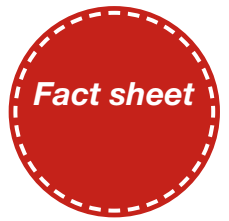




Information for witnesses



Enduring power of attorney appointment

This fact sheet explains your role if you are asked to act as witness for a person completing an enduring power of attorney under Victoria's *Powers of Attorney Act 2014*.

To make an enduring power of attorney, a person must have decision-making capacity to do so. You must be satisfied the person is acting freely and voluntarily.

Contact the Office of the Public Advocate (OPA) on 1300 309 337 if you have any concerns or for more information or at:

publicadvocate.vic.gov.au



- a care worker or accommodation provider for the person making the appointment.

Step 2: Ask questions

The person making the appointment is known as the 'principal'. You should ask the principal questions to check that they appear to have decision-making capacity to make the enduring power of attorney.

Definition of decision-making capacity

A person has decision-making capacity if they are able to:

- understand the information relevant to the decision and the effect of this decision
- retain the information to the extent necessary to make the decision
- use or weigh the information as part of the process of making the decision and
- communicate the decision, and their views and needs in relation to the decision in some way, including by speech, gestures or other means.

Your role as witness involves three steps.

Step 1: Check you are the right person to witness the document

Two adult witnesses are required for an enduring power of attorney appointment.

One must be:

- authorised to witness affidavits or
- a registered medical practitioner.



The following people cannot be a witness:

- a relative of the person making the appointment
- a person who is being appointed (an attorney or alternative attorney), or their relative

The principal must be acting freely and voluntarily. It is good practice to talk to the person without anyone they are appointing present.

You will need to be able to communicate with the principal in a language that they understand. If an interpreter is needed, it is preferable that they are accredited by the National Accreditation Authority for Translators and Interpreters (NAATI).

The Powers of Attorney Act sets out what witnesses certify. (See table overleaf). You should ask questions to make sure you are satisfied of these things.

Understanding the effect of their decision

You need to check the principal understands the effect of their decision to make an enduring power of attorney. According to the Powers of Attorney Act, this includes that they understand:

- when the enduring power of attorney starts
- that, once the power starts, their attorney has the same legal authority as the principal to make decisions about their financial matters, personal matters, or both (depending on what powers the principal has given their attorney)
- that they may place conditions on the power they give to their attorney and may give instructions
- that they may revoke (cancel) the power of attorney at any time while they have decision-making capacity to do so
- that the enduring power of attorney continues, even if they subsequently lose decision-making capacity for the matters included in the enduring power of attorney (for example, they become unable to make decisions about financial matters)
- that, at any time they do not have decision-making capacity, they will be unable to effectively oversee the use of the power.

Step 3: The person signs in front of you

If you are satisfied of the above and everything listed in the table below, the person signs in front of you and the other witness. You and the other witness then sign and date the witness certification.

If the principal has decision-making capacity but cannot physically sign, there is a section of the form where they can direct someone else to sign on their behalf in their presence and the presence of their witnesses.

Interpreters

If you need to use an interpreter to communicate with the person, OPA recommends that you and the other witness complete and sign the following statement on the form:

We communicated with the person through an interpreter, [name and NAATI number (if accredited)] who, to the best of our knowledge and belief:

- truly interpreted to the person in

[insert language]

- is not an attorney of the principal.

[Witnesses signature]

What witnesses certify	Enduring power of attorney
Decision-making capacity	That the person appears to have decision-making capacity at the time of signing in relation to the making of the enduring power of attorney
Understands nature and effect	That the person appears to understand the effect of their decision to make the enduring power of attorney (see above for what the Act says this means)
Freely and voluntarily signs	That the person appears to freely and voluntarily sign the document, and in the presence of the witnesses
Eligibility to be a witness	That you are eligible to be a witness