



Enduring power of attorney in South Australia

Learn more about making and changing an enduring power of attorney in South Australia.

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

Introduction

Actively planning for the future may help to ensure that you live your later years in wellbeing and security.

Sometimes, due to accidents, illness or ageing, people become unable to make their own decisions about financial matters. But you can take steps now to ensure that if this should happen to you, your decisions will still be made – and made in accordance with your wishes and preferences.

Types of powers of attorney

In South Australia there are two legal documents that allow you to appoint someone else to act as a decision-maker on your behalf.

1. a general (non-enduring) power of attorney
2. an enduring power of attorney

These two legal documents can specify who can make decisions for you, which decisions they can make, and when they can make them. Your nominated decision-maker is known as the 'donee', and you are known as the 'donor'.

To be able to make a power of attorney, you must:

- be over the age of 18
- understand the effect of making a power of attorney or advance personal plan
- have decision-making capacity at the time of making the document

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 covers financial matters only, and it can only be used while you have capacity to make your own decisions.

Typically, the power of attorney 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.

With this document, your donee can only act on your behalf for the time, task or the circumstances you have specified. For example, if you regularly travel, you might authorise your donee to make financial decisions whenever you are overseas.

If your general power of attorney does not have any specified limits in place, it ends.

2. Enduring power of attorney

An enduring power of attorney allows you to appoint a person, several people or a trustee organisation to make financial decisions – such as paying bills, or selling your home and using the funds to secure you a place in a residential aged care facility – if you no longer have capacity to make your own decisions.

You can only make an enduring power of attorney while you still have the capacity to make your own decisions.

You can specify when the enduring power comes into effect, whether prior to you losing decision-making capacity or only once you have lost decision-making capacity.

For example, you might specify that your appointed donee can pay bills on your behalf whenever you are travelling overseas but only take over making all your financial decisions when your doctor assesses you as no longer having capacity to make decisions.

Powers of Attorney and Agency Act 1984

Both general and enduring powers of attorney in South Australia are governed by the Powers of Attorney and Agency Act 1984 which you can read online on the State Government's website.

More Information



Report on the operation of powers of attorney in South Australia

The South Australian Law Reform Institute has recently published a report on the operation of powers of attorney in South Australia that includes recommendations aimed at preventing misuse of powers of attorney. The Government of South Australia is currently considering these recommendations. If you're interested in reading more, the report is available online on the Adelaide Law School's website.

[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 donee may need to act on your behalf in financial matters in other jurisdictions.

What is 'capacity'?

Capacity is a legal term that refers to a person's ability to make their 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

In most cases an enduring power of attorney only takes effect when a person has 'impaired capacity', which is a legal term meaning that you are no longer capable of making your own decisions. If you are no longer able to understand the legal action or arrangement, you may be considered to be 'legally incapacitated'.

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

Both general and enduring powers of attorney are only for legal and financial matters.

If you want to appoint someone to make decisions about your personal life and future medical care, you will need to make an Advance Care Directive.



Advanced Care Directives

These are legal documents that you can use to appoint one or more substitute decision-makers to act on your behalf in matters relating to your personal life, where you live, and your health care if you lose decision-making capacity.

Advanced Care Directives allow you to record your wishes and values to guide any future healthcare decisions that may need to be made for you. You can also set out any instructions for refusing health care and appoint substitute decision-makers.

Advance Care Directives replaced Medical Powers of Attorney, Enduring Powers of Guardianship and Anticipatory Directions in July 2014. (However, if you have previously completed any of these, they remain legally valid.)

Legal Service South Australia Law Handbook

See the Legal Service South Australia Law Handbook for more information about this decision-making option and the legislative changes.

More Information



Choosing an attorney

Who can be appointed as a donee?

In South Australia you can appoint as your donee anyone over the age of 18 who has the capacity to make their own decisions. You can appoint family members, friends, a lawyer or a licenced trustee company.

Eligible concession card holders can appoint the Public Trustee. However, they no longer act as donee for non-concession card holders. Check if you are eligible on their [website](#).

If the Public Trustee was appointed to act on your behalf in an existing power of attorney and you don't need to make any changes to it, they will still act on your behalf.

In South Australia, any donee appointed must agree to act for you by signing the enduring or general power of attorney to show that they have accepted the role. You cannot appoint someone against their wishes or without their knowledge.

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.

[More information](#)



Can I have more than one donee?

In South Australia you can appoint multiple people to act as donees. If you do appoint more than one person, you can authorise them to make decisions individually (known as 'severally'), together (known as 'jointly') or a combination of jointly and severally.

For example, you could require all decisions related to real estate to be made jointly but allow each of your donees to make decisions severally about spending money on your day-to-day expenses.

In this article, 'donee' refers to both one or multiple donees.



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

The South Australia the legislation requires the donee to act in ways that are in your interests and reflect or consider your wishes. Where possible, they should support your participation in decision-making.

Your donee must:

- act in your best interests
- keep good records of transactions and decisions
- keep your finances separate from their own

Your donee can reimburse themselves for reasonable costs that they incur when managing your affairs, but they must keep receipts to prove these costs.

You can limit or place conditions on the donee's decision-making power. For example, you can require them to submit accounts to a nominated accountant every year. You can explicitly authorise the donee to make specific gifts or restrict them from giving gifts to particular people.

In South Australia a donee cannot simply resign from the role if, at the time, the donor does not have decision-making capacity, If they wish to resign, they must seek permission from the Supreme Court of South Australia and seek legal advice.

Consideration of an application to the [South Australian Civil and Administrative Tribunal \(SACAT\)](#) for administration will be necessary, as administrators appointed by SACAT are able to vary, amend or revoke an [enduring power of attorney](#).

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

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

Once you lose decision-making capacity, you will not be able to cancel the enduring power of attorney. However, another person with an interest in your welfare can apply to the [Supreme Court of South Australia](#) or to [SACAT](#) for advice and direction or to have the enduring power of attorney varied or revoked. SACAT can appoint an independent administrator.

While it is a serious 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 to consider placing limitations on the decisions they can make.

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

If you do not have an enduring power of attorney and you no longer have capacity to make your own financial decisions, someone with an interest in your welfare can apply to SACAT for an Administration Order.

If SACAT cannot identify a suitable family member, friend or trustee company, they may appoint the Public Trustee.

Making and changing

You can download free standard forms for making a power of attorney from the Land Services SA website.

- [Power of Attorney Form P1](#)
- [Enduring Power of Attorney Form P2](#)

A downloadable do-it-yourself-kit can be purchased from the Legal Services Commission of South Australia. The kit contains all the necessary forms, detailed instructions on how to complete the form, and answers to common questions. [Find the kit here](#). The cost in November 2021 was AU\$22.

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

You do not need to get a lawyer to prepare 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 assistance in preparing the documents.

Find a lawyer

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

[More Information](#)



Advice and document preparation

The Public Trustee provides free advice and document preparation for eligible concession card holders only. To check your eligibility, see here.

[More Information](#)



Legal advice

Members of the Council on the Ageing (COTA) South Australia can access legal advice through Adelta Legal, who will assist with the preparation of simple documents for a set fee. For more information, see COTA SA's website.

[More Information](#)



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

In South Australia you only need to register a general or enduring power of attorney if the document authorises the donee to act on real estate matters on your behalf.

If this is the case, the power needs to be registered with Land Services South Australia. A fee will apply. Visit the [Land Service South Australia website](#) for more information.

There are good reasons for registering a general or enduring power of attorney anyway, including to ensure that the donee may at some stage be required to deal with real estate matters on your behalf.

Registration also:

- ensures there is a copy of the document available if the original is lost
- creates a public record of the power of attorney
- provides the donee with clear evidence for others that they are authorised to act on your behalf.

You should give certified copies of enduring and general powers of attorney to all your decision-makers, and it's a good idea to give copies to your bank and other key people in your life. (This also applies to copies of your revocation if you later revoke your power of attorney.)



Who can witness a general or enduring power of attorney?

General and enduring powers of attorney can be witnessed by any person authorised to take affidavits, such as a:

- Justice of the Peace
- police officer
- solicitor

The person making the appointment must sign in front of the witness, but the person being appointed does not have to sign at the same time.

Can I change or cancel my power of attorney?

You can change or cancel a general power of attorney at any time. If you have registered the power of attorney and either cancel or make changes to it, you will need to revoke the registered version and, if necessary, register a new or amended power of attorney.

If you cancel a registered power of attorney, you will need to complete a [withdrawal form](#) and submit it to [Land Services Australia](#).

Whether or not you registered your power of attorney, you will need to tell your donee that you have changed or cancelled it. It's recommended that you do this in writing so that there is a clear record of your advice.

If you have given your bank or any other people a copy, you will need to let them know that it is not longer in operation.

An enduring power of attorney can only be cancelled or changed if you still have capacity to make your own decisions. [You can access the form on Compass.info](#). If you no longer have decision-making power, either the Supreme Court of South Australia or an administrator appointed by [SACAT](#) can revoke or change your enduring power of attorney.



Checklist and resources

This [checklist](#) will guide you through the process of making an enduring power of attorney (EPOA, also referred to as an EPA) in South Australia. 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 - SA

This checklist will guide you through the process of making an enduring power of attorney (EPOA, also known as an EPA) in South Australia.

[More information](#)



More resources

The Law Handbook - Legal Services Commission of South Australia

The Law Handbook produced by the Legal Services Commission of South Australia is an online resource that provides information about legal matters in South Australia, including key future planning documents such as enduring powers of attorney and Advance Care Directives.

[More Information](#)



Easy-to-read brochure about powers of attorney

The Legal Services Commission of South Australia has an easy-to-read brochure about powers of attorney, including advice about ways to safeguard your interests when making yours.

[More Information](#)



The duties and responsibilities of your enduring power of attorney

'The duties and responsibilities of your enduring power of attorney', a leaflet produced by the Alliance for the Prevention of Elder Abuse, provides an overview of the key responsibilities of an appointed donee. The information is relevant to both donors and potential donees.

[More Information](#)



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

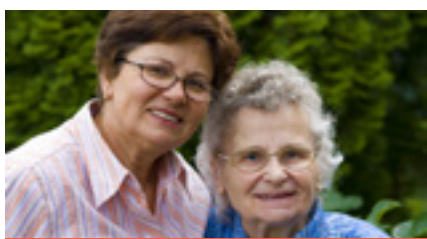
This booklet explains the process, provides useful tips on completing the form, poses questions to consider when choosing the person who will act for you in financial matters when you no longer have capacity, and includes example wording and personal stories.

[More Information](#)



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



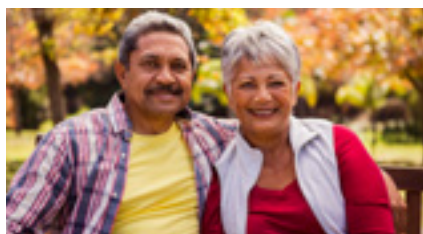
Choosing an attorney



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.