



Powers of attorney in Tasmania

- » Powers of attorney in Tasmania
- » Types of powers of attorney in Tasmania
- » Other decision-making options
- » Understanding powers of attorney in Tasmania
- » Making and changing enduring powers of attorney in Tasmania
- » More information and support about powers of attorney in Tasmania
- » Other useful resources

Powers of attorney in Tasmania

An enduring power of attorney is a legal document that allows you to nominate a person, several people or a trustee organisation to act as your decision-maker and manage financial and property decisions on your behalf. Your appointed decision-maker is called the 'attorney', and you are known as the 'donor'.

In Tasmania, an enduring power of attorney is only for financial and property decisions. So the decisions your attorney can make are things like:

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

You can authorise the attorney to act in all financial matters, or you can set limits on the financial decisions they can make. For example, you may decide to authorise your attorney to sell property for you, while you continue to manage the day-to-day accounts yourself.

To make a power of attorney in Tasmania, 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 Tasmania

Enduring power of attorney

An enduring power of attorney allows you to appoint someone to make financial and property decisions if you are no longer able to make them yourself. However, you can only make the enduring power while you still have the capacity to make your own decisions.

You can specify when the enduring power of attorney is to come into effect: either 'immediately' – this can be prior to you losing decision-making capacity – or only when you have lost mental capacity.

For example, you might specify that your appointed attorney can start immediately and pay bills on your behalf if you are physically unable to, but only take over making all your financial decisions when you no longer have mental capacity.

Or you can authorise it to start only when you no longer have capacity to manage your own financial decisions. It's completely up to you to set it up as you want.

Attorneys appointed under an enduring power of attorney cannot make decisions about your health, lifestyle or where you live. You will need an Enduring Guardian to appoint decision-makers for health, personal and lifestyle decisions.

You can also make an Advanced Care Directive to specify what medical decisions you would like made if you can no longer make decisions for yourself. There's more information about these two options further down this page.

Other powers of attorney in Tasmania

There are other forms of powers of attorney that are designed for short-term appointments. These cover situations when you have decision-making capacity but need someone to make decisions about your finances for you temporarily – for example, if you are in hospital or ill or you travel overseas. The appointments usually end when the event is over (that is, you return to Australia or are released from hospital).

For all the applicable forms, visit the [Land Tasmania webpage](#).

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. In Tasmania it's sometimes called 'mental capacity'.

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

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](https://compassproject.org.au)



Other decision-making options

In Tasmania, enduring powers of attorney are only for financial and property matters. There are additional appointments you should consider making to cover medical and personal decisions in your future planning

Enduring guardianship

In an enduring guardianship you (the 'appointer') appoint a person (the 'guardian') to make personal and medical decisions for you when you no longer have capacity. You make the appointment while you have capacity, and most often it begins when your capacity ends or is diminished (that is, when you become able to make some decisions but not others).

The guardian cannot make decisions about your money or finances, but they can make decisions about how you live your life, such as:

- where you live
- whether you enter aged care
- who you see or have contact with
- what health care you do, or do not, have
- what support services you should receive

They can also sign some documents on your behalf.

It is important that you think carefully about who you choose as your guardian. It should be someone you trust and whom you feel confident would know what you want.

The guardian's role is to act in your best interests at all times and to promote your dignity. They should consult with you and make sure that your voice is heard and that what you want to happen, happens.

You can choose to have your guardian be a 'full guardian' and make every decision for you, or to have your guardian make specific decisions for you and not others. For example, you may appoint your cousin Ros to make decisions about your social life, because you have always done things together and she knows what you like and what you don't like, and your son James to make decisions about where you live.

It's up to you to make your enduring guardian appointment arrangements fit your needs and maximise your opportunity to live the life you want to lead.

For more information about enduring guardianship, visit the [Public Trustees website](#).

Advanced Care Directives

Advanced Care Directives specify what medical decisions you would like made if you can no longer decide for yourself. They are legally binding documents, and they are typically about:

- undergoing or refusing medical treatment and
- deciding on end-of-life medical treatment

You can find the form to make an Advanced Care Directive on the [Department of Health website](#).

Understanding powers of attorney in Tasmania

Who can be appointed?

In Tasmania you can appoint anyone over the age of 18 who has the capacity to make their own decisions. The person must understand what is involved in the role and agree to take on the role. Many people appoint a family member, friend, neighbour, lawyer or accountant, but it can be anyone you choose.

It's a good idea to think very carefully about who you appoint to be your attorney. It should be someone who is unlikely to die before you do and is willing, able and available to take on the role.

You might like to talk with several people before you make up your mind, and there are some resources that can help you think about how to do this. 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 Tasmania you can appoint more than one attorney. If you do, you must decide if they are to act 'jointly' (that is, make all decisions together) or 'separately' (that is, make decisions separately).

It's a good idea to think about how the attorneys could work together, make decisions and problem-solve as a team to make the best decision for you. You should choose people who will be able to work well together.

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

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

Tasmanian law requires the attorney to act in ways that:

- are in the donor's best interest
- include consultation with the donor
- take into account both the donor's wishes and what would be reasonably likely to be the wishes of the donor if they had not lost mental capacity

Ideally, the attorney should support you to participate in your decision-making.

Your attorney must also:

- keep good records of transactions and decisions
- keep your finances separate from their own
- avoid conflicts of interest
- seek financial or tax advice when needed

In Tasmania you can limit or place conditions on the attorney's decision-making power. For example, you can require them to submit accounts to a nominated accountant every year.

Being an Attorney

An attorney has both the duty and the privilege of enabling another person to live the life they wanted to lead by understanding and enacting their wishes and preferences.

For more information visit the *Being an Attorney* section on [Compass.info](https://compass.info)

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

While you still have capacity, you can change or revoke the enduring power of attorney if you feel that your attorney is not acting in your best interests or may be taking your money or property. To do this, you will need to lodge a notice of revocation with the Recorder of Titles. A fee will apply.

If you lose decision-making capacity, you will then not be able to change or revoke your power of attorney. However, another person with an interest in your welfare can apply to the [Tasmanian Civil and Administrative Tribunal \(TASCAT\)](#) to have your attorney's actions investigated if they become concerned.

TASCAT has the power to change or revoke the enduring power of attorney, replace an attorney with a substitute, and direct the Recorder of Titles to make the change.

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 Tasmania if you lose capacity and don't have an enduring power?

If you do not have an enduring power of attorney and you lose capacity to manage your own financial affairs, someone can apply to the Public Trustees to take over the financial administration of your affairs for you.

See the [Public Trustees website](#) for more information.



Making and changing enduring powers of attorney in Tasmania

You can make an enduring power of attorney in Tasmania by completing a form and lodging it with the [Land Titles Office](#) in Hobart.

There are two forms available:

- **particular enduring power of attorney** (you specify what particular decisions you authorise the attorney to make)
- **general enduring power of attorney** (you authorise the attorney to make any decisions)

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

It's up to you. If your affairs are simple, you may be able to write your enduring power of attorney yourself, and if you have more complicated financial or family arrangements or conflict, you may wish to seek legal advice.

If you want to find a lawyer, the [Law Society of Tasmania](#) has advice about your options as well as a '[find a lawyer](#)' facility.

The Public Trustee will prepare the document for you if you are appointing them as either your enduring power of attorney or a substitute attorney. [Visit their website](#) to make an appointment. A sliding scale of charges, depending on your income level, will apply.

Do I have to register my enduring power of attorney?

In Tasmania, your enduring power of attorney must be [registered, or lodged](#), with the Land Titles Office in Hobart to be valid. [Fees will apply](#).

Sometimes people make their document but don't lodge it. In that case it's not a legally binding document, although it may provide some guidance to others on what they would like done.

If you think that there are reasons why you would prefer to delay the registration of your enduring power of attorney – for example, you need to talk with your family about what you have decided and who you have appointed – it may be worth getting legal advice about when to lodge it.

Once the document is registered, it is 'publicly searchable', which means that anyone can see it for a set fee.

Who can witness a power of attorney?

An enduring power of attorney in Tasmania must be witnessed by two adults. The witnesses cannot be 'parties' to the enduring power of attorney (which means, they are not being appointed), nor can they be close relatives to a party to the document.

Although the attorney needs to sign that they have accepted the role, their signature does not have to be witnessed.

Can I change or cancel my power of attorney?

If you have capacity, you can change or cancel a general power of attorney at any time. You should tell your attorney that you've done so. You can [download](#) form on Compass.info.

An enduring power of attorney can only be cancelled or changed if you still have capacity to make your own decisions. You must advise your attorney in writing if your enduring power of attorney is no longer in place. You'll also need to cancel the enduring power with the Land Titles Office in Hobart so that it is no longer registered. You can [access the correct form](#) on Compass.info.

If you no longer have capacity and there are concerns about the actions of your attorney, someone interested in your welfare will need to apply to the [Tasmanian Civil and Administrative Tribunal \(TASCAT\)](#) to have your situation reviewed. TASCAT has the power to change or revoke the enduring power of attorney and can direct the Recorder of Titles to make the change.



More information and support about powers of attorney in Tasmania



COTA (Council on the Ageing) Tasmania

Offers free legal advice for older Tasmanians through regularly scheduled legal clinics. Search the website for dates, locations and times.

Website: <https://www.cotatas.org.au/>



Public Trustee

Offers [resources](#) about guardianship. You can make an appointment to talk about preparing and registering your documents

Website: <https://www.publictrustee.tas.gov.au/>



Legal Aid for Tasmanians

Can give free legal information Monday to Friday between 9 am and 5 pm. Contact them by phone or use the Legal Talk chat window in the bottom right-hand corner of the website.

Tel: [1300 366 611](tel:1300366611)

Website: <https://www.legalaid.tas.gov.au/>



Tasmanian Elder Abuse Helpline

The helpline is free, confidential and statewide service operated by Advocacy Tasmania Inc on behalf on the Tasmanian Government. It assists older people, families, service providers and the wider community to respond to elder abuse and better access existing supports and services.

Tel: [1800 44 11 69](tel:1800441169)

Mobile and interstate calls: [\(03\) 6237 0047](tel:0362370047)

Email: eahelpline@advocacytasmania.org.au

Website: <https://advocacytasmania.org.au/what-we-do/tasmanian-elder-abuse-helpline/>

Other useful resources

TASCAT information sheet on guardianship

This resource provides a general overview of guardianship.

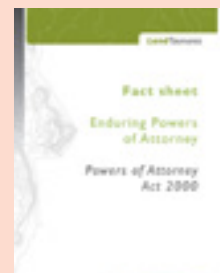
This resource can be found on [Compass.info](#)



Enduring powers of attorney fact sheet

Land Tasmania's overview of enduring powers of attorney, including links to forms and resources.

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



Senior Assist handbook for attorneys

A Legal Aid for Tasmanians handbook for attorneys, which outlines duties, risks, and where to get help.

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



Introduction to enduring power of attorney



Future planning



Having 'capacity'



Being an attorney



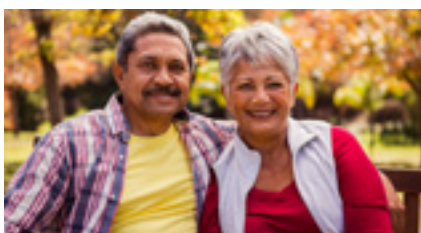
Choosing an attorney



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.



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