

## You Decide Who Decides

Making an enduring power for financial decisions

October 2019



# Acknowledgements

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## Disclaimers

The legal information provided in this guide is of a general nature and readers may require legal advice for their specific circumstances. OPA expressly disclaims any liability howsoever caused to any person in respect of any action taken in reliance on the contents of this publication. If you need legal advice, the organisations listed at the back of this guide may be able to help you.

Personal stories appear in this booklet to illustrate the choices available when making enduring powers. The stories provide examples of the types of considerations that may guide people's choices. The

personal stories are hypothetical and any resemblance to any person is coincidental.

## About AGAC

AGAC member organisations have a role in protecting adults who have a disability that impairs their capacity to make decisions and manage their affairs. It is comprised of Public Advocates and Guardians, Boards, Tribunals and Public or State Trustees or their equivalents throughout Australia.

## About the cover image

The cover image is a reproduction of an artwork



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# Explanation of key terms used

## **Appointed decision-maker**

Your appointed decision-maker for financial decisions, also known as an ‘attorney’, ‘decision-maker’ or ‘donee’, means the person you appoint under an enduring power to make financial decisions on your behalf.

## **Decision-making capacity**

The ability to make a decision is called ‘decision-making capacity’. All adults are presumed to have decision-making capacity. This should only be questioned if there is good reason to do so.

Generally, you have decision-making capacity if you can understand the nature and consequences of a decision after it is explained to you, and can communicate it in some way. See information in your state or territory for the specific definition.

You may have decision-making capacity for some types of decisions but not others, depending on how complex the decision is.

Your decision-making ability may also fluctuate. For example, you may be more alert in the morning and able to make decisions that you would struggle to make later in the day. Your ability to make decisions can also be temporarily affected by factors like medication, stress, illness or grief.

When this guide refers to you being able to make a decision, it means you have decision-making capacity for that decision.

## **Enduring power**

An enduring power is a document which enables you to appoint a decision-maker to make certain types of decisions on your behalf.

Unlike a non-enduring power, an enduring power can be used even if you do not have the ability to make decisions for yourself.

This guide is about enduring powers for financial decisions. In most states and territories this is known as an ‘enduring power of attorney’. In the Northern Territory, it is now known as an ‘advance personal plan’. In this guide, the term ‘enduring power’ is used to mean any of these.

## **Financial decisions**

‘Financial decisions’ means decisions relating to your financial or property affairs, including any related legal decisions. Examples of financial decisions include paying expenses or selling a property. See information in your state or territory for the specific definition.

## **Relevant body**

‘Relevant body’ means the board, court or tribunal in your state or territory.

# What this guide is about

This guide can help you decide whether to make an enduring power for your financial decisions.

An enduring power for financial decisions is a legal document that enables you to appoint another person to make financial decisions on your behalf. It can still be used even if you become unable to make decisions yourself.

While this guide is about financial decisions, you can also appoint someone to make personal and/or health or medical treatment decisions.

It can be difficult to decide whether to make an enduring power for financial decisions. Enduring powers can be very useful because they let the person you appoint look after your financial affairs, for example by paying your bills or selling property. However, enduring powers can also be misused, either by accident or deliberately.

This guide will help you decide whether making an enduring power for financial decisions is right for you.

If you do decide to make an enduring power, this guide will help you reduce the risk of things going wrong.

You can reduce the risk by:

- choosing the right person or people to make financial decisions for you
- communicating your wishes about these financial decisions
- in some cases, by putting instructions and conditions in your enduring power.

If you decide to make an enduring power, this guide has helpful tips, personal stories and examples of wording that you can use.

No one can make an enduring power on your behalf and no one can force you to make one. It is your choice whether to make an enduring power.

## The law in Australian states and territories

Each Australian state and territory has its own laws about enduring powers. These laws differ, so this guide should be read with information from your state or territory about enduring powers for financial decisions.

To check for changes to the law see information in your state or territory.

See page 40 for where to find the information in your state or territory.



## Legal advice

This is a guide only. The law in this area is complex. It can be helpful, and some organisations recommend, that you get legal advice for your circumstances.

If you choose to use a lawyer, this guide will help you prepare before you meet with them. It will help you to decide who you want to appoint, and how you want decisions to be made. Look for a lawyer who understands this area of law. You may also wish to seek financial advice about your specific circumstances.

# Why plan for future financial decisions?

You have the right to make your own decisions and to be supported to do so.

However, there may be a time when, even with support, you don't have the ability to make decisions yourself.



**See page 4 for more about this.**

Having the ability to make your own decisions can be described as having 'decision-making capacity'.

You may suddenly and unexpectedly lose the ability to make your own decisions. For example, you may suddenly become unable to make decisions because of a serious injury, stroke or car accident.

Alternatively, you may be diagnosed with a condition, such as dementia, that gradually reduces your ability to make decisions.

**As you become older, no one should assume you are unable to make your own decisions just because of your age.**

Many people mistakenly think that, if they do not have the ability to make a financial decision, then a family member or close friend will automatically be able to make the decision for them and manage their financial affairs. This is not always legally the case.

That is why it is important to plan ahead — to make sure that future decisions about your financial affairs are made as you would want.

## **Martina's story**

Martina has early signs of dementia.

Her family informally assist her with her day-to-day finances when she needs this help.

One day, Martina received an unexpectedly large bill. She felt worried, so she asked her son to talk to her service provider. The service provider said that they would only talk to her son if she signed a form to say she wanted him to speak for her. Her son helped her to read and understand the form. She signed the form and sent it to the service provider and the matter was eventually resolved.

The experience made Martina think about how she could prepare for problems like this in the future.

She wants to plan how her future financial decisions will be made before her health gets worse and she is unable to make decisions, or give another person permission to help her.



“

You have the right to make your own decisions and to be supported to do so.

”

## Why make an enduring power for financial decisions?

Making an enduring power for financial decisions enables you to appoint a trusted person (or people) to make financial decisions for you, if you can't make the decisions yourself. These could be decisions about paying expenses or selling property.

For some decisions, the person helping you must have legal authority to do so. For example, making an enduring power for financial decisions is the only way that you can personally give someone legal authority to sell your home if, in the future, you become unable to make the decision to do so yourself.

Other advantages of making an enduring power are that:

- you can choose a trusted person (or more than one person) who knows you and what you value in life, and you can discuss your views and wishes with them while you have the ability to make decisions
- you can choose a person (or people) who will involve you as much as possible
- it can help avoid family conflict if you make it clear who you want to make financial decisions for you, and how
- you can seek legal or financial advice for your circumstances
- as soon as the enduring power is fully completed (and, if applicable, registered) the document is ready for use, if needed

- you can 'tailor-make' the power, including by putting conditions or restrictions on the way it is used. See page 25 for more information.

You cannot 'tailor-make' the power in Western Australia if you want your appointed decision-maker to be able to deal with property, for example, to be able to sell your house.



## What happens if I don't make an enduring power?

If you:

- don't make an enduring power and
- need someone with legal authority to make a financial decision because you are unable to make the decision yourself,

someone you know can apply to the relevant body in your state or territory to appoint someone to make the decision for you.

The person making the application will need to fill out an application form, provide evidence that you are unable to make the decision and attend a hearing. This may have to happen at a difficult time for you and those close to you, if you are very unwell.

The relevant body could appoint someone you know, or an independent decision-maker such as the Public Trustee or private administrator. If an independent decision-maker is appointed, they will do their best to make financial decisions that reflect your wishes. However, they may not know you as a person or understand your wishes as well as a person involved in your daily life. They may also charge a fee.

Registration is required in Tasmania and is required in some other states and territories, in some circumstances. See page 34 for more about this.





## Are there any risks in making an enduring power?

Most enduring powers work well. However, sometimes things can go wrong.

It might be that the person you thought you could trust to act on your behalf isn't careful or reliable, misuses your money or takes advantage of you. This type of conduct can be abusive of you and your rights. Alternatively, your decision-maker may not understand their obligations. You may face challenges in recovering your money if things do go wrong.

However, you can reduce the risk of this happening. For example, you can make sure that your appointed decision-maker is aware of their responsibilities when they agree to take on the role. In some cases, you can place limits and conditions on your enduring power, or involve more than one person.



See page 25 for tips and example wording.

If things do go wrong, there are steps that you and others can take to:

- stop the misuse of the enduring power from continuing
- in some cases, recover funds.

For example, if you have capacity to do so, you can revoke (cancel) the enduring power for financial decisions at any time. Otherwise, someone close to you can apply to the relevant body in your state or territory to cancel the enduring power for financial decisions. However, this is only an option if you or someone else knows about the misuse of the power. It is also sometimes



There is help available if things go wrong. See page 40 for details.

difficult to recover money that has been spent.

## Is making an enduring power right for me?

It is your choice whether to make an enduring power. You may decide not to make an enduring power if, for example, you don't have anyone suitable to appoint. This guide will help you to decide whether making an enduring power is right for you.

## When should I make an enduring power?

If you do decide to make an enduring power, you must make it while you have decision-making capacity to do so.

This is because, for it to be legally effective:

- you must fully understand what you are signing
- in some states and territories, the person or people who witness you making your enduring power must be satisfied you have decision-making capacity to make it.

Witnesses must be satisfied that you have decision-making capacity to make an enduring appointment in the ACT, NSW, NT, Qld and Vic. Then they watch you sign and sign after you.



If there is any doubt about your decision-making capacity to make your enduring power, you should speak with your doctor, community worker, social or allied health worker.



## Everyone can plan ahead

In this guide, family includes biological family, extended families, step-families, adoptive families and families of choice. Some family members may also be carers.

The understanding of family, and how decisions are made within families, varies between cultures. For example, family for Aboriginal and Torres Strait Islander people may include cousins and others who are thought of as members of the family.

Planning ahead can benefit you and your family, regardless of your experiences and cultural background.

This guide relates to the laws in Australia. If you have experience of decision-making in another country, some of the suggestions in the guide may be new to you, or differ from how decisions are normally made in your family and your culture.

This booklet is for everyone in Australia.



# Ways to plan ahead

There are many ways to plan ahead to help you have choice and control over your future financial decisions.

Steps you can take to plan ahead include:

- working out what is important to you
- sharing your wishes with those you trust and who are close to you
- making some simple, informal arrangements
- making an enduring power, if it is right for you and your circumstances.

## Where to start

Whatever action you decide to take, a good place to start is to talk to those close to you about your wishes and what is important to you.

This guide focuses on financial decisions, but these conversations may also cover what is important to you in relation to other decisions, such as decisions about:

- your medical treatment or healthcare
- how and where you live and what supports or other assistance you may need.

Having these conversations early means that you can:

- consider things carefully while you can make decisions and are not under pressure
- make sure that the people close to you know what you would want to happen.

### Starting a conversation

Conversations about planning for the future can be difficult.

There are different ways you can try to start a conversation with your family and friends, particularly if they don't want to discuss what might happen to you in the future. You could talk about what has happened to other people you know or something you've seen on television or heard on the radio that has started you thinking.

The more information that you can give to those who are close to you, the better prepared they will be to make a decision the way you would want it to be made.

### Other ways to make your wishes known

You may not have close family or friends who you would be comfortable discussing your wishes with. If so, it can be helpful to write down your wishes or keep notes on your thoughts about the future.

If you write down your wishes and give a copy to someone you trust, or leave information about where a copy of this can be found, your wishes can be provided to the relevant body if needed in the future.

Keep in mind, however, that what you've written down in this way is not legally enforceable.

## Options to consider

Some, or all, of the options set out in the table below may:

- make it easier to manage your financial affairs for as long as possible
- make sure that you are supported if you need help
- make sure someone with legal authority can make decisions for you, if you cannot.

Decision-maker	Option to consider	Example or comments
You	Set up direct debits to authorise payment of bills from your account.	For example, you can authorise your phone company to withdraw the amount that you owe from your bank account each month when your bill is due.
You	Centrelink deductions can be made from your Centrelink payments to pay bills directly.	You can set up a deduction with Centrelink to pay your electricity bill or rent on a regular basis.
You with support	A debit card can be provided to another person to use up to a set limit.	For example, you might set up a separate account with a small amount in it for your shopping expenses. You could give another person a debit card to access this money to help you with your shopping.
You with support	A gift card can be provided to another person.	For example, you might give someone a gift card for a set amount to use to pay for your shopping.
You with support	Authorise another person to help you deal with telecommunications, utility companies, government agencies or similar organisations.	Important: Be sure that you understand what you are authorising. For example, are you allowing someone to speak on your behalf, or are you letting them sign you up for unnecessary or expensive goods and services?  (Note: In Victoria, you can appoint a 'supportive attorney' and authorise them to ask for information on your behalf or communicate your decision, but the decision is still made by you.)

Decision-maker	Option to consider	Example or comments
<p>The person (or people) you appoint</p>	<p>Make an enduring power appointing a person (or people) to make financial decisions on your behalf when you are unable to make a decision yourself.</p>	<p>Note: In some states and territories, the person you appoint is required to support you to make decisions, if possible. This is best practice, to the extent possible within the law in each state and territory.</p> <p>In some states and territories, you have the option to allow your appointed decision-maker to make decisions on your behalf as soon as the enduring power has been completed, even if you are still able to make the decision yourself (ACT, NSW, Qld, SA, Vic, Tas and WA). This might be useful if, for example, you find it difficult to physically go to the bank or shops.</p> <p>Important: This does not take away your right to make your own decisions and be involved in the decision-making process.</p>

# Section 1

## Making an enduring power for financial decisions



# Choose someone you trust

If you decide that making an enduring power is right for you, the most important decision is choosing who to appoint. It is essential that you trust the person you appoint because, depending on the decisions you authorise them to make, they will have considerable powers and access to your money and property.

## Responsibilities of your appointed decision-maker

The role of an appointed decision-maker is powerful and there are significant responsibilities.



See pages 40-43 for where to go for more information about the laws where you live.

Your appointed decision-maker for financial decisions must:

- act to protect and promote your interests
- not profit from the appointment
- avoid conflicts between their interests and yours
- act honestly, with care and diligence.

They must also keep your money and property separate from their own. This does not apply to property owned jointly by you and your appointed decision-maker.

### Luis' story

#### Misunderstanding obligations – Part 1

Luis appointed his son, Martin, as his appointed decision-maker for financial decisions.

Martin regularly does Luis' grocery shopping when he does his own.

He puts all the groceries through together. Sometimes he pays using his money and, on other occasions, he uses Luis' funds.

He thinks that this is all right because it all works out in the end.

In this example, Martin has breached his obligations by not keeping his property separate from Luis' property and by using Luis' money for his own purchases. Martin must pay for his own shopping separately, and must not deposit Luis' money into his own bank account. All Luis' money should be in separate bank accounts.

Your appointed decision-maker must also keep accurate records of the financial decisions they make.

### Luis' story continued

#### Misunderstanding obligations – Part 2

Martin throws the receipt in the bin and does not keep a record of what he purchased with Luis' money.

In this example, Martin has breached his obligations to keep accurate records about the decisions he has made on behalf of Luis. Martin must keep receipts for the items bought for Luis.

You and your appointed decision-maker should understand these responsibilities.

## How to choose

It can be useful to start by identifying the qualities that are important to you.

Examples of qualities that are important to consider for enduring powers for financial decisions include:

- willingness to listen to, respect and act on your wishes and preferences, rather than their own
- trustworthiness
- the skill and time required to perform the role
- the ability to manage property and money well
- the ability to stay calm in a crisis
- the confidence to speak up on your behalf (for example, the confidence to talk to lawyers and government agencies)
- the ability to communicate effectively with others and resolve potential disagreements
- that the person lives close to you and would be able to do things in person, or is prepared to manage their responsibilities from further away
- that the person understands and respects your culture and connections to your community
- willingness to take on the role with all its responsibilities.

Once you have identified the qualities that are important to you, try to think objectively about the people close to you. Making decisions in accordance with all the appointed decision-maker's obligations will not always be easy. Think about who is best placed to do this. Remember, you must trust the person or people you appoint.

The person who you appoint can do anything you can do with your finances and property (for example, sell a house or close bank accounts), unless you limit this and, often, there is very little supervision.

When appointing a decision-maker, choose a person in your life who you feel knows you, including what you want and value. Someone who you think will make good decisions that reflect your values, and what you would want and need. This might be a life partner, spouse, an adult child, another family member or a friend.

See page 17 for information about your options, if there is no one suitable.



Things that you should do:

- Make sure you consider all your options, for example, trusted friends, siblings, grandchildren, nieces and nephews. You don't have to appoint your adult children or your partner. Who you choose is completely up to you.
- Think about who will be able to make good decisions for you during what may be a period of crisis.
- Be careful about appointing someone experiencing their own difficulties, including financial problems and/or addiction.
- Be careful about appointing someone just to maintain harmony within the family now. It may be that the best way to have family harmony in the long-term is to talk about issues now.



Things that you should **not** do:

- You should not appoint someone just because they are family, or because of their position in the family, for example, because they are the eldest child.
- You should not appoint someone if you are feeling pressured to do so. It is up to you to decide who to appoint. If you are feeling pressured, see page 42 for an organisation in your area that can help.

The law in your state or territory may also have eligibility requirements for appointed decision-makers.

### Ming's story

Ming decided he wanted to appoint a decision-maker to look after his finances if he was unable to do so. He did not want to appoint his mum because he thought she would be too upset to make decisions for him if he was sick or injured.

He appointed his best mate, Sam, who he trusted, is good with money and with whom he has had many conversations about his life and what is important to him. He told his mum why he had appointed Sam rather than her and she understood.

## What happens if I do not want to appoint someone that I know?

If there is no one that you trust to appoint, you can appoint an independent decision-maker, like a public or private trustee company, an accountant or a lawyer.

There are benefits to using independent decision-makers as they are regulated, insured, have experienced staff and you know they will be available when you need them.

However, they usually charge fees for the services they provide. You should ask about these before appointing an independent appointed decision-maker.

In addition to this, the person who will make decisions on your behalf might not know who you are, and what you would want and value, as well as someone in your family or community might.

See pages 40-43 for details of the Public Trustee in your state or territory.



Keep in mind, if there is no one that you know that you want to appoint, and you do not want to appoint an independent decision-maker, you shouldn't make an enduring power.

## What happens if I don't appoint a decision-maker?

If you don't appoint anyone as your appointed decision-maker, and you are unable to make a financial decision when it needs to be made, the relevant body in your state or territory can appoint someone to make the decision.

The relevant body may appoint the Public Trustee in your state or territory, or a private administrator.

## When you have decided who to appoint

- Talk to the person, or people, that you are thinking of appointing. Give them a copy of information available for appointed decision-makers in your state or territory and make it clear that it is their choice to accept the role. They may want to get advice or take time to read, and think, about their obligations if they accept the role. They need to satisfy themselves that they are prepared to accept the obligations under the applicable laws.
- See if they take the time to listen to what you want, and that they understand the role and its responsibilities and are willing to accept it. You should be confident that the person you appoint will be able to follow your wishes under pressure.
- If you feel comfortable, explain to other family members or friends why you have chosen your appointed decision-maker at the time you make the appointment. You could also write down your reasons and give a copy to family members or friends, to prevent problems later.

### Jan's story

#### Jan changes her mind after talking to the people close to her

Jan is making an enduring power. She is considering appointing her friend, Frances, to make financial decisions on her behalf if she is unable to make those decisions herself.

When Jan raises the topic with Frances, they discuss the types of decisions that Frances may need to make if she accepts the role, including paying for services to assist Jan with daily living, if that becomes necessary.

Frances tells Jan that she is silly to waste her money paying a stranger to care for her when she is available and willing to assist.

Jan explains that she would want to maintain her privacy by engaging a professional carer rather than someone she knows. Frances still insists that it would be much better for Jan if she looked after her.

Frances has offered to assist Jan in the past. While Frances has good intentions, Jan has found that she is very busy and, as a result, is unreliable.

Jan then speaks to her friend, Sophia. Sophia listens and asks questions to understand Jan's wishes and preferences. She says that she understands how important privacy is to Jan. She would be happy to arrange to make payment for services for Jan, if that becomes necessary, and if that is what she wants.

Jan decides to appoint Sophia as her appointed decision-maker for financial decisions.

## Can I appoint more than one decision-maker?

You can appoint more than one person to make financial decisions if you are unable to make financial decisions yourself.

In fact, appointing more than one person can help to prevent things from going wrong. One of the best ways of making sure that your enduring power is used as you intended is to involve other people in the exercise of the power.

You can also appoint an alternative person, or people, to take on the role in certain circumstances. However, there are limits on the number of decision-makers you can appoint in some states and territories.



In Western Australia there is a limit of two appointed decision-makers.

### Hassan's story

#### Hassan makes his adult daughter his only appointed decision-maker

Hassan has two children, Ahmad and Maryam.

He makes Maryam his appointed decision-maker for all financial matters. Later, Hassan becomes unable to make financial decisions because of late-stage dementia.

Maryam is experiencing financial difficulties and withdraws money from Hassan's account to pay her household expenses.

Ahmad only discovers this when he hears that Hassan's nursing home fees have not been paid.

Clearly, Maryam is not allowed to use Hassan's money for herself.

There are things that Hassan could have done to reduce the risk of this happening.

### Acting jointly

One way to do this is to appoint more than one appointed decision-maker to 'act jointly'.

**'Acting jointly' means that the appointed decision-makers must make decisions together and all sign any documents. They would all be able to see your accounts once their role starts.**

Appointing more than one person to act jointly means that one appointed decision-maker can't act alone, making it less likely that the power will be misused.


However, appointing two people because you are not sure that one of them can be trusted if acting alone, is not a good idea. If you are not sure that you can trust the person you are considering appointing, it is best to think again about who you will appoint, if anyone.

You may also want to consider avoiding internet banking, as this allows an appointed decision-maker for financial matters to manage your finances without consulting the other appointed decision-maker.

If you own property in Western Australia you may not be able to include conditions like this.



It may not, however, always be practical to appoint more than one decision-maker to act jointly. Joint decision-makers are expected to work together and reach agreement on each decision that needs to be made. It is important to consider if the people you intend to appoint can cooperate and communicate with each other well when making decisions on your behalf.



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If your joint appointed decision-makers cannot agree on what is to be done, they may have to go to the relevant body in your state or territory for help.

It is also important to note that in some states and territories, the enduring power may not be able to be used at all if one of the joint decision-makers dies or is not able to make decisions.

### **Acting jointly and severally**

If it is not practical for you to require multiple appointed decision-makers to work together all the time, you can choose to appoint more than one decision-maker to act separately as well as together. This provides some flexibility to their role. It means that they can all sign any document together, or one appointed decision-maker alone can sign. This is called acting jointly **and** severally.

If you do this, it is important to let your appointed decision-makers know what your expectations are. For example, let them know that, for practical reasons, you've appointed them jointly and severally, but that you expect them to discuss all or some decisions with each other.

It is, however, important to make sure that the arrangement is workable. If the appointed decision-makers don't usually communicate well, it is unlikely that they will be able to work together under pressure.

It may be preferable to make one person your appointed decision-maker and consider some of the options discussed in section 2 to reduce the risk of things going wrong.

One of the best ways of making sure that things don't go wrong is to involve other people in the use of the power.



# Decide what powers to give

You decide what types of decisions your appointed decision-maker can make. You can give another person power to make financial, lifestyle and medical decisions. This guide is about financial decisions.

Your appointed decision-maker can only make the types of decisions for which they have been appointed.

## Anthony's story

### Misunderstanding the scope of the role

Anthony is the appointed decision-maker for financial matters for his mother, Margaret.

As Margaret's care needs increase, her partner, Clara, is no longer able to care for her at home and Margaret moves into residential care.

Anthony has never respected Margaret and Clara's relationship. Anthony tells the facility not to let Clara visit Margaret.

In this example, Anthony has acted outside the scope of his role.

A decision-maker who has been appointed to make decisions about financial matters cannot make decisions about who you spend time with.

Even if Anthony was appointed to make personal decisions, he should, as far as possible, consult with Margaret and act in accordance with her wishes.

In this example, Margaret can revoke the power if she is unhappy with how Anthony has exercised it and she has decision-making capacity to do so. If she does not,

Margaret, or another person with an interest in Margaret's affairs, such as Clara, can make an application to the relevant body. The relevant body could decide to remove Anthony as decision-maker for Margaret and appoint another person.

See page 35 for information about revoking an enduring power.



## Decisions involving both your financial and lifestyle affairs

Some decisions involve both your financial and lifestyle affairs, for example, the decision to sell your home and move in with family.

You can appoint different people, or the same person to make financial and lifestyle decisions but, bear in mind, that different skills might be helpful for different types of decisions.

If you appoint different people as appointed decision-makers for the same or different matters, they will need to be able to work well together.

## Limiting powers

You can also limit the types of financial decisions your appointed decision-maker can make. For example, so that they can't make a decision to sell your home.

Depending on your circumstances, you may not be able to limit your appointed decision-maker's powers, for example if you own land in Western Australia. See page 31 for more about this.



# Decide when the powers will start


You can choose whether your appointed decision-maker's powers start:

- as soon as the process for making the enduring power has been finalised, or
- in the future if you do not have decision-making capacity.


While you have decision-making capacity, you can oversee what your appointed decision-maker is doing and they must act at your direction.

Importantly, having appointed a decision-maker does not remove your right to make decisions. For example, the fact that your appointed decision-maker is paying your bills does not mean that you are unable to withdraw money from your bank account.

You still have the power to make your own decisions while you have decision-making capacity to make the decision, even after you have appointed a decision-maker.

 In the Northern Territory, the authority only starts when you don't have decision-making capacity.

In some states and territories, you can also specify that the power starts at a particular time, or in particular circumstances.

 You can specify that the power starts at a particular time or in particular circumstances in the ACT, NSW, Qld, Vic and WA.

## Starting the power in the future


You may prefer that the power starts in the future when you are not able to make the relevant decision.

In some jurisdictions, however, the enduring power can't be used in these circumstances unless it is registered, or there is an order from the relevant body that you are not able to make the decision yourself.

## Starting the power immediately

By specifying that your appointed decision-maker's powers start immediately (once the enduring power is fully completed and, if applicable, registered), you will be able to:

- oversee and monitor the use of your appointed decision-maker's powers while you are able to do so
- obtain practical help early. For example, if you are unwell and find it difficult to get to the bank but still have decision-making capacity, your appointed decision-maker can withdraw money from your bank account and pay bills for you.

In Western Australia, a declaration by the State Administrative Tribunal that you are unable to make the decision must be obtained if you have chosen this option. In Tasmania, your enduring power for financial decisions must be registered with the Land Titles Office. 

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If your appointed decision-maker's role starts when you do not have decision-making capacity, they should:

- act in a way that does not limit your ability to participate in making the decision and takes into account your wishes
- make sure that you are supported to participate in the decision-making process as much as possible.

### **Peter's story**

#### **Misunderstanding the obligations of an appointed decision-maker, and when a power can be used**

Peter made his son, Michael, his appointed decision-maker for financial decisions. Michael has power to act when Peter does not have decision-making capacity.

Peter suffers a stroke and is hospitalised. It is a minor stroke that only affects him briefly. He continues to have decision-making capacity to make financial decisions.

Michael doesn't understand that the power has not yet started because his father still has decision-making capacity. Without consulting his father, Michael tells the hospital staff that he will arrange payment for alternative treatments for his father.

In this example, Michael has breached a few of his obligations as an appointed decision-maker.

He acted on a power that he did not yet have. Even if the power had started, Michael should support his father to participate in making the decision to the greatest extent possible.

In this example, Peter can revoke the power if he is unhappy with how his son has exercised it and he has decision-making capacity to do so. If he does not have decision-making capacity to do so, Peter or another person with an interest in his affairs can make an application to the relevant body to revoke the power.

## Section 2

### Tips, personal stories and examples



This section does not apply to people who own land in Western Australia. See page 31 for more information.



# Helpful tips and example wording

Your appointed decision-maker has a lot of responsibility. Unfortunately, some appointed decision-makers accidentally or deliberately misuse their power. Unless a complaint is made, there is no independent oversight to ensure enduring powers are used appropriately.

However, there are things that you can do yourself to make your wishes clear and reduce the chance of things going wrong.

## Limits, conditions and instructions

In some states and territories, you can limit your appointed decision-maker's power to making decisions about specific financial matters.



See page 40 for links to the form and more information for your state or territory.

Where you can put limitations in place, it is important to think carefully about the types of situations that may arise in the future, so that the limitations you put in place do not prevent your appointed decision-maker from doing things for you that you would want.

**You should seek legal advice if you are considering limiting your decision-maker's powers in this way and you own real estate (because registration requirements in some states and territories may affect whether you are able to do this).**

One of the most significant decisions that people may need to make as they age is whether to sell their home and move into residential aged care. You don't have to give anyone the power to make that decision. If you want your appointed decision-maker to be able to make any financial decision except to sell the house that you live in, the following wording could be included in your enduring power:

### Example wording - to limit the power

My attorney\* is not authorised to sell my principal place of residence (which includes my principal place of residence immediately prior to my moving to supported accommodation, if applicable) unless they have exhausted all other reasonable options to pay for my supported accommodation.

\*Throughout this section, in the Northern Territory, substitute the words 'decision-maker' for the word 'attorney'.



If you want to make your wishes clear in your enduring power, you can also specify conditions, give instructions and/or include information about your preferences. Your appointed decision-maker must make decisions according to any directions you give them.

For example, thinking about the potential life transition from home to residential aged care now, provides you with the opportunity to tell those close to you what's important to you so that you get the care and support that you can afford when you need it.

Similarly, you may require support services to help you to live in your home for longer. It may be important to you that you retain your connection to your community and your home. This may be particularly important to you if you are from a culturally and linguistically diverse community, are an Aboriginal or Torres Strait Islander and/or are lesbian, gay, bisexual, trans, gender diverse or intersex.

You can include instructions in your enduring power to make sure that your appointed decision-maker maintains and promotes your connection to your community.

#### **Example wording**

If I need to move into residential aged care, my attorney(s)\* for financial matters should arrange to pay for services that respect my identity and lived experience, and ensure my continued connection with my community.

or

My attorney(s)\* for financial matters must continue my subscription to [insert name of magazine], and arrange payment for my attendance at events hosted by [insert social or support group] while I am able to attend, and my finances make it reasonably viable to do so.

Including conditions and instructions in your enduring power can help ensure your wishes are respected, if you are no longer able to make a decision yourself.

It is important, however, to make sure that any conditions you include are practical and valid. For example, you cannot direct your appointed decision-maker to do anything that is outside their powers or to do anything that is against the law. You should use the approved form to make sure that your power

complies with the relevant legislation. This is mandatory in some states and territories.

Imposing too many conditions on your appointed decision-maker may remove flexibility from the decision-making process, making it difficult for them to properly carry out their role.

## **Notifying others**

If you have made more than one person your appointed decision-maker, you could require each to notify the other(s) of financial transactions above a certain amount by including this in your enduring power. You can also indicate whether you want this to happen either prior to, or immediately after, the transaction is made.

Consider including a condition about this in your enduring power to make sure that more than one person knows what is happening with your affairs.

#### **Example wording**

My attorneys\* for financial matters may act jointly or severally (separately). When one of my attorneys\* acts severally, they must notify the other(s) before spending more than \$500 in any single transaction.

## Joe and Molly's story

### Joe and Molly appoint their children Alan and Jane jointly and severally

Joe and Molly live with their son, Alan, who is their primary carer. Their daughter, Jane, lives in a small rural community. Alan travels overseas a lot for his job and, while he is away, Jane comes to Canberra to look after their parents.

Joe and Molly have made Alan and Jane their appointed decision-makers for financial matters. They have appointed them to act jointly and severally for all decisions, recognising that decisions may need to be made at a time when either Alan or Jane are unavailable.

Joe and Molly are aware that Alan and Jane often discuss their parents' needs with each other. Joe and Molly include this as a condition on their power.

## Consulting another trusted person

Another way of involving more than one person is to include a requirement that your appointed decision-maker provide regular financial statements or reports to another trusted person.

The person you choose would be able to make an application to the relevant body if they do not receive the reports, or if they have any queries or concerns.

You may also want to consider authorising the release of a copy of your will to your appointed decision-maker. This is because your decision-maker may need to sell property that is a gift in your will, and the holder of the will may not be able to provide a copy without this authorisation.

### Example wording

My attorney(s)\* for financial matters must provide annual accounts to my sister [insert name]. I authorise my attorney(s)\* for financial matters to disclose confidential information and documents that are required by [insert name].

or

My attorney(s)\* for financial matters must provide copies of all records and accounts to my son and daughter [insert names] annually.

or

I authorise my attorney(s)\* for financial matters to view my will and retain a copy where this is relevant to financial decisions they need to make.

## Confidential information

If you want to involve another person in the exercise of the power, it is important to give your appointed decision-maker permission to provide confidential information to that person.

Your appointed decision-maker has an obligation to keep your personal information confidential. You must authorise them to disclose confidential information to other people, if you want that to occur.

This is the case even if you have always shared confidential information with that person in the past.

### Example wording

I authorise my attorney(s)\* for financial matters to disclose confidential information concerning my finances to my children [insert name] and [insert name].

## Assessment of decision-making capacity

You may choose for the power to start during periods when you don't have decision-making capacity for the decision. This can help to make sure you stay in control for as long as possible.



In the Northern Territory the relevant power may only be used during periods when you don't have decision-making capacity for the decision.

In these cases, you should consider including a requirement that the assessment of your decision-making capacity is based on independent advice from an appropriate

health and/or legal professional, and is not made by your appointed decision-maker alone.

This is not necessary in Western Australia because a declaration by the State Administrative Tribunal must be obtained.



You can specify in the enduring power that your appointed decision-maker must obtain medical reports indicating that you do not have decision-making capacity for that matter from a general practitioner and/or a specialist. Specialists who may be able to provide a report about your decision-making capacity include neuropsychologists, geriatricians and psychiatrists. This would generally involve a referral from your general practitioner.

When deciding the type of medical evidence you require, if any, keep in mind that the power may need to be activated quickly and that it could take weeks or months for your appointed decision-maker to obtain a specialist report.

It may also be necessary for the doctor to use specific wording in their report in order to be effective, so care must be taken when using this option.

### Example wording

The powers given to my attorney\* for financial matters can only be exercised once my attorney\* obtains an opinion from a medical practitioner, who knows me well, that I do not have decision-making capacity for the relevant financial matter.

I consent to my medical practitioner providing confidential medical and personal information to my attorney\* for this purpose.

## Notifying others when the power starts

If the power starts when you do not have decision-making capacity for the matter, you can specify in the enduring power that your appointed decision-maker notify a nominated person or people before using the power for the first time.

For example, consider a requirement that your appointed decision-maker notify a family member, trusted friend or professional adviser before exercising the power.

If that person has any concerns about the assessment of your decision-making capacity, they can make an application to the relevant body for independent consideration.

### Example wording

My attorney\* for financial matters must notify my friend [insert name] before exercising their powers for the first time.

## Reimbursing your decision-maker

The role of appointed decision-maker is often performed by a family member or trusted friend in an unpaid capacity, however, they can be reimbursed for expenses incurred in carrying out the role.

Unless authorised by you or the relevant body, your appointed decision-maker is not entitled to payment for undertaking the role. If they pay themselves without permission, they are in breach of their duties.

There may be circumstances where it is appropriate to compensate your appointed decision-maker for their time, for example, if there is a large amount of work to be done which will be time consuming. If you are considering paying your appointed decision-maker above and beyond reimbursing their costs, you should seek legal advice.

### Pat's story

#### Misunderstanding entitlement to payment

Pat has appointed her niece, Jenny, as her financial appointed decision-maker.

Pat now has advanced dementia and her care needs have increased. She does not have the ability to make her own decisions and the enduring power has become active.

Jenny arranges for the sale of Pat's property and her admission to an aged care facility. Jenny makes sure that Pat's bills are paid and visits her regularly.

Jenny transfers funds from Pat's account into her own account each month as compensation for all of the work that she has done for Pat.

She thinks that Pat would have wanted her to be paid for her efforts. However, there is no provision authorising this in the enduring power.

In the example above, Jenny has breached her obligations as appointed decision-maker. Jenny is not entitled to be paid from Pat's money, unless Pat has specifically authorised this in the enduring power.

This is the case even if it is likely that Pat would have authorised payment when she had decision-making capacity.

Pat or a person with an interest in Pat's affairs can make an application to the relevant body to review Jenny's actions as an appointed decision-maker.

## Conflicts of interest

If your appointed decision-maker has been appointed for financial matters, they must not enter into a transaction where they have a conflict between their duty to you and their own interests.

This is the case unless the transaction is authorised by you, or by the relevant body.

For example, if your appointed decision-maker used your money to purchase a car that they were selling, they would have a conflict between your interests in getting a good deal, and their own interest in getting the best price.

This type of transaction is known as a 'conflict transaction'.

### Vasili's story

#### Lack of understanding of conflicts of interest

Kosta is the appointed decision-maker for financial decisions for his father, Vasili.

Kosta's son, Jim, had a car accident and needed to buy a new car. Vasili had a car that he was no longer able to use.

Kosta sold Vasili's car to Jim at a very reduced price.

However, there is no provision authorising a transaction involving a conflict of interest in the enduring power.

In this example, by selling Vasili's car to Jim, Kosta has breached his obligation to avoid acting where there is a conflict of interest.

It also makes no difference if Kosta feels sure that Vasili would agree to help Jim in this way if he could make the decision. As an appointed decision-maker, Kosta cannot act in this way.

It is possible for you to authorise conflict transactions in your enduring power. For example, you may want family members to be able to live in your house. It is recommended that you seek legal advice if you are considering authorising your appointed decision-maker to enter into a conflict transaction.

**Your appointed decision-maker can only do things that you have clearly authorised them to do. Even if your appointed decision-maker knows you would have wanted them to act where there is a conflict, they cannot do this unless the enduring power allows them to.**

If you don't authorise conflict transactions, your appointed decision-maker can make an application to the relevant body seeking authorisation of the proposed transaction. These bodies are generally reluctant to authorise conflict transactions and orders are made sparingly. There may also be costs involved in making such an application.

### Example wording

I authorise my attorney\* for financial matters to enter into the following conflict transaction(s):

Allow my grandchildren [insert names] to stay rent free in my property at [insert address] while they are studying full-time, provided I still own this property and doing so does not affect my standard of care.

## Gifts



This guide should be read with information from your state or territory.

You may wish to include your wishes regarding gifts in your enduring power. In this way, you can advise your appointed decision-maker about the type of gifts you would like to make, and can place limits on, or extend the power to make sure that your wishes can be carried out.

Your appointed decision-maker will always need to make sure that you have enough money to meet all your expenses before allocating money for gifting or similar.



The law about the power of an appointed decision-maker to give gifts varies depending on which state or territory you live in. In some places, the power to give gifts must be stated in the enduring power, and in some states and territories, there are limits placed on the power.

### Example wording

My attorney(s)\* for financial matters is authorised to give gifts to the value of \$100 (or current equivalent taking into account CPI) to any recipient on no more than two occasions a year.

### Margaret's story

#### Misunderstanding obligations regarding gifts

Margaret has made her son, Lachlan, her appointed decision-maker for financial decisions.

Margaret has always spent about \$50 on each of her grandchildren for their birthdays. Margaret included a condition in her enduring power that authorised Lachlan to continue this.

Lachlan purchases a \$3000 computer for his daughter's birthday using Margaret's money.

In this example, Lachlan has breached his obligations as appointed decision-maker for financial matters. The gift was a lot more expensive than the gifts Margaret usually gives her grandchildren for their birthday, and was not authorised by Margaret's enduring power.

Margaret can revoke the power if she is unhappy with how Lachlan has exercised it and she has decision-making capacity to do so. If she does not have decision-making capacity to revoke the power, Margaret or another person with an interest in Margaret's affairs can make an application to the relevant body.

### Information for people who own land

- This section does not apply to people who own land in Western Australia. This is because the enduring power must be registered with Landgate before your appointed decision-maker can make decisions about land. Landgate will not register an enduring power of attorney that includes limitations on the power.
- There are similar requirements to register the enduring power with the applicable registration body in other states and territories. You should seek legal advice if you are considering including limitations on the power and you want your appointed decision-maker to be able to make decisions relating to your land.

# Section 3

## The process





# Completing the form

Once you have thought about what you want to include in your enduring power and who you would like to appoint, complete the enduring power form for your state or territory.

All states and territories have an approved form which meets the requirements of the relevant legislation. It is recommended that you use it to make sure that, if properly completed, your document is valid. You may want to pay for a lawyer who understands this area of law to help you complete the form correctly.



The law in some states and territories requires the use of the approved form. See page 40 for where to find the form and more about your options for completing it.



If you plan to include conditions or restrictions on the powers of your appointed decision-maker, consider seeking legal advice to make sure that the enduring power reflects your wishes and is workable.



States and territories have different witnessing requirements. See page 40 for links to information in your state or territory.

In all states and territories (except the Northern Territory) you also need to arrange for your appointed decision-maker to sign the form to accept the appointment.

In some states and territories, your appointed decision-maker must also sign in front of witnesses.



Your enduring power is not able to be used if your appointed decision-maker has not signed the statement of acceptance of appointment.

If you own land in Western Australia, you should complete two identical enduring power forms at the same time, as Landgate requires an original for its records.



# After making your enduring power

## Registration

In some states you can register your enduring power.



In Tasmania, your enduring power is not valid unless it is registered with the Land Titles Office.

In some states and territories, your enduring power must be registered with the state or territory body authorised to register enduring powers if your appointed decision-maker needs to sell, mortgage, lease or otherwise deal with your real estate.

By registering your enduring power, it will be:

- on record as a public document
- safe from loss or destruction
- more easily accepted as evidence that your appointed decision-maker can deal with your legal and financial affairs.

## Telling others

Tell important people in your life that you have made an enduring power. Who you choose to tell is up to you.

Consider showing a copy of (or a link to) this guide to all family members and friends to make sure that they understand the role and obligations of your appointed decision-maker. If your appointed decision-maker is unsure of their role, there are resources they can consult, and/or they can seek legal advice.

You, or anyone with an interest in your affairs can make an application to the relevant body for an order in relation to your enduring power.

If your appointed decision-maker breaches their obligations to you:

- you can revoke their powers (if you have decision-making capacity to do so) or they can be revoked by the relevant body
- if the breach has caused you a loss, they could be ordered to pay compensation by the relevant body

In some jurisdictions, they may also have to pay you any profits that they make as a result of the breach of their obligations to you.



- they could be charged with a criminal offence if the breach involved dishonesty, for instance, taking money from your bank account for themselves.

## Storage and certified copies

- If you are in a state or territory that does not require registration of enduring powers, keep the original form in a very safe place, and keep a copy to refer to. It is important that you and your appointed decision-maker know where the original form is, as organisations may need to see it before dealing with your appointed decision-maker. Keeping the original in a safe place also means, depending on when you said that the enduring power is to start, that you are more likely to know when your appointed decision-maker starts using the power if they are required to produce the original to third parties.
- You should also give a certified copy to your appointed decision-maker. The certified copy can be used in the same way as an original and should be kept in a safe place. You may also want to

give copies to anyone else who may need to be involved, such as your doctor, solicitor, accountant or your stockbroker.

- It may also be helpful to prepare a schedule of your assets and liabilities to assist your appointed decision-maker.

## Stay involved

**You can still do anything you are legally able to do while you have decision-making capacity for that matter.**

- Making an enduring power does not mean that you lose control over your financial affairs. As long as you have the ability to make a decision, you still have authority to deal with your assets just as you did beforehand.
- Continue to manage as much as you can for as long as you can.
- Talk to your bank about safeguarding measures that can be put in place, such as limits on withdrawals or duplicate bank statements.
- Review your accounts and ask questions of your appointed decision-maker to make sure that you understand how decisions are being made on your behalf.
- If you have any concerns, raise these with your appointed decision-maker or seek advice from your lawyer or the agencies listed at page 40.

**Remember, your decision-maker can be held accountable if they have not complied with their obligations to you.**

## Review

- Diarise to review your enduring power every two to three years for as long as you can.
- Make sure the choices that you made are still suitable for your current circumstances.
- Make sure that the person you appointed

is still prepared to be your appointed decision-maker. If you want to make any changes, you will need to make a new enduring power. You can make a new enduring power at any time while you have decision-making capacity to do so.

- Also review your enduring power if your circumstances change. For example, in some states and territories, the power is automatically cancelled when relationships such as a marriage start or end. If you move overseas, get divorced, married or enter a relationship, you may need to make a new enduring power.

## Revoking your enduring power

- You can revoke your enduring power at any time, so long as you have the decision-making capacity to do so. See page 40 for agencies who have information about how to do this in your state or territory.
- There are also circumstances where your enduring power can be automatically revoked, for example, if your appointed decision-maker dies or does not have decision-making capacity.

Refer to the agencies in your state or territory on page 40 for information about revocation in your state or territory. For example, in Queensland, marriage, civil partnership, divorce or the end of a civil partnership automatically revokes an enduring power.



**Remember, you can revoke your enduring power at any time, so long as you have the decision-making capacity to do so. Visit the website of the relevant body in your state or territory. See page 40.**

# Table of example wording

Page	Topic	Example wording
25	Limits, conditions and instructions	My attorney* is not authorised to sell my principal place of residence (which includes my principal place of residence immediately prior to my moving to supported accommodation, if applicable), unless they have exhausted all other reasonable options to pay for my supported accommodation.
26	Limits, conditions and instructions	<p>If I need to move into residential aged care, my attorney(s)* for financial matters should arrange to pay for services that respect my identity and lived experience, and ensure my continued connection with my community.</p> <p>or</p> <p>My attorney(s)* for financial matters must continue my subscription to [insert name of magazine], and arrange payment for my attendance at events hosted by [insert social or support group] while I am able to attend, and my finances make it reasonably viable to do so.</p>
26	Notifying others	My attorneys* for financial matters may act jointly or severally. When one of my attorneys* acts severally (acts separately), they must notify the other(s) before spending more than \$500 in any single transaction.
27	Consulting another trusted person	<p>My attorney(s)* for financial matters must provide annual accounts to my sister [insert name]. I authorise my attorney(*s) for financial matters to disclose confidential information and documents that are required by [insert name].</p> <p>or</p> <p>My attorney(s)* for financial matters must provide copies of all records and accounts to my son and daughter [insert names] annually.</p> <p>or</p> <p>I authorise my attorney(s)* for financial matters to view my will and retain a copy where this is relevant to financial decisions they need to make.</p>

\* In the Northern Territory, substitute the words 'decision-maker' for the word 'attorney'

Page	Topic	Example wording
28	Confidential information	I authorise my attorney(s)* for financial matters to disclose confidential information concerning my finances to my children [insert name] and [insert name].
28	Assessment of decision-making capacity	<p>The powers given to my attorney* for financial matters can only be exercised once my attorney* obtains an opinion from a medical practitioner who knows me well that I do not have decision-making capacity for the relevant financial matter.</p> <p>I consent to my general practitioner providing confidential medical and personal information to my attorney* for this purpose.</p>
29	Notifying others when the power starts	My attorney* for financial matters must notify my friend [insert name] before exercising their powers for the first time.
30	Conflict transactions	<p>I authorise my attorney* for financial matters to enter into the following conflict transaction(s):</p> <p>Allow my grandchildren [insert name/s] to stay rent free in my property at [insert address] while they are studying full-time, provided I still own this property and doing so does not affect my standard of care.</p>
31	Gifts	My attorney(s)* for financial matters is authorised to give gifts to the value of \$100 (or current equivalent taking into account CPI) to any recipient on no more than two occasions per year.

# Checklist

Use this checklist to guide you through the process of making an enduring power that:

- reflects your wishes
- includes conditions to reduce the risk of things going wrong.

## Where to start

- Have you had a discussion with those close to you?
- Have you decided that making an enduring power is right for you?

## Choosing someone you trust

- Have you considered what qualities are important to you when choosing your appointed decision-maker(s) for financial decisions?
- Have you chosen someone you trust to be your appointed decision-maker?
- Have you considered appointing more than one appointed decision-maker to act jointly (together)?
- Have you considered appointing more than one appointed decision-maker to act jointly and severally (together or alone)?
- Have you discussed the appointment and your wishes with that person or people?
- Are they willing to take on the role and listen to what you want?

## Deciding what powers to give

- Have you decided what powers to give to your appointed decision-maker?

## Deciding when the powers should start

- Have you decided when the powers will start?

## Helpful tips

Have you considered whether you want:

- legal or financial advice about your enduring power?
- to include limits, conditions or and/or instructions in your enduring power?
- to include an instruction that your appointed decision-makers notify other appointed decision-makers of certain transactions, if you have appointed more than one person?
- to include an instruction that your appointed decision-maker provide information to or consult another trusted person?
- to authorise your appointed decision-maker to disclose confidential information?
- to include an instruction requiring your appointed decision-maker to obtain an independent assessment of your decision-making capacity?
- to include an instruction that another person is notified before the power is used for the first time?
- to authorise payment to your appointed decision-maker?
- to authorise conflict transactions? For example, allowing a person to live in your house free of charge.
- to place any limits on (or extend) your decision-maker's power to make gifts?

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### **Complete the enduring power form**

- Have you thought about whether you want legal advice and help from a lawyer to complete the form, help from a public trustee, or want to do it yourself?
- If you have chosen to do it yourself, do you have the latest form and is it the one you need? Remember to read the information about witnessing requirements.

### **After you have made your enduring power**

- Do you need to register the form? If the answer is yes, have you registered the form?
- Have you provided a copy of this guide (or its weblink) to others, including anyone you have appointed?
- Have you stored your enduring power in a safe place?
- Have you given your appointed decision-maker(s) a certified copy of the enduring power?
- Have you diarised to review your enduring power every two or three years?

# Where to find the form

You may choose to go to a lawyer for help to complete your enduring power. If you chose to do this, look for a lawyer who understands this area of law. Keep in mind there will be a cost.

Having the help of a lawyer means you can get advice relevant to your specific circumstances, and help to complete the form accurately and in a way that reflects your wishes.

Some lawyers speak languages other than English which may be helpful. If you need an interpreter, it is recommended that you use an independent and accredited interpreter. You will have to pay for this.

Below are details of where to find the form in your state or territory, if you decide to complete the form yourself. Many states and territories have an accompanying guide that you can use.

In some state and territories you may:

- be able to go to the public trustee for help to complete the enduring power form (there will usually be a cost for this)
- also be able to appoint someone to make lifestyle or medical decisions using the same form.



Keep in mind, if you complete the form yourself, make sure you get information for your appointed decision-maker. They need to understand their role and responsibilities.

## Australian Capital Territory

### ACT Public Trustee and Guardian for the ACT

Find the form and guide in *The Power to Choose: Your guide to completing an enduring power of attorney*.

You can download it from the Public Trustee and Guardian website at: [ptg.act.gov.au](http://ptg.act.gov.au)

## New South Wales

You can download the form and accompanying fact sheet from the New South Wales Planning Ahead Tools website at: [planningaheadtools.com.au](http://planningaheadtools.com.au)

### NSW Trustee and Guardian

The NSW Trustee and Guardian may be able to help you to prepare your enduring power. There is a cost. However, if you receive a full Centrelink Age Pension, it may be free.

[tag.nsw.gov.au](http://tag.nsw.gov.au)

## Northern Territory

See the Northern Territory Government website for the Advance Personal Plan form which includes the enduring power for financial decisions at:

[nt.gov.au/law/rights/advance-personal-plan](http://nt.gov.au/law/rights/advance-personal-plan)



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## Queensland

### **Aged and Disability Advocacy Australia (ADA Australia)**

[adaaustralia.com.au](http://adaaustralia.com.au)

### **Office of the Public Guardian**

Find a link to the form on the Office of the Public Guardian website at:

[publicguardian.qld.gov.au](http://publicguardian.qld.gov.au)

### **Public Trustee**

The Public Trustee may be able to help you to prepare your enduring power. There is a cost for this.

[pt.qld.gov.au](http://pt.qld.gov.au)

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## South Australia

You can purchase the form at a small cost from the Legal Services Commission, Service SA or the Land Titles Office.

### **Legal Services Commission**

[lsc.sa.gov.au](http://lsc.sa.gov.au)

### **Service SA**

[shop.service.sa.gov.au](http://shop.service.sa.gov.au)

### **Land Titles Office**

[landservices.sa.gov.au](http://landservices.sa.gov.au)

### **Public Trustee**

Concession card holders may be able to go to the Public Trustee for free help to complete the form at:

[publictrustee.sa.gov.au](http://publictrustee.sa.gov.au)

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## Tasmania

### **The Public Trustee**

The Public Trustee may be able to help you to prepare your enduring power. There is a cost associated with this. However, if you are a concession card holder it may be free to prepare the document, when you appoint the Public Trustee to be your attorney.

### **Legal Aid Commission of Tasmania**

Find a link to the enduring form from the Legal Aid Commission of Tasmania website. See also their enduring power of attorney fact sheet at:

[legalaid.tas.gov.au](http://legalaid.tas.gov.au)

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## Victoria

### **Office of the Public Advocate**

Find a link to the form on the Office of the Public Advocate website and accompanying information about completing the form at:

[publicadvocate.vic.gov.au](http://publicadvocate.vic.gov.au)

### **State Trustees**

State Trustees may be able to help you prepare your enduring power form. There will be a cost for this. State Trustees also sells a do-it-yourself kit.

Go to: [statetrustees.com.au](http://statetrustees.com.au)

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## Western Australia

### **Office of the Public Advocate**

Find the form and guide on the Office of the Public Advocate website at:

[publicadvocate.wa.gov.au](http://publicadvocate.wa.gov.au)

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# Other useful websites

## Australian Capital Territory

### Older Persons ACT Legal Service (OPALS)

[legalaidact.org.au/opals](http://legalaidact.org.au/opals)

### Civil & Administrative Tribunal (ACAT)

[acat.act.gov.au](http://acat.act.gov.au)

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## New South Wales

### Seniors Rights Service

[seniorsrightsservice.org.au](http://seniorsrightsservice.org.au)

### Legal Aid New South Wales

[legalaid.nsw.gov.au](http://legalaid.nsw.gov.au)

### NSW Civil and Administrative Tribunal (NCAT)

[ncat.nsw.gov.au](http://ncat.nsw.gov.au)

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## Northern Territory

### Darwin Community Legal Service Seniors and Disability Rights Service

[dcls.org.au](http://dcls.org.au)

### Northern Territory Legal Aid Commission

[legalaid.nt.gov.au](http://legalaid.nt.gov.au)

### Northern Territory Civil and Administrative Tribunal

[ntcat.nt.gov.au](http://ntcat.nt.gov.au)

### Office of the Public Guardian

[publicguardian.nt.gov.au](http://publicguardian.nt.gov.au)

### Public Trustee

[nt.gov.au/law/processes/about-public-trustee](http://nt.gov.au/law/processes/about-public-trustee)

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## Queensland

### Caxton Legal Centre Seniors Legal Support Service

[caxton.org.au](http://caxton.org.au)

### Community Legal Centres Queensland

[communitylegalqld.org.au](http://communitylegalqld.org.au)

### Queensland Civil and Administrative Tribunal

[qcat.qld.gov.au](http://qcat.qld.gov.au)

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## South Australia

### Aged Rights Advocacy Service

[sa.agedrights.asn.au](http://sa.agedrights.asn.au)

### Office of the Public Advocate

[opa.sa.gov.au](http://opa.sa.gov.au)

### South Australian Civil and Administrative Tribunal

[sacat.sa.gov.au](http://sacat.sa.gov.au)

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## Tasmania

### Advocacy Tasmania

[advocacytasmania.org.au](http://advocacytasmania.org.au)

### Legal Aid Commission of Tasmania

[legalaid.tas.gov.au](http://legalaid.tas.gov.au)

### Guardianship and Administration Board

[guardianship.tas.gov.au](http://guardianship.tas.gov.au)

### Office of the Public Guardian

[publicguardian.tas.gov.au](http://publicguardian.tas.gov.au)

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## Victoria

### Seniors Rights Victoria

[seniorsrights.org.au](http://seniorsrights.org.au)

### Victoria Legal Aid

[legalaid.vic.gov.au](http://legalaid.vic.gov.au)

### COTA Victoria and Transgender Victoria: Safeguarding the end of the rainbow

[cotavic.org.au/publication/safeguarding-the-end-of-the-rainbow](http://cotavic.org.au/publication/safeguarding-the-end-of-the-rainbow)

### VCAT (Victorian Civil and Administrative Tribunal)

[vcat.vic.gov.au](http://vcat.vic.gov.au)

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## Western Australia

### Legal Aid Western Australia Seniors Rights & Advocacy Service

[legalaid.wa.gov.au](http://legalaid.wa.gov.au)

### State Administrative Tribunal (Western Australia)

[sat.justice.wa.gov.au](http://sat.justice.wa.gov.au)

### Public Trustee

[publictrustee.wa.gov.au](http://publictrustee.wa.gov.au)

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## National

### Older Persons Advocacy Network

[opan.com.au](http://opan.com.au)

### Dementia Australia planning ahead

[dementia.org.au/planning-ahead](http://dementia.org.au/planning-ahead)

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