

# ENDURING POWER OF ATTORNEY

*Powers of Attorney Act 2006*

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

## a) APPOINTER AND ATTORNEY

Appointer (Principal)	[name]
	[address]

Attorney 1	[name]
	[address]

**AND** *(Insert details of other Attorney, otherwise cross out and initial.)*

Attorney 2	[name]
	[address]

**AND** *(Insert details of other Attorney, otherwise cross out and initial.)*

Attorney 3	[name]
	[address]

## b) 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. To choose your option below, initial in the appropriate box and then delete and initial any option that does not apply.)*

I appoint my attorneys to act:

together

separately

together and separately

in the following manner -

.....

.....

.....

**c) 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. To choose your option below, initial in the appropriate box and then delete and initial any option that does not apply.)*

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

I expressly authorise the attorney/s named above to:

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

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

.....  
.....  
.....

**d) FUNCTIONS**

*(To choose your option below, initial in the appropriate box/es and then delete and initial any option that does not apply.)*

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.*

**e) DIRECTIONS, LIMITATIONS AND CONDITIONS**

*(To choose your option below, initial in the appropriate box/es and complete the directions, limitations or conditions you wish to impose. Delete and initial any option that does not apply.)*

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

property matters (includes financial matters)

.....  
.....  
.....

personal care matters

.....  
.....  
.....

health care matters  
.....  
.....  
.....

medical research matters  
.....  
.....  
.....

**f) REFUSAL OR WITHDRAWAL OF MEDICAL TREATMENT**

*(To choose your option below, initial in the appropriate box and then delete and initial any option that does not apply.)*

My attorney/s must not consent on my behalf to refuse, or require the withdrawal of, medical treatment generally.

My attorney/s may consent on my behalf to –

Refuse, or require the withdrawal of, medical treatment generally; or

refuse, or require the withdrawal of, the following kinds of medical treatment:

.....  
.....

**g) COMMENCEMENT**

*(To choose your option below, initial in the appropriate box and then delete and initial 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 the happening of an 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.

*(Note: 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.)*

**h) 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**

I directed the following person to sign this enduring power of attorney on my behalf –  
*(Note: 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	<i>[name]</i>
	<i>[address]</i>
Signature of person signing by direction	
Date	

**i) 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: one witness must be a person authorised to witness the signing of a statutory declaration.)*

**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 on behalf of the principal)**

- c) the principal directed the person to sign the enduring power of attorney for the principal;
- d) the principal gave the direction voluntarily in my presence and the person signed this document in the presence of the principal and me;
- e) the person signed the power of attorney in the presence of the principal and me; and 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.

*(Note: Cross out (a) and (b) if a person signed on behalf of the principal. Otherwise, cross out (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 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 enduring power of attorney.

**OR (if a person signed on behalf of the principal)**

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

*(Note: Cross out (a) and (b) if a person signed on behalf of the principal. Otherwise, cross out (c), (d), (e) and (f).)*

Signature of witness 2	
Name	
Qualification	
Address	
Date	

## j) 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	<i>[name]</i>
Signature of Attorney 1	
Date	

**AND** (if more than one attorney, otherwise cross out and initial)

I accept my appointment as attorney

Name of Attorney 2	<i>[name]</i>
Signature of Attorney 2	
Date	

**AND** (if more than one attorney, otherwise cross out and initial)

I accept my appointment as attorney

Name of Attorney 3	<i>[name]</i>
Signature of Attorney 3	
Date	

**SCHEDULE 1 TO THE ENDURING POWER OF ATTORNEY**

**REVOCAION OF AN ENDURING POWER OF ATTORNEY**

*(To choose your option below, initial in the appropriate box and then delete and initial 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. Note: a power of attorney is revoked to the extent of any inconsistency with a later power of attorney.)*

1) .....

2) .....

Name of the principal.....

Signature of the principal.....

Date.....

*(Refer to published guidelines 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 section 6 of 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.

*(Note: 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.

*(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 (see Powers of Attorney Act 2006, s 9 (1).)*