eligible-customer

Your appointed decision-maker can only make certain decisions about real estate you own in South Australia (for example, to be able to sell your home), if the enduring power of attorney is lodged at Land Services SA.

How to find a lawyer in South Australia

You can find a lawyer through the Law Society of South Australia 'See a Lawyer' Referral Service: lawsocietysa.asn.au/PseudoCode/Radius_Search.aspx

If things go wrong

You can revoke (cancel) an enduring power of attorney at any time by completing a revocation form, if you have decision-making capacity to do so. There is a revocation form in the kit. lsc.sa.gov.au/cb_pages/power_of_attorney_kit.php

If you don't have capacity to do this, someone close to you can apply to the South Australian Civil and Administrative Tribunal (SACAT) for the appointment of an administrator who can cancel it: sacat.sa.gov.au



Other enduring powers

In South Australia, you can make an 'advance care directive' to appoint someone who can make:

- lifestyle decisions for you (such as where you live or what services you receive) if you don't have decision-making capacity to make these decisions, and/or
- medical treatment/healthcare decisions for you if you don't have decision-making capacity to make these decisions.

Revoking an advance care directive

If you have legal capacity and make a new advance care directive, the new one is valid and the older document is automatically revoked.

If you do not have the capacity to make a new advance care directive, an application must be made for SACAT to make any changes to the document.

For more information about advance care directives, go to: sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/conditions/end+of+life+care/advance+care+directives

TASMANIA



For residents of Tasmania, the enduring power of attorney form and a fact sheet can be found on the Land Titles Office website. See: nre.tas.gov.au/land-tasmania/land-titles-office/power-of-attorney-forms#PowersofAttorneyforms

The Public Trustee in Tasmania can help you make an enduring power of attorney. See the Public Trustee website for more information including about fees: publictrustee.tas.gov.au/enduring-power-of-attorney/

The Office of the Public Guardian Tasmania website has general information about the enduring power of attorney. See: publicguardian.tas.gov.au/planning-ahead/administrators-and-enduring-powers-of-attorney

Registration

In Tasmania, an enduring power of attorney does not begin to operate and have effect until it has been registered. Registration of the completed enduring power of attorney is via the Land Titles Office of Tasmania. (There is a fee.)

How to find a lawyer in Tasmania

You can find a lawyer through the Law Society of Tasmania 'Register to Find a Lawyer or Law Firm' webpage: lst.org.au/find-a-lawyer/

Other enduring powers

In Tasmania, you can also make an 'enduring guardianship' appointment so that someone can make:

- lifestyle decisions for you (such as where you live or what services you receive) if you don't have decision-making capacity to make these decisions, and/or
- medical treatment/healthcare decisions for you if you don't have decision-making capacity to make these decisions.

The Office of the Public Guardian Tasmania website has general information about enduring guardianship. See: publicguardian.tas.gov.au/planning-ahead/enduring-guardianship

If things go wrong

You can revoke (cancel) the enduring power at any time, if you have decision-making capacity to do so. If you don't have capacity to do this, someone close to you can apply to the Tasmanian Civil and Administrative Tribunal (TASCAT) to cancel it. For more information see: tascat.tas.gov.au/guardianship/forms2

VICTORIA



For residents of Victoria, the enduring power of attorney form can be found on the Department of Justice and Community Safety website. See: justice.vic.gov.au/powers-of-attorney-act-2014

The Victorian Office of the Public Advocate website has information about making an enduring power of attorney. See: publicadvocate.vic.gov.au/your-rights/enduring-power-of-attorney/making-a-power-of-attorney

State Trustees in Victoria can help you make your enduring power of attorney. There are discounts for concession card holders. For more information, including about fees, see: statetrustees.com.au/power-of-attorney/

State Trustees also has a Powers of Attorney Registry which is a free service: statetrustees.com.au/wills-powers-of-attorney-registry-storage/

How to find a lawyer in Victoria

You can find a lawyer through the Law Institute of Victoria 'Find Your Lawyer Referral Service': liv.asn.au/web/content/for_the_public/referral/looking_for_legal_help.aspx

Other enduring powers

In Victoria, if you make an enduring power of attorney for financial decisions you can also appoint someone (in the same enduring power of attorney document) who can make:

- lifestyle decisions for you (such as where you live or what services you receive) if you don't have decision-making capacity to make these decisions.

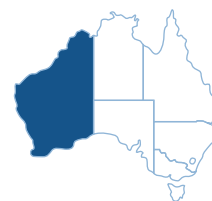
In Victoria, you can make an 'appointment of medical treatment decision maker' to appoint someone who can make:

- medical treatment decisions for you if you don't have decision-making capacity to make these decisions.

If things go wrong

You can revoke (cancel) the enduring power at any time, if you have decision-making capacity to do so. If you don't have capacity to do this, someone close to you can apply to the Victorian Civil and Administrative Tribunal (VCAT) to cancel it. For more information see: vcat.vic.gov.au/case-types/powers-of-attorney

WESTERN AUSTRALIA



For residents of Western Australia, the WA Office of the Public Advocate produces a range of information about enduring powers of attorney, including a kit and a guide. The kit and guide include the form and step-by-step instructions, and can be downloaded from this website: wa.gov.au/government/document-collections/publications-office-of-the-public-advocate#enduring-power-of-attorney-guides-and-kits

The Office of the Public Advocate also delivers education sessions (advertised on its website) and it operates an advisory service during business hours on 1300 858 455.

The Western Australia Public Trustee may help you make an enduring power of attorney in some circumstances and for a fee. For more information see: wa.gov.au/service/justice/civil-law/enduring-power-of-attorney

How to find a lawyer in Western Australia

You can find a lawyer through the Law Society of Western Australia ‘Find a Lawyer’ webpage: lawsocietywa.asn.au/services/find-a-lawyer/

Other enduring powers

In Western Australia, you can also make an ‘enduring power of guardianship’ to appoint someone who can make:

- lifestyle decisions for you (such as where you live or what services you receive) if, in the future, you don’t have decision-making capacity to make these decisions and/or
- treatment/healthcare decisions for you if, in the future, you don’t have decision-making capacity to make these decisions.

If things go wrong

You can revoke (cancel) the enduring power at any time, if you have decision-making capacity to do so. If you don’t have capacity to do this, someone close to you can apply to the State Administrative Tribunal (Western Australia) to cancel it. For more information see: sat.justice.wa.gov.au/E/enduring_power_of_attorney.aspx

Checklist

Before making an enduring power for financial decisions, you may find this checklist and information helpful.

Choose someone, or more than one person, who you trust

- ☐ Think about what qualities are important to you in your appointed decision-maker (page 8 has ideas).
- ☐ Think about whether you want to appoint more than one decision-maker to act jointly (together), or jointly and severally (together or alone), and whether you want to appoint back-up/s.
- ☐ Discuss the appointment, your wishes, and what is important to you with the person (or people) you want to appoint.
- ☐ Check the person (or people) you want to appoint is willing to take on the role and listens to what you want.
- ☐ Make sure you and the person (or people) you have chosen as your appointed decision-maker understand what their responsibilities will be.

Think about ways to reduce the risk of things going wrong

- ☐ Decide if you want legal or financial advice before you make your enduring power.

If you decide to get legal advice, below are things that may be helpful to think about before you speak to your lawyer. If you decide to complete the form yourself, these are things for you to think about.

- ☐ What powers do you want to give to your appointed decision-maker/s? (For example, this may be decisions about all financial matters, or only specified financial matters.)
- ☐ When do you want the enduring power to start? (For example, this may be immediately or when you don't have decision-making capacity for financial matters.)
- ☐ Do you want to include any instructions for your appointed decision-maker? (See page 24 for more about this.)
- ☐ Do you want to authorise your appointed decision-maker to do something? For example, a conflict transaction. (It is important to get legal advice if you are thinking of authorising a conflict transaction.)
- ☐ Do you want to place any limits on (or extend) your appointed decision-maker's power to make gifts? (See page 24 for more about this.)
- ☐ Do you want to appoint more than one decision-maker? You will have a decision about whether you want them to act jointly (together), or jointly and severally (together or alone).
- ☐ Do you want to appoint back-up/s?



Things to be aware of

The form

- All states and territories have an approved form which meets the requirements of the legislation. The law in some states and territories requires the use of the approved form.
- There are witnessing requirements.
- In all states and territories (except the Northern Territory) your appointed decision-maker/s also must sign the form to accept the appointment. In some states and territories they must sign in front of a witness or witnesses.

Registration, storage and certified copies

- In Tasmania, an enduring power of attorney does not begin to operate and have effect until it has been registered with the Land Titles Office.
- In some states and territories, your enduring power must be registered if your appointed decision-maker needs to sell, mortgage, lease or otherwise deal with your real estate.
- If you own land in Western Australia, you should complete two identical enduring power forms at the same time, as Landgate requires an original.
- You will need a safe place for the completed document. If you go to a lawyer or public trustee it may be kept with them. Some states and territories have a register.
- By registering your enduring power, it will be:
 - on record as a public document
 - safe from loss or destruction
 - more easily accepted as evidence that your appointed decision-maker can deal with your legal and financial affairs.
- You may need a certified copy (or copies), for example to give to your appointed decision-maker/s.

Reviewing and revoking

- You should regularly review your enduring power for financial decisions (at least every year or every second year). Often these documents are completed years before they are needed, so reviewing the document is very important.
- You can revoke (cancel) the enduring power at any time, as long as you have decision-making capacity to do this.

Limitations, instructions and conversations

In some states and territories, you can:

- limit your appointed decision-maker's power to making decisions about specific financial matters
- include instructions.

If you want to do this, consider getting legal advice to make sure you are able to include instructions or limitations, and to make sure that your enduring power for financial decisions reflects your wishes and will be workable.

Think carefully about whether limitations or instructions might prevent your appointed decision-maker from doing things for you that you would want. If your family circumstances or your finances are complex, it is always a good idea to get legal advice.

Some public trustees or state or territory governments have do-it-yourself kits that can be used to complete the form yourself. Some of these kits include example wording that may be helpful.

Regardless of whether you decide to include instructions, it is a good idea to talk to your appointed decision-maker(s) about what is important to you. You may also want to talk with a lawyer about things that are important to you. Below are some examples.

EXAMPLES

RESPECTING IDENTITY

Jose wants his appointed decision-maker to pay for services that respect his identity and his continued connection with his community.

SOCIAL GROUP

Kim wants their appointed decision-maker to organise the payments for them to attend events hosted by a particular social and support group that is important to them.

COMMUNICATION

Eduardo is worried that when he loses decision-making capacity that he will be 'shut out' and not kept updated. Eduardo is wrong, but to be sure he asks his lawyer to document clearly his communication expectations to his appointed decision-maker.

EXAMPLES

APPOINTED DECISION-MAKERS

Maria wants her appointed decision-makers to be able to act jointly and severally. When one of them acts severally (separately) she wants that person to notify the other appointed decision-maker before spending more than \$500 in a single transaction.

INVOLVING AN ACCOUNTANT

When Doug no longer has decision-making capacity, he wants his appointed decision-maker to have his accountant check his financial accounts every year. He gives instructions to his accountant about this and tells his accountant what to do if there is a problem.

RESIDENTIAL CARE

Siti knows that one of the most significant decisions anyone may need to make as they age is whether to sell their home and move into residential aged care.

Siti would only want her appointed decision-maker to sell her home to enable her to move into residential aged care, if all other reasonable options to pay for her support needs have been exhausted.

EVERYONE'S RIGHT TO MAKE DECISIONS

Terri wants her appointed decision-maker to start using the power immediately to support her. This is possible in the state where Terri lives.

Terri still has decision-making capacity and wants to make her own decisions while she can. Terri is worried that when her appointed decision-maker begins to act, she will lose all decision-making powers. Terri is reminded by her lawyer that the appointed decision-maker must follow her instructions while she has decision making capacity, and strongly consider her wishes when she loses decision making capacity.

GIFTS

Xin gifts her son \$5,000 annually for his birthday. She wants to continue to do this even when her son is acting as the appointed decision-maker. Her lawyer helps her document this, so her son is authorised for these conflict transactions. If she doesn't do this, her son would be in breach of his obligations.

Gifts

In some states and territories, the power to give gifts must be stated in the enduring power, and in others there are limits placed on the power.

EXAMPLE

ADVICE ABOUT THE RESPONSIBILITIES OF AN APPOINTED DECISION-MAKER

Ali wants to appoint his son and daughter as his appointed decision-makers. Ali and his son and daughter see a lawyer who explains the responsibilities of the role. The lawyer shares five common myths:

- ✗ 'When I am Ali's appointed decision-maker, I can use Ali's funds because he does not need it and would want me to have it.' This is a myth and is wrong.
- ✗ 'I am not in a position of conflict because I have acted in a manner consistent with Ali's wishes which Ali expressed to me before they lost decision-making capacity.' This is a myth and is wrong.
- ✗ 'I can make all decisions for Ali if my appointment commences immediately, irrespective of whether Ali has decision-making capacity.' This is a myth and is wrong.
- ✗ 'If Ali doesn't have decision-making capacity for a financial decision this means they cannot make any financial decisions at all.' This is a myth and is wrong.
- ✗ 'I don't have to discuss decisions I make as appointed decision-maker with Ali or consider Ali's wishes if Ali ceases to have decision-making capacity.' This is a myth and is wrong.

If you own land

You should seek legal advice if you are considering including limitations and own land.

For example, in Western Australia, the enduring power of attorney must be lodged with Landgate if your appointed decision-maker needs to transact on land or property that you own. Landgate has limitations on accepting documents for lodgement if they include certain conditions or restrictions which affect your appointed decision-maker's authority. It is advisable to speak to Landgate about these limitations before making your document.

In other states and territories there are requirements to register an enduring power for the appointed decision-maker to be able to deal with land.

You Decide Who Decides short videos

Find the 'You Decide Who Decides' short videos on the Compass.info website. See: compass.info/featured-topics/powers-of-attorney/you-decide-who-decides





