

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 Registrar-General’s Office. 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, 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

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

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.



8 STATEMENT OF UNDERSTANDING AND SIGNATURE

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

- (a) that the principal may, in the power of attorney, state or limit the power to be given to the attorney;
- (b) that the principal may, in the power of attorney, instruct the attorney about the exercise of the power;
- (c) when the power under the power of attorney can be exercised;
- (d) that, if the power under a 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 power of attorney;
- (e) that the principal may revoke the power of attorney at any time the principal is capable of making the 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 listed under the *Statutory Declaration Regulations 1993* of the Commonwealth.)
- 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 this 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.