



Factsheet:

# Enduring Power of Attorney

## What is an Enduring Power of Attorney?

An Enduring Power of Attorney is an important legal document which enables you to appoint one or more people (your attorneys) to manage your financial and legal affairs on your behalf.

It will continue to operate even if you lose your mental capacity from unsoundness of mind, mental illness or accident.

## Who can make an Enduring Power of Attorney?

Anyone over the age of 18 can make a power of attorney as long as they have the mental capacity to understand what they are signing. If a person's capacity is in doubt, an assessment of their capacity needs to be made by a lawyer, who may also liaise with your doctor, psychologist or psychiatrist.

## Why do I need to make an Enduring Power of Attorney?

You have no way of knowing if or when you will lose your decision making ability in the future. Loss of mental capacity can be caused by illness, accident or trauma or a situation might arise that leaves you physically unable to attend to your property or financial matters. If you lose mental capacity and

you haven't made an Enduring Power of Attorney, there won't be anyone with legal authority to manage your property and financial matters for you. A relative or another person may need to apply to the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) or the Supreme Court to have a financial manager appointed for you. The person appointed as your financial manager may not be the person you would have chosen to take on this role. This process may also cause unnecessary delay and hardship.

### When should I make an Enduring Power of Attorney?

It is important to plan ahead and make an Enduring Power of Attorney now because it will be too late to do so once you have already lost mental capacity. An enduring power of attorney can only be effective if you understand what you are signing at the time of making it, so it has to be in place before any loss of capacity.

### Who should I choose to be my attorney?

Your attorney should be someone you know and trust and it can be anyone you choose as long as they are over the age of 18 and of sound mind. This may be a family member, close friend or professional adviser.

### What can my attorney do?

Your attorney can act on your behalf in financial and legal matters which might include spending and managing your

money, paying bills, buying or selling shares for you or buying, selling, leasing or mortgaging your real estate. An attorney can also act on your behalf while you still have your full mental capacity but you may have travelled overseas.

### Who can look after my personal matters?

A power of attorney only authorises your attorney to act in relation to financial and legal matters. It does not allow the attorney to make personal health and lifestyle decisions for you. If you want another person to make these types of decisions for you, please speak to us about making an Appointment of Enduring Guardian.

### What are the obligations of my Attorney?

An attorney has a duty to act in your best interests. Your attorney can't spend any of your money on themselves or make gifts to anyone unless you have previously authorised it when making the Power of Attorney.

### How can an Enduring Power of Attorney be cancelled or revoked?

Your Enduring Power of Attorney can be cancelled at any time provided you have the mental capacity to do so and it will automatically cease to have effect when you die. From that point on, your Will dictates what will happen to your estate.

## What should I do now?

After reading through this guide,  
call us on (02) 9411 4466 or email@avlawyers.com.au  
to arrange an appointment to discuss your requirements with a  
solicitor from our Estates team.

**Wills and Estates**  
**Miranda Thompson** Special Counsel  
T: +61 2 8448 9878  
mthompson@avlawyers.com.au

**Leora Tius** Associate  
T: +61 2 8448 9876  
ltius@avlawyers.com.au