



Choosing an attorney

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

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The person you appoint as your attorney in your enduring power of attorney may need to make important financial decisions on your behalf, so you should choose someone you really trust. Ideally, your attorney will know and understand your values and what's important to you, and make the decisions for you that you would have made for yourself.

You can appoint one attorney and give all decisions about finances, big and small, to that person. In most Australian states and territories you can appoint more than one attorney, and you could decide to divide the responsibilities between them.

For example, you might appoint your daughter to look after decisions about property sales, a close friend to manage bills and small expenses like mobile phone plans, and your neighbour to arrange payments for grocery shopping.

Who can be an attorney?

You may choose whoever you trust and think best to be your attorney(s), as long as they meet a few criteria.

In Australia, an attorney must be someone over the age of 18 who has decision-making capacity. Each state or territory then has its own additional criteria (for example, in some states your attorney cannot be a paid carer), so you will need to [check your state or territory](#) for the requirements that apply where you live.

Not everyone in their later life has a network of close family members and friends who could be attorneys. However, there are several options for appointing an attorney, so people can – and should – still plan for the future.

Even if you are ageing alone, or are not sure that your family members would be the right choice, or don't have a close friendship group, you can still make an enduring power of attorney.

Family, friends and neighbours

An obvious choice is a family member – one that you trust who would be both suitable and willing to act on your behalf. Remember that you can appoint more than one attorney, so you can choose more than one family member.

Alternatively, you can ask a friend, a neighbour or someone in your community. Again, they should be someone you trust who knows your values and what's important to you.



State government trustees

If you feel there are no suitable family members or friends to ask, or you simply prefer not to ask them, you may be eligible to appoint the Public Trustee in your state or territory. This is a state government department that can administer people's decisions and legal affairs if they can't do so themselves. Each state or territory's Public Trustee is different and has different practices.

The Public Trustee may act as your attorney and manage your financial affairs. You can appoint the trustee the same way as you would any other attorney, although fees and charges will apply for its services.

It may also be possible for you to appoint the Public Guardian or Public Advocate for personal matters. [Check your state or territory for more details.](#)

Australian State and territory public trustees

Check with your state or territory's Public Trustee for details of its powers, functions and services eligibility and fees.

[More Information](#)



Other professional attorneys

As well as the Public Trustee, there are private trustee services that you can appoint. These can be through insurance companies, banks or specialist businesses that manage trusts. If you choose a private trustee company, it's wise to get legal advice about how to set it up correctly. Private trustees will also charge fees for their services.

Alternatively, you can nominate a solicitor or accountant. Like anyone else you might consider as your attorney, the solicitor or accountant should be someone you trust and get on well with. Rules and regulations in both professions make sure that lawyers and accountants act with 'due diligence' (which means, in their clients' best interests). If you do not have a solicitor, each state has a legal services board that can help you find one.

Other options

While considering your attorney options, you may hear or read about other possibilities, such as the ones below.

Think carefully and check the rules in your state or territory before making your choice. Consulting family or friends may be helpful.

Informal arrangements

If a person believes there is no one to appoint through a formal legal document such as an enduring power of attorney, they can at least record what they would want done.

This will mean that people will know what their wishes are, and the record might influence them to follow through with what they want. However, there is no guarantee that they will, as there is no legal power to enforce an informal arrangement like this.

If you decide to take this option, you will need to provide a lot of detail in the written record so that it covers all the decisions that might need to be made.

You'll also need to make sure that it is accessible to the people who will be making decisions for you. This might mean keeping copies in your handbag or wallet and in an accessible part of the house (like on a hall table or kitchen drawer) and giving copies to people around you, such as friends or service providers.

However, making formal arrangements through an enduring power of attorney is a much better and safer plan.



What to think about when choosing an attorney

An attorney does not have to be a family member or your spouse or partner. You are free to choose the person (or people) that you trust most and think would best be able to act for you if it becomes necessary.

Even though friends, partners or family members are able to be your attorney (and may even expect to be), you may feel for any number of reasons that someone else might be a better choice.

Remember that if you lose capacity and become unable to make your own financial decisions, you also won't be able to guide or instruct your attorney, so choose the person or people that you believe will best be able to undertake the role.

Who would make a good attorney?

Think about who would be best able to make financial decisions for you if you couldn't make them.

- Who has the right skills and abilities for managing finances? Consider digital / online skills – Centrelink etc
- Will the person you're considering have the time to look after your decisions?
- Where do they live? Will they be able to easily access your bank accounts, service providers and carers? An adult child who lives overseas might not be a practical choice.
- If a decision about you or your financial interests needed to be made quickly, are they able to be decisive?
- They may need to advocate for you. Will they be able to do that?

If you are considering appointing more than one attorney, you can divide the tasks between them, so think about their skills and experience. For example, one person in your family or friendship group may be good at buying and selling property, and another may be an accountant, so they could be given those responsibilities.

An attorney's age and health

In terms of trust and shared values, it may seem obvious and sensible to choose your spouse, a sibling or a close friend. However, if they are of a similar age to you or in poor health, it's possible that they themselves could lose decision-making capacity as time passes.

If that happens, they would become unable to act as your attorney. And if your attorney loses capacity after you have, there will be no one able to look after your financial affairs.

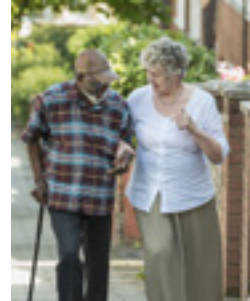
Although you can appoint a new attorney while you have capacity, it's not possible to do so if you have lost it. So changing your enduring power then would be difficult.

To avoid such problems, consider choosing at least one attorney from a younger generation – a younger relative or friend.

Powers of attorney in each state and territory

In some states and territories, you can also nominate a substitute or alternative attorney who can step in if your initial attorney resigns, dies or loses capacity.

More information



It's important to review your enduring power of attorney every few years to make any necessary or desired changes and reduce the chances of any problems arising.

Tell people about your choice of attorney

When you've decided who you'd like to appoint as your attorney, talk to that person. Make sure they understand what the role involves and that they are happy to take it on. This is an important step in making an effective enduring power, as the person you choose might not want, or feel able, to act for you.

Talking with your attorney so they understand when, or in what circumstances, the enduring power gets enacted can also help to maintain your independence and decision-making as much as possible throughout your life. The more they understand about your wishes now, the better they'll be able to make them happen if the time comes.

If the person is happy to be your attorney, then consider talking with other people you are close to – such as family and close friends – about who you've appointed. Making your decision known and understood when you make your enduring power can help to avoid any misunderstandings with other people about their place in your life or any expectations they may have about helping you as you age.

Your family and close friends may also be able to provide advice to the attorney if making your financial decisions does become necessary, so it's a good idea to let them know in advance who you've chosen to look after your affairs.

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'



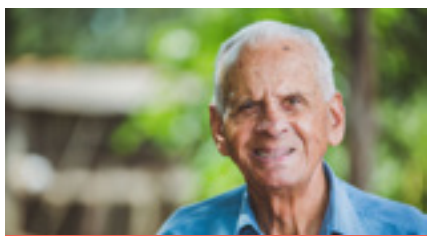
Being an attorney



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.



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