

# Take control

A kit for making powers of attorney and guardianship



OFFICE OF THE  
PUBLIC ADVOCATE

Victoria  
Legal Aid

Lawyers And  
Legal Services

# Take Control

A kit for making powers of attorney and guardianship

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## Victoria Legal Aid (VLA)

### Our vision

VLA is a leading and responsible force for community access to the legal system and for social justice.

### Our values

Victoria Legal Aid is committed to: serving our clients and community professionally and ethically; acting with integrity, fairness and transparency at all times; respecting and valuing diversity, and pursuing continuous improvement across the organisation.

### Our services

We can help you with legal problems about criminal matters, family breakdown, family violence, child support, immigration, social security, mental health, discrimination, guardianship and administration, tenancy, debt and traffic offences.

Our free legal services include:

- information over the phone in English and other languages
- booklets and other materials in English and other languages
- seminars and workshops
- legal advice across Victoria, including most courts and tribunals.

If you want ongoing help from a lawyer, you can apply for a grant of legal assistance. Getting a grant will depend on your financial situation and your legal problem. You can use a grant to:

- pay a lawyer to help reach agreement or speak for you in court
- go to our family dispute resolution service.

Some of our services are subject to guidelines and means tests. However, most of our services are provided free of charge. Application forms for legal assistance are available from VLA or private lawyers.

Call us to find out how we can help you on 9269 0120 or 1800 677 402 (country callers).

## Office of the Public Advocate

The Office of the Public Advocate is an independent statutory office, working to promote the interests, rights and dignity of Victorians with a disability. It provides advice about advocacy, guardianship, powers of attorney (including enduring guardianship) and consent to medical and dental treatment.

The Office of the Public Advocate manages three voluntary programs, the Community Visitors Program, the Independent Third Persons Program and the Community Guardianship Program. Community visitors monitor the quality of disability services in order to safeguard the rights of vulnerable people. The Independent Third Persons program provides support for people with a cognitive impairment who have contact with the police. The Community Guardianship Program is a community-based program of guardianship for Victorians with a cognitive disability who are unable to make decisions for themselves.

For more information visit [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au) or call our advice service on 1300 309 337 for the cost of a local call.

## About this kit



Many people have a Will to let people know their wishes after they die, but what if you were faced with an accident or illness and were unable to make decisions for yourself? Have you given people the right legal authority to make decisions for you? As with a Will, you can make legal documents that allow decisions to be made that take into account your wishes. The difference is that these documents allow you to control who will make financial, medical and/or lifestyle decisions while you are still alive.

You can choose a person to act on your behalf to make these decisions. You can make:

- **a general power of attorney** by appointing someone to make financial or legal decisions for you, usually for a specific period of time, such as when you are away on holidays
- **an enduring power of attorney (financial)** by appointing someone to make financial and legal decisions on your behalf, such as signing a legal document, selling property or doing your banking, if you are unable to make these decisions some time in the future
- **an enduring power of attorney (medical treatment)** by appointing someone to make medical decisions on your behalf, such as agreeing to or refusing surgery, if you are unable to make these decisions some time in the future
- **an enduring power of guardianship** by appointing someone to make day-to-day lifestyle decisions on your behalf, such as where you live and health care issues, if you are unable to make these decisions some time in the future.

An attorney does not have to be a lawyer. It can be anyone you trust to make decisions on your behalf, like a family member or friend.

**We recommend that everyone over 18 years of age consider making these arrangements.**

Read this kit carefully. It will help you work through the issues so you can put the arrangements in place that are best for you. Take your time. Think about what decisions you want to be made for you and who is the best person to make them. When you are ready, there are forms at the back of this kit that you can fill in to make your arrangements legal.

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The information in *Take control* is not intended to be a replacement for legal advice.

Although you do not need a lawyer to make a power of attorney or guardianship, get legal advice if you are unsure about your rights and responsibilities. There is a list of places you can go for further information at the back of the kit.

See 'Where to get help'.

At the end of most sections you will find some commonly asked questions to help you. There is also a section at the back of the kit that explains some of the legal words that you may come across when you are making a power of attorney or guardianship.

See 'Legal words' if there are any words you do not understand.

## Why do I need to make a power of attorney or guardianship?



Sometimes things happen that you are not expecting, such as a head injury from a car accident or temporarily becoming unconscious as a result of an illness. Making a power of attorney or guardianship is the only way you can take control over who will make decisions for you if you are not able to do so.

### Who can make a power of attorney or guardianship?

To appoint someone as your attorney or guardian, you must:

- be 18 years of age or over
- have sufficient **capacity** to make the appointment.

**Capacity**, or legal capacity, means you have the ability to reason things out. You can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.

This means that at the time of making the appointment of power of attorney or guardianship, you must be able to understand things like:

- what sorts of powers the attorney or guardian will have
- what sorts of decisions they will have the authority to make
- when and how they will have the authority to exercise that power
- the effects that their power could have on you and the things that are important to you
- how to cancel or change the arrangement in the future.

Then you must be able to weigh up the risks and benefits and make a decision based on what matters most to you, without pressure from anyone else. When you make a decision in this way, you have made an informed decision or given informed consent.

You might make a very different decision from other people who are in similar situations to you and that is fine. As far as the law is concerned, the important thing is that you have understood the general nature of your decision and you have made your decision freely.

You are not required to take a test to determine your capacity. The law assumes that you have capacity once you turn 18 years old. However, for all enduring powers of attorney, the witnesses are required to check your capacity by asking questions to make sure you understand the document you are signing and the powers you are giving your attorney.

For any power of attorney or guardianship appointment to be valid, the person who signs the form must also have capacity at the time they sign it. If a person does not have the capacity to make an informed decision, then any form they sign will not be legally valid.

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A legal body such as the Supreme Court or the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT) can find that a person did not have capacity to sign a power of attorney or guardianship form. You may need a doctor or other expert to give their opinion about your capacity to make decisions.

The **Guardianship List** is part of the Victorian Civil and Administrative Tribunal (VCAT) and has the power to make orders about enduring powers of attorney.

## Who decides when I can no longer make decisions for myself?

It is most likely to be your attorney or guardian who will make a decision about when you lose capacity. They may be assisted by your doctor or health care service. There may be a period of time where you have capacity, but are very frail, and so you rely more on these people to help you. This may assist you to clarify whether you can trust them. Your capacity may be good one day and poor the next. This will make it difficult for professionals and your attorney or guardian to determine whether you have capacity.

Just because you have lost capacity does not mean that you should not be involved in decision-making. Your attorney or guardian should make decisions that are in your best interests in consultation with you.

## What happens if I do not have a power of attorney or guardianship?

Not everybody bothers to appoint attorneys or guardians. There is certainly nothing to say that you have to, but there are consequences if you do not. For example, it could lead to conflict over who should take charge of the decision-making process if you become unable to do this yourself.

The way in which conflict can be resolved will depend on the type of decisions that need to be made.

### Financial and lifestyle decisions

If you do not appoint an enduring power of attorney (financial) or guardian, and you lose capacity to make your own decisions, then only the Guardianship List of VCAT can appoint someone with the legal authority to make decisions on your behalf.

If the Guardianship List decides that you need someone to make decisions about your finances or legal affairs, they will appoint an **administrator**.

An **administrator** is a person appointed by the Guardianship List of VCAT to make financial and legal decisions if you are unable to make these decisions yourself.

If they decide that you need someone to make decisions for you about other aspects of your life, they will appoint a **guardian**.

A **guardian** is a person appointed to make personal lifestyle decisions on your behalf. A guardian can only make decisions for you if you are unable to make decisions yourself.

The Guardianship List has an obligation to take your views into account when appointing an administrator or guardian, but ultimately it is their decision, not yours.

Guardianship and administration hearings, while not as formal as a court hearing, can still be very stressful for everyone involved. There can be conflict between family and friends about who is best placed to make decisions for you. Appointing someone as an attorney or guardian ahead of time avoids this conflict.

## Medical treatment decisions

If you do not appoint an attorney (medical treatment) or guardian with power to make medical treatment decisions, and you are unable to make your own decisions about medical treatment, whoever is first on the following list can consent to medical treatment for you:

- someone already appointed by the Guardianship List of VCAT to make medical decisions for you
- someone you have appointed in some other way in writing to make medical treatment decisions for you
- your spouse or partner
- your primary carer (cannot be a paid professional carer)
- your nearest relative.

These people cannot consent to the following special medical procedures without first getting approval from the Guardianship List:

- medical procedures that are likely to lead to infertility
- termination of pregnancy
- removing tissue for transplants.

They also cannot refuse medical treatment for you if you are unconscious and dying, even if you would not want the medical treatment or it would cause you unreasonable distress. For example, if you were dying with cancer you may not want to be resuscitated, as this can be painful and distressing. You need someone to sign a document declaring that you are not to be resuscitated. Once you have lost your capacity, only an agent appointed under the *Medical Treatment Act 1988* or a guardian appointed by the Guardianship List can sign such a document for you.

**Appointing an enduring attorney under the Medical Treatment Act is the only way in which you can have control over who will make these end-of-life decisions for you if you are unable to make these decisions for yourself.**

See 'What is an enduring power of attorney (medical treatment)?'

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## More questions

### Is it possible to ask someone to sign a power of attorney for me if I cannot physically sign the form myself?

Yes – as long as you have capacity. The enduring power of attorney (financial) form has a space for a person, who is not a witness or the attorney, to sign on your behalf and in your presence. We recommend similar wording be used on the other forms. For example:

I, ... [person signing at your direction prints his/her full name] ..., state that:

- (a) I am the person signing at the direction and in the presence of the donor as the donor is unable to sign
- (b) I am at least 18 years old
- (c) I am not a witness for this document or an ... [attorney/alternate attorney/guardian/alternate guardian] ... for the donor.

[Person signing under your direction and in your presence signs here]

### How can someone make a power of attorney if they cannot read English?

If a person cannot read English, they should only sign a form once it has been translated and they are satisfied that they understand what the document says. The interpreter must be qualified. We suggest the following words are added to the form below the person's signature to make it clear that the document was translated:

Signed as a deed by ... [name of person making the power] ..., having first been read out and translated into ... [language] ... by ... [name of interpreter] ..., the donor being ... [nationality] ... and ... [language] ... being the customary language understood by the donor.

It is sensible for the witnesses to be able to speak English and the language of the donor. We suggest that these witnesses complete and sign the statement below:

#### Certificate of witnesses

This enduring power of attorney/guardianship was read out and translated to the donor into ... [language] ... by ... [name of interpreter] ... and the donor appeared to understand the same and approve its contents.

[Witness signs under this statement]

The interpreter should also provide a signed statement to say they have translated the power of attorney or guardianship form. This statement should be attached to the form.

A donor is a person giving decision-making power to another person.

## General power of attorney



A general power of attorney is a legal document that appoints one or more people to make financial and legal decisions for you. It is often used for a specific purpose and for a fixed period of time.

You can give your attorney authority to do one thing or a whole range of things. This could include:

- using your bank account
- selling your property
- paying your everyday expenses
- paying your taxes and mortgage payments
- making investment decisions
- running your business.

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

You can appoint more than one decision-maker. You can choose whether they make decisions:

- **jointly**, which means they must all agree to any decisions and every document must be signed by all of them
- **jointly and severally**, which means that any of them can make a decision and sign documents together or without the others.

Appointing more than one decision-maker can help you get a balanced outcome. For example, you might choose to appoint one person who knows what you would want, such as a friend or relative, and another person who can make good financial decisions, such as an accountant. If they act jointly, you may feel confident that any decisions made would be in your best interests and financially sound. Be aware though, if you appoint them jointly and they cannot come to an agreement about what to do then a decision cannot be made. Your attorneys would have to apply to a court to resolve the disagreement. Appointing your attorneys jointly and severally may avoid such problems and delays.

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## When do my attorney's powers begin and end?

You have control over when your attorney's powers begin. It will be as soon as you have signed the form or you can change the form and specify a starting and/or ending date. For example, if you need someone to run your business while you are on holidays you can make a power for the period that you are away.

If you appoint a general power of attorney and then lose legal capacity at a later stage, the document will no longer be valid. The person you have appointed will not be able to make decisions on your behalf. Your attorney's powers also stop if they become bankrupt, they resign or you die. You can also change or cancel a general power of attorney at any stage.

See 'How to change or cancel an appointment'.

## Can I limit my attorney's powers?

You can limit or place conditions on how you want your attorney(s) to carry out their responsibilities. For example, you could limit their authority so that they only deal with shares, or they can pay bills, but not deal with your property.

**If you do not specify any limits, your attorney will be able to make any financial or legal decisions on your behalf until the appointment is changed or cancelled, or you lose capacity.**

## Enduring power of attorney (financial)



An enduring power of attorney (financial) is a legal document that appoints one or more people to make financial and legal decisions for you. Unlike a general power of attorney, it continues to be legal even if you are unable to make these decisions yourself. This means that someone you choose can take control of your financial and legal affairs if you ever lose capacity.

When making decisions for you, your attorney must:

- act in your best interests
- wherever possible, make the same decision that you would make
- keep accurate records of dealings and transactions
- avoid situations where there is a conflict of interest
- keep your property and money separate from their own.

You do not need to pay your attorney for the power to be effective. Normally, payment is made if your attorney is a trust company or professional person, such as an accountant. If you appoint a friend or family member, and you believe that they should be paid for their service, get a lawyer to prepare the documentation.

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

There are two options under the Instruments Act 1958 to appoint more than one decision-maker. You can choose whether they make decisions:

- **jointly**, which means they must all agree to any decisions and every document must be signed by all attorneys
- **jointly and severally**, which means that any of them can make a decision and sign documents together or without the others.

Appointing more than one decision-maker can help you get a balanced outcome. For example, if you choose someone who knows what you would want, but they do not have the financial knowledge, you could have a second attorney who is a financial expert, such as an accountant.

If you appoint two people jointly it can slow the decision-making process down. Also, if they cannot come to an agreement about what to do, your attorneys would have to apply to the Guardianship List of VCAT to resolve the disagreement. Appointing your attorneys jointly and severally may avoid such problems and delays.

You can also appoint an alternative decision-maker so that if the first person is unable to carry out the role there is someone else who can step in. An **alternative attorney** can only act if your attorney loses capacity, dies or they are absent for a period of time, such as when they are travelling overseas.

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## When do my attorney's powers begin?

You can nominate when your attorney's power starts. On the form you are asked if you want the attorney to begin:

- immediately
- on a specified date
- on a specified occasion.

If you do not select one of these options the power begins immediately.

If you choose to start it immediately, your attorney can act even if you still have capacity. You can also continue to make decisions yourself while you have capacity, but they must act in accordance with your directions.

If the power comes into effect once you have lost capacity, then the attorney may have to prove that you have lost capacity. This usually requires some medical evidence. It is wise to give your attorney permission to speak to your doctor about your health so they can get this evidence. A draft form of consent can be found on the Office of the Public Advocate website at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

## Can I limit my attorney's powers?

You can limit how you want your attorney to carry out their responsibilities and place conditions on the decisions they make on your behalf. You can include instructions about what you would like your attorney to do and they must act on these. You can also set out your wishes, but these are not binding on the attorney. If you have large capital assets, such as property or shares, you could leave clear instructions about how your attorney should manage, distribute or dispose of these assets.

It is better not to place too many restrictions on your attorney's power, as this may make it difficult for them to make decisions on your behalf. If you choose to impose conditions or restrictions, it is recommended you get legal advice.

See 'Where to get help'.

**If you do not specify any limits, your attorney will be able to make any financial or legal decisions on your behalf from the time the power of attorney begins to when it is changed or cancelled.**

## Enduring power of attorney (medical treatment)



An enduring power of attorney (medical treatment) is a legal document that appoints another person to make decisions about your medical treatment. The appointment begins if and when you are unable to make decisions about your medical treatment. You may have lost capacity permanently, such as through dementia or an acquired brain injury, or it might be temporarily, such as if you are unconscious as a result of an accident or illness.

In either event, while emergency treatment can be given without your agreement, other medical treatment, such as surgery or medication, generally requires consent. If you are unable to give that consent, but have an enduring power of attorney (medical treatment), your attorney can make a decision on your behalf about whether to agree to treatment or not.

In some cases, the power to refuse medical treatment may be significant. You may wish to appoint someone to make these decisions for you if you do not want to:

- be put on life support
- have medical interventions that may prolong dying but not be of any therapeutic value.

When making decisions on your behalf, your **agent** must:

- act in your best interests
- wherever possible, make the same decision that you would have made
- avoid situations where there is a conflict of interest.

The person that you appoint to be your decision-maker for an enduring power of attorney (medical treatment) is called an **agent**.

It is very important that your agent understands your views about potential medical treatment, especially the type you would want them to refuse. Discuss this with them and write down your wishes.

You may also wish to discuss this with your family, as your agent has the power to override the medical decisions of family members. If your family believes the agent is not acting in your best interests, they can make an application to the Guardianship List of VCAT to revoke or suspend your enduring power of attorney (medical treatment).

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

You can only appoint one agent, but you can appoint an alternative decision-maker so that if your agent is unable to carry out the role there is someone else to step in. An **alternate** agent can only act if your attorney loses capacity, dies or they are absent for a period of time.

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## Can I limit my agent's powers?

The powers of the agent are set out in the Medical Treatment Act and cannot be changed. They can only make decisions about medical treatment. They can only refuse medical treatment on your behalf if the treatment would cause you unreasonable distress or they reasonably believe that you would consider the treatment unwarranted.

## Are there any medical decisions that my agent cannot make?

An agent does not have the authority to consent to medical procedures that are likely to lead to:

- infertility
- termination of pregnancy
- removal of tissue for transplants.

Before any of these procedures can be carried out, the agent must apply to the Guardianship List of VCAT for a decision.

## Enduring power of guardianship



This is a legal document appointing someone to make personal or lifestyle decisions on your behalf. The appointment begins when you are unable to make your own decisions.

It is up to you to specify what sorts of decisions you would want your guardian to make. These will generally be decisions around practical issues that affect your daily life, such as where you live or what sorts of activities you do. The form has examples of the types of powers you can choose.

If you have not made an enduring power of attorney (medical treatment), your guardian can also consent or withhold consent to medical treatment on your behalf. If your guardian withholds consent to proposed medical or dental treatment, a practitioner may only provide treatment after notifying your guardian and giving them an opportunity to apply to the Guardianship List of VCAT about the treatment. If you wish to appoint a person who can refuse medical treatment in all circumstances, it is best to make an enduring power of attorney (medical treatment).

When making decisions on your behalf, your guardian must:

- take into account any wishes you have expressed
- act in your best interests
- wherever possible, make the same decision that you would have made.

**You cannot appoint a person who is providing you with professional care, treatment or accommodation.**

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

You can only appoint one guardian. However you can also appoint an alternative decision-maker, so that if your guardian is unable to carry out the role there is someone who can step in. An **alternative guardian** can only act if your guardian loses capacity, dies or they are absent for a period of time, such as they are travelling overseas.

## Can I limit my guardian's powers?

You can limit how your guardian uses their powers. You can also state any wishes you want your guardian to take into account when making a decision. You should discuss these with them before making the appointment. You can delete from the form any powers that you do not want your guardian to have.

**If you do not specify any limits to the powers of an enduring guardian, then they will have the same decision-making powers that a parent would have over a child.**

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## Are there medical decisions that my guardian cannot make?

If you have appointed a person as your agent under an enduring power of attorney (medical treatment), their decision about your medical treatment will have priority over the decision of your guardian.

Like an agent, a guardian does not have the authority to consent to medical procedures that are likely to lead to:

- infertility
- termination of pregnancy
- removal of tissue for transplants.

Your guardian must apply to the Guardianship List of VCAT for a decision about whether these procedures can be carried out.

### More questions

#### If I have not appointed a guardian, what can my family do?

If you have capacity, but are reluctant to appoint a guardian, your family and friends should still know what you want in relation to health care, financial decisions, palliative care, resuscitation and accommodation choices. Your family should record what you want and the date when you made these statements, so they can carry out your wishes if you are unable to do so. Eventually you may wish to appoint a guardian, but remember you can only make this decision if you have capacity.

#### What happens if I don't have a guardian and I lose capacity?

If everyone agrees about the treatment or care you need or where you should live, then it is likely that your family and health care professionals can make decisions about your welfare without an enduring power of guardianship in place. If your family does not agree with health professionals on what is best for you, they can apply to the Guardianship List of VCAT to appoint a guardian. Contact the Office of the Public Advocate to get information about an application.

The Guardianship List will appoint a guardian if this is appropriate. Any statements you made while you had capacity about what you wanted will be very important to guide the decision-maker. The Guardianship List may appoint the Public Advocate as your guardian as a last resort, such as if you have no family or there is a need for an independent person to make decisions.

#### When can my guardian start making decisions?

Your guardian can make decisions for you when you have lost capacity. The Office of the Public Advocate has fact sheets on enduring power of guardianship available at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

## Choosing the right power for you



The four different powers of attorney and guardianship have their own purpose and value. You need to select the powers that are relevant to your situation.

The main difference between the general power of attorney and the three enduring powers is that a general power stops when you lose capacity to make decisions. An enduring power will continue through any period of incapacity.

**Be careful that you do not make things more complicated than they need to be. Choose the arrangements, and the people, that are right for YOU.**

It is important that you spend time thinking about what you want to achieve by making the appointment. Also think about the areas of your life where you need a decision-maker.

### When do I want someone to make decisions for me?

Thinking about the following questions can help you work out when you might want someone to be your decision-maker.

#### Do you want to deal with problems that are arising now or in the immediate future?

For example, do you need someone to:

- manage your financial affairs while you are away on holiday
- carry out financial transactions for you because you cannot do so yourself, either through a physical disability or geographical remoteness?

If YES, then you can appoint someone with a general power of attorney.

If you give someone a general power of attorney, that power will stop if you lose legal capacity to make decisions. This could be awkward if your attorney is in the middle of conducting business for you.

#### Do you want to prepare yourself for problems that might happen in the future?

For example, do you need someone to:

- manage your finances if you are unable to do so yourself, such as if you were involved in a car accident and you acquire a brain injury that affects your ability to make decisions
- make medical treatment decisions for you because you have episodes of mental illness where you cannot make decisions for yourself
- make decisions about where you will live if you cannot do so yourself because you have dementia?

If YES, then you can appoint someone with an enduring power of attorney or guardianship.

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## What decisions do I want someone to make for me?

Sometimes it is not going to be immediately obvious which arrangement, or combination of arrangements, is best for you. For example, there are some similarities between an enduring power of attorney (medical treatment) and guardianship. Make sure you understand the various arrangements before you make your final decision.

### Do you want to give someone the authority to make financial decisions, such as managing your banking and income, paying your bills, signing contracts or handling your assets?

If YES, and you have capacity, you need a general power of attorney. If you want someone to make these decisions if you lose capacity, you need to appoint someone with an enduring power of attorney (financial).

### Do you want to give someone the authority to make medical treatment decisions, such as consenting to surgery or maintaining life support systems?

If YES, then you need to appoint someone with an enduring power of attorney (medical treatment).

### Do you want to give someone the authority to make lifestyle decisions, such as where you will live or how your health care should be maintained?

If YES, then you need to appoint someone with an enduring power of guardianship.

#### More questions

#### Can someone appointed with an enduring power of attorney (financial) also make decisions about my medical treatment?

No. You must appoint an enduring power of attorney (medical treatment) or an enduring power of guardianship for someone to make decisions about your medical treatment.

#### Can my guardian also make decisions about my finances?

No. If you want someone to make decisions about your financial or legal affairs, then you must appoint an enduring power of attorney (financial).

#### Can my guardian make decisions about my medical treatment?

Yes, but if you have also appointed someone with an enduring power of attorney (medical treatment) their decisions will take precedence over your guardian's decision about medical treatment. Also a guardian cannot refuse medical treatment on your behalf. Only somebody with an enduring power of attorney (medical treatment) can do this.

#### Can someone appointed with an enduring power of attorney (medical treatment) make decisions about where I should live and what support services I may need in my home?

No. Only a guardian can make decisions about living arrangements and support services.

#### Why do I have to make four powers instead of just one?

The laws about different powers of attorney were developed at different times, which is why there are four forms instead of one. There is a proposal to have one form, but this will require new laws.

## Choosing the best person to appoint



Probably the most important decision of all is deciding who you are going to choose to make decisions for you. This is particularly important when you are appointing someone with an enduring power, as they will have the authority to make decisions for you after you lose the capacity to change or cancel the appointment.

Many people choose their spouse or an adult child, but you may prefer to appoint another family member, a friend with expertise in the area, an accountant, a lawyer, State Trustees Limited or a trustee company. You should feel confident that the person or agency is competent and willing to take on the responsibility on your behalf.

Remember, for someone to be your attorney or guardian they must:

- be 18 years of age or more
- have legal capacity.

See 'Who can make a power of attorney or guardianship?'

### Who is the best decision-maker for you?

When you appoint someone to make decisions on your behalf, be sure the person is going to act the way you want them to. This means you need to choose someone who knows you well enough to be able to know what you would want.

Think carefully about deciding who you are going to appoint.

#### Appoint someone you can trust

Remember that any power of attorney or guardianship gives enormous power to the person you appoint. They will be able to make legally binding decisions about important areas of your life. With the exception of the general power of attorney, the person is able to make decisions when you lose capacity to make decisions for yourself. That means they are able to make important decisions for you when you are vulnerable and powerless. You need to be sure that the person is someone who you trust.

#### Appoint someone who can act according to your interests and not their own

Do not assume that the people who are closest to you will be the best decision-makers. Sometimes the people who know you the best are also the least objective. For example, it might be very difficult for a close friend, partner or family member to make decisions about life-saving medical treatment. They would be trying to balance their responsibilities to do what you would want with their own feelings about what they want.

This does not mean that it is unwise to appoint people who are close to you. Think about if the person will be able to act genuinely in your best interests to do what you want.

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## ✔ **Appoint someone who is likely to be able to take on the role when it is needed**

Often the powers will not be used for some time, particularly with enduring powers of attorney or guardianship. You need to appoint someone who is able to take on the role in the future. This might not be someone who is appropriate now. For example, an older parent or friend might not be appropriate, because they may not be alive or able to take on the role when required.

## ✔ **Appoint someone who is happy to take on the role**

Make sure you talk with the person you want to be your attorney or guardian before making the appointment. Do not assume they want to take on the role. The person might know you well and care for your welfare and interests, but they might find the role too daunting or feel they cannot be objective.

## ✔ **Appoint someone who will listen to what you want and respect your preferences even after you have lost legal capacity**

Anyone who is appointed to make decisions for you should take the time to listen to what you want. This means they need to talk with you about the sorts of situations that might arise, and what decisions you want them to make. For example, if you make an enduring power of attorney (medical treatment) you should talk to your attorney about what sort of medical treatment you would want (and not want), and when you want them to refuse life-prolonging treatment. The person should also be prepared to check what you want in the future, as your opinions and priorities might change.

If you lose capacity to make decisions, it is important that decisions are made based on what matters to you. You might not be able to explain what you want coherently, but you still may be able to communicate in some way. Be sure you appoint an attorney or guardian who respects your wishes and will take the time to find out what is important to you, even after you have lost capacity.

Talk to the person about how you would want decisions made before you appoint them. This not only gives them an idea of how you would want them to act, but also gives you a sense of how open they are to listening to you and to accepting the sorts of decisions you would want made.

**It is important that you choose someone who is also able to listen, respect what you want and balance this with what is in your best interests.**

## ✔ **Appoint someone who is able to take on the role**

Make sure the person you appoint knows enough about the issues so they can make appropriate and competent decisions. This does not mean the person you appoint needs to be an expert, but it does mean they need to know what they are doing, and be able to get advice from others when necessary.

## **Are you checking that you have appointed the right person?**

Circumstances can change. Someone who is the right person to appoint now might not be the right person in a year or so. It is a good idea to check at least once a year to see if the people you have appointed are still right for the job. You can change your appointment if you change your mind.

See 'How to change or cancel your powers'.

### **More questions**

#### **Do I have to pay my attorney or guardian?**

If your attorney is a friend or relative, you do not have to pay them. If your attorney is a lawyer, accountant, trustee company or other professional entity, then you will have to pay. Make sure you understand their fees.

#### **Can the same person be a guardian, financial attorney and medical attorney?**

Yes, but you can also choose different people.

#### **Does the person I choose have to be the same person I choose to be executor of my Will?**

No.

#### **Is it best to have the same or different people?**

It makes no difference in law. It is up to you to decide who would be the best person to act in each role.

#### **My three adult children always disagree about everything. I am considering appointing one to each of the three roles. Is this a recipe for disaster?**

Though the roles for the three enduring powers are separate, there are times they overlap. For example, the person appointed under your enduring power of attorney (medical treatment) can make decisions about medical matters, even if your guardian disagrees. However, your guardian has authority for non-medical health matters, such as physiotherapy or diet. Another example is if your guardian needs to make a decision about your residential care, they may also need your attorney (financial) to cover the costs. Make sure that your children are aware of each appointment and that they may need to co-operate.

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## What if I do not have any family?

If you do not have any family, or there is no-one you trust to make decisions, you can appoint a professional person to make your decisions.

You can appoint a trustee company, a lawyer or an accountant to make your financial decisions. Always get consent before making these appointments. There will usually be a cost involved to your estate.

You may trust that your health care professionals can assist you to make decisions that are in your best interests. You may be happy to comply with their decisions, as they have a professional duty of care. If they fail that duty, another carer can ask the Public Advocate or an aged care body to investigate your situation.

In rare circumstances, the Public Advocate will accept an appointment as a person's agent or guardian. However, talk to the Office of the Public Advocate before any such appointment is made.

## What happens if my attorney dies?

If you have only appointed one attorney, then you will have to choose a new attorney and fill in new forms. If you have appointed more than one attorney and they make decisions jointly, then they cannot act alone and you will need to appoint a new attorney. If you have attorneys who make decisions jointly and severally, the surviving attorney can still make decisions. If you have appointed an alternative attorney, they will take over the powers of your attorney.

## How to change or cancel your powers



There are different reasons why you might want to change or cancel a power of attorney or guardianship. These may include:

- your relationship with the attorney has changed.
- you now know someone who would be more suitable for the role
- you or the attorney may have moved
- your financial, health or lifestyle circumstances have changed so much that the person you appointed is no longer suited to make decisions on your behalf, such as your financial situation has become more complex, and the person you appointed is no longer appropriate for the role
- your wishes have changed and you want to change your attorney's instructions.

Depending on what you want, this could mean appointing a different person or the same person again with different responsibilities.

If you choose to appoint a new guardian, any previous appointment is automatically revoked. If you choose to change your enduring power of attorney (financial) or enduring power of attorney (medical treatment), you have the option to revoke all previous enduring powers when you complete a new form.

You should tell the previous guardian or attorney that the power has been revoked. It is also a good idea to tell any organisations or people who have a copy of your forms, such as financial institutions, businesses, or healthcare workers.

You can also revoke a power of attorney or guardianship by:

- telling the attorney or guardian that their power is withdrawn
- destroying the document and any copies
- putting it in writing or filling in a revocation form.

[See 'Revocation forms'](#).

If you put it in writing, keep the original document and give a copy to your attorney or guardian. Ask them to return their copy of the power of attorney or guardianship form. If you do not have legal capacity, the Guardianship List of VCAT can revoke a power if it believes that your attorney or guardian is acting improperly or against your best interests.

[See 'What can the Guardianship List of VCAT do?'](#)

You may revoke a power of attorney or guardianship at any time, as long as you have capacity.

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Your power of attorney or guardianship is also revoked by:

- your death
- an attorney becoming bankrupt, losing capacity or dying
- an attorney's resignation
- the terms of the power, for example, if it is for a set period of time it will be revoked at the end of that period
- a decision of the Guardianship List
- in the case of a general power of attorney, if you lose capacity.

Remember your attorney's or guardian's actions are binding unless their power is revoked.

## More questions

### Can I change an enduring power of attorney after someone begins exercising their powers?

Yes, but you can only change the powers by revoking them if you have capacity.

### What if my attorney makes financial or legal decisions that are not in my best interests or against my wishes before I have a chance to revoke their power?

You will need to take legal action against your attorney to recover any losses. To do this, you need to show that your attorney acted without proper care.

### Can my attorney continue to act if I have revoked the power, but have not been able to notify them of this?

Yes, so long as they are acting in good faith based on documents that they do not know are revoked.

### Can my attorney resign?

Yes. If your attorney decides that they can no longer fulfil this role, they can resign by giving you a signed notice. They can also get leave to resign from the Guardianship List of VCAT or the Supreme Court if you do not have capacity.

## How to protect your best interests



When you appoint an attorney or guardian you are giving a great deal of power to another person. They will have the authority to make important decisions about your life without being formally monitored.

Your attorney or guardian does not have to submit any reports about their decisions or show how they have acted in your best interests, unless they are asked to by the Guardianship List of VCAT. Even so, your attorney or guardian has a legal obligation to act in your best interests. There are ways to make sure your attorney or guardian does this.

This is relatively straightforward with a general power of attorney or an enduring power of attorney (financial). While you still have legal capacity, you can check what they are doing. This does not work if you have lost capacity. When you are making your powers, think about having another person, such as a friend or professional, check on your situation. It is best to tell all parties, including your attorney or guardian, that you have made this arrangement, so everyone knows what you want. These sorts of arrangements will always be informal.

There are also legal options to deal with an attorney or guardian if they are not acting responsibly or in your best interests. You can ask the Guardianship List to revoke or suspend the power. You can also take legal action if there is negligence or go to the police if there is any dishonesty.

### What can the Guardianship List of VCAT do?

Anyone who has a genuine interest in your welfare can ask the Guardianship List of VCAT to consider the actions of the attorney or guardian. If the Guardianship List is satisfied that the attorney or guardian is not acting in your best interests, it can revoke or suspend the appointment. This can only happen when you do not have legal capacity to make your own decisions. The Guardianship List can then appoint an administrator or guardian for you, or they can decide that you do not need to have anyone to make decisions for you.

**If the matter is urgent the Guardianship List has a 24-hour emergency service. Contact the Office of the Public Advocate for advice and further information.**

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In addition, in the case of an enduring power of attorney (financial) the Guardianship List can:

- declare the power to be invalid
- give directions or make recommendations to the attorney
- vary the effect of the power
- suspend the power
- give advisory opinions
- require the attorney to lodge accounts or have accounts examined or audited.

Victoria Legal Aid provides a free duty lawyer service at the VCAT, as well as clinic appointments and advice about guardianship matters.

See 'Where to get help'.

## Can I take legal action?

If an attorney or guardian has acted irresponsibly and you have suffered some harm or loss as a result, then you might be able to take legal action. This would involve suing the attorney or guardian for negligence. You should get legal advice to do this.

If you have lost capacity, the situation is more complicated but legal action is still possible. You need to take the matter to the Guardianship List of VCAT to revoke the appointment because the person has not acted in your best interests. The Guardianship List can appoint an administrator who can take legal action on your behalf.

See 'How to change or cancel an appointment'.

If you are not able to take the matter to the Guardianship List yourself (which is likely), another person, such as a friend or family, could make an application on your behalf. Contact the Guardianship List, the Office of the Public Advocate or Victoria Legal Aid for more information.

See 'Where to get help'.

## More questions

### How do I make sure my attorney or guardian will do what I want?

On the enduring power of attorney (financial) form you can give instructions or set conditions and limitations on your attorney's powers. On the enduring power of guardianship form you can list the things you want your guardian to take into account when making decisions. There is no ability to do this for an enduring power of attorney (medical treatment) under the Medical Treatment Act.

It is important for you to tell your attorney or guardian what you want. The more details you discuss, the easier it will be for them to work out what you would want to happen.

### Is there somewhere I can go if I believe that a power of attorney or a power of guardianship is being abused?

Yes. You can contact the Guardianship List of VCAT. The Guardianship List can revoke any enduring power of attorney or guardianship. If you would like further advice, contact Victoria Legal Aid or the Office of the Public Advocate.

See 'Where to get help'.

### What can be done if doctors or other professionals do not agree with my attorney or guardian regarding care options?

If a doctor considers that your attorney or guardian is not acting in your best interests, the doctor can serve them with a notice about treatment or take the matter to the Guardianship List of VCAT. Your attorney or guardian should contact the Office of the Public Advocate if this happens.

If your attorney or guardian considers that your doctor is not acting in your best interests, they could ask for a second opinion from another physician or a specialist. This could resolve the matter. If the disagreement is about care in a residential aged care facility, they can talk to your doctor first to review your care plan.

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## How to make a power of attorney or guardianship

A power of attorney or guardianship is easy to make. It does not have to be prepared by a lawyer, but if your financial or legal affairs are complex you should get legal advice.

The forms you need to fill in to make a power are at the back of this kit. Extra forms can also be downloaded from the Office of the Public Advocate website at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

You will need witnesses for some of the powers. There are restrictions on relatives, the attorney or guardian, or alternate decision-makers being witnesses, so check the instructions with each of the forms. People who witness you signing the form must believe that you have the capacity to make the power of attorney or guardianship. If there is any question about your capacity, get an independent medical assessment.

**If you are unsure about what to do or have any questions, you can contact the Office of the Public Advocate for advice and further information.**

See 'Where to get help'.

### Who can witness statutory declarations?

If you make an enduring power of attorney (financial), it will need to be witnessed by a person who can witness a statutory declaration.

The following is a list of people authorised to witness a statutory declaration under section 107A of the *Evidence Act 1958*:

- a justice of the peace or a bail justice
- a notary public
- an Australian lawyer
- a clerk to an Australian lawyer
- the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court
- the registrar of probates or an assistant registrar of probates
- the associate to a judge of the Supreme Court or the County Court
- the secretary of a master of the Supreme Court or the County Court
- a person registered as a patent attorney under the *Patents Act 1990* of the Commonwealth
- a member of the police force
- a sheriff or a deputy sheriff
- a member or former member of either House of the Parliament of Victoria
- a member or former member of either House of the Parliament of the Commonwealth
- a councillor of a municipality
- a senior officer of a council as defined in the *Local Government Act 1989*
- a registered medical practitioner
- a registered dentist
- a veterinary practitioner
- a pharmacist
- a principal in the teaching service
- the manager of an authorised deposit-taking institution (such as a bank)
- a member of the Institute of Chartered Accountants in Australia, the Australian Society of Accountants or the National Institute of Accountants
- a secretary of a building society
- a minister of religion authorised to celebrate marriages (but not a civil celebrant)
- a fellow of the Institute of Legal Executives (Victoria)
- a person employed under Part 3 of the *Public Administration Act 2004* with a classification that is prescribed as a classification to which this section applies or who holds office in a statutory authority with such a classification (such as a person who holds office in the Victorian Public Service or a statutory authority).

**Try not to be offended when witnesses seek to do their role responsibly and ask you questions about the meaning of the document and your understanding of it.**

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## Do I need to make certified copies?

You can use a photocopy of the original power of attorney or guardianship so people know what you want, but it has no legal power. If you need a copy of your power of attorney or guardianship to have the same power as the original forms, it needs to be certified to be valid. Your attorney, guardian or agent should get a certified copy. Do not leave certified copies with organisations where someone could use them pretending to be your attorney or guardian.

## Who can make a certified copy?

If you want to make a certified copy of a general power of attorney, you can certify it yourself. All you need to do is add at the bottom of each page 'This is a true and complete copy of the corresponding page of the original' and sign and date it. On the last page you must write 'This is a true and complete copy of the original' and sign and date it.

For the enduring power of attorney (financial), a copy should be certified in the same way by a justice of the peace, a legal practitioner, a public notary, a financial services licensee under the *Corporations Act 2001* or a regulated principal under the Corporations Act.

For all enduring powers of attorney, any of the following people who are authorised to administer an oath (an oath is not a statutory declaration) can certify a copy:

- any judge or the associate to any judge
- a master of the Supreme Court or of the County Court or the secretary of such a master
- a justice of the peace or a bail justice
- the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court
- the registrar of probates or an assistant registrar of probates
- a senior member or ordinary member of VCAT who, immediately before the commencement of section 8.2.1 of the Legal Profession Act, was the registrar or a deputy registrar of the Legal Profession Tribunal
- a member or former member of either House of the Parliament of Victoria
- a member or former member of either House of the Parliament of the Commonwealth
- a public notary
- a legal practitioner
- a member of the police force of or above the rank of sergeant or for the time being in charge of a police station

- a person employed under Part 3 of the Public Administration Act with a classification that is prescribed as a classification to which this section applies
- a senior officer of a Council as defined in the Local Government Act
- a person registered as a patent attorney under Chapter 20 of the Patents Act of the Commonwealth
- a fellow of the Institute of Legal Executives (Victoria)
- any officer or person empowered authorised or permitted by or under any Act of Parliament to take affidavits in relation to the matter in question or in the particular part of Victoria in which the affidavit is sworn and taken.

## Should I see a lawyer?

It is your choice. If you feel confident that you understand the forms and your affairs are straightforward, you may not need to see a lawyer. However, you may choose to get legal advice if you:

- are struggling to fill out the forms
- have a complicated family situation
- have complex financial arrangements
- think someone may challenge your appointments and you need help getting evidence to support your capacity.

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## Summary of powers of attorney and guardianship



	General power of attorney	Enduring power of attorney (financial)	Enduring power of attorney (medical treatment)	Enduring power of guardianship
What decisions can the person appointed make?	Financial and some legal	Financial and some legal	Medical	Lifestyle
When does it begin?	As soon as you make the appointment or when you specify it will start	You can choose whether it will start immediately, on a particular date, on the happening of an occasion or when you lose capacity	As soon as you lose legal capacity to make decisions about your medical treatment	As soon as you lose legal capacity to make decisions about lifestyle matters
How long does it last?	Until you cancel it, you lose legal capacity, your attorney becomes bankrupt or resigns, or you die	Until you or the Guardianship List change or cancel it, your attorney becomes bankrupt or resigns, or you die	Until you cancel it, the Guardianship List rules that the attorney is not acting in your best interests or you die	Until you cancel it, the Guardianship List rules that the attorney is not acting in your best interests or you die
What limits can I put on the decision-making powers?	You can specify how long the appointment will last or place limits on the type of decisions the attorney can make. If you do not specify any limits, the attorney will be able to make any financial or legal decisions on your behalf, until appointment is cancelled	You can specify conditions, limitations and instructions to your attorney	None	You can limit the powers of the guardian to any area of decision-making. If you do not set any limits, then the guardian will have the same decision-making power as a parent would have over a child
Who can cancel it?	You	You can while you have legal capacity or the Guardianship List can after you lose legal capacity	You while you have legal capacity or the Guardianship List can after you lose legal capacity	You while you have legal capacity or the Guardianship List can after you lose legal capacity
Can I appoint joint decision-makers?	Yes	Yes	No	No
Can I appoint an alternate decision-maker?	No	Yes – called an ‘alternative’	Yes – called an ‘alternative’	Yes – called an ‘alternative’
Witnesses required	None – unless executed by direction, when two witnesses are required	Two witnesses, one authorised for the statutory declaration.* Only one can be a relative. The attorney must not be a witness	Two witnesses, one authorised for the statutory declaration.* Witness cannot be agent or alternate agent	Two witnesses, one authorised for the statutory declaration.* A relative of either the donor or the attorney cannot be a witness

\* See ‘Who can witness statutory declarations?’.

## Legal words



**administrator:** A person appointed by the Guardianship List to make financial and legal decisions on behalf of someone with a disability who is unable to make those decisions for themselves.

**agent:** Another name for an attorney, used in an enduring power of attorney (medical treatment).

**alternate agent:** A person who is appointed to stand in place of an agent when the agent is dead, incompetent or cannot be contacted or where the agent’s whereabouts are unknown.

**alternative attorney:** A person appointed to stand in the place of an attorney in the event of the death or during the period of the absence or legal incapacity of the original attorney.

**alternative guardian:** A person appointed to stand in the place of a guardian on the death or during the period of absence or incapacity of the original guardian.

**appointer:** A person giving decision-making power to another person through an enduring power of guardianship.

**attorney:** A person appointed to make financial, legal or medical treatment decisions for another person.

**capacity (legal capacity):** Having the ability to reason things out. You can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.

**certified copy:** Copy of a document on which an authorised person has certified: ‘This is a true and complete copy of the original.’ See ‘Do I need to make certified copies?’.

**deed:** A document that is signed, sealed and delivered.

**donor:** The person giving (donating) decision-making power to another person.

**enduring:** In this setting it means the power continues (endures) even if the person giving it loses the capacity to make decisions.

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**Guardian:** A person appointed either by a person or the Guardianship List to make personal lifestyle decisions, such as decisions about where the person will live. A guardian only makes decisions for someone who is unable to make those decisions themselves.

**Guardianship List:** Part of the VCAT that has the power to make orders about enduring powers of attorney.

**Jointly appointed:** When two people are appointed as attorneys and both must agree on a decision for that decision to be valid.

**Jointly and severally appointed:** When two or more people are appointed as attorneys and either one or all can make a valid decision.

**Revoke:** To cancel a power of attorney or guardianship.

**Statutory declaration:** A document in which a person makes a statement and acknowledges that it is made in the belief that, if the statement is false, the person is liable to penalties for perjury. The statement is witnessed by a person authorised under section 107A of the *Evidence Act 1958*.

**Victorian Civil and Administrative Tribunal (VCAT):** Deals with disputes, including guardianship and administration matters.

**Witness:** A person who is present when someone signs a document who confirms that the signature is genuine by adding their own signature.

## Where to get help



### Office of the Public Advocate

5th Floor, 436 Lonsdale St  
Melbourne 3000  
tel: 1300 309 337 for the cost of a local call  
fax: 1300 787 510  
TTY: 9603 9529  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

### Guardianship List of the Victorian Civil and Administrative Tribunal

7th Floor, 55 King St  
Melbourne 3000  
tel: 9628 9911  
free call: 1800 133 055 (country callers only)  
[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

### Victoria Legal Aid

350 Queen St  
Melbourne 3000  
tel: 9269 0416 or country callers: 1800 677 402  
[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)



### Victoria Legal Aid

#### Telephone Information Service

Monday to Friday between 8.45 am and 5.15 pm  
Tel: 9269 0120 or 1800 677 402 (country callers).

The service is also provided in languages other than English by bilingual staff:

Arabic: 9269 0127	Croatian: 9269 0164
Greek: 9269 0167	Italian: 9269 0202
Persian (Farsi): 9269 0123	Polish: 9269 0228
Serbian: 9269 0332	Ukrainian: 9269 0390

All other non-English languages:

Call the Translating and Interpreting Service on 13 14 50 and ask to be put through to Victoria Legal Aid.

If you have a speech or hearing impairment you can call the National Relay Service and ask to be connected through to Victoria Legal Aid:

- TTY/voice: 133 677 or 1800 555 677 (country callers)
- SSR/speak and listen: 1300 555 727 or 1800 555 727 (country callers)

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## Local Offices

We have offices all over Victoria. See the back cover for office locations.

## Federation of Community Legal Centres

Call to find out your nearest community legal centre (or specialist centre for intellectually disabled or mentally ill people).

Tel: 9652 1500

[www.communitylaw.org.au](http://www.communitylaw.org.au)

## State Trustees Limited

168 Exhibition St

Melbourne 3000

tel: 9667 6444

## State Trustees Call Centre

tel: 9667 6773 (outside Melbourne metropolitan area)

[www.statetrustees.com.au](http://www.statetrustees.com.au)

## Forms and instructions



### A checklist for making powers of attorney and guardianship

- Choose the power(s) you want.
- Choose the people you want to appoint.
- Ask the people you want to appoint whether they are happy to be your attorney or guardian. Make sure they understand what this involves and what they have to do so they know what they are agreeing to.
- Tear out the forms you want to complete from the kit. Make any copies of the form by photocopying or downloading additional forms from the Office of the Public Advocate's website at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)
- Complete the form according to the instructions, but do not sign them until you have checked witnessing requirements and arranged for witnessing of the signatures.
- Arrange for the signing and witnessing of the forms. Make sure the witnesses have read the instructions set out in each document.
- Photocopy and certify copies.
- If you have appointed an enduring power of attorney (financial) it is a good idea to give a copy of the form to your financial institutions/representatives for their records.
- If you have appointed an enduring power of attorney (medical treatment) or an enduring guardian, it is a good idea to give a copy to your doctor for their records.
- Keep the original in a safe place. Every household should have a box or folder where important documents, such as powers of attorney and Wills are kept. Family or close friends need to know where these are kept. You could also carry a card in your purse or wallet that has the details of your powers of attorney.
- Give a certified copy to your attorney, agent or guardian. You should also give a copy to anyone else who may need to be involved, such as your doctor, solicitor, accountant or stockbroker.

For free or low cost help with these forms contact the Office of the Public Advocate, Victoria Legal Aid or Federation of Community Legal Centres. The Federation can direct you to a community legal service. State Trustees Limited also provide a discounted service for the public.

See 'Where to get help'.

These forms can be used by non-English speakers if a qualified interpreter/translator reads it to the person in the person's own language and a statement signed by the interpreter/translator is attached.

## More questions you might have

### Do I have to register the power of attorney anywhere?

No.

### How private are these forms?

You decide who gets copies of these forms. They do not need to be produced until your guardian or attorney needs to act on them.

### When are these forms used?

The forms need to be shown to prove the attorney's or guardian's powers. The person who needs proof will probably want to see the original or certified copy and take a copy. Before hospitals accept the power of an agent, they are entitled to see an original or certified copy of the power of attorney. Aged care facilities should make sure they have copies of the documents when a person enters residential care.

### How do the people that matter, such as doctors and hospital emergency staff, know you have filled out these forms if I am too sick to tell them?

You should tell your treating doctors about the powers you have in place. Some people like to have the enduring power of attorney (medical treatment) sighted and copied when they enter hospital for serious surgery, in case it is needed.

In emergency situations, staff do not usually have time to sort out documents until a patient is stable. However, if you have decided that you do not want to be resuscitated, this will be respected if there is evidence that this is what you want. Evidence includes a Refusal of Treatment Certificate available on the Office of the Public Advocate website at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

### If I change my address or my name, do I have to change the documents?

No.

### Are these documents valid in other states or countries?

The laws in each state differ. Many Australian states and territories do accept each other's powers of attorney, but not all. The financial powers are more likely to be accepted, but most states do not have an enduring power of attorney (medical treatment), so the Victorian form would not be recognised.

Other countries may give some recognition to your powers, if they are able to do so under their laws. Your attorney or guardian might tell them what care or treatment you want, but it is unlikely that the country will accept your attorney's or guardian's authority as legally binding.

## General power of attorney

### Instructions

Please read 'What is a general power of attorney' before filling in the form that follows.

To make a general power of attorney you need to fill in and sign the form on the following page. You can include:

- when you want your attorney's powers to begin
- what financial or legal decisions you want them to be able to make
- any limits on their powers.

If you want to limit the powers of your attorney, cross this out 'I authorise my attorney(s) to do on my behalf anything that I may lawfully authorise an attorney to do.' in section 2 and add in the conditions you want. For example, 'I authorise my attorney to withdraw money from my bank account between 1/7/08 and 1/12/08'.

This form does not have to be witnessed, unless you are unable to sign the form. In this case, you can direct another person to fill in and sign the form for you. The other person must sign on your behalf in front of you and two witnesses, who must also sign the form.

See 'Legal words' for explanation of jointly and severally or any other words that you do not understand on this form.

## General Power of attorney

This **general power of attorney** is made on the

Print date here \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_,

Print your full name here by \_\_\_\_\_

Print your address here of \_\_\_\_\_

in pursuance of Section 107(1) of the Instruments Act 1958.

*Cross out the following option if you wish to appoint more than one attorney.*

Print the full name of your attorney here 1. I appoint \_\_\_\_\_

Print your attorney's address here of \_\_\_\_\_  
to be my attorney

**OR**

*Cross out the following option if you wish to appoint one attorney.*

Print the full name of your first attorney here I appoint \_\_\_\_\_

Print your first attorney's address here of \_\_\_\_\_

Print the full name of your second attorney here and \_\_\_\_\_

Print your second attorney's address here of \_\_\_\_\_

Tick one of the following options  jointly to be my attorneys  jointly and severally to be my attorneys

If you want to limit the powers of your attorney, cross this out and add the conditions you want. 2. I **authorise** my attorney(s) to do on my behalf any thing that I may lawfully authorise an attorney to do.

Sign your name here Signed, sealed and delivered by \_\_\_\_\_

## Enduring power of attorney (financial)

### Instructions

Please read 'What is an enduring power of attorney (financial)' before filling in the form that follows.

Use this form only if you wish your attorney(s) to act for you, or continue to act for you, when you have lost the capacity to make decisions for yourself. If you do not wish your attorney to act for you if you have lost this capacity, use the general power of attorney form.

As the person making the enduring power of attorney, you are called 'the donor'. To make an enduring power of attorney (financial) for financial and legal matters you need to complete the following three forms.

### Enduring power of attorney

You, as the donor, need to fill in the 'Enduring power of attorney financial' form. If you have a physical disability that prevents you from filling in and signing the form, you may instruct another person to do this for you. When this person signs the form, they must do so at your direction in your presence and before two witnesses. This person must be 18 years old or more, and must not be a witness or your attorney. They must complete the statement at the end of the second page.

If you want this power to begin only once you have lost capacity, write in section 4 next to 'on this occasion': 'When I become unable to make reasonable judgements relating to all or any part of my estate'.

### Certificate of witnesses

The two witnesses must sign the 'Certificate of witnesses'. You cannot be a witness and neither can your attorney. At least one of the witnesses must be someone who is not related to you or the person(s) you appoint as your attorney(s). One of the witnesses must be authorised by law to witness the signing of statutory declarations.

See 'Who can sign statutory declarations'.

The witnesses must sign this form together and in front of you. They must choose one of the statements under part (a) that applies to your situation and cross out the option which does not apply.

This means:

- if you signed the form yourself, they select the first option and cross out the second (a)
- if someone else signed the form for you, they select the second option and cross out the first (a).

If a witness is not sure that you understand the nature and effect of the document, they should refuse to sign the document.

### Statement of acceptance

Your attorney must sign and date the 'Statement of acceptance'. This can be done at a later date. Make sure your attorney reads the 'Information for attorneys' before they sign the form.

**Do not use any forms that were published before 1 April 2004. They will not be valid if you are making a new power of attorney.**

See 'Legal words' for an explanation of jointly, severally, alternate attorney or any other words that you do not understand on these forms.

## Information for witnesses

As a witness, your responsibility goes beyond making sure that the signature of the person making the power is genuine. You also need to certify that this person, called the donor, has:

- signed the form freely and voluntarily in your presence without any undue influence or pressure
- has the capacity to make the power of attorney.

**Capacity**, or legal capacity, means you have the ability to reason things out. You can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.

This means that, at the time of making the appointment, the donor must be able to understand matters such as:

- what sorts of powers the attorney will have
- what sorts of decisions they will have the authority to make
- when and how they will have the authority to exercise that power
- the effects that their power could have on the donor
- how to cancel the arrangement in the future.

In examining the capacity of the donor, you should respect their privacy. You do not need to know the specific details of the estate, such as the balance of the donor's bank accounts or exactly how many properties the donor may own. Rather, you should make sure that the donor understands that they are giving the attorney the same power that the donor has to deal with any of the donor's assets.

You may have to give information in the future about the donor's capacity at the time the powers were made. If you have any doubts about the donor's capacity, you can make appropriate inquiries with the donor's consent. For example, you could contact the donor's doctor. You could also ask for a medical certificate confirming the donor's capacity and attach it to the forms.

**If you have any doubts it is strongly recommended** that you make a written record of your concerns and any questions you asked to work out the donor's capacity. If you think that the donor does not understand the nature and effect of the document, you should refuse to sign the form. You should also refuse to sign the form if the donor appears to be signing it under duress, undue influence or pressure from another person.

**Where an interpreter is required, it is important that you are satisfied that the form has been explained in a language that the donor understands.**

## Information for attorneys

### Important notice

The donor, in choosing you to be their enduring power of attorney, is entrusting you to act in their best interests. If you accept this trust and the enduring power of attorney, you will be taking on serious responsibilities. If you fail to observe these responsibilities, you could be removed as attorney or even convicted of an offence and required to pay compensation.

Besides the particular responsibilities mentioned in this document, there are responsibilities imposed by the Instruments Act 1958 and under the common law.

### What are these responsibilities?

They are both general and specific.

#### General responsibilities (to guide you in decision-making)

You must exercise the power given to you honestly and with reasonable care. It is an offence not to do so, and you may also be required to compensate the donor.

You must comply with the terms of the enduring power of attorney and any other requirement of the Supreme Court or VCAT. In addition, you must abide by the general principles on which the Act is based.

#### General principles include:

- presuming that the donor has the capacity to make a particular decision until there is conclusive evidence that this is not the case
- recognising their right to participate in decisions affecting their life to the maximum extent for which they have capacity
- respecting the donor's human worth and dignity and equal claim to basic human rights, regardless of their capacity
- recognising the donor's role as a valued member of society and encouraging their self-reliance and participation in community life
- taking into account the importance of the donor's existing supportive relationships, values and cultural and linguistic environment
- ensuring that your decisions are appropriate to the donor's characteristics and needs
- recognising the donor's right to confidentiality of information.

### Specific responsibilities

- **Duty to keep records.** You must keep accurate records of dealings and transactions made under the power as VCAT or the Supreme Court or the Public Advocate may require you to produce them. You must keep these records separate from your own affairs where possible.  
For example, if you dispose of an asset you should keep records about the disposal.  
Where there are joint attorneys, then it is sufficient that by agreement one of the attorneys will retain a record or account of transactions or dealings.
- **Duty to keep property separate.** You must keep your property separate from the donor's property unless you and the donor own the property jointly.  
If the donor's capacity to make decisions is impaired, you must also get approval from VCAT or the Supreme Court for any transactions that have not been authorised in this document.
- **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 relation, business associate or close friend) into conflict with those of the donor.  
However, you may enter into such a transaction if it has been authorised in this document or by VCAT or the Supreme Court.

### How do I complete a document for the donor?

If you have the power to execute (complete) a document for the donor, you do so in the ordinary way, but you must note on the document that you are executing it as the donor's attorney under an enduring power of attorney (for example, 'John Smith, by his duly appointed attorney, Mary Jones').

### Proof of your authority

It is recommended that you keep the Enduring Power of Attorney document in a safe place. Sighting of the document may be a requirement of your authority by financial institutions, banks etc.

### When does my power to make decisions begin?

The donor may nominate in this document when your power to make financial decisions begins. If the donor does not nominate a date or event or occasion when a power becomes exercisable, then your power begins immediately. However, while the donor retains capacity, you must act in accordance with the donor's directions.

### When does my power end?

Though there is no time limit on enduring powers of attorney, certain actions by you or the donor or VCAT or the Supreme Court can bring your power to an end.

#### Your actions

- **Your resignation.** So long as the donor is capable of using the power given to you, you can resign by giving the donor a signed notice. However, if the donor is incapable of using the power, then you may only resign by getting leave of VCAT or the Supreme Court.
- **Becoming incapable.** Your power is revoked if you become incapable of understanding the nature and foreseeing the effects of a decision, and communicating that decision.
- **Becoming bankrupt or insolvent.** If this happens, your power is revoked.
- **Your death.**

#### The donor's actions

- **Revoking your power.** The donor may revoke your power at any time, so long as they have the capacity to revoke it, that is, the donor understands the nature and effect of revoking the power.  
If the donor revokes your power, the donor has an obligation to inform you.  
If the donor neglects to advise you that the power is revoked and you continue to exercise the power in good faith, then you will be protected under the legislation.
- **Appointing a new attorney exclusively to have your powers.** If the donor completes a new document giving your powers to another attorney exclusively, your powers are revoked to that extent. Because the new document has a later date and is inconsistent with your powers, it overrides the earlier document.
- **The donor's death.** If the donor dies, your enduring power of attorney is revoked in its entirety.

#### Actions by the Supreme Court or VCAT

- Your power may also be changed or revoked by the Supreme Court or VCAT if you have failed to act in the donor's interests.

**Can I be held liable?**

Yes, you can be held liable if you use the enduring power of attorney knowing that it has been changed or revoked, or knowing of an event that effectively revokes it, or even if you have reason to believe that it has been revoked.

The Supreme Court, VCAT and the Office of the Public Advocate have the power to protect the donor’s interests. You may be required to produce a summary of receipts and expenditure or more detailed accounts, and these may be audited. You may also be required to give evidence in relation to the exercise of your powers. If VCAT, the Supreme Court or the Public Advocate believes that you have not adequately protected the donor's interests, you may be removed or your enduring power of attorney may be revoked, and you may be required to compensate the donor.

**Where can I go for advice?**

The Office of the Public Advocate, a community legal centre, a solicitor, VCAT, the Supreme Court, State Trustees Limited or a trustee company can advise you about this document and your power and responsibilities under it. VCAT and the Supreme Court can also make a declaration about the validity of this document or whether your power to make a decision for the donor has begun.

**Enduring power of attorney (financial)**

This enduring power of attorney is made under Part XIA of the *Instruments Act 1958* and has effect as a deed.

*Print date here*

This enduring power of attorney is made on \_\_\_\_\_

*Cross out the following option if you wish to appoint more than one attorney.*

*Print your full name here*

**1. I,** \_\_\_\_\_

*Print your address here*

**of** \_\_\_\_\_

*Print the full name of your attorney here*

**appoint** \_\_\_\_\_

*Print your attorney's address here*

**of** \_\_\_\_\_

**to be my attorney**

OR

*Cross out the following option if you wish to appoint one attorney.*

*Print your full name here*

**1. I,** \_\_\_\_\_

*Print your address here*

**of** \_\_\_\_\_

*Print the full name of your first attorney here*

**appoint** \_\_\_\_\_

*Print your first attorney's address here*

**of** \_\_\_\_\_

*Print the full name of your second attorney here*

**and** \_\_\_\_\_

*Print your second attorney's address here*

**of** \_\_\_\_\_

*Cross out the following next two lines if wish to appoint only two attorneys*

*Print the full name of your third attorney here*

**and** \_\_\_\_\_

*Print your third attorney's address here*

**of** \_\_\_\_\_

*Tick one of the following options*

jointly to be my attorneys       jointly and severally to be my attorneys

*Cross out the following option if you do not wish to appoint an alternative attorney*

*Print your full name here*

**1a. I,** \_\_\_\_\_

*Print your address here*

**of** \_\_\_\_\_

*Print the full name of your alternative attorney here*

**appoint** \_\_\_\_\_

*Print the address of your alternative attorney here*

**of** \_\_\_\_\_

*Print the name of the original attorney(s) you are appointing here*

**as an alternative attorney for** \_\_\_\_\_

## Enduring power of attorney (financial)

2. I authorise my attorney(s) to do on my behalf anything that I may lawfully authorise an attorney to do.

*Cross out the following option if it does not apply*

3. The authority of my attorney(s) is subject to the following conditions, limitations, and instructions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. I declare that this power of attorney begins:

*Tick one box only*

immediately.

on this date: \_\_\_\_\_

on this occasion: \_\_\_\_\_

*If you do not complete this clause, the power begins immediately.*

5. I declare that this power of attorney will continue to operate and have full force and effect even if I subsequently become legally incapable.

*Cross out the following option if it does not apply*

6. I declare that all previous enduring powers of attorney (financial) signed by me are hereby revoked.

Signed as a deed by \_\_\_\_\_

or

*Cross out the following option if it does not apply*

I, \_\_\_\_\_

state that: a) I am at least 18 years old

b) I am not a witness for this document or an attorney for the donor.

Note: If this enduring power of attorney confers power on two or more attorneys to act jointly, then they have equal authority and can only act with the agreement of them all, and any documents must be signed by all of the attorneys together. If this enduring power of attorney confers power on two or more attorneys to act jointly and severally, then in exercising the powers under the enduring power of attorney any of the attorneys can act and sign documents together or alone.

## Certificate of witnesses

Print the full name of the witness authorised to witness the signing of statutory declarations here

We, \_\_\_\_\_

Print the address of your first witness here

of \_\_\_\_\_

Print the full name of your second witness here

and \_\_\_\_\_

Print the address of your second witness here

of \_\_\_\_\_

certify:

*Cross out whichever option a) does not apply*

a) that the donor has signed this enduring power of attorney (financial) freely and voluntarily in our presence;

or

a) that this enduring power of attorney (financial) has been signed in our presence at the direction and in the presence of the donor of the power, and the donor of the power gave that direction freely and voluntarily;

AND

b) that at the time of signing, the donor appeared to each of us to have the capacity necessary to make the enduring power of attorney.

Witness authorised to witness the signing of statutory declarations signs here

\_\_\_\_\_

Other witness signs here

\_\_\_\_\_

Print the date you want the power of your attorney(s) to begin here

Print the occasion you want the power of your attorney(s) to begin here

Sign your name here

Person signing for the donor prints his/her full name here

Person signing at the direction and in the presence of the donor of the power signs here

## Statement of acceptance for attorneys

*Print the full name of proposed attorney here*

I, \_\_\_\_\_

*Print address of proposed attorney here*

of \_\_\_\_\_

*Print date here*

on \_\_\_\_\_

**accept** appointment as an attorney under

*Tick one box only*

this enduring power of attorney

the attached enduring power of attorney

and undertake -

- a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and
- b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and
- c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

*Signature of the attorney goes here*

\_\_\_\_\_

*Cross out the following option if it does not apply*

*Print the full name of proposed attorney here*

I, \_\_\_\_\_

*Print address of proposed attorney here*

of \_\_\_\_\_

*Print date here*

on \_\_\_\_\_

**accept** appointment as an attorney under

*Tick one box only*

this enduring power of attorney

the attached enduring power of attorney

and undertake -

- a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and
- b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and
- c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

*Signature of the attorney goes here*

\_\_\_\_\_

## Statement of acceptance for attorneys

*Cross out the following option if it does not apply*

*Print the full name of proposed attorney here*

I, \_\_\_\_\_

*Print address of proposed attorney here*

of \_\_\_\_\_

*Print date here*

on \_\_\_\_\_

**accept** appointment as an attorney under

*Tick one box only*

this enduring power of attorney

the attached enduring power of attorney

and undertake -

- a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and
- b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and
- c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

*Signature of the attorney goes here*

\_\_\_\_\_

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## Statement of acceptance for alternative attorneys

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*Print the full name of proposed  
alternative attorney here*

I, \_\_\_\_\_

*Print address of proposed  
alternative attorney here*

of \_\_\_\_\_

*Print date here*

on \_\_\_\_\_

**accept** appointment as an attorney under

*Tick one box only*

- this enduring power of attorney  
 the attached enduring power of attorney

and **undertake** -

- a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and  
 b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and  
 c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

*Signature of the attorney  
goes here*

\_\_\_\_\_

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## Enduring power of attorney (medical treatment)

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### Instructions

Please read 'What is an enduring power of attorney (medical treatment)' before filling in the form that follows.

To make an enduring power of attorney (medical treatment) you need to fill in and sign the form on the following page. The form uses the term agent which is another name for an attorney. An agent's authority to refuse treatment is outlined in section 5A of the Medical Treatment Act.

You will need two witnesses to sign the 'Certificate of witnesses' in front of you. You and your agent cannot be witnesses. One of the witnesses must be authorised by law to witness the signing of statutory declarations.

See 'Who can sign statutory declarations'.

Your agent's power begins when you lose capacity and cannot make decisions. Their decisions have the same legal force as if you had made them yourself.

See 'Legal words' for an explanation of agent, alternate agent or any other words that you do not understand on these forms.

### Information for witnesses

As a witness, your responsibility goes beyond making sure that the signature of the person making the power is genuine. You also need to state that you believe that the person, called the donor, is of sound mind and understands this form.

The donor should be able to tell you things like:

- what sorts of powers the agent will have
- what sorts of decisions the agent will have the authority to make
- when and how the agent will have the authority to exercise that power
- the effects that the agent's power could have on the donor
- how the donor may cancel or change the arrangement in the future.

If you have any doubts it is strongly recommended that you make a written record of your concerns and any questions you asked to work out the donor's capacity. You can also make appropriate inquiries with the donor's consent. For example, you could contact the donor's doctor or ask for a medical certificate confirming the donor's capacity.

If you think that the donor does not understand the nature and effect of the document, you should refuse to witness the form. You should also refuse to witness the form if the donor appears to be signing it under duress, undue influence or pressure from another person.

## Enduring power of attorney (medical treatment)

This enduring power of attorney is given on the

*Print date here* \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_,

*Print your full name here* by \_\_\_\_\_

*Print your address here* of \_\_\_\_\_

under Section 5A of the *Medical Treatment Act 1988*.

*Cross out the following option if you also wish to appoint an alternate agent.*

*Print the full name of your agent here* 1. I appoint \_\_\_\_\_

*Print your agent's address here* of \_\_\_\_\_

to be my agent.

Or

*Cross out the following option if you do not wish to appoint an alternate agent.*

*Print the full name of your agent here* 1. I appoint \_\_\_\_\_

*Print your agent's address here* of \_\_\_\_\_

to be my agent

*Print the full name of your alternate agent here* and \_\_\_\_\_

*Print your alternate agent's address here* of \_\_\_\_\_

to be my alternate agent.

2. I **authorise** my agent or, if applicable, my alternate agent, to make decisions about medical treatment on my behalf.

3. I revoke all other enduring powers of attorney (medical treatment) previously given by me.

*Sign your name here* **Signed, sealed and delivered by:** \_\_\_\_\_

*Print your witnesses' names here* We \_\_\_\_\_

*Print your name here* each believe that \_\_\_\_\_

in making this enduring power of attorney (medical treatment) is of sound mind and understands the import of this document. **Witnessed by:**

*Witnesses sign here* \_\_\_\_\_

*Person authorised to witness statutory declarations* \_\_\_\_\_ *Other witness* \_\_\_\_\_

*Name of witnesses* \_\_\_\_\_

*Addresses of witnesses* \_\_\_\_\_

\_\_\_\_\_

## Enduring power of guardianship

### Instructions

Please read 'What is an enduring power of guardianship' before filling in the form that follows.

As the person making the enduring power of guardianship, you are called the 'appointor'. To make an enduring power of guardianship you need to complete the following forms.

### Enduring power of guardianship

You need to fill in the 'Enduring power of guardianship' form on the following pages. A guardian has the power to make decisions on your behalf as set out in the form.

**If you do not cross out any powers in section 2, you will be authorising your guardian to have all the powers that a parent has over their child. If you have not made an enduring power of attorney (medical treatment), this will also include the power to consent to medical treatment on your behalf.**

Two witnesses must sign this form together and in front of you. You, your guardian or your alternative guardian cannot be witnesses. You also cannot have anyone who is related to you, your guardian or your alternative guardian. One of the witnesses must be authorised by law to witness the signing of statutory declarations.

See 'Who can sign statutory declarations'.

### Acceptance of appointment by guardian (or alternative guardian if applicable)

Your guardian (and alternative guardian, if applicable) must sign and date the 'Acceptance of appointment by guardian'.

Again two witnesses must sign this form. One of the witnesses must be authorised by law to witness the signing of statutory declarations.

See above for details about who cannot be a witness.

Make sure your guardian understands their responsibilities and your instructions and wishes before they sign this form.

See 'Legal words' for an explanation of guardian, alternate guardian or any other words that you do not understand on these forms.

## Information for witnesses

As a witness, your responsibility goes beyond making sure that the signature of the person making the power is genuine. You also need to certify that this person, called the appointor has:

- signed the document freely and voluntarily in your presence
- appeared to understand the effect of this document.

The appointor should be able to tell you things like:

- what sorts of powers the guardian will have
- what sorts of decisions the guardian will have the authority to make
- when and how the guardian will have the authority to exercise that power
- the effects that the guardian’s power could have on the donor
- how the appointor could cancel or change the arrangement in the future.

If you have any doubts it is strongly recommended that you make a written record of your concerns and any questions you asked to work out the appointor’s capacity. You can also make appropriate inquiries with their consent. For example, you could contact the appointor’s doctor or ask for a medical certificate confirming their capacity.

If you think the appointor does not understand the nature and effect of the document, you should refuse to sign the form. You should also refuse to sign the form if the appointor appears to be signing it under duress, undue influence or pressure from another person.

## Enduring power of guardianship

### Form of appointment

*Print date here* 1. I, \_\_\_\_\_

*Print your address here* of \_\_\_\_\_

*Print your occupation here* \_\_\_\_\_

*Print the full name of your guardian here* appoint \_\_\_\_\_

*Print your guardian’s address here* of \_\_\_\_\_

*Print your guardian’s occupation here* \_\_\_\_\_

to be my guardian.

2. I authorise my guardian if, and only to the extent that, I subsequently become unable by reason of a disability to make reasonable judgements in respect of any matters relating to my person or circumstances, to exercise the powers of a guardian under section 24 of the Guardianship and Administration Act 1986, being all the powers that a parent may exercise in respect of his or her child, including -

- to decide where I am to live, whether permanently or temporarily;
- to decide with whom I am to live;
- to decide whether I should or should not be permitted to work and, if so -
  - the nature or type of work; and
  - for whom I am to work; and
  - matters related thereto; and
- to consent to any health care that is in my best interests;
- to restrict visitors to such extent as may be necessary in my best interests and to prohibit visits by any person if my guardian reasonably believes that visits by that person would have an adverse effect on me.

*(Delete any powers you do not wish your guardian to exercise. If you do not delete any powers, you will be deemed to have authorised your guardian to exercise the full powers of a guardian under section 24 of the Guardianship and Administration Act 1986.)*

*List limitations you wish to place on your guardian’s powers here*

but subject to the following limitations:

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List any wishes that you want your guardian to take into account when making decisions on your behalf

3. I require my guardian to take into account the following wishes in exercising, or in relation to the exercise of, the powers conferred by this appointment:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If applicable print the full name of your alternative guardian here

4. I appoint \_\_\_\_\_

Print your alternative guardian's address here

of \_\_\_\_\_

Print your alternative guardian's occupation here

to be my alternative guardian in place of, and with the same powers as, my guardian appointed under paragraph 1 if that person is incapable of acting as my guardian or is absent for a period.

This is an appointment of an enduring guardian made under Division 5A of Part 4 of the *Guardianship and Administration Act 1986*.

Sign your name and insert date here

Signature of appointor \_\_\_\_\_ Date \_\_\_\_\_

### Certificate of witnesses

Print the full name of the person who is authorised to witness the signing of statutory declarations here

We, \_\_\_\_\_

Print the address of this first witness here

of \_\_\_\_\_

Print the occupation of your first witness here

and \_\_\_\_\_

Print the full name of your second witness here

of \_\_\_\_\_

Print the address of your second witness here

Print the occupation of your second witness here

certify -

- a) that the appointor has signed this instrument freely and voluntarily in our presence; and
- b) that the appointor appeared to understand the effect of this instrument.

First witness signs and dates

Signature \_\_\_\_\_ Date \_\_\_\_\_

Second witness signs and dates

Signature \_\_\_\_\_ Date \_\_\_\_\_

Note: An enduring guardian will be able to make decisions on your behalf on all health care and lifestyle matters you empower your enduring guardian to make. If you give your enduring guardian power to make decisions about your health care, your enduring guardian will be able to consent or withhold consent to medical or dental treatment on your behalf.

If your enduring guardian withholds consent to proposed medical or dental treatment, a practitioner may only provide the treatment if the practitioner believes on reasonable grounds that it is in your best interests to do so and if the practitioner gives your enduring guardian the opportunity to refer the matter to the Victorian Civil and Administrative Tribunal (the Tribunal) for determination.

If you wish to appoint a person who can, unless the Tribunal otherwise determines, refuse medical treatment on your behalf, you will need to appoint a person as your agent under the *Medical Treatment Act 1988*.

If you are considering appointing an agent under the *Medical Treatment Act 1988* -

- you should ensure that you understand the rights and powers which an appointment under the *Medical Treatment Act 1988* confers on your agent; and
- you may wish to appoint the same person as your agent under the *Medical Treatment Act 1988* as the person you appoint as your enduring guardian, although you may choose a different person for each role; and

If you appoint or have already appointed a person as your agent under the *Medical Treatment Act 1988* and another person as your enduring guardian -

- the decision of your agent under the *Medical Treatment Act 1988* will have priority over the decision of your enduring guardian in relation to any proposed medical treatment; and
- your agent under the *Medical Treatment Act 1988* will be able to refuse to consent to medical treatment on your behalf in all circumstances regardless of any consent to the treatment that your enduring guardian may give or wish to give.

### Acceptance of appointment by guardian

Print your guardian's full name here

I, \_\_\_\_\_

Print your guardian's address here

of \_\_\_\_\_

Print your guardian's occupation here

accept appointment as a guardian under this instrument and undertake to exercise the powers conferred honestly and in accordance with the provisions of the *Guardianship and Administration Act 1986*.

Your guardian signs and dates

Signature \_\_\_\_\_ Date \_\_\_\_\_

### Certificate of witnesses

Print the full name of the person who is authorised to witness the signing of statutory declarations here

We, \_\_\_\_\_

Print the address of this first witness here

of \_\_\_\_\_

Print the occupation of your first witness here

and \_\_\_\_\_

Print the full name of your second witness here

of \_\_\_\_\_

Print the address of your second witness here

Print the occupation of your second witness here

certify -

- a) that the appointor has signed this instrument freely and voluntarily in our presence; and
- b) that the appointor appeared to understand the effect of this instrument.

First witness signs and dates

Signature \_\_\_\_\_ Date \_\_\_\_\_

Second witness signs and dates

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Acceptance of the appointment by alternative guardian

*Print your alternative guardian's full name here*

I, \_\_\_\_\_

*Print your alternative guardian's address here*

of \_\_\_\_\_

*Print your alternative guardian's occupation here*

\_\_\_\_\_ accept appointment as a guardian under this instrument and undertake to exercise the powers conferred honestly and in accordance with the provisions of the *Guardianship and Administration Act 1986*.

*Your alternative guardian signs and dates*

Signature \_\_\_\_\_ Date \_\_\_\_\_

### Certificate of witnesses

*Print the full name of the person who is authorised to witness the signing of statutory declarations here*

We, \_\_\_\_\_

*Print the address of this first witness here*

of \_\_\_\_\_

*Print the occupation of your first witness here*

\_\_\_\_\_

*Print the full name of your second witness here*

and \_\_\_\_\_

*Print the address of your second witness here*

of \_\_\_\_\_

\_\_\_\_\_ certify -

a) that the appointor has signed this instrument freely and voluntarily in our presence; and

b) that the appointor appeared to understand the effect of this instrument.

*First witness signs and dates*

Signature \_\_\_\_\_ Date \_\_\_\_\_

*Second witness signs and dates*

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Revocation of general power of attorney

### Instructions

Please read 'How to change or cancel your powers' before filling in the form that follows.

You may change or revoke your general power of attorney at any time, so long as you have capacity.

You can revoke a power by telling your attorney, or attorneys, that their power is withdrawn and destroying the power of attorney document and any copies.

You can also formally revoke your power by filling out the 'Revocation of power of attorney' form on the following page and giving it, or a certified copy, to your attorney.

You should keep a certified copy for your records and a record of how you told each attorney of the revocation.

It is very important that you ask your attorney to return the general power of attorney document to make sure that they do not continue to act as your attorney. It is also a good idea to tell any people or organisations that your attorney may have been dealing with, such as your bank.

See 'Legal words' for an explanation of revocation, attorney or any other words that you do not understand on these forms.

## Revocation of general power of attorney

Print the full name of your attorney here

To \_\_\_\_\_

Print your full name here

I \_\_\_\_\_

revoke the power of attorney dated the \_\_\_\_\_

Print the date of the power of attorney document here

day of \_\_\_\_\_ 20 \_\_\_\_\_ that I gave you.

Sign your name here

Signed by \_\_\_\_\_

Print the full name of your witness here

Witnessed by \_\_\_\_\_

Witness signs and dates

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Revocation of enduring power of attorney (financial)

### Instructions

Please read 'How to change or cancel your powers' before filling in the form that follows.

You may change or revoke your enduring power of attorney (financial) at any time, so long as you have capacity.

You can revoke a power by telling your attorney, or attorneys, that their power is withdrawn and destroying the power of attorney document and any copies.

You can also formally revoke your power by filling out the 'Revocation of enduring power of attorney (financial)' on the following page and giving it, or a certified copy, to your attorney.

You should keep a certified copy for your records and a record of how you told each attorney of the revocation.

Two witnesses must sign this form. You or your attorney cannot be witnesses. At least one of the witnesses must be someone who is not related to you or to the person(s) you appointed as your attorney(s). One of the witnesses must be authorised by law to witness the signing of statutory declarations.

See 'Who can sign statutory declarations'.

It is very important that you ask your attorney to return the enduring power of attorney form to make sure that they do not continue to act as your attorney. It is also a good idea to tell any people or organisations that your attorney may have been dealing with, such as your bank.

See 'Legal words' for an explanation of revocation, attorney or any other words that you do not understand on this form.

### Information for witnesses

As a witness, your responsibility goes beyond making sure that the signature of the person revoking the power is genuine. You also need to certify that this person, called the donor, has:

- signed the document freely and voluntarily in front of you without any undue influence or pressure
- has the capacity to revoke the power of attorney.

**Capacity**, or legal capacity, means you have the ability to reason things out. You can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.

If you have any doubts it is strongly recommended that you make a written record of your concerns and any questions you asked to work out the donor's capacity. You can also make appropriate inquiries with the donor's consent. For example, you could contact the donor's doctor or ask for a medical certificate confirming their capacity.

If you think that the donor does not understand the nature and effect of this document, you should refuse to sign the form. You should also refuse to sign the form if the donor appears to be signing it under duress, undue influence or pressure from another person.

## Revocation of enduring power of attorney (financial)

*Print your full name here* 1. I, \_\_\_\_\_

*Print your address here* of \_\_\_\_\_

*Print the date of the power of attorney document here* **revoke** the enduring power of attorney (financial) dated on \_\_\_\_\_

*Print the full name of your first attorney here* which appointed \_\_\_\_\_

*Print your first attorney's address here* of \_\_\_\_\_

*Cross out the following four lines if you appointed only one attorney.*

*Print the full name of your second attorney here* **and** \_\_\_\_\_

*Print your second attorney's address here* of \_\_\_\_\_

*Cross out the following two lines if you appointed only two attorneys.*

*Print the full name of your third attorney here* **and** \_\_\_\_\_

*Print your third attorney's address here* of \_\_\_\_\_  
as my attorney(s).

2. This revocation of enduring power of attorney is made under Part XIA of the *Instruments Act 1958*.

*Sign your name and print the date here* **Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

or

*Cross out the following option if it does not apply.*

*Person signing at the direction and in the presence of the donor prints their full name here* I, \_\_\_\_\_ sign at the direction of the donor.

*Person signing for the donor signs and dates here* **Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

*Print full name of the person who can witness the signing of statutory declarations here* **Witnessed by** \_\_\_\_\_

*Print the address of first witness here* of \_\_\_\_\_

*First witness signs here* **Signature** \_\_\_\_\_

*Print the full name of the second witness here* **and** \_\_\_\_\_

*Print the address of second witness here* of \_\_\_\_\_

*Second witness signs here* **Signature** \_\_\_\_\_

## Revocation of enduring power of attorney (medical treatment)

### Instructions

Please read 'How to change or cancel your powers' before filling in the form that follows.

You may change or revoke your enduring power of attorney (medical treatment) at any time, so long as you have capacity.

You can revoke a power by telling your agent(s), that their power is withdrawn and destroying the enduring power of attorney document and any copies.

You can also formally revoke your power by filling out the 'Revocation of enduring power of attorney (medical treatment)' form on the following page and giving it, or a certified copy, to your agent. You should keep a certified copy for your records and a record of how you told each agent of the revocation.

It is very important that you ask your agent to return the enduring power of attorney document to make sure that they do not continue to act as your agent. It is also a good idea to notify any people or organisations that your agent may have been dealing with, such as your doctor or service providers.

See 'Legal words' for an explanation of revocation, agent or any other words that you do not understand on these forms.

## Revocation of enduring power of attorney (medical treatment)

Print the full name of your attorney here

To \_\_\_\_\_

Print your full name here

I \_\_\_\_\_

revoke the power of attorney (medical treatment) dated the \_\_\_\_\_

Print the date of the power of attorney document here

day of \_\_\_\_\_ 20 \_\_\_\_\_ that I gave you.

Sign your name here

Signed by \_\_\_\_\_

Print the full name of your witness here

Witnessed by \_\_\_\_\_

Witness signs and dates

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Revocation of enduring power of guardianship

### Instructions

Please read 'How to change or cancel your powers' before filling in the form that follows.

You may change or revoke your enduring power of guardianship at any time, so long as you have capacity.

You can revoke your power by filling out the 'Revocation of enduring power of guardianship' form on the following page and giving it, or a certified copy, to your guardian or alternative guardian. You should keep a certified copy for your records and a record of how you told your guardian or alternative guardian of the revocation.

Two witnesses must sign this form together and in front of you. You, your guardian or your alternative guardian cannot be witnesses. You also cannot have anyone who is related to you, your guardian or your alternative guardian as witness. One of the witnesses must be authorised by law to witness the signing of statutory declarations.

See 'Who can sign statutory declarations'.

It is very important that you ask your guardian or alternative guardian to return the enduring power of guardianship form to make sure that they do not continue to act on your behalf. It is also a good idea to notify any people or organisations that your guardian or alternative guardian may have been dealing with, such as your doctor or service providers.

See 'Legal words' for an explanation of revocation, guardian or alternative guardian or any other words that you do not understand on these forms.

#### Information for witnesses

As a witness, your responsibility goes beyond making sure that the signature of the person revoking the power is genuine. You also need to certify that this person, called the donor, has:

- signed the document freely and voluntarily in front of you without any undue influence or pressure
- has the capacity to revoke the power of attorney.

**Capacity**, or legal capacity, means you have the ability to reason things out. You can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.

If you have any doubts it is strongly recommended that you make a written record of your concerns and any questions you asked to work out the donor's capacity. You can also make appropriate inquiries with the donor's consent. For example, you could contact the donor's doctor or ask for a medical certificate confirming their capacity.

If you think that the donor does not understand the nature and effect of this document, you should refuse to sign the form. You should also refuse to sign the form if the donor appears to be signing it under duress, undue influence or pressure from another person.

## Revocation of appointment of enduring guardian

*Print your full name here* 1. I, \_\_\_\_\_

*Print your address here* of \_\_\_\_\_

*Print your occupation here* \_\_\_\_\_

*Print the full name of your guardian or alternative guardian here* revoke the appointment of \_\_\_\_\_

*Print your guardian or alternative guardian's address here* of \_\_\_\_\_

*Print your guardian or alternative guardian's occupation here* \_\_\_\_\_

*Insert guardian or alternative guardian as applicable here* as my \_\_\_\_\_

*Insert enduring guardian or alternative enduring guardian as applicable here* 2. This revocation of appointment as an \_\_\_\_\_ is made under Division 5A of Part 4 of the *Guardianship and Administration Act 1986*.

*Sign and date here* Signature of appointor \_\_\_\_\_ Date \_\_\_\_\_

### Certificate of witnesses

*Print the full name of the person who is authorised to witness the signing of statutory declarations here* We, \_\_\_\_\_

*Print the address of this first witness here* of \_\_\_\_\_

*Print the occupation of your first witness here* \_\_\_\_\_

*Print the full name of your second witness here* and \_\_\_\_\_

*Print the address of your second witness here* of \_\_\_\_\_

*Print the occupation of your second witness here* \_\_\_\_\_

certify -  
a) that the appointor has signed this instrument freely and voluntarily in our presence; and  
b) that the appointor appeared to understand the effect of this instrument.

*First witness signs and dates* Signature \_\_\_\_\_ Date \_\_\_\_\_

*Second witness signs and dates* Signature \_\_\_\_\_ Date \_\_\_\_\_

# Take control

A kit for making powers of attorney and guardianship

## **Office of the Public Advocate**

5th Floor, 436 Lonsdale St  
Melbourne VIC 3000

Tel: 1300 309 337 for the cost of a local call  
TTY: 9603 9529 or ACE 133 677 (03) 9603 9500  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

## **Victoria Legal Aid**

### **Legal Information Service**

Tel: 9269 0120  
Country callers: 1800 677 402

### **Offices**

#### **MELBOURNE**

350 Queen St  
Melbourne VIC 3000  
Tel: 9269 0120  
Country callers: 1800 677 402

#### **Suburban offices**

#### **BROADMEADOWS**

North western suburbs  
Level 1, Building 1  
Broadmeadows Station Centre  
1100 Pascoe Vale Rd  
Broadmeadows VIC 3047  
Tel: 9302 8777

#### **DANDENONG**

Westernport region  
Level 1, 9-15 Pultney St  
Dandenong VIC 3175  
Tel: 9767 7111

#### **FRANKSTON**

Peninsula region  
Cnr O'Grady Ave & Dandenong Rd  
Frankston VIC 3199  
Tel: 9784 5222

#### **PRESTON**

North eastern suburbs  
42 Mary St  
Preston VIC 3072  
Tel: 9416 6444

#### **RINGWOOD**

Outer eastern suburbs  
23 Ringwood St  
Ringwood VIC 3134  
Tel: 9259 5444

#### **SUNSHINE**

Western suburbs  
1/474 Ballarat Rd  
Sunshine VIC 3020  
Tel: 9300 5333

#### **Regional offices**

#### **BALLARAT**

Central Highlands region  
Area A, Level 1  
75 Victoria St  
Ballarat VIC 3350  
Tel: 5329 6222  
Toll free: 1800 081 719

#### **BENDIGO**

Loddon-Campaspe region  
424 Hargreaves St  
Bendigo VIC 3550  
Tel: 5448 2333  
Toll free: 1800 254 500

#### **GEELONG**

Barwon region  
Level 2, 199 Moorabool St  
Geelong VIC 3220  
Tel: 5226 5666  
Toll free: 1800 196 200

#### **HORSHAM**

Wimmera region  
29 Darlot St  
Horsham VIC 3400  
Tel: 5381 6000  
Toll free: 1800 177 638

#### **MORWELL**

Gippsland region  
Cnr Chapel & George St  
Morwell VIC 3840  
Tel: 5134 8055

#### **BAIRNSDALE**

Gippsland region (branch office)  
101A Main St  
Bairnsdale VIC 3875  
Tel: 5153 1975

#### **SHEPPARTON**

Goulburn region  
36-42 High St  
Shepparton VIC 3630  
Tel: 5823 6200

#### **WARRNAMBOOL**

South Coast region  
185 Fairy St  
Warrnambool VIC 3280  
Tel: 5559 7222  
Toll free: 1800 651 022

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