

THE POWER TO CHOOSE

YOUR GUIDE TO COMPLETING
AN ENDURING POWER OF ATTORNEY



Public Advocate of the ACT



Your guide to appointing someone to:

- Manage your finances*
- Make personal decisions*
- Make medical decisions*

for you when you can't do this yourself

The Public Advocate of the ACT wishes to acknowledge the work completed by the Office of the Public Guardian (NSW Attorney General's Department) in their publication, *Enduring Guardianship in New South Wales: your way to plan ahead*.

The information in this book is not intended to be legal advice.

The Public Advocate of the ACT has carefully prepared this document so that it is as accurate and relevant as possible, however the document should not be used as the only source of information and advice.

If you have a legal question you should talk to a lawyer before making a decision about what to do.

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1. WHY

plan for the future by appointing an enduring power of attorney?

If you cannot make your own financial and lifestyle decisions because of an accident, illness or disability, you cannot always be sure that informal support networks or people important to you will be available or recognised when significant decisions need to be made on your behalf.

ACT Legislation allows a treating doctor to appoint a person to make substitute medical decision for persons who have impaired capacity and who have not appointed an enduring attorney/attorneys.

Sometimes there can be conflict among family members and friends about what is in your best interests or what your wishes would be. An enduring attorney, legally appointed by you, can consider your thoughts and opinions (past and present), the views of professionals and other people important in your life, take into account the circumstances at the time and make decisions on your behalf should the need arise.

There is a growing awareness in the community of the important need to plan ahead for a time when we may be unable to make our own decisions. Many people are familiar with a will as a means of forward planning. A will enables you to set out your intentions as to what will happen with your assets and estate after you die.

A person appointed by you under an enduring power of attorney has legal authority to manage your financial affairs and make decisions about your money and property and authority to make personal care and health care decisions. They become your substitute decision-maker should you become a person with impaired decision-making capacity.

The Public Advocate of the ACT has a statutory responsibility to provide information to the community and is committed to raising community awareness about enduring attorneys and ensuring that people have the necessary information to plan ahead and appoint an enduring attorney of their choice should they wish to do so.

2. WHAT

is a general power of attorney, enduring power of attorney and a health attorney?

A GENERAL POWER OF ATTORNEY

is a legal document that appoints the attorney to act on behalf of another (the principal) in relation to the principal's property and financial matters. It operates while the principal has decision-making capacity. It generally commences at the time it is signed and the attorney can start acting straight away. It ceases to have effect, and therefore cannot be used, if the principal becomes a person with impaired decision-making capacity.

AN ENDURING POWER OF ATTORNEY

is an enduring legal document that appoints the attorney to act on behalf of another (the principal) in relation to financial and property matters, personal care matters or health care matters. It is not revoked by the principal's impaired decision-making capacity – it endures throughout their incapacity, and is generally recognised in other States and Territories.

An enduring power of attorney can also operate in the same manner as a general power of attorney (for property and financial matters only) if when you complete an enduring power of attorney you elect to have it operate immediately.

PLEASE NOTE, that your directions in relation to personal care and health care matters will only operate while you have impaired decision-making capacity.

A HEALTH ATTORNEY

is a person authorised to give substitute consent to medical treatment for a person with impaired decision-making ability. A health attorney can be a domestic partner, unpaid carer, relative or friend and can only provide substitute medical consent. A health attorney is appointed by the treating doctor at the time the substitute medical consent is required.

For ease of reading throughout this guide we use the term "enduring attorney" to refer to an attorney appointed under an enduring power of attorney.

3. WHO

can complete an enduring power of attorney?

If you are over the age of 18 years, and you have the capacity to make financial and property, personal care and health care decisions, then you can complete an enduring power of attorney.

4. WHAT

is capacity?

To have legal capacity to complete an enduring power of attorney, you must be able to understand the nature and effect of making an enduring power of attorney.

This means that you understand that you are appointing someone to make decisions on your behalf should you, at some time in the future, lose capacity. It is important that you understand that the enduring attorney's powers come into effect and continue while you are incapacitated. It is also important that you understand that you can revoke the appointment and make another appointment at any time provided you continue to have capacity.



CASE STUDY

MARION IS A WOMAN WITH EARLY DEMENTIA.

She has concerns about who will make decisions about where she will live, her medical treatment and who will manage her financial matters when she becomes a person with impaired decision-making capacity. She wishes to appoint her son James as her enduring attorney. Marion is able to understand that she is appointing James to make decisions about where she should live and to consent to medical treatment and manage her financial and property matters on her behalf. Marion talks over the appointment of her enduring power of attorney with her doctor and decides to give James the authority to consent to what services she should have to help her stay in her own home as long as possible.

Marion understands that the authority she gives James will come into effect when she becomes a person with impaired decision-making capacity and is unable to make these decisions for herself, and that James will continue to have this authority as long as she remains unable to make her own financial, personal and health care decisions.

YOU CAN CHANGE OR REVOKE THE APPOINTMENT AND MAKE A NEW APPOINTMENT AT ANY TIME PROVIDED YOU CONTINUE TO HAVE DECISION-MAKING CAPACITY.

5. WHO

can you appoint?

You can appoint a person who is 18 years or over.

Given the important nature of this decision-making role, it is essential that the person you wish to appoint understands the responsibilities of an enduring attorney (as a substitute decision-maker). The person you are appointing will have authority to make, should you lose capacity, financial, property, personal care and health care decisions. It is therefore important that you trust the person to be able to take into account your views and make decisions in your best interests.

There are some people who are not eligible to be appointed as your enduring attorney. A person who is bankrupt or has executed a personal insolvency agreement cannot be an attorney for property matters. No corporation other than the Public Trustee or a trustee company can be an attorney under an enduring power of attorney for property matters (includes financial matters). No corporation can be appointed as an attorney for personal care or health care matters. The Public Advocate may be appointed as an attorney only for personal care or health care matters, or both.

Some of the other issues you might consider in deciding whom to appoint as your enduring attorney include:

- **the willingness of the person to take on the role;**
- **the person's availability; and**
- **their age and health.**

6. HOW

do you appoint an enduring attorney?

If you wish to appoint an enduring attorney, you can complete and sign the Enduring Power of Attorney form. (Part B of this guide)

This form can be used for the appointment of one person as your enduring attorney, or the appointment of two or more people as your enduring attorneys with the same functions.

If you wish to appoint two or more enduring attorneys with different functions you can use separate forms for each enduring attorney appointed.

The person or people you appoint as your enduring attorney/attorneys must also sign the form to show that they have agreed to accept this responsibility.

You can authorise your nominated attorney/attorneys to delegate their powers to someone known to you or someone you nominate; e.g. should they be unable to carry out their powers, whether temporarily or otherwise.

7. WHO

can witness the enduring power of attorney form?

ELIGIBLE WITNESS

- One witness must be a person authorised as per the *Statutory Declarations Act 1959 of the Commonwealth* and only one witness can be a relative of the principal or the attorney.
- The witnesses must complete certificates at the end of the enduring power of attorney certifying that the principal signed the enduring power of attorney voluntarily and appeared to understand the nature and effect of making it.
- The witness must not be an attorney under the enduring power of attorney or a person signing the enduring power of attorney for the principal.
- The witness must be an adult. (i.e. 18 years of age or over)



8. WHO

can sign the enduring power of attorney form?

ELIGIBLE SIGNER

- If you are unable to sign the form, you can instruct a person to sign the form on your behalf. A person is eligible to sign an enduring power of attorney for the principal if the person is:
 - (a) an adult; and
 - (b) not a witness for the enduring power of attorney; and
 - (c) not the enduring attorney for the principal.

A STATUTORY DECLARATION

may be made before any of the persons listed here as per the *Statutory Declarations Act 1959*;

- Chiropractor	- Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made.	- Notary public	- Legal practitioner
- Medical practitioner		- Police officer	- Optometrist
- Patent attorney		- Teacher employed on a full-time basis at a school or tertiary education institution	- Physiotherapist
- Psychologist		- Employee of the Commonwealth authorised under paragraph 3 (c) of the <i>Consular Fees Act 1955</i> who is exercising his or her function outside Australia	- Veterinary surgeon
- Postal Manager	- Member of the Australian Institute of Mining and Metallurgy	- Member of the Parliament of the Commonwealth, a State, a Territory legislature, or a local government authority or a State or Territory	- Magistrate
- Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the <i>Consular Fees Act 1955</i>)	- Permanent employee of (a) the Commonwealth or a Commonwealth authority; or (b) a State or Territory or a State or Territory authority; or (c) a local government authority; with at least 5 years continuous service	- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants	- Bank, building society or credit union officer with 5 or more continuous years of service
- Chief executive officer of a Commonwealth court	- Dentist	- Member of the Australian Defence Force who is (a) an officer; (b) a non-commissioned officer within the meaning of the <i>Defence Force Discipline Act 1982</i> with at least 5 years continuous service; (c) a warrant officer within the meaning of that Act	- Fellow of the National Tax Accountants' Association
- Commissioner for Declarations	- Nurse		- Holder of a statutory office
- Commissioner for Affidavits	- Pharmacist		- Marriage celebrant
- Member of Chartered Secretaries Australia	- Trade marks attorney		- Member of Engineers Australia, other than at the grade of student
- Sheriff's officer	- Bailiff		- Sheriff
- Registrar, or Deputy Registrar of a court	- Finance company officer with 5 or more years of continuous service		- Minister of religion registered under the <i>Marriage Act 1961</i>
- Member of the Association of Taxation and Management Accountants	- Clerk of a court		- Senior Executive Service employee of the Commonwealth a Commonwealth authority, a State or Territory, or a State or Territory authority
- Employee of the Australian Trade Commission authorised under paragraph 3 (d) of the <i>Consular Fees Act 1955</i> who is exercising his or her function outside Australia	- Judge of a court		- Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
	- Justice of the Peace		
	- Master of a court		

9. WHAT

decisions can your enduring attorney/attorneys make?

You must choose the decision-making areas you give to your enduring attorney/attorneys. These decision-making areas are called functions and are already included on the enduring power of attorney form.

Your enduring attorney/attorneys are appointed to make;

- financial and property,
- personal care, and
- health care

decisions on your behalf should you become a person with impaired decision-making capacity and unable to make these decisions for yourself.

1) Some examples of property matters (including financial) that an enduring attorney may deal with:

- you can give your attorney power over your finances. For instance he/she may collect your income, do your banking, pay your bills and taxes, sell or rent your home, use your income to pay for your needs, or invest your money; and
- if your attorney exercises, or your attorneys exercise, a power to execute a transfer of an interest in land, the enduring power of attorney must be registered with the Registrar-General's Office.

2) Some examples of personal care matters that an enduring attorney may deal with:

- where you live;
- who you live with;
- whether you work, and if so, where and how you work;
- what education or training you receive;
- whether you apply for a licence or permit;
- your daily dress and diet;
- whether to consent to a forensic examination for you;
- whether or where you will go on holiday; and
- legal matters relating to your personal care.

3) Some examples of health care matters that an enduring attorney may deal with:

- consenting to lawful medical treatment necessary for your wellbeing;
- donations (other than donations of non-regenerative tissue) under the *Transplantation and Anatomy Act 1978* by the principal to someone else;
- withholding or withdrawal of medical treatment for you; and
- legal matters relating to your health care.

10. WHAT

decisions your enduring attorney/attorneys can't make.

You cannot appoint your enduring attorney to make any decisions that are contrary to law. For example, euthanasia is illegal in all States and Territories of Australia.

Your enduring attorney **cannot** consent to the following special personal care matters or special health care matters.

Special personal matters

[s36, Powers of Attorney Act 2006]

- (a) making or revoking the principal's will;
- (b) making or revoking a power of attorney;
- (c) exercising the principal's right to vote in a Commonwealth, State, Territory, or local government election or referendum;
- (d) consenting to the adoption of a child of the principal who is under 18 years; and
- (e) consenting to the marriage of the principal.

Special health care matters

[s37, Powers of Attorney Act 2006]

- (a) removal of non-regenerative tissue from the principal while alive for donation to someone else;
- (b) sterilisation of the principal if the principal is, or is reasonably likely to be, fertile;
- (c) termination of the principal's pregnancy;
- (d) participation in medical research or experimental health care;
- (e) treatment for mental illness;
- (f) electroconvulsive therapy or psychiatric surgery; and
- (g) prescribed health care.

Consent for special health care matters can only be provided by the ACT Civil and Administrative Tribunal.

11. CAN

you authorise your enduring attorney/attorneys to give gifts and pay living expenses?

You may:

- want to generally authorise your enduring attorney/attorneys to give gifts;
- want to authorise your enduring attorney/attorneys to give specified gifts to someone, including to the enduring attorney/attorneys;
- want your enduring attorney/attorneys to pay reasonable living allowances to someone, including to the enduring attorney/attorneys;
- want your enduring attorney/attorneys to make any other payment to someone, including to the enduring attorney/attorneys; and
- want your enduring attorney/attorneys to maintain your dependants out of your estate.

If you want one or more of these to happen you must indicate on the enduring power of attorney form:

- what you want your attorney to do; and
- under what terms and conditions.

12. WHEN

can your enduring attorney/attorneys start making decisions?

1. For property (including financial) matters, your enduring attorney's power begins when you indicate. You must choose to give your attorney:

- immediate power; or
- power from a particular date (you specify the date) or the happening of an event; or
- power only when you become a person with impaired decision-making capacity.

2. For personal care and health care matters, your enduring attorney's power begins only if you become a person with impaired decision-making capacity.

An enduring power of attorney can also operate in the same manner as a general power of attorney (property and financial matters only) if when you complete your enduring power of attorney you elect to have it operate immediately (or from a date, or the happening of an event, before your decision-making capacity becomes impaired). Even if you give your attorney power immediately, you may also continue to make decisions yourself while you are able to do so. While you retain capacity, your attorney must act in accordance with your directions.



13. WHO

decides when you have lost capacity?

In some cases, the issue of loss of capacity is clear.

For example, in Alasdair's situation where he has suffered a severe brain injury, it may be unlikely that there would be differences of opinion as to whether Alasdair could make his own decisions.

In other cases the decision about whether a person has lost capacity to make his or her own decisions and therefore needs the involvement of his or her enduring attorney may be less clear.

For example, where a person has dementia and is slowly losing his or her capacity to make his or her own decisions, or where a person has a mental illness and has periods when he or she is unwell and unable to make his or her own decisions.

If there is concern or disagreement over a person's capacity to make his or her own decisions, it is recommended that a medical certificate from the person's treating doctor be obtained. If a decision cannot be given by the treating doctor, the matter can be referred to the Guardianship and Management of Property Tribunal.

CASE STUDY

ALASDAIR IS 25 YEARS OF AGE.

He appointed Brian four years ago to be his enduring attorney to make decisions about his financial and property matters, his personal care and health care matters. For several years there was no need for Brian to make any decisions on Alasdair's behalf. About one year ago Alasdair was involved in a serious car accident and sustained a severe brain injury. Alasdair is now not able to make decisions about his financial, property, personal care and health care matters. Over the last 12 months Brian has been active in his role as Alasdair's enduring attorney, making decisions about finance, property, health care and medical issues on Alasdair's behalf.

14. WHAT

are the obligations of the enduring attorney/attorneys?

An enduring attorney may be responsible for making financial, property, personal care and health care decisions.

The principles set out in the *Powers of Attorney Act 2006*, must be complied with to the maximum extent possible by a person who exercises the functions of an attorney, under an enduring power of attorney, in relation to a principal with impaired decision-making capacity.

These principles aim to promote the independence and choice of the impaired decision-maker, as well as ensuring the person's care and protection from neglect or exploitation.

Making decisions that are in keeping with the principles may not always be easy. In practice, some principles may conflict with others. For example, it may be difficult to ensure that someone has freedom of action to do what he or she wants, and yet at the same time ensure he or she is protected from abuse, neglect and exploitation. Finding a balance is the key, and this will require the enduring attorney/attorneys to think carefully about the consequences of their decision, weigh up alternatives and to ask many questions in order for themselves to be satisfied about the options available, and the decisions made, on behalf of the person.

Obligations of the enduring attorney include the following:

■ **Duty to keep records.**

You must keep accurate records of dealings and transactions made under the power as you may be required to produce them. You must keep these records separate from your own affairs.

■ **Duty to keep property separate.**

You must keep your property separate from the principal's property unless you and the principal own the property jointly.

■ **Duty to avoid transactions that involve conflict of interest.**

You must not enter into transactions that could or do bring your interests (or those of your relative, business associate or close friend) into conflict with those of the principal.

It is a duty of an attorney to inform other attorneys under the enduring power of attorney about the attorney's resignation, revocation of the attorney's authority, or an order of the ACT Civil and Administrative Tribunal affecting the attorney's power. In the last event, the attorney also has a duty to inform anyone who deals with the attorney. This duty is provided in s.43.

15. CAN

you appoint more than one enduring attorney?

You may appoint a number of people together or separately to be your enduring attorneys. This means that the enduring attorneys you appoint have the same functions and can act either together or separately at their discretion in making decisions on your behalf.

You must indicate if you wish them to act:

- together; or
- separately; or
- in the manner you direct.

Enduring Attorneys appointed together:

You may appoint a number of people jointly to be your enduring attorneys. This means that the enduring attorneys you appoint have the same decision-making areas. In making decisions on your behalf they will only be able to act if they all agree on the course of action.

Enduring Attorneys appointed separately:

You may appoint a number of people separately to be your enduring attorneys. This means that the enduring attorneys you appoint will be able to act independently, however it would be expected that there would be consultation prior to any decision.

Enduring Attorneys appointed together and separately:

You may appoint a number of people together and separately to be your enduring attorneys. This means that the enduring attorneys you appoint have the same functions and can act either together or separately at their discretion in making decisions on your behalf.

The death, resignation or incapacity of one of the enduring attorneys does not automatically terminate the appointment of the other enduring attorneys.

There are a number of things you may wish to consider in deciding whether to appoint more than one enduring attorney.

- Decisions made by one enduring attorney may impact on the decisions made by another enduring attorney.
- There may be potential for disagreement among enduring attorneys appointed *together* (that is enduring attorneys appointed with the same decision-making areas).
- The people you are appointing need to be able to communicate well with each other in making decisions on your behalf.
- Consider who you have appointed, or are considering appointing, under an enduring power of attorney, as personal decisions can have financial implications, and financial decisions can have lifestyle implications.
- You can also use the form to appoint a person as your alternate enduring attorney to act in the event of the unwillingness or unavailability of your enduring attorney.

16. WHAT

if your enduring attorney/attorneys dies, resigns or becomes a person with impaired decision-making capacity?

What happens if your only enduring attorney dies or becomes incapacitated.

In these circumstances, where it is recognised that you are a person who has impaired decision-making capacity, an application may be made to the ACT Civil and Administrative Tribunal. The Tribunal will consider the appointment of a guardian and/or financial manager.

If your **only** enduring attorney resigns from this role, and you still have capacity to make your own decisions and do not need a guardian, the enduring attorney can resign by giving you written notice. There is a form of resignation in Part B of this booklet. You would then need to consider completing another enduring power of attorney.

If you have lost capacity, then your enduring attorney can only resign with the approval of the ACT Civil and Administrative Tribunal.

What happens if you have appointed two persons as your enduring attorneys to act together?

- the death, resignation or incapacity of one of the enduring attorneys does not automatically invalidate the appointment of the other enduring attorney.
- the surviving enduring attorney can continue to act on your behalf.

17. DOES

anyone supervise enduring attorney/attorneys?

The appointment of your enduring attorney/attorneys and their decision-making role is not subject to supervision.

There is no requirement for your enduring attorney/attorneys to report on the decisions they make on your behalf.

There may be situations where there is a need to review the actions of an enduring attorney.

If someone has a concern about actions taken by an enduring attorney, they should raise that concern with the enduring attorney. If there are circumstances preventing them from doing this, or they have raised the issue and the concern remains, they can contact:

- ACT Civil and Administrative Tribunal.
- Public Advocate of the ACT

The Guardianship & Management of Property Tribunal could decide on reviewing the concerns raised to:

1. give a direction to the enduring attorney/attorneys;
2. make a declaration about the interpretation or effect of the enduring power of attorney;
3. revoke the enduring power of attorney or part of it; and/or
4. appoint a guardian or manager.

The Public Advocate could decide on reviewing the concerns raised to investigate the actions of an enduring attorney/s and require the enduring attorney/s to provide the accounts or other records of transactions.

18. WHEN

does an enduring power of attorney end?

Although there is no time limit on enduring powers of attorney, certain actions by you, the enduring attorney or the ACT Civil and Administrative Tribunal can bring the enduring power of attorney to an end.

An enduring power of attorney ends:

1. when the principal dies; or
2. when the sole enduring attorney, or last of the enduring attorneys appointed to act separately, dies or becomes a person with impaired decision-making capacity; or
3. where there are more than one joint enduring attorney, one of the attorneys dies or becomes a person with impaired decision-making capacity.

An enduring power of attorney ends when it is revoked:

- by the person who made the appointment; or
- when formally revoked by the ACT Civil and Administrative Tribunal.

If you have appointed two or more persons as your enduring attorneys to act together (unanimously), and have become a person with impaired decision-making capacity, the death, resignation or impaired decision-making capacity of an attorney does not automatically invalidate the appointment of the other enduring attorney. The surviving attorney can continue to act on your behalf.

The appointment of your enduring attorney is revoked:

- on your marriage, unless you are marrying your enduring attorney; and/or
- when you are married to your enduring attorney and divorce.

19. WHAT

happens if you change your mind?

It is possible to change your mind about:

- your enduring attorney/attorneys;
- the functions you have given; or
- the directions you have given.

For this to be valid you must have decision-making capacity to:

- revoke the appointment;
- alter the functions given to the enduring attorney; or
- appoint a different person.

This means you must understand the nature and effect of making the document you will sign to revoke the appointment.

It is good practice to put in writing your revocation of an enduring power of attorney. There is a copy of the form of revocation in Part B of this guide.

It is recommended that you notify the person in writing that you have revoked his or her appointment.

20. HOW

will your enduring attorney/attorneys get access to information to make decisions on your behalf?

When your enduring attorney/attorneys are making decisions on your behalf due to your impaired decision-making capacity, they have the right to access to all the information that could have been provided to you.

An enduring attorney will need certain information to make informed decisions on your behalf, which are in your best interests. For example, an enduring attorney will require information about your health, medical condition, and medication to enable them to make a decision or consent to medical treatment on your behalf.

21. WHAT

should you do with the enduring power of attorney form?

Completing an enduring power of attorney form can be a private arrangement between you and the person or persons that you appoint.

It is a good idea, for appropriate people to be informed that you have completed an enduring power of attorney. This may include informing other family members, friends and/or your family doctor.

There is no requirement to register an enduring power of attorney with any agency. However an enduring power of attorney may be registered with the Office of Regulatory Services and maintained under the *Registration of Deeds Act 1957*.

The enduring power of attorney is an important legal document. The original should be given to your attorney/attorneys. A copy should be kept in a safe place, possibly where you keep other important legal documents such as your will.

If your enduring attorney/attorneys exercise, a power to execute a deed or to transfer an interest in land, the Enduring Power of Attorney document must be registered with Office of Regulatory Services. You pay a fee to the Office of Regulatory Services for this service.

22. MORE

Where can I get more information?

For more information or additional copies of the booklet you can contact:

PUBLIC ADVOCATE OF THE ACT

PO Box 1001

Civic Square ACT 2608

Telephone: (02) 6207 0707

Facsimile: (02) 6207 0688

Email: pa@act.gov.au

Website: www.publicadvocate.act.gov.au

PUBLIC TRUSTEE OF THE ACT

PO Box 221

Civic Square ACT 2608

Telephone: (02) 6207 9800

Facsimile: (02) 6207 9811

Email: publictrustee@act.gov.au

Website: www.publictrustee.act.gov.au

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

For more information about making a guardianship and management of property application, contact the ACT Civil and Administrative Tribunal.

GPO Box 370

Canberra City ACT 2601

Telephone: (02) 6207 1740

Facsimile: (02) 6205 4855

Email: tribunal@act.gov.au

Website: www.acat.act.gov.au

OFFICE OF REGULATORY SERVICES

GPO Box 158

Canberra City ACT 2601

Telephone: (02) 6207 3000

Facsimile: (02) 6207 0538

Email: ors@act.gov.au

Website: www.ors.act.gov.au/index.html

PART B

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Guidelines for Completing an Enduring Power of Attorney



GENERAL

In an enduring power of attorney:

“principal” means the person making this enduring power of attorney.

“attorney” means the person who is authorised to act for the principal.

- An enduring power of attorney **may** be registered at the Office of Regulatory Services. If the attorney is to act in relation to land transaction, this enduring power of attorney **must** be registered.
- The principal or the person signing for the principal must initial any part of the form for an enduring power of attorney that is crossed out.
- It is recommended that the principal, or a person who is directed by the principal to sign, initials at the bottom of each page of this enduring power of attorney.
- When an interpreter registered with the National Accreditation Authority for Translators and Interpreters translates this document, they must complete the Interpreter/Translator’s Statement.

An enduring power of attorney contains the following schedules:

- (1) **Schedule 1**, which should include information on whether or not any of the principal’s previous enduring powers of attorneys are revoked.
- (2) **Schedule 2**, which sets out the obligations of an attorney.

1 APPOINTMENT OF ATTORNEY/ATTORNEYS

You may appoint an adult as an attorney to act for any or all of your property matters (includes financial matters), personal care matters, and health care matters. No corporation may be appointed as attorney. However, the Public Trustee or a trustee company may be appointed as an attorney for a property matter. The Public Advocate may be appointed as an attorney for personal care or health care matters. You may appoint one or more than one attorney.

If you want to appoint more than one attorney and you want your attorneys to have the same functions, then you should fill out the form by inserting the names of all your proposed attorneys in the place indicated. If more attorneys are to be appointed, add their particulars.

Each attorney must sign this form to show that the attorney accepted the appointment.

However, if you want to appoint more than one attorney and want your attorneys to have different functions and act separately, it is advisable that you fill out a different form for each attorney appointed.

2 AUTHORITY FOR SOMEONE ELSE TO EXERCISE THE ATTORNEY’S/ATTORNEYS’ POWERS

You can authorise your attorney to delegate any or all of their power to someone known to you. If you **do not** want your attorney to have the power to delegate their authority on your behalf to someone else cross out this section and initial.



3 MULTIPLE ATTORNEYS

This relates to the appointment of two or more attorneys. If you are only appointing one attorney, then cross out this section and put your initials beside any writing you have crossed out.

If you want to appoint more than one attorney and you want your attorneys to have the same functions, then you should also indicate whether you want them to act:

- together - they will only be able to act if they all agree on the course of action; or
- separately - each of them will be able to act independently, however it would be expected that there would be consultation prior to any decision.

You may also appoint attorneys to act both together and separately, in any combination, or in any other manner as noted in the form.

4 FUNCTIONS

Property Matters (includes financial matters),

Your attorney will automatically exercise functions in relation to your property and financial affairs from when you have indicated under Commencement (7) in the Enduring Power of Attorney form.

Personal Care Matters

If a power in relation to personal care matters is given, the attorney may deal with where you live; who you live with; whether, where and how you work; what education or training you receive; whether you apply for a licence or permit; your daily dress and diet; whether to consent to forensic examination of you; whether and where you will go on holiday; and legal matters relating to your personal care.

Health Care Matters

A health care matter for you means a matter, other than a special health care matter (explained below), relating to your health care.

Powers that cannot be given to an attorney

You cannot give powers to an attorney in relation to special personal matters (i.e. making or revoking your will; making or revoking a power of attorney or enduring power of attorney for you; voting in an election or referendum; consenting to the adoption of your child under 18; or consenting to your marriage), and special health care matters (i.e. removal of non-regenerative tissue from you for donation; sterilisation if you are, or are reasonably likely to be, fertile; termination of pregnancy; participation in medical research or experimental health care; treatment of mental illness; electroconvulsive therapy or psychiatric surgery; or prescribed health care.

5 DIRECTIONS, LIMITATIONS AND CONDITIONS

If you **do not** want to give any direction to, or set any limits on, your attorneys power cross out this section and initial.

6 REFUSAL, OR WITHDRAWAL OF, MEDICAL TREATMENT

You may also wish to set any conditions in relation to refusing, or requiring withdrawal of, medical treatment; e.g. if treatment is not likely to lead to a reasonable quality of life. If you have previously made a direction under the *Medical Treatment (Health Directions) Act 2006*, that direction may have no effect if you give power to the attorney in relation to health care matters.

7 COMMENCEMENT

Choose your option of when your attorney's power comes into effect in relation to property matters ONLY, by initialling the appropriate box.



8 STATEMENT OF UNDERSTANDING AND SIGNATURE

Understanding the nature and effect of making an enduring power of attorney includes understanding each of the following:

- (a) that the principal may, in the enduring power of attorney, state or limit the power to be given to the attorney;
- (b) that the principal may, in the enduring power of attorney, instruct the attorney about the exercise of the power;
- (c) when the power under the enduring power of attorney can be exercised;
- (d) that, if the enduring power under an enduring power of attorney can be exercised for a matter, the attorney has the power to make decisions in relation to, and will have full control over, the matter subject to terms or information about exercising the power that are included in the enduring power of attorney;
- (e) that the principal may revoke the enduring power of attorney at any time the principal is capable of making the enduring power of attorney; and
- (f) for enduring powers of attorney only, the power given by the principal continues even if the principal becomes a person with impaired decision-making capacity. –
 - i. that the power given by the principal continues even if the principal becomes a person with impaired decision-making capacity; and
 - ii. that, at any time the principal is not capable of revoking the power of attorney, the principal cannot effectively oversee the use of the power.

Note: A person has decision-making capacity if the person can make decisions in relation to the person's affairs and understands the nature and effect of the decisions (see Section 9 (1) Power of Attorney Act 2006).

Directing a person to sign

If needed, you can direct a person to sign the enduring power of attorney on your behalf. This person must be at least 18 years of age, not a witness for the enduring power of attorney, and not the attorney. You should give this direction to sign on your behalf in the presence of the witnesses.

9 CERTIFICATE OF WITNESS

An enduring power of attorney requires 2 witnesses.

- One witness must be a person authorised to witness the signing of a statutory declaration. (Such persons are as per the *Statutory Declarations Act 1959*– see page 6 of the Power to Choose – your guide to completing an enduring power of attorney).
- Only one witness can be a relative of the principal or the attorney.

A witness cannot be a person under 18 years of age;

- the person signing the enduring power of attorney for you; or
- the attorney

10 ACCEPTANCE OF APPOINTMENT

To an attorney: Prior to signing your acceptance of the attorney appointment it is very important to read the Obligations of the Attorney in Schedule 2 of this document. This Schedule also includes the General Principles with which an attorney must comply when the principal becomes a person with impaired decision-making capacity.



SCHEDULE 1

Information about revoking a power of attorney

An enduring power of attorney is revoked in the following circumstances:

- according to the terms as to when, or in which circumstances, it would end;
- when the principal dies;
- when any of the joint attorneys ceases to be an attorney (but, if the principal has become a person with impaired decision-making capacity, the enduring power of attorney will end only where the last of the joint attorneys ceases to be an attorney);
- when revoked by the principal, or by a later enduring power of attorney;
- in relation to an attorney, when the principal marries a person other than the attorney; or
- in relation to an attorney, when the principal and the attorney, who is the principal's spouse, divorce.

An enduring power of attorney is revoked, in relation to a particular attorney, if the attorney becomes a person with impaired decision-making capacity, or dies.

An enduring power of attorney is revoked to the extent it gives power in relation to property matters to an attorney, when the attorney becomes bankrupt.

Enduring Power of Attorney

UNDER THE *POWERS OF ATTORNEY ACT 2006*



1 APPOINTMENT OF ATTORNEY/ATTORNEYS

I, *[insert name]*

of *[insert address]*

appoint as my attorney/attorneys

[insert name]

of *[insert address]*

and

[insert name]

of *[insert address]*

NOTE: If you are appointing only one attorney, cross out the word "and", and the two lines after it.

Refer to published guidelines before completing this section.

2 AUTHORITY FOR SOMEONE ELSE TO EXERCISE THE ATTORNEY'S/ATTORNEYS' POWERS

I expressly authorise my attorney/attorneys to delegate all or any of the attorney's/attorneys' powers to:

Refer to published guidelines before completing this section.

3 MULTIPLE ATTORNEYS

Choose your option by initialling in the appropriate box. Delete and initial the other options.

I appoint my attorneys to act:

together

separately

in the following manner

Indicate whether you want the attorneys to act together and/or separately, in any combination, or in any other manner (such as different attorneys to act in different circumstances on the happening of different events or in relation to different matters).

Refer to published guidelines before completing this section.



4 FUNCTIONS

Choose your option by initialling in the appropriate box. Delete and initial any option that does not apply.

property matters (includes financial matters)

I authorise my attorney/attorneys to do, on my behalf, anything that I can lawfully do by an attorney, in relation to my property matters (which includes financial matters).

personal care matters

I authorise my attorney/attorneys to do, on my behalf, anything that I can lawfully do by an attorney, in relation to my personal care matters, while I have impaired decision-making capacity.

health care matters

I authorise my attorney/attorneys to do anything that I can lawfully do by an attorney, in relation to my health care matters, while I have impaired decision-making capacity.

Refer to published guidelines in relation to powers under this section.

5 DIRECTIONS, LIMITATIONS AND CONDITIONS

My attorney/attorneys shall only exercise power under section 4 above, subject to the following directions, limitations and conditions.

Choose your option by initialling in the appropriate box. Delete and initial any option that does not apply.

Property matters (includes financial matters)

personal care

health care

6 REFUSAL, OR WITHDRAWAL, OF MEDICAL TREATMENT

Choose your option by initialling in the appropriate box. Delete and initial the other option.

My attorney/attorneys may consent on my behalf to –

refuse or require the withdrawal of, medical treatment generally; or

refuse, or require the withdrawal of, the following kinds of medical treatment:

Refer to published guidelines in relation to this power.

7 COMMENCEMENT

Choose your option by initialling in the appropriate box. Delete and initial the other options.

My attorney's/attorneys' power in relation to my property matters comes into effect –

Immediately

From _____ (specify date or the happening of an event)

Only when I become a person with impaired decision making capacity.

My attorney's/attorneys' powers in relation to personal care matters and health care matters will be exercisable when I become a person with impaired decision-making capacity.



8 STATEMENT OF UNDERSTANDING AND SIGNATURE

I fully understand that, by making this enduring power of attorney, I authorise my attorney/attorneys to act on my behalf in accordance with the terms set out in this enduring power of attorney. I also understand the nature and effect of making a power of attorney.

NOTE: Published guidelines set out the meaning of "understanding the nature and effect of making a power of attorney". You should read the relevant guideline before signing this statement.

a) Signature Date
[Signature of Principal]

OR,

b) I directed:

Name
Address
Suburb State Postcode

to sign this enduring power of attorney on my behalf.

Signature Date
[Signature of another person signing in the presence of and by the direction of the principal.]

Refer to published guidelines in relation to giving this direction.

9 CERTIFICATE OF WITNESS

Refer to published guidelines in relation to signing the certificate of witness, and who can be a witness.

Witness 1

I,

[insert full name, occupation and the category of persons authorised to witness the signing of a statutory declaration]

of:

[insert address]

and

Witness 2

I,

[insert full name and occupation]

of:

[insert address]



certify that:

- a) the principal signed this enduring power of attorney in my presence voluntarily; and
- b) at the time the principal signed this enduring power of attorney, the principal appeared to me to understand the nature and effect of making it.

OR (if a person signed on behalf of the principal)

- c) the principal directed the person to sign the enduring power of attorney for the principal;
- d) the principal gave the direction voluntarily in my presence and the person signed this document in the presence of the principal and me;
- e) the person signed the power of attorney in the presence of the principal and me; and
- f) at the time the principal gave the direction, the principal appeared to me to understand the nature and effect of making this enduring power of attorney.

NOTE: Cross out (a) and (b) if a person signed on behalf of the principal. Otherwise, cross out (c), (d), (e) and (f).

Witness 1

Signature

Date

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Witness 2

Signature

Date

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

10 ACCEPTANCE OF APPOINTMENT

I have read this enduring power of attorney which appoints me as attorney for the principal. I understand that by signing this enduring power of attorney, I take on the responsibility of exercising the powers which I have been given by the following acceptance of my appointment.

I accept my appointment as attorney

Name

Signature

Date

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

and

I accept my appointment as attorney

Name

Signature

Date

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

NOTE: If only one person is being appointed, cross out the word "and", and the three lines after it.

Refer to published guidelines in relation to acceptance of appointment.

SCHEDULE 1

Revocation of an Enduring Power of Attorney

NOTE: Choose your option by initialling in the appropriate box. Delete and initial the other options.

- I have not made an enduring power of attorney before.
- I revoke all of my previous enduring powers of attorney.
- The following enduring powers of attorney will continue to operate even after the making of this enduring power of attorney: *(Give the date of making the continuing enduring power/s of attorney and the name of the attorney/attorneys appointed under it/them)*

1) _____

2) _____

Name

[Name of Principal]

Signature

[Signature of Principal]

Date

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Refer to published guidelines in relation to revocation of a power of attorney.

Obligations of the Attorney under an Enduring Power of Attorney

PART 1

YOUR OBLIGATIONS AS ATTORNEY INCLUDES THE FOLLOWING:

1. Unless expressly authorised by this enduring power of attorney, you must avoid transactions which result, or may result, in conflict between your duty to the principal; and either the interests of you, or your relative, business associate or close friend of the attorney; or another duty you may have.
2. You must notify other attorneys when you resign as attorney or your authority is revoked. You must notify other attorneys and any one who has had dealings with you as the principal's attorney, about any court or tribunal matter that has effect on your authorisation
3. If the principal's decision-making capacity is impaired:
 - a. You must, to the maximum extent possible, comply with the general principles set out in Schedule 1 to the Powers of Attorney Act (an extract of which is part of this schedule);
 - b. If you are an attorney for property matters, you must
 - i. keep accurate records and accounts of all dealings and transactions made under this power of attorney, and
 - ii. keep the principal's property separate from yours, unless the property is owned jointly by you and the principal; and
 - c. You must not ask for medical treatment to be withheld or withdrawn from the principal, unless you have been expressly authorised to consent to the withholding or withdrawal of treatment under section 6 of this enduring power of attorney, and you have consulted a doctor about the nature of the principal's illness, any alternative forms of treatment available, and the consequences of the principal remaining untreated. Your decision should be on the basis of what the principal would ask for if the principal could make a rational judgment, and were to give serious consideration to the principal's own health and wellbeing

NOTE: In the event that the principal's decision-making capacity becomes impaired, you have the right to all the information that the principal would have been entitled to if the principal had decision-making capacity. If you are in doubt about your responsibilities as attorney you may seek advice or assistance from the Public Advocate of the ACT.

PART 2

GENERAL PRINCIPLES FOR ENDURING POWERS OF ATTORNEY

(Schedule 1 to the Powers of Attorney Act 2006 (section 44))

1.1 Access to family members and relatives

- (1) An individual's wish and need to have access to family members and relatives, and for them to have access to the individual, must be recognised and taken into account.
- (2) An individual's wish to involve family members and relatives in decisions affecting the individual's life, property, health and finance must be recognised and taken into account.

1.2 Human worth and dignity

An individual with impaired decision-making capacity has an inherent right to respect for the individual's human worth and dignity as an individual.

1.3 Role as a member of society

- (1) An individual has a right to be a valued member of society.
- (2) Because of this right, it is important to encourage and support the individual to perform social roles valued in society.

1.4 Participation in community life

It is important to encourage and support an individual to live a life in the general community, and to take part in activities enjoyed by the community.

1.5 Quality of life

An individual's need and wish to have a reasonable quality of life must be recognised and taken into account.

1.6 Participation in decision making

- (1) An individual has a right to take part in decisions affecting the individual's life to the greatest extent practicable.
- (2) Without limiting subsection (1), an individual also has a right to take part in decisions affecting the individual's property and finance to the greatest extent practicable.
- (3) The right of the individual to make the individual's own decisions must be preserved to the greatest extent practicable.

Examples of preserving individual's right to make own decisions

- 1 The individual must be given any necessary support, and access to any necessary information, to allow the individual to take part in decisions affecting the individual's life to the greatest extent practicable.
- 2 To the greatest extent practicable, the individual's views and wishes must be sought and taken into account before exercising power in relation to the individual.
- 3 Power in relation to the individual must be exercised in the way that is least restrictive of the individual's rights.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) If an individual's wishes or needs cannot be expressed by the individual, the person exercising power in relation to the individual must try to work out, as far as possible, from the individual's past actions, what the individual's wishes and needs would be if the individual could express them and take those wishes and needs into account.

(5) However, a person exercising a function in relation to an individual must do so in a way consistent with the individual's proper care and protection.

(6) An individual's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

1.7 Individual taken to be able to make decisions

An individual must not be treated as unable to take part in making a decision only because the individual makes unwise decisions.

1.8 Maintenance of existing supportive relationships

The importance of maintaining an individual's existing supportive relationships must be taken into account.

1.9 Maintenance of environment and values

(1) The importance of maintaining an individual's cultural and linguistic environment, and set of values (including any religious beliefs) must be taken into account.

(2) For an individual who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the individual's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom) must be taken into account.

(3) In this section:

Aboriginal tradition—

(a) means the body of traditions, observances, customs and beliefs of Aboriginal people generally, or of a particular community or group of Aboriginal people; and

(b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

Island custom, known in the Torres Strait as Ailan Kastom—

(a) means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally, or of a particular community or group of Torres Strait Islanders; and

(b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

1.10 Confidentiality

An individual's right to confidentiality of information about the individual must be respected.

1.11 Health care

(1) An individual is entitled to have decisions about health care matters made by an attorney—

(a) in the way least restrictive of the individual's rights and freedom of action; and

(b) only if the exercise of power—

(i) is, in the attorney's opinion, necessary and appropriate to maintain or promote the individual's health and wellbeing; or

(ii) is, in all the circumstances, in the individual's best interests.

(2) An individual's wishes in relation to health care matters, and any information provided by the individual's health care provider, must be taken into account when an attorney decides what is appropriate in the exercise of power for a health care matter.

Interpreter's/Translator's Statement

COMPLETE THIS STATEMENT IF YOU ACTED AS AN INTERPRETER/TRANSLATOR WHEN THE FOLLOWING DOCUMENT WAS SIGNED:

- **An Enduring Power of Attorney (for financial or personal or health matters)**

The statement must be added to the original document, and witnessed by the same person who witnessed the signing of that document.

Note: You must be a qualified interpreter/translator, registered with the National Accreditation Authority for Translators and Interpreters.

THIS STATEMENT IS AN ANNEXURE (ATTACHMENT) TO:

(Write here the title of the document that you translated, e.g. 'Enduring Power of Attorney')

dated *(write here the date when the document was signed)*

I,

(Write your full name here)

certify that, before the attached document was signed by the principal,

(Write here the full name of the principal)

I translated the document into the

language,

(write here the language used)

and, in the presence of the witness, read the translation to the principal, who is unable to speak or read the English language well enough to understand the original. When I read the translation of the document to the principal, he/she appeared to fully understand its nature, meaning and effect.

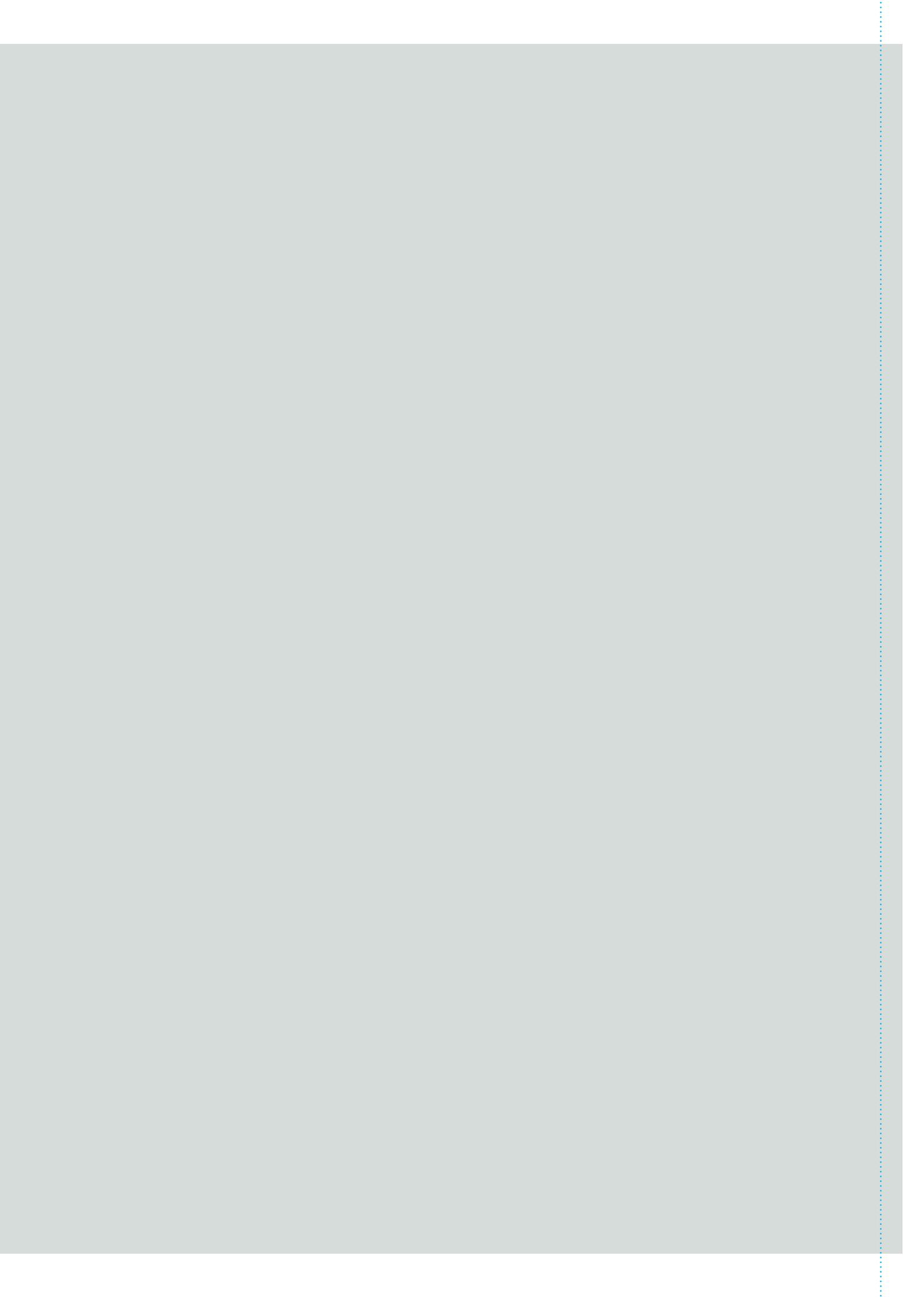
(you sign here)

(Write your qualifications here)

(Your witness signs here)

(Witness writes the date here)

When completed, this statement MUST be attached to the document named above



Notice of Resignation of Enduring Attorney

I, Name

Address

Suburb

State

Postcode

resign my appointment as an attorney.

of

Name of Principal

Address

Suburb

State

Postcode

NOTE: You may resign your appointment as an attorney by giving written notice to the person who appointed you. However, you can only do this if that person is not in need of a guardian at the time you give this notice. If the person is in need of a guardian at that time, you may resign only with the approval of the ACT Civil and Administrative Tribunal. Please forward this notice with a copy of the Enduring Power of Attorney to the ACT Civil and Administrative Tribunal.

Signature

Date

I DIRECTED:

Name

Address

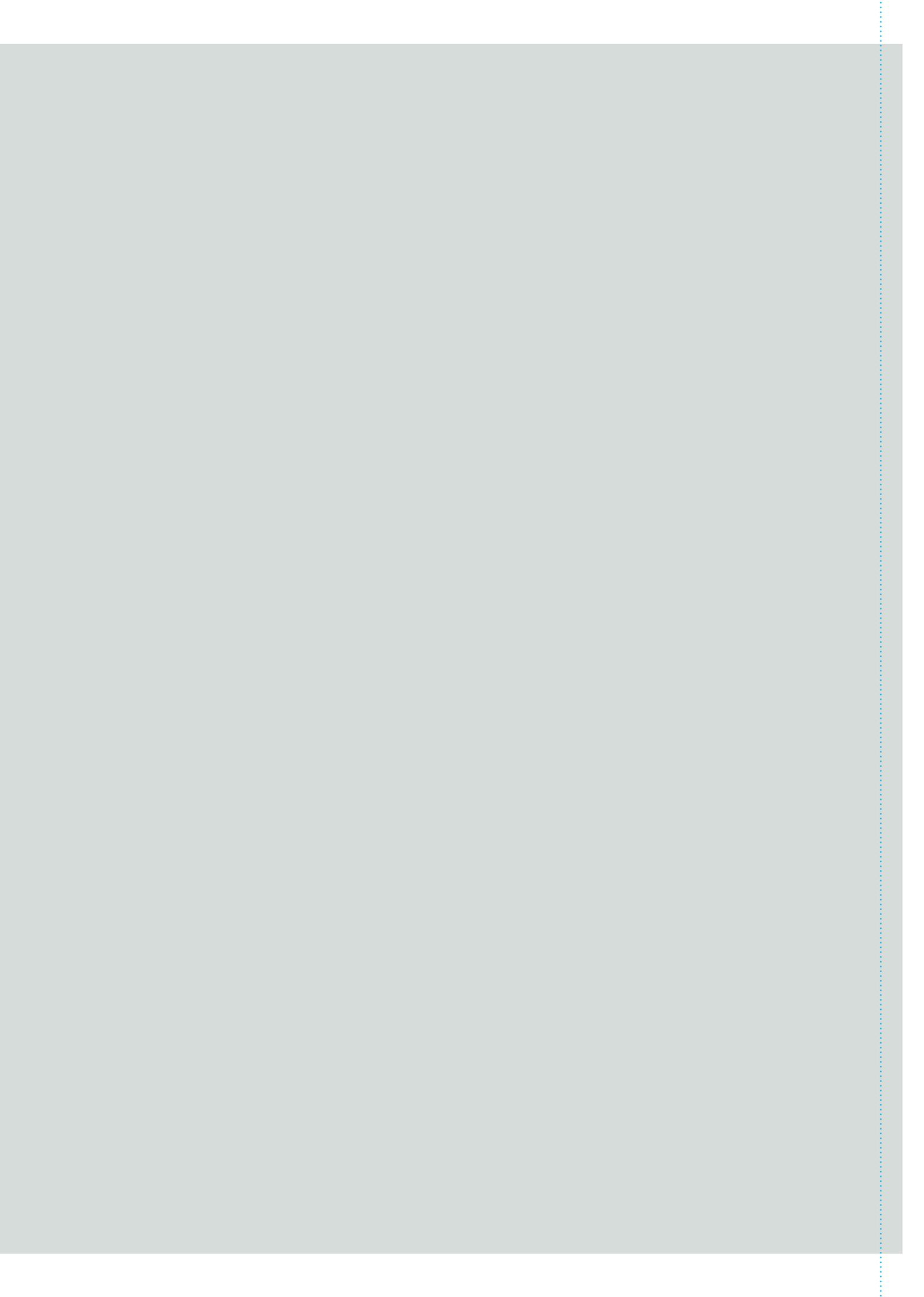
Suburb

State

Postcode

to sign this document on my behalf.

NOTE: If needed, you can direct a person to sign the document on your behalf. This person must be at least 18 years of age. If this statement does not apply, cross out and put your initials beside any writing you have crossed out.





Public Advocate of the ACT

*protecting and promoting
the rights and interests
of our vulnerable citizens
in partnership with
the ACT community*

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