



# Powers of attorney in Victoria

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# Powers of attorney in Victoria

A power of attorney is a legal document that allows you to nominate a person, multiple people, or a trustee organisation to act as your decision-maker and manage decisions on your behalf. The person or organisation that you nominate is known as the 'attorney', and you are known as the 'principal'.

In Victoria, attorneys can be appointed to make the principal's financial decisions, such as:

- operating bank accounts
- managing shares and investments
- paying bills
- buying and selling real estate

and their personal /lifestyle decisions, such as:

- where they live
- who they see
- how they live in the community,
- what relationships they maintain



When you are making your enduring power of attorney, you choose whether you want your attorney to make financial decisions, personal decisions, or both. You can have the same person be both a personal and financial enduring power of attorney, if you like.

Your attorney can only make the decisions specified in the appointment. An attorney in a financial enduring power can't make personal decisions, and an attorney in a personal enduring power can't make financial decisions.

Both appointments are bound by any limitations you set out in the document. You can authorise the attorney to act in all financial and personal matters or set limits on which financial decisions they can make – for example, only decisions about buying and selling of real estate.

To appoint a power of attorney, you must:

- be over the age of 18 and
- understand the effect of making a power of attorney

*You can also appoint a supportive attorney to assist with making decisions about both personal and/or financial matters.*

# Types of powers of attorney in Victoria

There are three types of powers of attorney in Victoria. Apart from the supportive power of attorney, other states and territories have similar documents, although they may have different names and different rules.

## 1. General non-enduring power of attorney

A general non-enduring power of attorney can only be used when you have capacity to make your own decisions, and it can only be used to make decisions about financial matters. It ends if you lose decision-making capacity, so it's not a future planning tool. Typically, this power is in place for a specific time – for example, if you are travelling overseas or are injured and therefore need someone else to look after your finances temporarily.

Under a general non-enduring power of attorney, your appointed attorney is only able to manage your decisions for the time period, 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 power of attorney does not have any specified limits in place, it ends when you no longer have decision-making capacity or when you die.

## 2. Enduring power of attorney

An enduring power of attorney allows you to appoint someone to make financial and personal decisions – such as paying bills or choosing where you live – if you no longer have capacity to make them yourself. You can only make an enduring power while you still have the capacity to make your own decisions.

You can specify when the enduring power of attorney comes into effect: not unless you lose decision-making capacity or sooner than that.

For example, you might specify in your enduring power of attorney that your appointed attorney can pay bills on your behalf whenever you are travelling overseas but only take over making all your personal and financial decisions when you no longer have capacity.

You can specify when the enduring power of attorney starts. For example, can it start when your appointed attorney believes you no longer have capacity to manage your own financial decisions, or only when your doctor assesses you as no longer having capacity to make decisions?

### 3. Supportive power of attorney

A supportive power of attorney is different from an alternative attorney or any other 'substitute' decision-making role. It's designed to maximise your autonomy over the course of your life. They don't make a decision **for** you, they make a decision **with** you.

This type of attorney can be appointed by someone with decision-making capacity to **support** them in making decisions. For example, people with disability, such as a cognitive disability, might choose to have a supportive decision-maker.

Supportive attorneys can be appointed to make specific financial or personal decisions, and they can't assist with real estate decisions or decisions about amounts over \$10,000. Only one supportive attorney can be appointed.

Powers of attorney in Victoria are covered by the [Powers of Attorney Act 2014](#), which commenced 1 September 2015. All appointments made prior to 2015 remain valid, and there is no need to alter your pre-2015 enduring power of attorney unless you want to.

*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 the decision and your views and needs in some way, including by speech, gestures or other means

An enduring power of attorney often begins when the principal has 'impaired capacity', meaning they have lost some of this ability.

#### Having Capacity

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

**For more information visit the [Having Capacity](#) section on [Compass.info](#)**

# Other decision-making options in Victoria

In Victoria, there are additional appointments you could consider making to cover other aspects of your future planning.

## Medical treatment decision-maker

Since 2016, appointing a medical decision-maker in Victoria has been separate from powers of attorney.

If you become unable to make your own decisions regarding medical treatment and haven't appointed a medical decision-maker, someone will be appointed to make medical decisions for you. A hierarchy of people may be appointed (spouse or domestic partner, then a specified group of other people that includes carers, siblings and adult children).

## Advanced care planning

An advanced care directive allows you to record your preferences for your health and medical treatment, including end-of-life care and ceasing further treatment. You can make notes about your values and priorities to guide future decisions. It's a good way to make sure that everyone knows what you would want to have happen, particularly if you are ill or approaching end-of-life.





# Understanding powers of attorney in Victoria

## Who can be appointed?

In Victoria you can appoint anyone over the age of 18 who has the capacity to make their own decisions. They can be someone from your family, a friend, neighbour, or a lawyer or accountant, and you can appoint more than one person.

You cannot appoint anyone who is your care worker, health provider or accommodation provider as your attorney. There are also certain rules applying to people who have been bankrupt, are insolvent, or have been convicted of a dishonesty offence.

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. The person you appoint must understand what is involved in being an attorney and agree to be appointed.

Talk with several people before you make up your mind. To help you think about how to have these conversations, you might like to watch the short film [\*Having conversations about the future\*](#) by [Seniors Rights Victoria](#).

### Choosing an Attorney

The person you appoint as your attorney in your enduring power of attorney may need to make important decisions on your behalf, so you should choose someone you really trust.

**For more information visit the [Choosing an Attorney](#) section on [Compass.info](#)**



# Can I have more than one attorney?

In Victoria, you can appoint up to 4 people to act as your attorney. And in case one of your appointed attorneys becomes no longer able to act on your behalf or wishes to resign, you can also nominate an alternative attorney for each attorney you appoint.

This can be particularly important when making an enduring power of attorney, as if you do lose capacity it will no longer be possible for you to appoint a new attorney to replace someone.

If you appoint more than one person to become your financial decision-maker, you can authorise them to make decisions individually (known as 'severally'), together (known as 'jointly'), or a combination of jointly and severally.

You could, for example, require all decisions related to real estate to be made jointly but allow each attorney to make individual decisions about spending money on your day-to-day expenses.

If you are appointing more than one attorney, you may also specify that your attorneys make decisions as a majority.



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

In Victoria the law requires your attorney to act in ways that are in your interest and reflect or consider your wishes. In every decision, they must consider 'your wills and preference' and where possible work with you to decide what that is.

Your attorney must act in your best interests, keep good records of transactions and decisions, and keep your finances separate from their own. Where possible, they should support your participation in decision-making.

While you can choose to include a clause or option in your enduring power of attorney that allows your attorney to benefit from your money and property – for example, cover their living costs – they cannot use your money or property for their own benefit without your authorisation.

In Victoria you can limit or place conditions on the attorney's decision-making power. So, 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?

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

You will not be able to change or cancel your power of attorney if you have lost decision-making capacity. However, another person with an interest in your welfare can apply to the Victorian Civil and Administrative Tribunal (VCAT) to have your attorney's actions investigated if they are concerned.

There is a standard form for revoking a power of attorney. For advice on how to proceed, call the Office of the Public Advocate on 1300 309 337 or visit their website.

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

If there is a need to appoint an attorney in these circumstances, the Guardianship Division of VCAT will appoint someone to make the decisions for you. This could be through a guardianship or administration order.

- Guardians and administrators can be:
- family members
- friends
- appointments by the Office of the Public Advocate and/or State Trustees
- other private appointments, such as trustee companies.



# Making and changing powers of attorney in Victoria

Standard forms for making an enduring power of attorney in Victoria are also on the Office of the Public Advocate's website. There are different forms to complete depending on whether you appoint one person (the 'short' form) or several people and up to two alternative attorneys (the 'long' form).

If you have a physical disability and you need someone to sign for you, you will need to complete the long form.

- Enduring power of attorney – [short form](#)
- Enduring power of attorney – [long form](#)
- A form is also available for appointing a supportive attorney - [form](#)



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

If your affairs are simple and the appointment of your attorney is straightforward, you may not need a lawyer for your paperwork. There are kits available that can be purchased, or downloaded for free, to assist you to do it yourself.

You can also ask a lawyer to prepare the document for you or advise you. In most cases, you will need to pay for this advice or for assistance.

## Do I have to register my enduring power of attorney?

In Victoria there are no requirements for you to register an enduring power of attorney.

It is a good idea to keep your enduring power in a safe place and let people know where it is. You could also give your attorney a copy to keep.

If you have a lawyer and/or accountant, give them a copy of the enduring power. This creates a record of the document's existence and ensures there is a copy available if the original is lost. It also provides the attorney with clear evidence that they are authorised to act on your behalf if they need to show others.

## Who can witness an enduring power of attorney?

An enduring power of attorney in Victoria needs be witnessed by two adults (that is, 18 years of age or older). One of these two people must be either someone authorised to witness affidavits or a registered medical practitioner. For a list of people authorised to witness affidavits, see the [Justice and Community Safety website](#).

There are some people who cannot witness an enduring power. These include:

- a relative of the person making the appointment
- a person who is being appointed as an attorney or alternative attorney, or their relative
- a care worker or accommodation provider for the person making the appointment

## Can I use remote witnessing for my power of attorney?

Remote witnessing is when people sign important documents electronically rather than meeting in person and signing in each other's physical presence. This option can be very useful for people who live in rural, regional or remote areas, or have mobility limitations, or for other reasons cannot or prefer not to leave their homes.

While meeting face-to-face to sign powers of attorney is generally the best option, Victorian legislation allows for electronic signing and witnessing of documents.

Anyone involved in remote witnessing of an enduring power of attorney should make sure that the person making the document is doing so voluntarily and is not under any pressure or duress to make the appointment. Coercion may be harder to assess when a document is being signed remotely.

## Can I change or cancel my power of attorney?

You may change or cancel a general power of attorney at any time. You should tell your attorney that you have changed or cancelled the power of attorney, and it's recommended that you do this in writing.

An enduring power of attorney can only be cancelled or changed if you still have capacity to make your own decisions. You can [download the form](#) on Compass.info.

If you no longer have capacity, someone will have to apply to [Victorian Civil and Administrative Tribunal \(VCAT\)](#) to have the enduring power revoked. If this becomes necessary or if there is concern about the existing enduring power, seek advice about how to proceed. You can call the Office of the Public Advocate on [1300 309 337](tel:1300309337) or refer to their website at [www.publicadvocate.vic.gov.au/](http://www.publicadvocate.vic.gov.au/).

## More information and support about powers of attorney in Victoria



Office of the  
Public Advocate

### Office of the Public Advocate

Provides free telephone advice for people with disability, older people, carers and the community. Acts as independent guardians and advocates when appointed by VCAT. Has great online resources (in English and in other languages) and regular information sessions.

Tel: [1300 309 337](tel:1300309337)

Website: [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

### Deaf or impaired hearing users

TTY: [1300 305 612](tel:1300305612)

NRS: [133 667](tel:133667)



Seniors  
Rights  
Victoria

### Seniors Rights Victoria

Provides both non-legal and legal assistance for older people via their advice line, as well as legal support for some legal matters. Has self-help resources, including videos, and toolkits for workers.

Tel: [1300 368 821](tel:1300368821)

Email: [info@seniorsrights.org.au](mailto:info@seniorsrights.org.au)

Tel: [1800 424 079](tel:1800424079)

Website: [www.seniorsrights.org.au](http://www.seniorsrights.org.au)



## Victorian Civil and Administrative Tribunal (VCAT)

Provides information about powers of attorney, guardianship and administration, advance care directives and other matters.

Tel: [1300 018 228](tel:1300018228)

Translating and interpreting service: [131 450](tel:131450)

Koori support team: [0417 516 335](tel:0417516335)

Website: [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)



## State Trustees

Acts as an independent administrator and provides fee-for-service execution of wills, powers of attorney and other services. Locations across Melbourne and in Bendigo.

Tel: [1300 138 672](tel:1300138672)

Website: [www.statetrustees.com.au](http://www.statetrustees.com.au)





# Other useful resources

## Seniors Rights Victoria's information sheet, 'Decision making and your rights'

This PDF gives a simple overview of decision-making, capacity and supports.

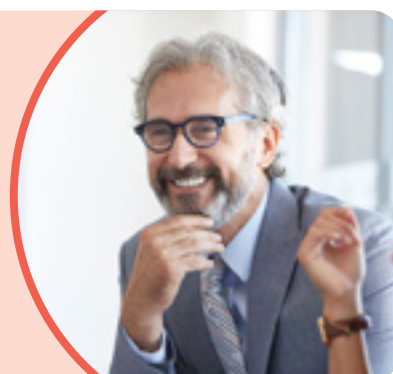
**This resource can be found on [Compass.info](#)**



## Law Institute Victoria – Find your lawyer referral service

This PDF gives a simple overview of decision-making, capacity and supports.

**This resource can be found on [Compass.info](#)**



## Future planning for decision-making and the law in Victoria: a resource for lawyers who practice in future planning

Issued by the Office of the Public Advocate is for Victorian lawyers assisting clients with powers of attorney.

**This resource can be found on [Compass.info](#)**



## 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.

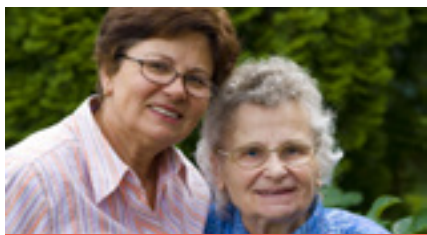
**This resource can be found on [Compass.info](#)**



### **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**



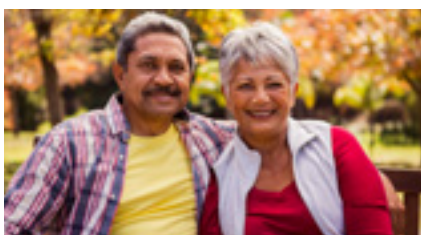
**Choosing an attorney**



**LGBTQIA+ people and enduring power of attorney**



**Your rights and enduring power of attorney**



**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.



**Australian Government**  
**Attorney-General's Department**



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