

CHOOSING AN ENDURING POWER OF ATTORNEY

What is an Enduring Power of Attorney:

- The Principal gives the Attorney the power to step into the Attorney's shoes;
- Only operates while the Principal is alive;
- Starts on different commencement triggers;
- The Principal needs to have the legal capacity to donate the power;
- Endures beyond the time the Principal loses capacity to revoke the document



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ENDURING POWER OF ATTORNEY

What is an Enduring Power of Attorney
(continued);

- Financial and Personal matters can be contained in the one document in Victoria (but can also be separated out or excluded);
- You can add conditions, limitations or additional powers (and your lawyer can help you identify where these might be appropriate).



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ENDURING POWER OF ATTORNEY

What's the risk of not having an Enduring Power of Attorney? If you lose capacity to make decisions for yourself:

- There are no "next of kin" rights for spouses or partners;
- Someone will need to apply to VCAT (or local tribunal) to make decisions on your behalf;
- There needs to be proven incapacity, an application, a hearing, then an Order.



ENDURING POWER OF ATTORNEY

Relying on a VCAT Order isn't ideal because:

- You won't have control over who applies;
- Different members of your family may apply and it would be a contested matter;
- VCAT may appoint a professional Administrator or Guardian who doesn't know you, your values, & will charge for their work;
- The Order might be overly restrictive and difficult to comply with;
- Proving incapacity can sometimes be difficult;
- Stress and delay will make a bad situation worse;
- Loss of privacy if the hearing and records are public;
- The added cost and risk of paying personally.



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WHAT CAN AN ATTORNEY DO

Unless excluded by legislation or a condition in the document, an Attorney can decide and do anything a Principal could have.

Attorneys are always bound by the overarching obligations in the legislation to always make decisions in the best interests of the Principal, and to always defer to the Principal where they may have some limited ability to make decisions for themselves.



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WHAT CAN AN ATTORNEY DO

Examples of **Financial** matters:

- Pay all bills and expenses, budget for you;
- Ability to carry out all transactions, including moving money and shares;
- Managing property, including the rental, sale, and purchase;
- Insure and maintain all assets;
- Liaising with Centrelink, ATO, etc. on your behalf;
- All legal matters, including bringing and defending a claim;
- Engage professional advisors (lawyers and accountants);
- Manage your money to support your dependants.



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WHAT CAN AN ATTORNEY DO

Examples of **Personal and Lifestyle** matters:

- Decide where and with whom the Principal should live;
- Control who can visit you, when, for how long;
- Put in place support services such as shopping, cleaning;
- Organise personal care appointments, such as hair dresser, podiatrist;
- If the Principal should participate in education or social activities;
- Day to day life management decisions, such as diet, and dress.



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WHAT CAN AN ATTORNEY DO

Examples of things an Attorney **cannot do** on your behalf:

- Vote;
- Make decisions about the care of your children;
- Make or revoke a Will;
- Make or revoke an Enduring Power of Attorney;
- Consent to marriage or dissolve a marriage;
- Consent to a sexual relationship;
- Enter into surrogacy arrangements;
- Consent to an unlawful act;
- Manage your estate on your death.



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MEDICAL TREATMENT DECISIONS

In Victoria the power to make medical treatment decisions on behalf of another person is through a document titled: "Appointment of a Medical Treatment Decision Maker".

In NSW medical decision making is bundled together with personal and lifestyle decision making in a document called: "Enduring Guardianship".

It is different in every State, in QLD the financial, lifestyle, and medical decisions are all in the same document (long or short form).



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MEDICAL TREATMENT DECISIONS

This is what we tell clients about the Victorian document (AMTDM):

- The power only commences once you cease to have decision making capacity;
- Your medical practitioner will check if you've consented to, or refused treatment in a valid Advanced Care Directive;
- You can only appoint one person at a time;
- Don't include anyone who you would not like to make medical decisions for you;
- There are next of kin rights;
- Options for storage and copies of the document;
- VCAT can appoint someone to make medical decisions or resolve disputes.



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MEDICAL TREATMENT DECISIONS

Your Medical Treatment Decision Makers should consider these things when making decisions on your behalf;

- What is the decision they reasonably believe you would have made for yourself if you had the capacity to;
- Your preferences and values (written and verbal wishes);
- Who else would you have expected them to consult with;
- The nature of the medical treatment, effects, consequences, and alternatives;
- Promote your personal and social wellbeing.



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