

Let's talk about an Enduring power of attorney

To learn more, call or visit on:

 1300 360 044

 www.pt.qld.gov.au

What is an enduring power of attorney?

An enduring power of attorney is a legal document that allows you (the 'principal') to appoint someone you trust (an attorney) to make financial decisions or personal decisions (including decisions about your health) on your behalf.

At some point in the future, a situation may arise where you are unable to make your own decisions about personal, health or financial matters. This might be because of an accident, a medical condition, or a mental illness. An enduring power of attorney allows you to appoint people you trust to make decisions for you if you are unable to.

If you intend to make an enduring power of attorney don't delay — as you won't be able to make one once you lose capacity.

An enduring power of attorney document can significantly affect your legal rights and is governed by the *Powers of Attorney Act 1998* (the Act)¹. It is strongly recommended you seek independent legal advice from a qualified legal professional before completing an enduring power of attorney form. This ensures you receive personalised advice and will give you peace of mind that your document is correctly prepared to reflect your intentions, and all legal requirements are met.

To make a valid enduring power of attorney, the principal must have capacity (see section 41 of the Act), and the document must be recorded in writing and executed properly by the principal before a witness (see section 44 of the Act).

What is an attorney?

An attorney is the person you nominate to make your personal, health and/or financial decisions on your behalf. You can set terms or provide instructions in your enduring power of attorney on how your attorney acts on your behalf. This can include limiting your attorney's powers by specifying the decisions they cannot make and those requiring approval from a nominated, trusted non-attorney.

Who should I nominate as my attorney?

This is a very important decision. The person or persons you nominate will have legal power to make decisions on your behalf if you lose the ability to make them for yourself. It is vital to choose someone you trust, who understands your needs, interests and values, and will do what's best for you.

What does an attorney for financial matters take care of?

A financial attorney can do things such as:



ensuring your bills are paid



managing your investments



preparing your tax returns.

What does an attorney for personal and health matters take care of?

An attorney for personal matters can attend to things such as where you will live, who you will live with and services to support you.

An attorney for health matters can attend to certain medical decisions, treatment options and medicines.



This is **not** the same as an advance health directive, which is something you can make in consultation with your doctor.

¹ www.legislation.qld.gov.au/view/pdf/inforce/current/act-1998-022

What should I consider when I make an enduring power of attorney?

Some of the things you may wish to consider are:

- ☐ How would I like to live my life if I was unable to make my own decisions?
- ☐ What religious or cultural matters have significance for me?
- ☐ Are there other people I would like involved in discussions about my care or financial decisions that affect me?
- ☐ What things would be most important to me?

What should I consider when I choose an attorney?

Some of the things you may wish to consider are:

- ☐ Is the person 18 years of age or older?
- ☐ Is the person trustworthy and likely to act in my best interest?
- ☐ Is the person willing to take on the responsibility?
- ☐ Does the person have sufficient financial skills and can they deal with all financial and property matters relating to my estate?
- ☐ Does the person live close enough to me to carry out their duties?
- ☐ Is the person able to keep and preserve accurate records and accounts of all dealings and transactions made under an enduring power of attorney?
- ☐ Could the choice of attorney create conflict within my family?
- ☐ Should I set any rules or restrictions for the attorney?

How should I start planning ahead?

Planning ahead includes thinking about what is important to you and talking about it with your loved ones and those you trust. Knowing your options when making an enduring power of attorney, and how to protect yourself and those you wish to provide for in the future, is very important. It is always recommended to seek advice from a professional about making an enduring power of attorney rather than preparing the document yourself.

You may also wish to consider nominating a professional organisation, a lawyer or an accountant to act as your attorney, however fees will apply.

Who can I contact to make an enduring power of attorney?

Queensland Public Trustee: For more information on making an enduring power of attorney and how you can appoint QPT as your attorney for financial matters, visit: www.pt.qld.gov.au/wills-powers-of-attorney-estates/powers-of-attorney.

Queensland Public Trustee

Office of the Public Guardian: For more information about the role of the Public Guardian and how you can appoint the Public Guardian as your attorney for personal and health care matters, visit: www.publicguardian.qld.gov.au/planahead.

Office of the Public Guardian

Queensland Government: Enduring power of attorney forms and guidelines are available on: www.publications.qld.gov.au/dataset/power-of-attorney-and-advance-health-directive-forms.

Queensland Government