



Frequently asked questions

- » Frequently asked questions
- » Common misconceptions
- » Common questions

Frequently asked questions

Even if you have an idea of what enduring powers of attorney are and how they can help you, you may still have questions to ask or things you're not sure about.

As well as the answers below, there are lots of resources on Compass that can help you with considering and making an enduring power of attorney.



Common misconceptions

I don't need an enduring power of attorney. I'm fit and healthy, and I'll be fine.

Anyone 18 years of age or older can make – and should consider making – an enduring power of attorney. While capacity may commonly be lost due to ageing, it also can happen following an accident or illness. It may happen suddenly or gradually. Potentially anyone, regardless of their current health and circumstances, could lose capacity.

If you don't have an enduring power of attorney in place and you lose capacity, someone will most likely have to apply to a court or tribunal to have a financial manager of your affairs appointed.

This can be expensive and take time and often occurs at a time of illness and distress, so there may be delays and expenses involved in sorting out who will be able to look after anything – from paying for your groceries and electricity to organising aged care services and managing your property – for you.

It would also mean that the important decisions about your finances will be left up to people who may not know about, respect or understand your values and preferences.

It's better to appoint someone yourself while you are able to do so – by making an enduring power of attorney. If you continue to be strong and healthy, your enduring power may never be needed – but at least it will be there, just in case.

My partner will look after my decisions if I can't make them.

Unless you have an enduring power of attorney in place before you lose capacity, your partner may have no authority to look after your decisions for you.

It may seem obvious and sensible to nominate your spouse, a sibling or a close friend as your attorney. However, if they are of a similar age to you, it's possible that they themselves could lose decision-making capacity as time passes. They would become unable to act as your attorney if you also lost capacity, and then there would be no one able to look after your financial affairs.

Consider choosing an attorney from a younger generation – a younger relative or friend – or more than one attorney, if it's permitted in your state.

Powers of attorney in different states and territories

Every Australian state and territory has different rules governing powers of attorney including how you go about changing or cancelling a power of attorney.

For more information visit the [States and Territories](#) section on [Compass.info](#)

I don't know how to make an enduring power of attorney.

Each state and territory in Australia has its own form for making general or enduring powers of attorney. They are available online, along with information to support you in completing the forms.

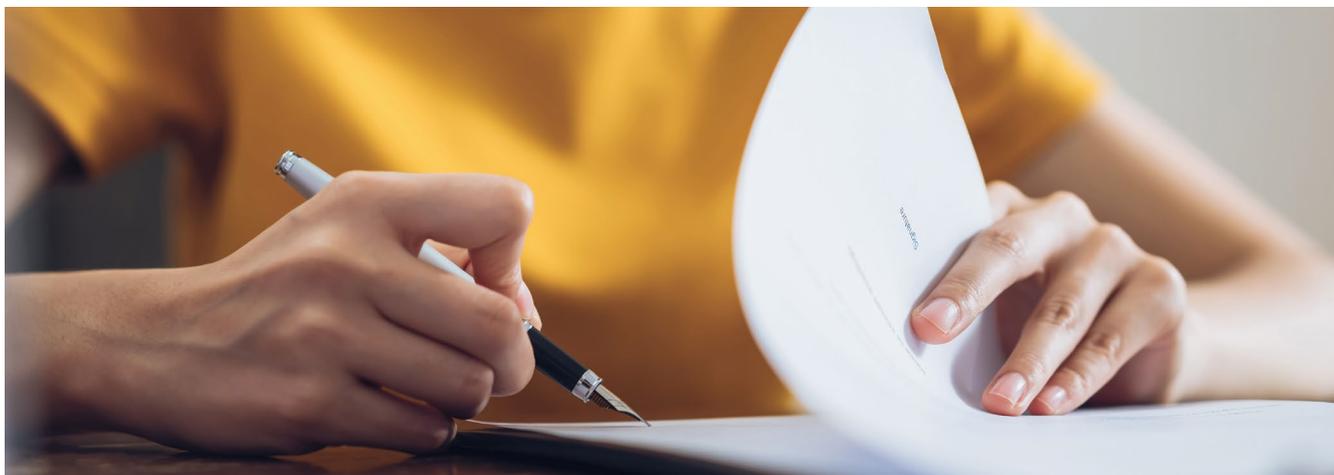
In some states you will need to register, or lodge, your enduring power form once you've completed it.

Visit the relevant page for your state or territory for detailed information on where to find the forms and what else you'll need to know.

- [Australian Capital Territory \(ACT\)](#)
- [New South Wales](#)
- [Northern Territory](#)
- [Queensland](#)
- [South Australia](#)
- [Tasmania](#)
- [Victoria](#)
- [Western Australia](#)

An enduring power sounds complicated.

An enduring power of attorney is a key strategy that you can take to make sure you can live your best life as you get older. This is called 'future planning'. And although making an enduring power may seem daunting, the process is not so hard.



There are four basic steps involved.

1. Think about what you want life to look like in your later years

- **Consider things like where you will want to live, and who with.** Perhaps you have a preference of aged care service provider, and there might be some social, cultural or physical activities you will want to continue. What lifestyle values are important to you now when you make your decisions?
- **Look at the financial decisions you make now** – anything from paying the newspaper bill to managing a business. Understanding your current financial decisions may help you to think about how you would want each one to be managed if you lost capacity and who might be well suited to managing it for you.

2. Talk to other people you trust and know well

- **Friends who have already made an enduring power of attorney may have tips and suggestions to share.** Family, friends, carers and neighbours may have suggestions to offer. Some people may find it uncomfortable to talk about ageing and possible sicknesses, but the more you talk with others about these topics, the better you'll be able to plan for your future and for issues that may (or may not!) arise.
- **You can also get advice from your solicitor** or from reliable organisations like your state's Public Trustee or Legal Aid service or a community legal centre.
- **Once you have some thoughts about who you'd like to appoint as your attorney, talk to that person about it.** Find out what ideas and thoughts they have, and make sure they are prepared to agree to the role.

3. Write down everything that's important to you

- **Make notes and lists of your wishes, preferences and financial commitments.** Write instructions for specific decisions that may need to be made.
- **Record your values and priorities for decision-making, too.** This might include notes about things like cultural, ethical, spiritual or other lifestyle preferences that you will want respected.

4. Formalise your wishes and decisions

- **Use the notes and lists to help you as you make your enduring power of attorney.** This involves filling in a form and following the particular process for your state or territory. You can find information, instructions and links to the relevant form for your jurisdiction on.
 - [Australian Capital Territory \(ACT\)](#)
 - [New South Wales](#)
 - [Northern Territory](#)
 - [Queensland](#)
 - [South Australia](#)
 - [Tasmania](#)
 - [Victoria](#)
 - [Western Australia](#)



I don't want someone managing everything for me; I can still do my own banking and shopping.

Capacity can be 'decision-specific', which means that the person might have capacity to make some decisions but not all of them. You can authorise your attorney to make certain decisions and not others, and you may be able to appoint more than one attorney and ask them to look after different financial matters.

Someone with decision-specific (or partial) capacity may be able to make smaller, day-to-day decisions for themselves and not ever need bigger decisions made – for example, if their housing and care arrangements are already settled. So their enduring power may never take effect, because they still have capacity to make the decisions that they need to for themselves.

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](#)

My partner is getting forgetful but says they're not. I don't know what to do.

Deciding whether a person has capacity can be hard. Sometimes it's obvious to everyone – even the person themselves – that their decision-making ability has diminished, but other times it's not so simple. Loss of capacity can also be partial, which may make it harder to be certain.

It may help to talk to other people about your concerns – family, friends, neighbours who know your partner well – to see if they've noticed any changes.

Determining whether a person has capacity can be as simple as asking a lawyer or GP to conduct a review or obtaining opinions from experts such as geriatricians, psychiatrists or neuropsychologists.

If no one can agree on your partner's capacity, you may be able to apply to the Civil and Administrative Tribunal (found in most states) for a determination to be made.

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.

For more information visit the [An introduction to capacity](#) section on [Compass.info](#)

English is not my first language, and I find it hard to explain what I want done. People get impatient with me, so sometimes I don't bother asking.

All older people have the right to be able to access the information they need and to communicate their decisions. These rights don't depend on the language you speak, where you live, how old you are, or any other factors.

Having decision-making capacity doesn't rely on the ability to speak English (or, in fact, on any perception of communication ability). Other people should make every effort to provide you with whatever will enable you to communicate your decisions, access information and make your wishes and preferences known.



If, for example, you have difficulty communicating in English, you should be provided with whatever is necessary to allow you to understand and communicate – perhaps an interpreter or translation technology.

Your rights and enduring power of attorney

Everyone has recognised rights that don't expire as you age, regardless if you live alone or with others, have capacity or have lost it, receive aged care or manage independently, you still have rights.

For more information visit the [Your rights and enduring power of attorney section](#) on [Compass.info](#)

I'm worried that my family won't let my same-sex partner make my decisions.

Anyone who loses capacity without an enduring power of attorney in place faces the risk of their decision-making falling to someone who won't understand, respect or value their preferences, priorities and lifestyle values.

If you make an enduring power that appoints your partner as your attorney, they will have authority to act as your decision-maker. Making an enduring power of attorney as part of your future planning is the best strategy for ensuring that your preferences and values will be respected.

LGBTQIA+ people and enduring powers

LGBTQIA+ people may face particular challenges in making their future planning arrangements.

For more information visit the [LGBTQIA+ people and enduring powers section on Compass.info](#)

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.

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



Common questions

I already have a will, so why do I need an enduring power?

Many people make their wills to ensure that their wishes for the distribution of their assets (such as property, money and shares) will be carried out after they die.

However, a will does not provide authority to anyone for managing your financial affairs while you are alive, even if you lose capacity.

So it's wise to make both a will and an enduring power.

I already have a lawyer. Why do I need an attorney, too?

In Australia, attorneys and lawyers are two very different roles. An attorney is someone authorised under a general or enduring power of attorney to make decisions for another person in certain situations where the person can't make their own decisions.

If you already have a lawyer, they will be able to advise you about making a power of attorney.



Couldn't my solicitor make decisions for me if I couldn't make them?

Your solicitor will not have the legal authority to manage your financial decisions unless you make an enduring power and appoint them as your attorney.

A solicitor is one of the many people you can nominate as your decision-maker, but they won't be able to make your decisions just because they are your solicitor. You must give them that authority in an enduring power of attorney if you want them to manage your financial affairs.

What if I change my mind about who is to be my attorney?

You can change or revoke your enduring power at any time as long as you still have decision-making capacity. Depending on where in Australia they live, different rules or processes will be involved [see jurisdictional information].

In fact, it's important to review your enduring power of attorney occasionally in case there's been a change in your circumstances – for example, you've changed your mind about your original choice of attorney or the attorney is now unable to fulfil the role.



What if people don't make my decisions the way I want them to?

An enduring power of attorney is a great tool for ensuring your financial decisions will be made the way you would like if you lose capacity. The enduring power sets out what decisions can and can't be made for you and allows you to authorise someone you trust to make the decisions.

An important step is to choose the best person (or people, if you choose more than one attorney) to manage your affairs if you can't do it. Then, talking to that person about your values, preferences and wishes enables them to make the decisions in appropriate ways.

If you have nominated an attorney but have doubts later, you may be able to change the enduring power and choose another attorney, as long as you still have capacity.

Once an enduring power of attorney takes effect (which may be immediately or because you have lost capacity), other people close to you may be able to apply to a tribunal to have your attorney's actions investigated if there is doubt that they are acting in your best interests. See the articles about powers of attorney in your state or territory for more information on what can be done.

Understanding your human rights may help, too. Your right to the things you need doesn't stop just because you're older.

Your rights and enduring power of attorney

Read more about your rights and how they can support your future planning here.

For more information visit the [Your rights and enduring power of attorney section on Compass.info](#)

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.

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

I have no close family, so who would be my attorney?

You may be surprised to know how many options you have for choosing an attorney. Friends, neighbours, public and private trustees, solicitors and accountants may be able to take on the role for you.



My daughter expects to be my attorney because I have no other family. She's not good with managing her own money, but who else will look after mine if I can't?

Generally, you may appoint anyone that you trust and think is most suitable to be your attorney(s), as long as they are 18 years old or older and have decision-making capacity. It's important to choose someone suitable for the role, and that may not always be a family member.

While family members may be the obvious choice to be attorneys, they aren't the only option. Sometimes friends or neighbours with the right skills and experience may be more suitable. There are even organisations that could be your attorney.

And in some states, you can have more than one attorney, too.



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



Powers of attorney in each state and territory



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



Australian Government
Attorney-General's Department



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