



Enduring power of attorney in the ACT

Learn more about how to make and change an enduring power of attorney in the Australian Capital Territory.

- » Introduction
- » Types of powers of attorney
- » Other decision-making options
- » Choosing an attorney
- » Making and changing
- » Checklist and resources

Introduction

A power of attorney is a legal document that you can complete to appoint someone to make your decisions for you if you become unable to make them yourself.

The document allows you to specify who can make decisions for you, which decisions they can make, and when they can make them. The person or organisation that you nominate is known as the 'attorney', and you are known as the 'principal'.

To make a power of attorney in the ACT, you must:

- be over the age of 18
- understand the effect of making a power of attorney
- have decision-making capacity

Types of powers of attorney

In the ACT there are two types of powers of attorney that allow you to appoint a decision-maker:

- general power of attorney
- enduring power of attorney

Other states and territories have similar documents, although they may have different names and different rules.



1. General power of attorney

A general power of attorney in the ACT is only for financial and legal matters and can only be used while you have capacity to make your own decisions. It ends if you lose decision-making capacity, so it's not a future planning tool.

Typically, a general power of attorney is in place for a specific time – for example, you are travelling overseas or are injured and need someone else to manage your finances temporarily.

Under a general power, your attorney is only able to do so for the time, task or circumstances you have specified. For example, if you regularly travel, you might authorise your attorney to make financial decisions whenever you are overseas.

If your general power of attorney does not have any specified limits in place, it ends when you no longer have decision-making capacity or when you pass away.

2. Enduring power of attorney

An enduring power of attorney allows you to appoint a decision-maker who can act if you no longer have capacity to make your own decisions. You can only make an enduring power of attorney while you have the capacity to make your own decisions.

In the ACT, your attorney in an enduring power may make decisions or act for you in relation to:

- financial
- property
- personal
- health and
- medical research matters

However, they can only make personal, health and medical research decisions after you lose decision-making capacity. For financial and property matters, you can specify whether the enduring power can start immediately or only after you lose capacity.

For example, you might specify that your appointed attorney can pay bills on your behalf whenever you are travelling overseas but only take over all your other financial decisions when you no longer have capacity to make decisions.

Powers of Attorney Act 2006

Enduring powers of attorney in the ACT are governed by the Powers of Attorney Act 2006, which you can find on the ACT Legislation Register.

More Information



Every Australian state and territory has different rules governing powers of attorney. It's important to check the rules in other jurisdictions if you think your attorney may need to act on your behalf in financial matters in other jurisdictions.

What is 'capacity'?

Capacity is a legal term that refers to your ability to make your own decisions. People may have capacity throughout their adult years and be able to look after their own financial and other decisions, but they may lose capacity due to an accident, illness or adverse effects of ageing.

You have decision-making capacity if you are able to:

- understand the information relevant to the decision and the effect of the decision
- retain that information to the extent necessary to make that decision
- use or weigh up that information as part of the process of making the decision
- communicate your decision and your views and needs in some way, including by speech, gestures or other means

For personal, health, and medical research matters, an enduring power of attorney in the ACT can only take effect when the principal loses capacity.

An introduction to capacity

The law presumes adults have the 'capacity' to make their own decisions, until proven otherwise. But capacity isn't always straightforward.

[More information](#)



Other decision-making options

In the ACT, an enduring power of attorney is one of several options for future planning in relation to health care and medical treatment.

You can also choose to make an Advance Care Plan Statement of Choices and/or a health direction to specify your wishes for health care and medical treatment

An enduring power will allow your attorney to consent to or refuse medical treatments on your behalf if you have lost capacity.

They must, however, consider any specific instructions that you have made for your future health care in either the enduring power, an advance care plan statement of choices or a health directive.

Advance care plan statement of choices

This statement is another way that you can record your wishes in relation to future medical decisions.

You can include information in the statement about your wishes in relation to life-prolonging treatments and any religious and spiritual issues that you want considered when you are nearing the end of your life.

Health directive

This legal document allows you to give instructions to refuse, or require withdrawal of, medical treatments and procedures. For example, a person with a terminal illness may wish to have resuscitation withheld.

Australian Capital Territory: create your plan

More information on future planning in relation health and medical treatment in the ACT.

[More Information](#)



Dying to talk: discussion starter

Palliative Care Australia's website Dying to talk: discussion starter has useful resources to help older Australians plan what they would like to have happen if they were to become very sick or when they are approaching the end of their life.

[More Information](#)



The questions and tips for starting conversations about end-of-life planning could also be used to guide conversations with family and friends about financial matters, lifestyle, and cultural values. The site has culturally relevant resources for Aboriginal and Torres Strait Islander people.

Choosing an attorney

Who can be appointed?

In the ACT you can appoint as your attorney anyone over the age of 18 who has the capacity to make their own decisions.

They can be family members, friends, a lawyer, a licenced trustee company or the Public Trustee and Guardian. If the person you appoint is going to act in relation to financial and property matters, they must not be bankrupt or personally insolvent.

It's a good idea to think very carefully about who you choose to be your attorney. It should be someone who is unlikely to lose capacity or pass away before you do and is willing, able and available to take on the role. They must understand what is involved in being an attorney and agree to be appointed.

The attorney must accept the role by signing the acceptance section of the general or enduring power of attorney form.

In the ACT, your power of attorney will automatically be revoked if you later marry or enter a civil partnership unless you take a particular step when making the document.

To prevent the automatic revocation, complete the section of the enduring power of attorney related to marriage, civil union or civil partnership. There you can make it clear that the power is not to be revoked if you get married or enter a civil union or partnership.

Can I have more than one attorney?

In the ACT you can appoint more than one person to act as your attorney. If you appoint do more than one person, you can authorise them to make decisions:

- individually (known as 'separately')
- jointly (known as 'together')
- a combination of separately and together

For example, you could require all decisions related to real estate to be made together but allow each of your decision-makers to make decisions separately about spending money for your day-to-day expenses.

Appointing your attorneys both separately and together allows them to use their discretion about which decisions they make together and which ones they make separately. Where they are to make decisions together, they must agree on the decision.

If you are considering appointing more than one attorney, it's a good idea to think about how they could work together, make decisions and problem-solve as a team to make the best decision for you.

In the ACT, you can also nominate alternative or substitute attorneys to take on the role if one of your appointed attorneys becomes unavailable, resigns from the role or dies.

In this article, 'attorney' is used as a reference to both one attorney and multiple attorneys.



What are the attorney's responsibilities when acting on my behalf?

ACT legislation requires your attorney to act in your best interests and to reflect or consider your wishes, values and culture. Wherever possible, they should support your participation in decision-making.

They must keep good records of transactions and decisions, keep your finances separate from their own, and avoid conflicts of interest. They can reimburse themselves for reasonable costs incurred in managing your affairs, but they must keep receipts to prove these costs.

An attorney is not allowed to give gifts or pay the living expenses of another person on behalf of the principal unless the enduring power of attorney explicitly authorises them to do so.

An attorney can only delegate responsibilities to another person if permission to do so is recorded in the enduring power of attorney.

You can limit or place conditions on attorneys' decision-making powers when you make the power of attorney. For example, you can require them to submit accounts to a nominated accountant every year.

What if my attorney is not acting in my best interests?

If you are concerned that your attorney is not acting in your best interests or may be taking your money or property, you can cancel or revoke the power of attorney if you still have capacity.

You will not be able to cancel or revoke an enduring power of attorney if you have lost decision-making capacity. However, another person with an interest in your welfare can ask the [ACT Civil and Administrative Tribunal \(ACAT\)](#) to review the attorney's actions.

While it is a criminal offence to misuse a power of attorney, there is no agency that oversees their operation, which is why it is important to appoint someone you can trust and consider placing limitations on the decisions they can make.

What happens in ACT if you lose capacity and don't have an enduring power?

In these circumstances, someone with an interest in your welfare can apply to ACAT, who will seek to appoint a suitable person to the role. If ACAT can't identify a suitable person, they may appoint the Public Trustee and Guardian.

For more information on this, visit the [ACAT website](#).

Making and changing

You can make an enduring power of attorney in the ACT by completing a standard form.

The power to choose - The Public Trustee and Guardian

This free, downloadable booklet also provides a comprehensive guide to making an enduring power of attorney.

[More Information](#)



Do I need to have a lawyer prepare my power of attorney?

You don't need to get a lawyer to prepare a general or enduring powers of attorney, but you may wish to seek legal advice before finalising your documents. In most cases you will need to pay for this advice or for any assistance in preparing your documents.

ACT Law Society - Find a Lawyer

The ACT Law Society has information about how to find a lawyer.

More Information



The Public Trustee and Guardian

The Public Trustee and Guardian office can prepare power of attorney documents for a fee, and in cases of hardship they may reduce the fee.

More Information



Do I have to register my general or enduring power of attorney?

In the ACT, you only need to register a general or enduring power of attorney if the attorney will need to act on real estate matters on your behalf, such as selling your home.

Access Canberra

Find out more about registration requirements on the Access Canberra website.

More information



However, you should give certified copies of enduring and general powers of attorney to all your attorneys. It is also a good idea to give a copy to your bank, doctor and other key people in your life.

Who can witness a power of attorney?

Powers of attorney in the ACT need to be witnessed by two people aged over 18. One must be a person authorised to witness the signing of a statutory declaration, such as a lawyer or a justice of the peace. Only one witness can be a relative of the principal or the attorney.



Can I change or cancel my power of attorney?

You can revoke or change a general power of attorney at any time, but an enduring power of attorney can only be cancelled or changed if you still have capacity to make your own decisions. [Click here](#) to download form.

If you registered your power of attorney, you will need to complete a withdrawal form and submit it to the Registrar-General's Office. For more information about the withdrawal process, [click here](#).

You will need to tell your attorney that you have changed or cancelled the power of attorney, and it's recommended that you do this in writing so that there is a clear record of the advice. If you have given your bank or other people a copy, you will need to let them know as well.



Checklist and resources

This [checklist](#) will guide you through the process of making an enduring power of attorney (EPOA) in the Australian Capital Territory. It will show you what to think about and connect you to relevant information.

This checklist includes the following:

- Background information and resources to help you research and prepare to make an EPOA.
- Practical information you will need to consider before completing the EPOA form.
- Helpful information to help you complete the EPOA form.
- Information about how to correctly sign and witness your EPOA.
- Information about registration requirements and tips on where and how to store your EPOA.
- Information to assist you should you want to change or revoke your EPOA.

Make an EPOA checklist - ACT

This checklist will guide you through the process of making an enduring power of attorney (EPOA) in the Australian Capital Territory.

[More information](#)



More resources

The Power to Choose

The Public Trustee and Guardian has free resources available on their website, including a useful booklet called The Power to Choose (PDF). This free resource is a downloadable comprehensive guide to making an enduring power of attorney and includes all the required forms.

[More Information](#)



The Public Trustee and Guardian

The Public Trustee and Guardian can also prepare enduring power of attorney documents, for a fee. For more information or to make an appointment, visit the website.

[More Information](#)



ACT Law Society - Making an Enduring Power of Attorney

The ACT Law Society has an online fact sheet on preparing an enduring power of attorney in the ACT.

[More Information](#)



You Decide Who Decides: Making an enduring power for financial decisions

This booklet explains the process, provides useful tips on completing the form, poses questions to consider when choosing the person who will act for you in financial matters when you no longer have capacity, and includes example wording and personal stories.

[More Information](#)



Dying to talk: discussion starter

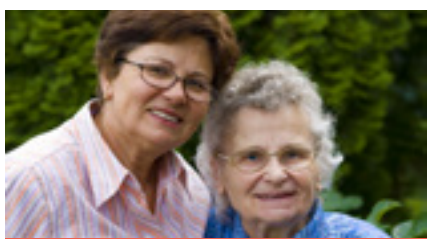
Palliative Care Australia's website Dying to talk: discussion starter has useful resources to help older Australians plan what they would like to have happen if they were to become very sick or when they are approaching the end of their life. The questions and tips for starting conversations about end-of-life planning could also be used to guide conversations with family and friends about financial matters, lifestyle, and cultural values. The site has culturally relevant resources for Aboriginal and Torres Strait Islander people.

[More Information](#)



Disclaimer: The information provided in this document is not a substitute for individual legal advice.

Find the following at [Compass.info](https://compass.info)



Introduction to enduring power of attorney



Future planning



Having 'capacity'



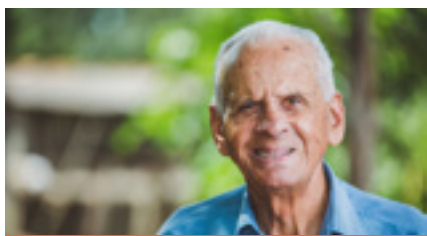
Being an attorney



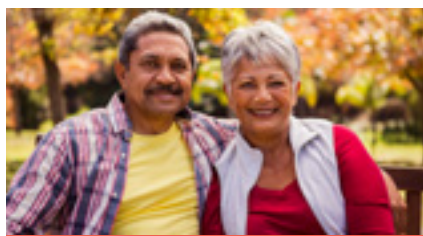
Choosing an attorney



LGBTQIA+ issues



Your rights



Helpful terms to know



Frequently asked questions



Made for all Australians regardless of nationality, culture or language, Compass is an inclusive website navigating elder abuse.



Compass is an initiative of EAAA and funded by the Attorney-General's Department
© Copyright EAAA Compass 2022.