

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.

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 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

Witness 2

Signature

Date

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

and

I accept my appointment as attorney

Name

Signature

Date

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
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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 guardianship 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.