



Your guide to completing an enduring power of attorney



The *Powers of Attorney Act 2006* (the Act) was amended in February 2016. The amendments allow people to authorise their enduring attorneys to make decisions, on their behalf, about participation in medical research and experimental health care. The amendments are effective from 1 September 2016.

Enduring Powers of Attorney (EPAs) made prior to this date are still valid.

The Public Trustee and Guardian is committed to providing information to, and raising awareness in the community about, EPAs. The aim of this commitment is to ensure that people have the information to allow them to plan ahead and appoint an enduring attorney of their choice.

This publication provides general information about EPAs in the ACT. It includes information about:

- why you should make an EPA;
- the difference between an EPA and other powers of attorney;
- how to make an EPA, including appointing one or more enduring attorneys and identifying their powers;
- things an enduring attorney can and can't do; and
- obligations of enduring attorneys.

This publication also includes a form for making an EPA and guidelines to assist you to complete the form.

There is growing awareness in the community about the importance of planning ahead for a time when a person may be unable to make their own decisions. An EPA allows a person to control who will make certain decisions on their behalf if they no longer have decision-making capacity because of an accident, illness or disability.

The Public Trustee and Guardian encourages everyone 18 years and over to make an EPA.



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PART A

WHY MAKE AN EPA?



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If you can no longer make your own decisions, and you do not have an EPA, you may not be able to have a say in who will be appointed to make those decisions.

A person appointed under an EPA has the legal authority to make decisions on your behalf as the ‘principal’, such as decisions about property (including financial), personal care, health care and medical research matters. They become your substitute decision-maker if you are no longer able to make decisions.

If you can no longer make your own decisions, and you do not have an EPA, you may not be able to have a say in who will be appointed to make those decisions. It may also mean that those who are appointed to act on your behalf will not be aware of your views and wishes.

Appointing an enduring attorney means that you have the opportunity to talk to your attorney about your views and wishes. They can then take into account your views and wishes (past and present) and the views of relevant professionals and other important people in your life to make the best decisions on your behalf in the circumstances at the time.

POWERS OF ATTORNEY IN THE ACT

Powers of attorney in the ACT, including EPAs, are made under the *Powers of Attorney Act 2006* (the Act). Another type of attorney, a health attorney, may also be appointed under the *Guardianship and Management of Property Act 1991*.

Each of these powers of attorney is briefly described below. However, this publication only looks at EPAs in detail.

General Power of Attorney

A general power of attorney is a legal document made by one person, 'the principal', authorising another person, an 'attorney', to act on behalf of the principal in relation to the principal's property (including financial) matters. It operates while the principal has decision-making capacity. It generally commences at the time it is signed and the attorney can start acting straight away.

A principal may limit the power in a power of attorney and specify when and how the power under the power of attorney may be exercised.

A general power of attorney ceases to have effect, and cannot be used, once the principal no longer has decision-making capacity.

Enduring Power of Attorney

An EPA is a legal document appointing one or more attorneys to act on behalf of the principal if the principal has impaired decision-making capacity. A person has impaired decision-making capacity if they cannot make decisions in relation to their affairs or does not understand the nature or effect of the decisions they make in relation to their affairs.

An enduring power of attorney can nominate someone to make decisions on behalf of the principal in property (including financial), personal care, health care or medical research matters.

An EPA is different from a general power of attorney in that -

- While a person has full decision-making capacity, an EPA can only operate as a general power of attorney and only for property matters.

- In relation to property matters, it may be expressed to commence immediately or at a particular date, otherwise it will commence when the principal has impaired decision-making capacity;
- It may only commence in respect of personal, health care and medical research matters when the principal has impaired decision-making capacity.

As for a general power of attorney, an EPA may limit the power given to an enduring attorney. It may also direct an attorney how to perform their functions under the power.

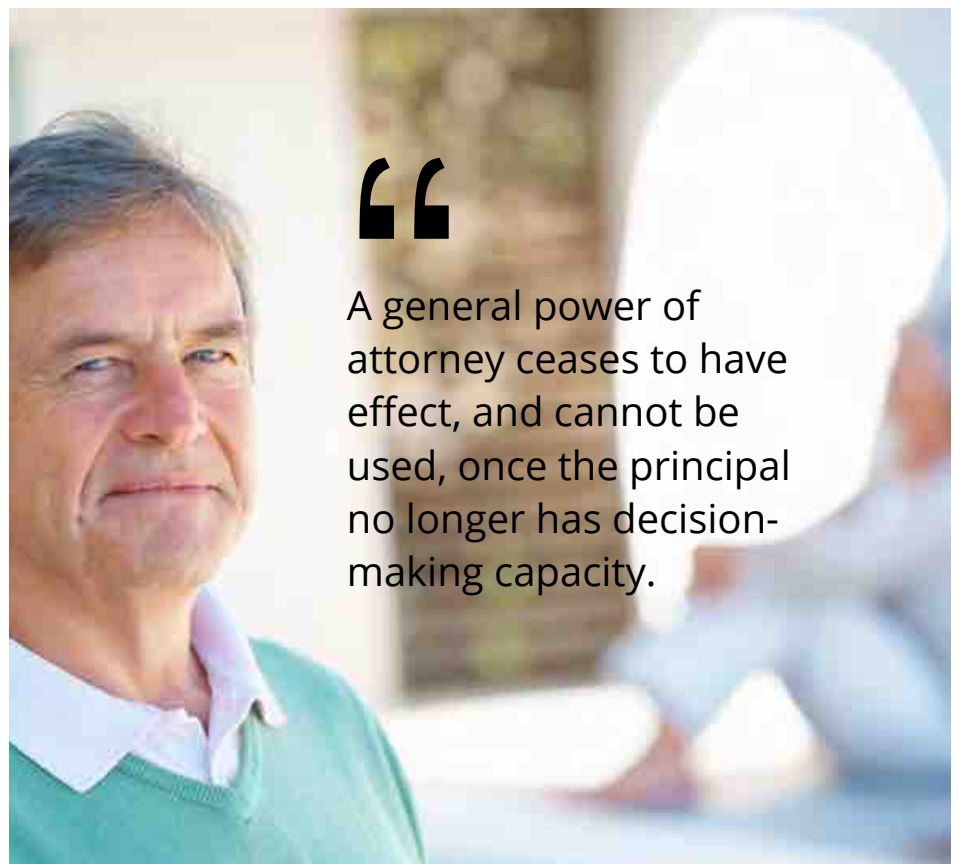
An EPA made in the ACT will generally be recognised in other States and Territories.

Both a General Power of Attorney and an EPA cease to have effect on the death of the principal.

Health Attorney

A health attorney is a person authorised to consent to medical treatment on behalf of a person with impaired decision-making ability. A health attorney is appointed by the treating doctor at the time the substitute medical consent is required.

A health attorney can be a domestic partner, unpaid carer, close relative or close friend and can only provide substitute medical consent.



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A general power of attorney ceases to have effect, and cannot be used, once the principal no longer has decision-making capacity.

WHO CAN MAKE AN EPA?

Anyone of 18 years and over who has decision-making capacity, can make an EPA.

A person who has decision-making capacity can also revoke their EPA. A person who has a guardian or manager appointed under order of the ACT Civil and Administrative Tribunal (ACAT) cannot make an EPA unless ACAT approves the provisions of the EPA.

Under s. 9 of the Act, 'a person has decision-making capacity if the person can make decisions in relation to [their] affairs and understands the nature and effect of the decisions'.



HOW TO MAKE AN EPA

Making an EPA is simple and straightforward – you simply complete the form found in the Forms Section (Liftout) Pages F1 to F17 of this Guide, which must be signed by you or your delegate and your authorised witnesses. More detail about the form is set out below –



Before you make an EPA, you need to make some important decisions about:

- 1. The powers or functions you are going to give your attorney (or attorneys);**
- 2. Who you want to appoint as your attorney/s; and**
- 3. Any limits or conditions you want to place on how the powers are exercised.**

1. Powers that can be given to an enduring attorney

Under s.13 of the Act, you may appoint an attorney/s to act on your behalf in any or all of these four areas:

- a. **Property matters** – some examples of property matters that an attorney may deal with include: paying maintenance and accommodation costs for you and your dependants; carrying on your trade or business;

paying your debts or expenses; discharging your mortgage; and legal matters relating to your finances and property.

- b. **Personal care matters** – this means a matter concerning your personal care or welfare, but not a health care matter. Some examples of a personal care matter include: where you live and who you live with; any education or training you get; whether you work and where; and legal matters relating to personal care matters.
- c. **Health care matters** – this means a health care matter, other than a special health care matter (discussed at p.17). Some examples of a health care matter include consenting to lawful medical treatment necessary for your wellbeing; withholding or withdrawal of medical treatment; consenting to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery); and legal matters relating to health care.

- d. **Medical research matter** – this means a matter relating to your participation in medical research that has been approved by a human research ethics committee. Examples of medical research include: research using information collected during routine health care; collecting information through a survey conducted for the purpose of research; and observing a person's activities for research purposes. Examples of experimental health care include: a clinical trial of a drug; trialling increased physical therapy for someone on ventilation apparatus; and trialling a new absorbent material after bathing to treat dermatological conditions.

To safeguard a person with impaired decision-making capacity, there are a number of conditions that must be met before an enduring attorney can make a decision to allow participation in medical research or experimental health care. These are discussed at p.13.

Prior to changes to the Act which became effective on 1 September 2016, enduring attorneys were not allowed to consent to participation in medical research or experimental health care. From 1 September 2016, you will need to specify whether this is a power you give to your enduring attorney.

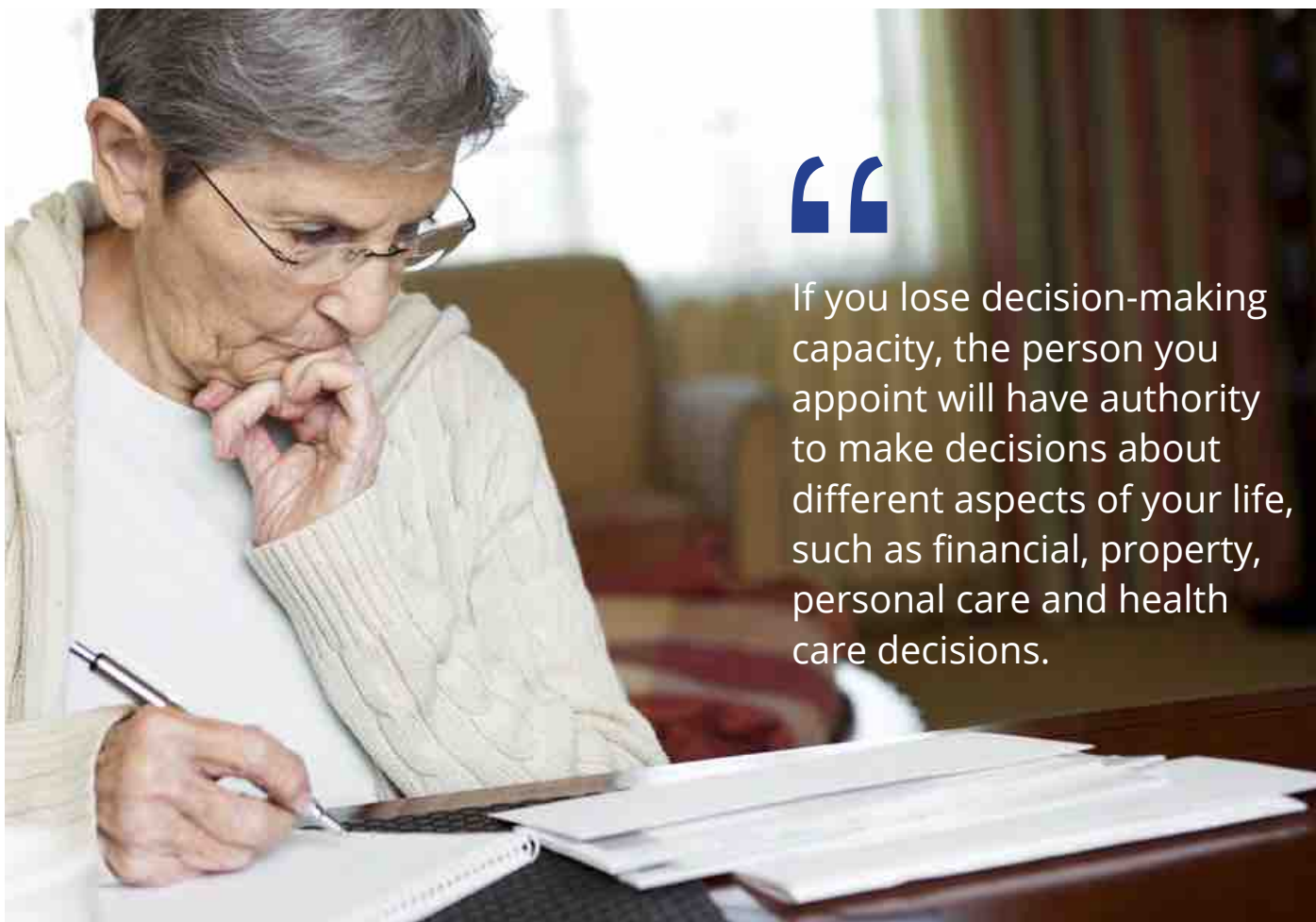
If you have an enduring power of attorney made before 1 September 2016 that includes a power for health care matters, your enduring attorney will be able to make decisions about medical research matters without your making a new EPA, unless the EPA or a health direction, made under the *Medical Treatment (Health Directions) Act 2006*, says otherwise. In making any decisions about medical research matters, the enduring attorney must comply with the new safeguards (see p.13).

If you wish to specifically authorise your enduring attorney to make decisions about medical research matters, or direct how your enduring attorney may make these decisions, you will need to make a new EPA.

Continued page 6



If you lose decision-making capacity, the person you appoint will have authority to make decisions about different aspects of your life, such as financial, property, personal care and health care decisions.



HOW TO MAKE AN EPA *continued*

CASE STUDY

Joe and Molly live with their son, Alan, who is their primary carer. Their daughter, Jane, lives in a small rural community in NSW. Alan travels overseas a lot for his job and while he is away Jane comes to Canberra to look after Joe and Molly.

Joe and Molly have appointed Alan and their daughter, Jane, as their enduring attorneys. They have appointed them separately in relation to all functions, recognising that decisions may need to be made at a time when either Alan or Jane is not easily contactable. In deciding to appoint them separately, they are also aware that Alan and Jane often discuss Joe's and Molly's needs, including with Joe and Molly.

2. Who to appoint as your attorney/s

You can appoint anyone of 18 years and over as an enduring attorney.

An attorney has an important decision-making role, so it is essential that the person you wish to appoint understands the responsibilities of an enduring attorney as a substitute decision-maker. If you lose decision-making capacity, the person you appoint will have authority to make decisions about different aspects of your life, such as financial, property, personal care and health care decisions. It is therefore important that you trust the person to be able to take into account your views and make decisions in your best interests.

In relation to property matters, you cannot appoint someone who is bankrupt or personally insolvent. You also cannot appoint a corporation other than the Public Trustee and Guardian or a trustee company.

Similarly, you cannot appoint a corporation other than the Public Trustee and Guardian as an enduring attorney for personal care, health care or medical research matters.

Other issues you might consider in deciding who to appoint as your enduring attorney include:

- the willingness of the person to take on the role;

- the person's availability; and
- their age and health.

Appointing more than one attorney

You may appoint a number of people together or separately to be your enduring attorneys. This means that the enduring attorneys you appoint can act either together or separately when making decisions on your behalf.

Enduring attorneys appointed **together** means that the enduring attorneys you appoint have the same decision-making areas and when making decisions on your behalf they will only be able to act if they agree on the course of action.

Enduring attorneys appointed **separately** means that the enduring attorneys you appoint will be able to act independently. However it would be expected that the enduring attorney taking the action would consult with any other attorneys prior to making a decision.

You may also appoint enduring attorneys both separately or together, allowing them to act either together or separately at their discretion in making decisions on your behalf.

You may also authorise different enduring attorneys to act in different circumstances or in relation to different matters. For example, you could appoint two enduring attorneys to act separately in relation to property and personal care matters, but authorise

them to only act jointly in relation to health care and medical research matters.

If one enduring attorney dies, resigns or is no longer eligible to perform their functions, the EPA is only revoked to the extent of that enduring attorney's power. The EPA still operates in relation to any other enduring attorney.

When considering whether to appoint more than one enduring attorney, who to appoint and whether to appoint them jointly or separately, you may want to consider factors such as:

- ease of communication between the enduring attorneys;
- the likely impact of decisions made by one enduring attorney on the decisions made by another enduring attorney e.g. personal decisions could have financial implications, and financial decisions can have lifestyle implications; and
- any potential for disagreement among enduring attorneys appointed together.

Alternative enduring attorneys

You can nominate a person as your alternative enduring attorney to act in the event of the unwillingness or unavailability of your appointed enduring attorney.

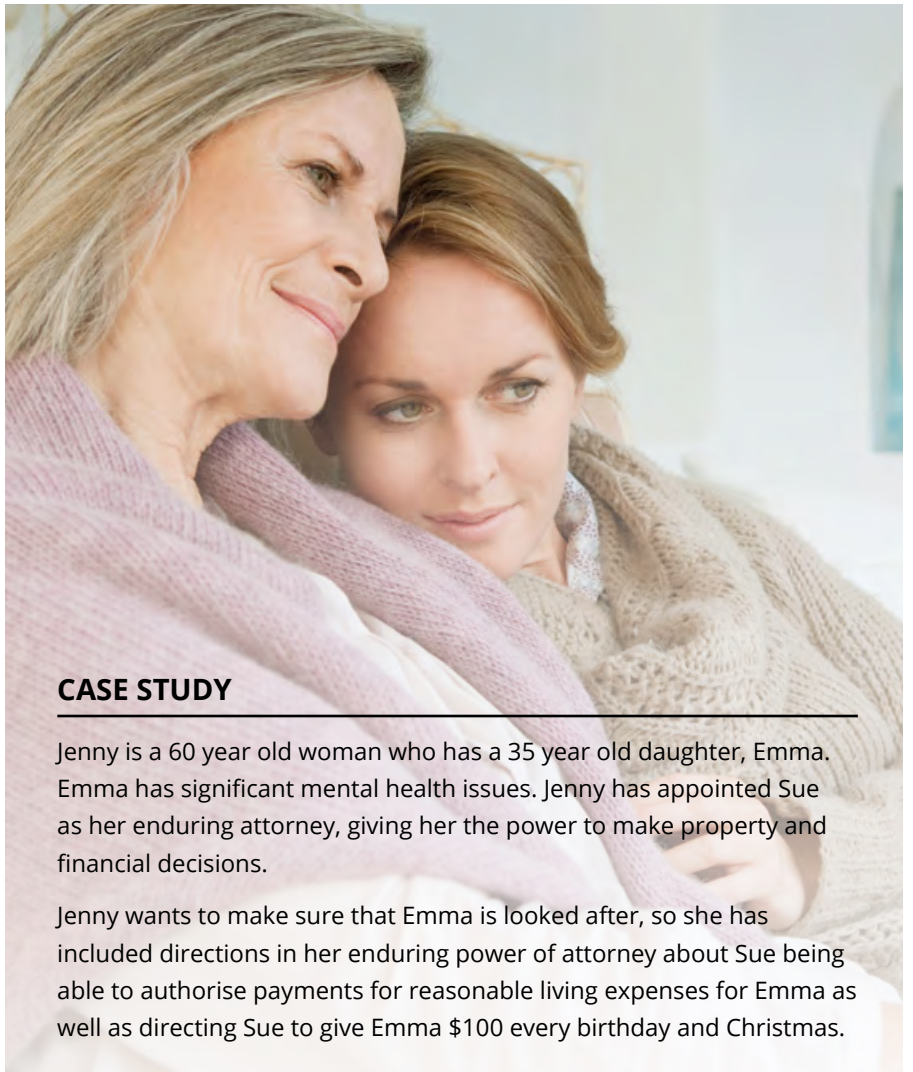


3. Any directions, limitations or conditions on how the powers are exercised

You can provide directions or place limitations or conditions on how your attorney may exercise their functions. For example, you may choose to provide directions about the amount of money allocated for a particular purpose.



An attorney has an important decision-making role, so it is essential that the person you wish to appoint understands the responsibilities of an enduring attorney as a substitute decision-maker.



CASE STUDY

Jenny is a 60 year old woman who has a 35 year old daughter, Emma. Emma has significant mental health issues. Jenny has appointed Sue as her enduring attorney, giving her the power to make property and financial decisions.

Jenny wants to make sure that Emma is looked after, so she has included directions in her enduring power of attorney about Sue being able to authorise payments for reasonable living expenses for Emma as well as directing Sue to give Emma \$100 every birthday and Christmas.



A person cannot be a witness if they are signing on behalf of the principal or they are appointed as an enduring attorney under the EPA.

FORMAL REQUIREMENTS FOR AN EPA

Completing the form

To appoint an enduring attorney, you must complete and sign an EPA form using the form found in the Forms Section (Liftout) Pages F1 To F17 of this Guide. Copies of the form can also be downloaded from www.ptg.act.gov under "Publications and Forms".

This form can be used to appoint one or more people as your enduring attorney/s.

Guidelines on completing the form are included at page F12 of the Forms Liftout Section.

Signing the form

Once you have completed the form, a number of signatures are required before the EPA becomes effective:

1. You must sign the form as the principal.

If you are unable to sign, you can direct another person to sign on your behalf as long as you are present. In order to sign on your behalf, the other person must:

- a. be an adult (18 years or over);
- b. not be a witness to the EPA; and
- c. not be an attorney for the principal.

2. The form must be signed and dated by two adult witnesses while you and each of the witnesses are present.

At least one witness must be a person authorised to witness a statutory declaration and only one witness can be a relative of the principal or the attorney.

A list of people authorised to sign a statutory declaration is at Attachment 2, page F16 Forms Liftout Section..

A person cannot be a witness if they are signing on behalf of the principal or they are appointed as an enduring attorney under the EPA.

The witnesses must complete certificates at the end of the EPA certifying that the principal signed the EPA voluntarily and appeared to understand the nature and effect of making it.

3. An appointed enduring attorney must sign the form to show that they have agreed to accept this responsibility.

THINGS AN ENDURING ATTORNEY CAN AND CANNOT DO

Under the Act, as principal, you can appoint an enduring attorney to make decisions in relation to:

- Property matters;
- Personal care matters;
- Health care matters; and
- Medical research matters.

You can also direct the enduring attorney to exercise the powers given in a particular way or you can place limitations or conditions on how the powers are exercised.

An enduring attorney can only exercise the powers given to them in a legal EPA. In addition, they must act according to any directions, limitations or conditions. Penalties may apply or an enduring attorney may have to pay compensation if an enduring attorney fails to act according to the EPA.

The Act also includes a number of things that an enduring attorney is not allowed to do or is only allowed to do if the enduring power of attorney says so.

Attorney may delegate their powers

If your attorney is unable to fulfil their attorney responsibilities, they can delegate their powers to another person but only if:

- the EPA expressly authorises an attorney to authorise someone else to exercise some or all of the attorney's powers;
- the person being authorised is eligible to be appointed as an enduring attorney; and
- you know the person being authorised, or knew them when you had decision-making capacity.

Special personal matters and special health care matters

Under the Act, an enduring attorney cannot exercise power in relation to either special personal matters or special health care matters. It is unlawful for an attorney to exercise power in relation to these areas.

Special personal matters include:

- making or revoking the principal's will;



Under the Act, an enduring attorney cannot exercise power in relation to either special personal matters or special health care matters.

- making or revoking a power of attorney;
- exercising the principal's right to vote in a Commonwealth, State, Territory, or local government election or referendum;
- consenting to the adoption of a child of the principal who is under 18 years; and
- consenting to the marriage of the principal.

Special health care matters include:

- removal of non-regenerative tissue from the principal while alive for donation to someone else,
- sterilisation of the principal if the principal is, or is reasonably likely to be, fertile,
- termination of the principal's pregnancy, and
- electroconvulsive therapy or psychiatric surgery.

Consent for special health care matters can only be provided by ACAT, when an EPA is in effect.

Enduring attorneys are also subject to a number of other restrictions and obligations in relation to medical treatment and participation in medical research. These are discussed at p.13.

Decisions or actions the principal must expressly authorise

Acts that would benefit the attorney

An enduring attorney must not execute an assurance or other document or

do anything else that would result in a benefit to the attorney unless the EPA expressly authorises that kind of benefit being given to the enduring attorney.

Giving gifts and paying living expenses

An enduring attorney is not allowed to give gifts to anyone unless they are specifically authorised in the EPA. You can do this by including:

- a general authorisation allowing an enduring attorney to give a gift to a relative or close friend of the principal for a celebration or special event, such as a birth or marriage. It also allows an enduring attorney to make a donation of the kind that the principal made or would have been expected to make when they had decision-making capacity. An enduring attorney is allowed to receive a gift under a general authorisation;
- a general authorisation allowing an enduring attorney to authorise payment of living expenses for a particular person. This allows payment of reasonable costs for the person named for housing, food, education, transportation, medical care and medication; or
- an authorisation to provide for the needs of a dependant.

Any gift given under any authorisation must be a reasonable amount, taking into account the circumstances of the principal and the size of their estate.

Conflict transactions

An enduring attorney generally must not enter into transactions that could or will bring their interests (or those of a relative, business associate or close friend) into conflict with those of the principal.

The only exception to this is if the principal has authorised a conflict transaction, conflict transactions of a particular type or conflict transactions generally.

If you are in doubt about whether a transaction is a conflict transaction, it is best to seek professional advice e.g. from a solicitor.



OBLIGATIONS OF ENDURING ATTORNEYS

The Act includes a number of obligations that enduring attorneys must comply with. These range from compliance with a set of general principles through to requirements to ensure an enduring attorney is accountable and specific obligations in relation to medical treatment and participation in medical research.

General principles for EPAs

An enduring attorney must comply, to the maximum extent possible, with the general principles set out in Schedule 1 of the Act. A copy of the principles in full is included in this publication at Schedule 2 at page F9 of the Forms Liftout Section.

The principles aim to maintain the rights of the principal, with a focus on participation in decision-making and ongoing family and community participation.

In summary the principles cover the areas of:

- Access to family and relatives in a way that recognises and takes into account the principal's needs and wishes for contact.
- Respect for the principal's human worth and dignity as an individual.
- The right to be a valued member of society and to perform social roles valued in society.
- Encouraging and supporting the principal's participation in community life.
- A reasonable quality of life taking into account the principal's wishes and needs.

- Participation in decision-making. Even though a person has impaired decision-making capacity, an enduring attorney must allow them to take part in decisions affecting their life, including property and finance matters, to the greatest extent possible. The principles preserve a person's right to make their own decision to the greatest extent possible. If a person is unable to express their wishes or needs, an enduring attorney is obliged to consider what their wishes might be based on the person's past actions.

However, an enduring attorney must also act in a way that is consistent with the principal's proper care and protection.

- Maintenance of existing supportive relationships must be taken into account.
- The importance of maintaining environment and values is recognised, including the need to take into account a person's cultural and linguistic environment as well as religious beliefs.
- The principles specifically recognise the importance of maintaining the distinct cultural rights of Aboriginal and Torres Strait Islander people.



If an enduring attorney resigns or their appointment under the EPA is revoked, they must tell any other attorney under that EPA about the resignation or revocation.



CASE STUDY

Richard is a 70 year old man with dementia. He has managed to live on his own in the family home since his wife died 3 years ago. He has three adult children. Richard can no longer live on his own and needs to move into a residential facility.

Richard appointed Thomas his enduring attorney after his wife died. As Richard explained to Tom at the time he made the EPA, he and his wife wanted to keep the house until they both died to make sure their children had a worthwhile inheritance.

Although Tom is aware of Richard's wish that the house not be sold, it will not be possible for Richard to receive the level of care he requires without the house being sold.

Making decisions that are in keeping with the principles will not always be easy and may require an enduring attorney to balance a number of competing considerations. Enduring attorneys need to think carefully about their decisions, weighing up the various options available and consequences of each option and taking account of the principal's rights and wishes, all relevant information and the views of treating professionals, carers and family.

For example, it may be difficult to implement a person's views about property matters if that would

jeopardise their having enough money for their care and support.

Keeping interested people informed

If an enduring attorney resigns or their appointment under the EPA is revoked, they must tell any other attorney under that EPA about the resignation or revocation.

Similarly, if ACAT makes an order affecting the attorney's power, the attorney must inform any other attorney under the EPA. They must also inform anyone who deals with the attorney.

Keeping records

An enduring attorney must keep accurate records of all dealings and transactions made under the EPA.

Keeping property separate

An enduring attorney must keep their property separate from the principal's property unless the property is owned jointly.

Continued page 12

OBLIGATIONS OF ENDURING ATTORNEYS *continued***Medical treatment**

In addition to the prohibition on an enduring attorney authorising special health care matters, discussed on p.9, the following conditions apply to an enduring attorney exercising their power in relation to medical treatment.

Request for medical treatment to be withdrawn or withheld

An enduring attorney must not ask for medical treatment to be withdrawn or withheld unless the enduring attorney has consulted a doctor about:

- the nature of the principal's illness;
- any alternative forms of treatment available; and
- the consequences of the principal remaining untreated.

The enduring attorney must also believe on reasonable grounds that that the principal would ask for treatment to be withheld or withdrawn if they could make a rational judgement and give serious consideration to their own health and wellbeing.

Mental health treatment, care or support

An enduring attorney is allowed to consent to treatment for mental illness, but only if the principal:

- does not have decision-making capacity;
- does not have an advance consent direction under the *Mental Health Act 2015* authorising the treatment; and
- expresses willingness to receive the treatment.

Consent for mental health treatment, care or support must be in writing and must be for a stated period of no longer than six months.

Health care directions

Under the *Medical Treatment (Health Directions) Act 2006*, an adult can make a health direction to refuse or require the withdrawal of medical treatment, either generally or treatment of a particular kind.

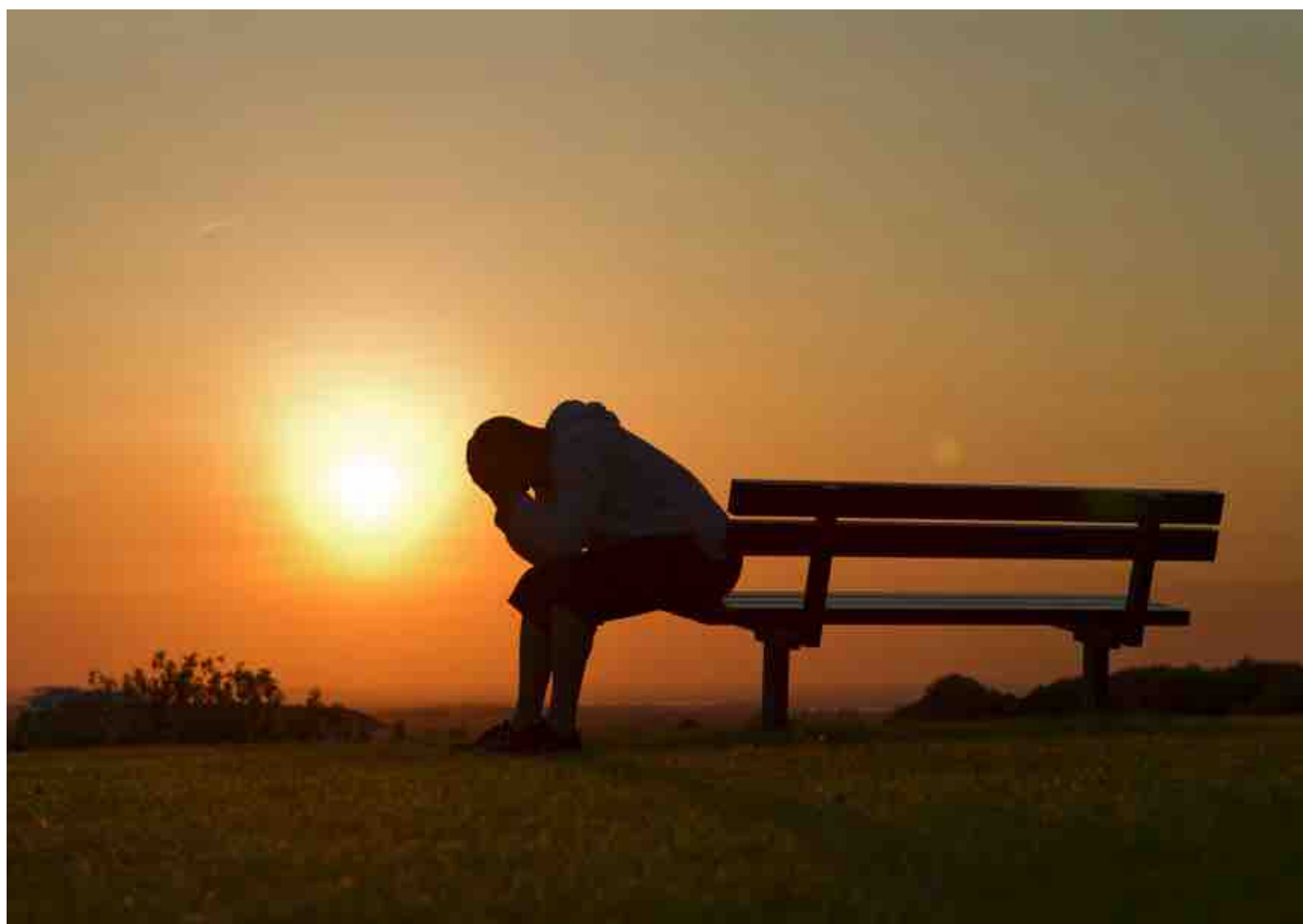
From 1 September 2016, enduring attorneys are required to act consistently with a health direction

unless it is not reasonable to do so, e.g. if the enduring attorney is not aware that a health direction exists. This applies to medical research matters as well as medical treatment.

If there is an inconsistency between the health direction and the EPA, the most recent document applies.



Consent for mental health treatment, care or support must be in writing and must be for a stated period of no longer than six months.



The Power to Choose

FORMS SECTION LIFTOUT

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ENDURING POWER OF ATTORNEY

Powers of Attorney Act 2006

(Note 1: Please refer to the guidelines in 'The Power to Choose' published on the Public Trustee and Guardian's website **before** completing this form.)

Note 2: Please carefully complete each applicable section, including schedule 1 (Revocation of an Enduring Power of Attorney). You may delete the explanatory material on this form after you have read it. You may also change the look of the form; for example, by changing the font type or size, or by setting the document out in a format which is easier for you to use.)

1) APPOINTOR AND ATTORNEY

I,

Appointer (Principal)	[name]
	[address]

appoint the following as my attorney/s:

Attorney 1	[name]
	[address]

(Add additional boxes to accommodate the number of attorneys being appointed (Attorney 3, Attorney 4 etc). If only one attorney is being appointed, cross out and initial or delete the box for Attorney 2.)

AND

Attorney 2	[name]
	[address]

2) SUBSTITUTE ATTORNEY

(Cross out and initial or delete this section if not applicable.)

If all of my attorneys are unwilling or unable to accept their appointment or to continue in their appointment, I appoint the following as my attorney/s:

Attorney 3	[name]
	[address]

(Add additional boxes to accommodate the number of substitute attorneys being appointed (Attorney 5, Attorney 6 etc). If only one substitute attorney is being appointed, cross out and initial or delete the box for Attorney 4.)

AND

Attorney 4	[name]
	[address]

3) MULTIPLE ATTORNEYS

(Indicate whether you want the attorneys to act together and separately, in any combination, or in any other manner, such as different attorneys to act in different circumstances, on the happening of different events or in relation to different matters. Choose your option below by initialling in the appropriate box. Cross out and initial or delete this section if not applicable, or any option that does not apply.)

I appoint my attorneys to act:

- ☐ together
☐ separately
☐ together and separately
☐ in the following manner -

4) AUTHORITY TO SOMEONE ELSE

(You may authorise your attorney/s to authorise someone else to exercise all or some of their powers as your attorney/s. Choose your option below by initialling in the appropriate box. Cross out and initial or delete any option that does not apply.)

- ☐ My attorney/s must not authorise anyone else to exercise my attorney's/attorneys' powers

I expressly authorise my attorney/s to:

- ☐ authorise one or more people to exercise any of my attorney's/attorneys' powers
☐ authorise one or more people to exercise the following of my attorney's/attorneys' powers -

5) FUNCTIONS

(Choose your option below by initialling in the appropriate box/es. Cross out and initial any option that does not apply. DO NOT DELETE.)

I authorise my attorney/s to do, on my behalf, anything that I can lawfully do in relation to the matters specified below -

- ☐ property matters (includes financial matters)
- ☐ personal care matters
- ☐ health care matters
- ☐ medical research matters (This authorisation must be carried out in accordance with part 4.3A of the *Powers of Attorney Act 2006*.)

6) DIRECTIONS, LIMITATIONS AND CONDITIONS

(Choose your option below by initialling in the appropriate box/es and completing the directions, limitations or conditions you wish to impose. Cross out and initial any option that does not apply. DO NOT DELETE.)

My attorney/s shall only exercise power under section 5 above, subject to the following directions, limitations and conditions -

- ☐ property matters (includes financial matters)

- ☐ personal care matters

- ☐ health care matters

- ☐ medical research matters:

To carry out the powers in accordance with part 4.3A of the *Powers of Attorney Act 2006* and:

7) REFUSAL OR WITHDRAWAL OF MEDICAL TREATMENT

(Choose your option below by initialling in the appropriate box. Cross out and initial or delete any option that does not apply.)

☐ My attorney/s must not refuse, or require the withdrawal of, medical treatment on my behalf

My attorney/s may, on my behalf -

☐ refuse, or require the withdrawal of, medical treatment generally

☐ refuse, or require the withdrawal of, the following kinds of medical treatment -

8) COMMENCEMENT

(Choose your option below by initialling in the appropriate box. Cross out and initial or delete any option that does not apply.)

My attorney's/attorneys' power in relation to my property (including financial) matters comes into effect -

☐ immediately

☐ from _____ (specify date or event)

☐ only when I become a person with impaired decision-making capacity

My attorney's/attorneys' powers in relation to personal care matters, health care matters and medical research matters will be exercisable while I am a person with impaired decision-making capacity.

(Your attorney/attorneys cannot exercise powers in relation to your personal care matters, health care matters or medical research matters while you have decision-making capacity.)

9) MARRIAGE, CIVIL UNION OR CIVIL PARTNERSHIP

(If, after you have appointed your attorney, you marry or enter into a civil union or civil partnership with someone who is not your attorney, your attorney's appointment is revoked unless you complete this section. Cross out and initial or delete this section if not applicable.)

This enduring power of attorney is not revoked in relation to any of my attorneys if I marry or enter into a civil union or civil partnership with:

Name _____

Address _____

This enduring power of attorney is valid even if the marriage, civil union or civil partnership does not eventuate.

10) STATEMENT OF UNDERSTANDING AND SIGNATURE

I fully understand that, by making this enduring power of attorney, I authorise my attorney/s to act on my behalf in accordance with the terms set out in this enduring power of attorney. I also understand the nature and effect of making an enduring power of attorney as set out in Schedule 3 to this document.

Signature of Appointer (Principal)	
Date	

OR

(Cross out and initial or delete if not applicable.)

I directed the following person to sign and initial this enduring power of attorney on my behalf –

(Another person can sign the enduring power of attorney on your behalf if you are unable to sign it yourself.)

Name and address of person signing by direction	[name]
	[address]
Signature of person signing by direction	
Date	

11) CERTIFICATE OF WITNESSES

(Note 1: only one witness can be a relative of the principal or of a person appointed as an attorney under this enduring power of attorney.)

Note 2: witness 1 must be a person authorised to witness the signing of a statutory declaration.

Note 3: the witnesses must sign in the presence of each other and the appointor.)

WITNESS 1

I, witness 1 described below:

- (i) am an adult;
- (ii) am authorised to witness the signing of a statutory declaration;
- (iii) am not appointed as attorney under this enduring power of attorney; and
- (iv) did not sign this enduring power of attorney for the principal.

I certify that:

- a) the principal signed this enduring power of attorney voluntarily in my presence; and
- b) at the time the principal signed this enduring power of attorney, the principal appeared to me to understand the nature and effect of making it as set out in Schedule 3 to this document.

OR (if a person signed and initialled the enduring power of attorney on behalf of the principal)

- c) the principal directed the person to sign and initial the enduring power of attorney for the principal;
- d) the principal gave the direction voluntarily in my presence;
- e) the person signed and initialled the enduring power of attorney in the presence of the principal and me;
and
- f) at the time the principal gave the direction, the principal appeared to me to understand the nature and effect of making this enduring power of attorney.

(If a person signed and initialled the enduring power of attorney on behalf of the principal, cross out and initial or delete (a) and (b). Otherwise, cross out and initial or delete (c), (d), (e) and (f).)

Signature of witness 1	
Name	
Qualification	
Address	
Date	

WITNESS 2

I, witness 2 described below:

- (i) am an adult;
- (ii) am not appointed as attorney under this enduring power of attorney; and
- (iii) did not sign this enduring power of attorney for the principal.

I certify that:

- a) the principal signed this enduring power of attorney voluntarily in my presence; and
- b) at the time the principal signed this enduring power of attorney, the principal appeared to me to understand the nature and effect of making it as set out in Schedule 3 to this enduring power of attorney.

OR (if a person signed and initialled the enduring power of attorney on behalf of the principal)

- c) the principal directed the person to sign and initial the enduring power of attorney for the principal;
- d) the principal gave the direction voluntarily in my presence;
- e) the person signed and initialled the enduring power of attorney in the presence of the principal and me;
and
- f) at the time the principal gave the direction, the principal appeared to me to understand the nature and effect of making this document.

(If a person signed and initialled the enduring power of attorney on behalf of the principal, delete or cross out (a) and (b). Otherwise, delete or cross out (c), (d), (e) and (f).)

Signature of witness 2	
Name	
Qualification	
Address	
Date	

12) ACCEPTANCE BY ATTORNEY OF APPOINTMENT

I have read this enduring power of attorney which appoints me as attorney for the principal. I understand that by signing this acceptance of my appointment, I undertake the responsibility of exercising the powers which I have been given, including the responsibilities and obligations set out in Schedule 2 to this document.

I accept my appointment as attorney

Name of Attorney 1	[name]
Signature of Attorney 1	
Date	

(Add additional boxes to accommodate the number of attorneys or substitute attorneys being appointed (Attorney 3, Attorney 4 etc). If only one attorney is being appointed, cross out and initial or delete the box for Attorney 2.)

AND

Name of Attorney 2	[name]
Signature of Attorney 2	
Date	

SCHEDULE 1 TO THE ENDURING POWER OF ATTORNEY

REVOCATION OF AN ENDURING POWER OF ATTORNEY

(Choose your option below by initialling in the appropriate box. Cross out and initial or delete any option that does not apply.)

- ☐ I have not made an enduring power of attorney before
- ☐ I revoke all of my previous enduring powers of attorney
- ☐ The following enduring powers of attorney will continue to operate even after the making of this enduring power of attorney - *(Give the date of making the continuing enduring power/s of attorney and the name of the attorney/attorneys appointed under it/them. Add or delete lines if necessary. A power of attorney is revoked to the extent of any inconsistency with a later power of attorney.)*

1) _____

2) _____

Appointor (Principal)	[name]
Signature	
Date	

(Refer to the guidelines in 'The Power to Choose' published on the Public Trustee and Guardian's website in relation to revocation of a power of attorney.)

SCHEDULE 2 TO THE ENDURING POWER OF ATTORNEY

OBLIGATIONS OF THE ATTORNEY UNDER AN ENDURING POWER OF ATTORNEY

PART 1

Your obligations as attorney include the following:

1. Unless expressly authorised by this enduring power of attorney, you must avoid transactions which result, or may result, in conflict between your duty to the principal; and either the interests of you, or your relative, business associate or close friend of the attorney; or another duty you may have.
2. You must notify other attorneys when you resign as attorney or your authority is revoked. You must notify other attorneys and anyone who has had dealings with you as the principal's attorney, about any court or guardianship tribunal matter that has effect on your authorisation.
3. If the principal's decision-making capacity is impaired:
 - a. you must, to the maximum extent possible, comply with the general principles set out in Schedule 1 to the *Powers of Attorney Act 2006* (an extract of which is part of this schedule);
 - b. if you are an attorney for property matters, you must:
 - i. keep accurate records and accounts of all dealings and transactions made under this power of attorney, and
 - ii. keep the principal's property separate from yours, unless the property is owned jointly by you and the principal;
 - c. if you are an attorney for medical research matters, you must make decisions about medical research matters in accordance with part 4.3A of the *Powers of Attorney Act 2006*; and
 - d. you must not ask for medical treatment *to be withheld or withdrawn from the principal, unless you have been expressly* authorised to consent to the withholding or withdrawal of treatment under this enduring power of attorney, and you have consulted a doctor about the nature of the principal's illness, any alternative forms of treatment available, and the consequences of the principal remaining untreated. Your decision should be on the basis of what the principal would ask for if the principal could make a rational judgment, and were to give serious consideration to the principal's own health and wellbeing.

(In the event that the principal's decision-making capacity becomes impaired, you have the right to all the information that the principal would have been entitled to if the principal had decision-making capacity. If you are in doubt about your responsibilities as attorney you may seek advice or assistance from Public Trustee and Guardian.)

PART 2

General principles for enduring powers of attorney

(Schedule 1 to the *Powers of Attorney Act 2006* (section 44))

1.1 Access to family members and relatives

- (1) An individual's wish and need to have access to family members and relatives, and for them to have access to the individual, must be recognised and taken into account.
- (2) An individual's wish to involve family members and relatives in decisions affecting the individual's life, property, health and finance must be recognised and taken into account.

1.2 Human worth and dignity

An individual with impaired decision-making capacity has an inherent right to respect for the individual's human worth and dignity as an individual.

1.3 Role as a member of society

- (1) An individual has a right to be a valued member of society.
- (2) Because of this right, it is important to encourage and support the individual to perform social roles valued in society.

1.4 Participation in community life

It is important to encourage and support an individual to live a life in the general community, and to take part in activities enjoyed by the community.

1.5 Quality of life

An individual's need and wish to have a reasonable quality of life must be recognised and taken into account.

1.6 Participation in decision-making

- (1) An individual has a right to take part in decisions affecting the individual's life to the greatest extent practicable.
- (2) Without limiting subsection (1), an individual also has a right to take part in decisions affecting the individual's property and finance to the greatest extent practicable.
- (3) The right of the individual to make the individual's own decisions must be preserved to the greatest extent practicable.

Examples of preserving individual's right to make own decisions

- 1 *The individual must be given any necessary support, and access to any necessary information, to allow the individual to take part in decisions affecting the individual's life to the greatest extent practicable.*
- 2 *To the greatest extent practicable, the individual's views and wishes must be sought and taken into account before exercising power in relation to the individual.*
- 3 *Power in relation to the individual must be exercised in the way that is least restrictive of the individual's rights.*

Note: An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If an individual's wishes or needs cannot be expressed by the individual, the person exercising power in relation to the individual must try to work out, as far as possible, from the individual's past actions, what the individual's wishes and needs would be if the individual could express them and take those wishes and needs into account.
- (5) However, a person exercising a function in relation to an individual must do so in a way consistent with the individual's proper care and protection.
- (6) An individual's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

1.7 Individual taken to be able to make decisions

An individual must not be treated as unable to take part in making a decision only because the individual makes unwise decisions.

1.8 Maintenance of existing supportive relationships

The importance of maintaining an individual's existing supportive relationships must be taken into account.

1.9 Maintenance of environment and values

- (1) The importance of maintaining an individual's cultural and linguistic environment, and set of values (including any religious beliefs) must be taken into account.
- (2) For an individual who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the individual's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom) must be taken into account.
- (3) In this section:

Aboriginal tradition—

- (a) means the body of traditions, observances, customs and beliefs of Aboriginal people generally, or of a particular community or group of Aboriginal people; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

Island custom, known in the Torres Strait as Ailan Kastom—

- (a) means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally, or of a particular community or group of Torres Strait Islanders; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

1.10 Confidentiality

An individual's right to confidentiality of information about the individual must be respected.

1.11 Health care and medical research

- (1) An individual is entitled to have decisions about a health care matter or a medical research matter made by an attorney—
 - (a) in the way least restrictive of the individual's rights and freedom of action; and
 - (b) only if the exercise of power—
 - (i) is, in the attorney's opinion, necessary and appropriate to maintain or promote the individual's health and wellbeing; or
 - (ii) is, in all the circumstances, in the individual's best interests.
- (2) An individual's wishes in relation to a health care matter or a medical research matter, and any information provided by the individual's health care provider, must be taken into account when an attorney decides what is appropriate in the exercise of power for a health care matter or a medical research matter.

SCHEDULE 3 TO THE ENDURING POWER OF ATTORNEY

UNDERSTANDING NATURE AND EFFECT OF MAKING POWERS OF ATTORNEY

(Powers of Attorney Act 2006, section 17)

Understanding the nature and effect of making a power of attorney includes understanding:

1. that the principal may, in the power of attorney, state or limit the power to be given to an attorney;
2. that the principal may, in the power of attorney, instruct the attorney about the exercise of the power;
3. when the power under the power of attorney can be exercised;
4. that, if the power under a power of attorney can be exercised for a matter, the attorney has the power to make decisions in relation to, and will have full control over, the matter subject to terms or information about exercising the power that are included in the power of attorney;
5. that the principal may revoke the power of attorney at any time the principal is capable of making the power of attorney;
6. for enduring powers of attorney only—
 - a. that the power given by the principal continues even if the principal becomes a person with impaired decision-making capacity; and
 - b. that, at any time the principal is not capable of revoking the power of attorney, the principal cannot effectively oversee the use of the power.

(A person has decision-making capacity if the person can make decisions in relation to the person's affairs and understands the nature and effect of the decisions (see Powers of Attorney Act 2006, s 9 (1).)

GUIDELINES FOR COMPLETING AN ENDURING POWER OF ATTORNEY

General

In an Enduring Power of Attorney (EPA):

- principal means the person making this enduring power of attorney.
- an EPA may be registered with Access Canberra. An EPA must be registered if the attorney is to act in relation to a dealing with land.

These instructions provide explanatory material to assist you to complete the form.. For example, it explains what you can and cannot delete. If you prefer not to delete the sections entirely, you may cross out the sections, so long as you or the person signing on your behalf initials that change.

a) Appointor and Attorney

You may appoint a person of 18 years or over as an attorney to act for any or all of your property, personal care, health care and medical research matters.

You may appoint the Public Trustee and Guardian as an attorney, but you may appoint a trustee company for property matters only.

b) Multiple attorneys

Together - they will only be able to act if they all agree on the course of action; or Separately - each of them will be able to act independently; however, it would be expected that there would be consultation prior to any decision; or You may also appoint attorneys to act both together and separately, in any combination, or in any other manner as noted in the form.

You may appoint one or more than one attorney. If you appoint more than one attorney, you must indicate how they are to act:

- together - they will only be able to act if they all agree on the course of action;
- separately;
- together or separately; or
- in any other manner.

c) Authority to someone else

You may authorise your attorney to authorise someone else to exercise all or some of the attorney's powers. An attorney can only delegate to another adult who is known to you.

You need to indicate on the form if you:

- do **not** authorise this to happen; or
- authorise the attorney to authorise one or more people to exercise their powers.

You may choose to limit the powers that the attorney can delegate.

d) Functions

Property matters

Some examples of property matters that an enduring attorney may deal with include: paying maintenance and accommodation costs for you and your dependants; carrying on your trade or business; paying your debts or expenses; discharging your mortgage; and legal matters relating to your property.

Personal care matters

This means a matter concerning your personal care or welfare, but **not** a health care matter. Some examples of a personal care matter include: where you live and who you live with; any education or training you get; whether you work and where; and legal matters relating to personal care matters.

Health care matters

This means a health care matter, other than a special health care matter (discussed at p. 15). Some examples of a health care matter include consenting to lawful medical treatment necessary for your wellbeing; withholding or withdrawal of medical treatment; consenting to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery); and legal matters relating to personal health care matters.

Medical research matters

This means a matter relating to your participation in medical research, including experimental treatment that has been approved by a human research ethics committee. Examples of medical research include research using information collected during routine health care; collecting information through a survey conducted for the purpose of research; or observing a person's activities for research purposes. Examples of experimental health care include: a clinical trial of a drug; trialling increased physical therapy for someone on ventilation apparatus; and trialling a new absorbent material after bathing to treat dermatological conditions.

In exercising their power for a medical research matter, an attorney **must** meet the conditions set out in part 4.3A of the *Powers of Attorney Act 2006*.

Powers that cannot be given to an attorney

The principal cannot give powers to an attorney in relation to special personal matters or special health care matters.

Special personal matters include:

- making or revoking your will;
- making or revoking a power of attorney or EPA;
- voting in an election or referendum;
- consenting to the adoption of a child under 18; and
- consenting to marriage.

Special health care matters include:

- removal of non-regenerative tissue for donation;
- sterilisation if you are, or are reasonably likely to be, fertile;
- termination of pregnancy;
- electroconvulsive therapy or psychiatric surgery; and
- other health care prescribed by regulation.

e) Directions, limitations and conditions

Use this section to provide any directions, limitations and conditions on the exercise of powers under the EPA. For example, you may want to specify gifts to family members or friends or donations to charity.

f) Refusal or withdrawal of medical treatment

This part of the form allows you to express your preferences relating to refusal or withdrawal of medical treatment and to set any conditions relating to refusal or withdrawal. For example, you may instruct your enduring attorney to cease or refuse treatment if it is not likely to lead to a reasonable quality of life.

Any health direction you have made under the *Medical Treatment (Health Directions) Act 2006* should be noted here as an enduring attorney is generally obliged to follow that direction.

g) Commencement

This section allows you to elect when your attorney's power comes into effect in relation to property matters ONLY. You can elect to have it come into effect immediately, from a certain date, or only when you have impaired decision-making capacity.

h) Statement of understanding and signature

This statement is a declaration that you are authorising your attorney/s to act on your behalf according to the EPA.

You are also declaring that you understand the nature and effect of making an EPA, as set out in Schedule 3 to this form.

Note: A person has decision-making capacity if the person can make decisions in relation to the person's affairs and understands the nature and effect of the decisions.

This section of the form also allows you to direct another person to sign on your behalf.

Anyone signing on your behalf must be at least 18 years of age, not a witness to the EPA, and not the attorney. A direction to someone else to sign on your behalf must be made in the presence of the witnesses.

i) Certificate of witness

An EPA requires two witnesses who are 18 years or over.

One witness must be a person authorised to witness the signing of a statutory declaration. A list of people authorised to sign a statutory declaration is at Attachment 2 (page 18).

Only one witness can be a relative of the principal or the attorney.

A person signing the EPA on your behalf cannot be a witness.

If the EPA has been signed by someone on your behalf, the witnesses must declare that the direction was given voluntarily and that the EPA was signed in the presence of the principal and the witnesses.

j) Acceptance of appointment

Each attorney must sign this section to show that the attorney accepts the appointment and understands that they are taking responsibility for exercising the powers conferred in the EPA. They also accept the obligations imposed on enduring attorneys.

Schedule 1 - Revocation of an EPA

This schedule includes information about any of the principal's previous enduring EPAs and to what extent, if any, they continue to operate.

Schedule 2 - Obligations and general principles for attorneys

Schedule 2, F9 Forms Liftout Section. sets out the obligations and the General Principles that an attorney must comply with when exercising the powers under the EPA.

ATTACHMENT 1:

NOTICE OF RESIGNATION OF ENDURING ATTORNEY

I,	[name]			
	[address]			
	[suburb]	[state/terr]	<input type="text"/> <input type="text"/> <input type="text"/>	[postcode]
			<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	

resign my appointment as an attorney.

of	[name of Principal]			
	[address]			
	[suburb]	[state/terr]	<input type="text"/> <input type="text"/> <input type="text"/>	[postcode]
			<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	

NOTE: You may resign your appointment as an attorney by giving written notice to the person who appointed you.

However, you can only do this if that person is not in need of a guardian at the time you give this notice. If the person is in need of a guardian at that time, you may resign only with the approval of the ACT Civil and Administrative Tribunal in which case you will need to forward this notice with a copy of the Enduring Power of Attorney to the Tribunal.

Please forward this notice with a copy of the Enduring Power of Attorney to the ACT Civil and Administrative Tribunal.

Signature	
Date	

I DIRECTED:	[name]			
	[address]			
	[suburb]	[state]	<input type="text"/> <input type="text"/> <input type="text"/>	[postcode]
			<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	

to sign this document on my behalf.

NOTE: If needed, you can direct a person to sign the document on your behalf. This person must be at least 18 years of age. If this statement does not apply, cross out and put your initials beside any writing you have crossed out.

ATTACHMENT 2:

AUTHORISED PERSONS THAT CAN WITNESS A STATUTORY DECLARATION.

A statutory declaration may be made before a person on the list of authorised witnesses in the *Statutory Declarations Regulations 1993* (C'1th):

1. a person who is currently licensed or registered under a law of a State or Territory to practise in one of the following occupations:
 - Chiropractor
 - Dentist
 - Legal practitioner
 - Medical practitioner
 - Nurse
 - Optometrist
 - Patent attorney
 - Pharmacist
 - Physiotherapist
 - Psychologist
 - Trade marks attorney
 - Veterinary surgeon
2. a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
3. a person who is in the following list:
 - Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
 - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
 - Bailiff
 - Bank officer with 5 or more continuous years of service
 - Building society officer with 5 or more years of continuous service
 - Chief executive officer of a Commonwealth court
 - Clerk of a court
 - Commissioner for Affidavits
 - Commissioner for Declarations
 - Credit union officer with 5 or more years of continuous service
 - Employee of the Australian Trade Commission who is:
 - a. in a country or place outside Australia; and
 - b. authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
 - c. exercising his or her function in that place
 - Employee of the Commonwealth who is:
 - a. in a country or place outside Australia; and
 - b. authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
 - c. exercising his or her function in that place
 - Fellow of the National Tax Accountants' Association
 - Finance company officer with 5 or more years of continuous service
 - Holder of a statutory office not specified in another item in this list
 - Judge of a court
 - Justice of the Peace
 - Magistrate
 - Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
 - Master of a court
 - Member of Chartered Secretaries Australia
 - Member of Engineers Australia, other than at the grade of student
 - Member of the Association of Taxation and Management Accountants
 - Member of the Australasian Institute of Mining and Metallurgy
 - Member of the Australian Defence Force who is:
 - a. an officer; or
 - b. a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
 - c. a warrant officer within the meaning of that Act
 - Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
 - Member of:
 - a. the Parliament of the Commonwealth; or
 - b. the Parliament of a State; or
 - c. a Territory legislature; or
 - d. a local government authority of a State or Territory
 - Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*
 - Notary public
 - Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
 - Permanent employee of:
 - a. the Commonwealth or a Commonwealth authority; or
 - b. a State or Territory or a State or Territory authority; or
 - c. a local government authority; with 5 or more years of continuous service who is not specified in another item in this list
 - Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
 - Police officer
 - Registrar, or Deputy Registrar, of a court
 - Senior Executive Service employee of:
 - a. the Commonwealth or a Commonwealth authority; or
 - b. a State or Territory or a State or Territory authority
 - Sheriff
 - Sheriff's officer
 - Teacher employed on a full-time basis at a school or tertiary education institution.

INTERPRETER'S/TRANSLATOR'S STATEMENT

Complete this statement if you acted as an interpreter /translator when the following document was signed:

• **An Enduring Power of Attorney (for financial or personal or health matters)**

The statement must be added to the original document, and witnessed by the same person who witnessed the signing of that document.

Note: You must be a qualified interpreter/translator, registered with the National Accreditation Authority for Translators and Interpreters.

THIS STATEMENT IS AN ANNEXURE (ATTACHMENT) TO:

<i>Title of the document that you translated, e.g. 'Enduring Power of Attorney'</i>	
<i>Date</i>	

I,

[name]

certify that, before the attached document was signed by the Principal,

[full name of Principal]

I translated the document into the

[language used]

language,

and, in the presence of the witness, read the translation to the principal, who is unable to speak or read the English language well enough to understand the original. When I read the translation of the document to the principal, he/she appeared to fully understand its nature, meaning and effect.

<i>Translator's signature</i>	
<i>Translator's qualifications</i>	
<i>Witness signature</i>	
<i>Date witnessed</i>	

When completed, this statement MUST be attached to the document named above.

[illegible]

Medical research matters

From 1 September 2016, the Act allows the principal to authorise their enduring attorney to make decisions about the principal's participation in medical research, including experimental health care.

To ensure the safety and wellbeing of a person with impaired decision-making capacity, amendments to the Act include safeguards that an enduring attorney must apply when making decisions about participation in medical research.

Enduring attorneys must follow a strict process for decisions relating to participating in medical research.

Research must be approved

An enduring attorney must only consider medical research that has been approved by a human research ethics committee constituted under and complying with the National Statement on Ethical Conduct in Human Research (2007)¹.

The principal is not likely to regain decision-making capacity

An enduring attorney is not allowed to consent to participation in medical research if the principal is likely to regain decision-making capacity before the latest time they could meaningfully participate in the medical research. Such an assessment would need to be

made by an independent doctor and would take into account:

- the principal's medical, mental and physical condition;
- the severity of their condition;
- the current stage of treatment and care required;
- the nature of the medical research; and
- any other relevant circumstances.

Relevance and impact of the medical research

An enduring attorney must be satisfied that:

- the medical research relates to the diagnosis, maintenance or treatment of a condition that the principal has, or is likely to have;
- the medical research may result in a benefit to the principal or to others with that condition;
- the potential benefit outweighs any potential risk or inconvenience to the principal or any potential adverse effect on their quality of life; and
- participating in the research will not unduly interfere with the principal's privacy.

No benefit to the enduring attorney

To avoid any undue influence and maintain a focus on the best interests of the principal, an enduring attorney

must not benefit from the participation in medical research. This means the enduring attorney must not accept a fee or other benefit from agreeing to the principal's participation. The enduring attorney must also have no involvement or connection with the research.

Applications to ACAT for assistance or review

In making a decision about medical research, an enduring attorney may decide to seek the assistance of ACAT. The Tribunal is obliged to provide such assistance if requested.

An 'interested person' may also apply to ACAT for a review of an enduring attorney's decision to consent or refuse to consent to participation in medical research. People who are considered to be an 'interested person' include:

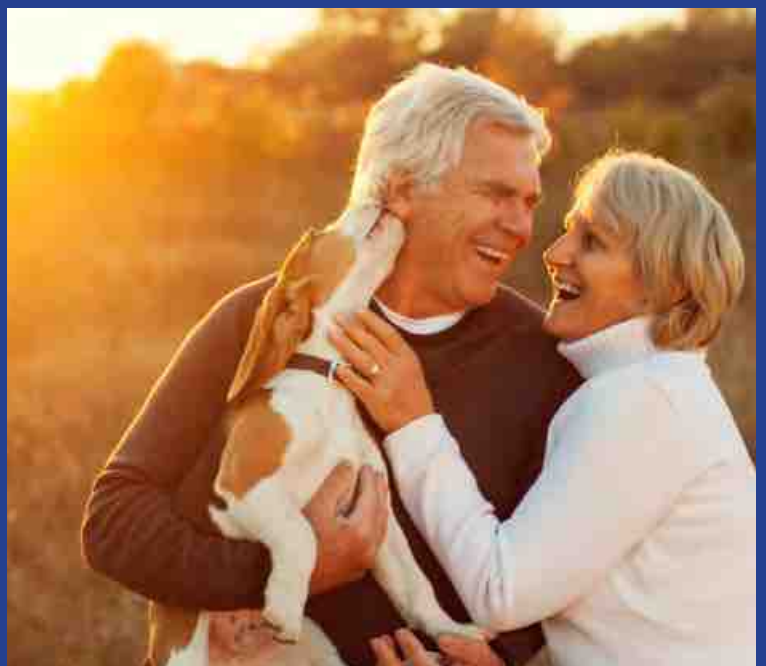
- an attorney;
- the principal;
- a relative of the principal;
- the Public Advocate;
- the Public Trustee and Guardian;
- a guardian of the principal; and
- a manager or the guardian.

Guardians and managers may be appointed by ACAT to make decisions for a person (refer S.7 & 8 of the *Guardianship and Management of Property Act 1991*) respectively for powers.

¹ The National Statement on Ethical Conduct in Human Research can be found at <https://www.nhmrc.gov.au/guidelines-publications/e72>

ACCESS TO INFORMATION

If the principal has impaired decision-making capacity, their enduring attorney is entitled to have all the information that the principal would be entitled to if they had the capacity to make a decision unless the principal indicates otherwise in the EPA.



ENDING A POWER OF ATTORNEY



An EPA can be ended in any of the following ways:

The principal dies

An EPA ends once the person who made it dies.

Principal revokes the EPA

As long as the principal still has decision-making capacity, they can revoke an EPA at any time. If they do revoke the EPA, they must tell any enduring attorney who is affected.

A form that can be used to revoke an EPA is included at page F8 of the Forms Liftout Section.

Resignation of an attorney

An enduring attorney may resign their appointment by giving written notice to the principal who appointed them. However, if the principal has impaired decision-making capacity, the attorney may only resign with leave of ACAT.

If there is only one attorney appointed, the EPA is revoked.

If more than one attorney is appointed and the attorneys are authorised to act separately, the EPA is not revoked for the remaining attorney/s. However, if the attorneys are appointed jointly, the resignation of one attorney will revoke the EPA.

A form that can be used for the resignation of an enduring attorney is included at page F15 of the Forms Liftout Section.

The principal marries or enters into a civil union or civil partnership

The EPA is revoked if the principal marries or enters into a civil union or civil partnership with someone other than the person appointed as enduring attorney.

The exception to this is if the EPA specifies that the enduring power is not revoked in that circumstance.

End of marriage, civil union or civil partnership

An EPA ends if a person appointed as enduring attorney is married to, or in a civil union or civil partnership, with the principal and that marriage, union or partnership ends.

Bankruptcy of individual attorney

If an individual enduring attorney becomes bankrupt or personally insolvent, the EPA is revoked only in relation to property (including financial) matters.

Enduring attorney loses decision-making capacity

If an enduring attorney loses decision-making capacity, the EPA is revoked in relation to that attorney.

Revocation

A EPA may be revoked in a number of ways -

- ACAT can remove an enduring attorney if the principal has impaired decision-making capacity and it is satisfied that it is in the interests of the principal to remove the attorney;
- According to the terms of the power of attorney;
- Winding up of corporate attorney; or
- A later enduring power of attorney is made revoking the earlier one.

“

The EPA is an important legal document. The original should be given to your appointed attorney. A copy should be kept in a safe place, possibly where you keep other important legal documents such as your Will.

KEEPING AND REGISTERING YOUR EPA

Completing an EPA form can be a private arrangement between you and the person or persons that you appoint.

It is a good idea for appropriate people to be informed that you have completed an EPA. This may include informing other family members, friends and/or your family doctor.

Generally, there is no requirement to register an EPA with any agency. However, if the attorney needs to carry out a transaction with the principal's land, an EPA will need to be registered with Access Canberra under the *Registration of Deeds Act 1957* before the transaction.

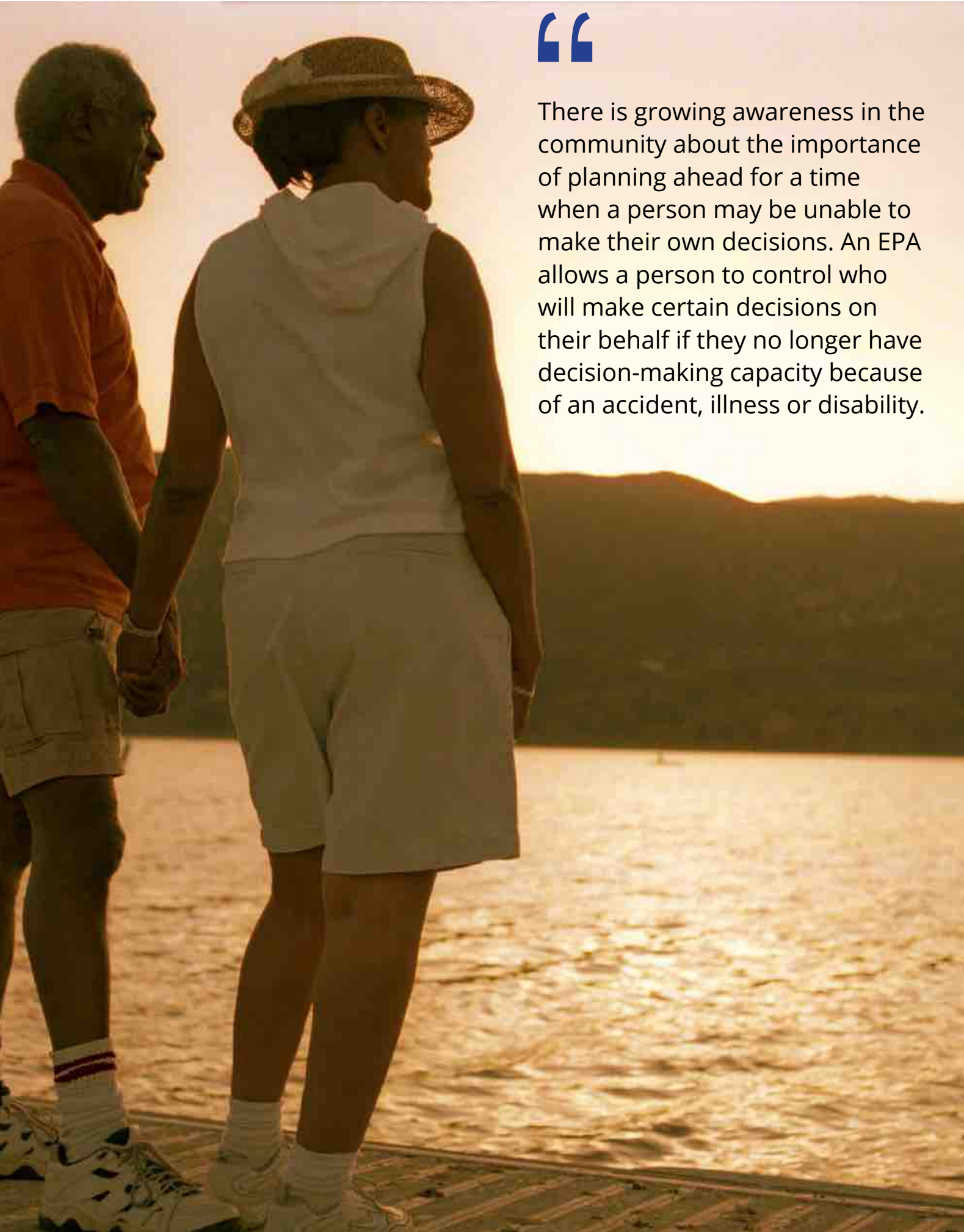
In the event that the land is in another state/territory, the attorney will need to register the EPA in the relevant state/territory before the transaction. A fee is payable to register the EPA as a deed.

The EPA is an important legal document. The original should be given to your appointed attorney. A copy should be kept in a safe place, possibly where you keep other important legal documents such as your Will.





There is growing awareness in the community about the importance of planning ahead for a time when a person may be unable to make their own decisions. An EPA allows a person to control who will make certain decisions on their behalf if they no longer have decision-making capacity because of an accident, illness or disability.



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