

Powers of Attorney & Enduring Guardians (NSW)

In some circumstances – such as prolonged absence, illness or mental incapacity, you may need to authorise a close friend or family member to make decisions on your behalf in the event you are no longer able to make them for yourself.

Powers of attorney and enduring guardianships are legal documents that allow such decisions to be made involving your property, finances, health and lifestyle.

What is a power of attorney?

A 'power of attorney' is a document appointing another person to act for you in relation to your property and financial affairs. The powers you give your attorney can be as specific or as general as you wish, and can include authorising your attorney to operate your bank accounts, manage your investments, pay your bills, and/or sell or buy property on your behalf.

How long does a power of attorney last?

A power of attorney can operate for as long as you require. If you want your power of attorney to continue after you lose the capacity to make your own decisions, you will need to sign an 'enduring power of attorney.'

You can also cancel a power of attorney at any time while you have the capacity to make the decision.

I am in good health, why do I need to make a power of attorney now?

A power of attorney can only be made by a person while they are of sound mind and able to understand what they are doing.

You can however make your power of attorney commence at a later date, for example, an enduring power of attorney can be specified as only coming

into effect when you lose the capacity to manage your own financial matters.

What happens if I am unable to manage my affairs but do not have a power of attorney?

If you are no longer able to manage your own affairs and do not have an enduring power of attorney, your assets will be 'frozen' until the court or tribunal appoints a financial manager to act on your behalf.

What is an enduring guardianship?

Unlike a power of attorney which is limited to property and financial decisions, an 'enduring guardianship' enables your appointed guardian to make health and lifestyle decisions on your behalf if you become incapable of making reasonable judgements about your personal circumstances.

You may limit the authority you give your guardian, and give as many or as few functions as you wish, such as deciding where and with whom you live, and/or what health care and medical treatment you receive.

Making a power of attorney and enduring guardianship

The legal requirements for preparing powers of attorneys and enduring guardianships in Australia are governed by state laws.

To ensure your specific needs are met and that the appointment is legally valid, these documents need to be prepared by a solicitor, and in most cases, signed in the presence of a solicitor.