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# Information for attorneys under an enduring power of attorney (personal matters)

## What is an enduring power of attorney (personal matters)?

You have been appointed by a person making the enduring power of attorney (personal matters), called the principal to be his or her attorney. Serious responsibilities are imposed upon you by this appointment.

An enduring power of attorney (personal matters) is a legal document which enables the principal to appoint another person to make decisions about the principal's lifestyle and personal choices.

This could become necessary or useful if the principal becomes ill or incapacitated or is travelling (depending on the conditions imposed). The power is "enduring" because it continues to be effective even if the principal later loses decision making capacity.

### Obligations

If you accept an appointment to act as an enduring attorney for someone you must sign a statement of acceptance of appointment wherein you state that you undertake to exercise the powers conferred honestly and in accordance with the provisions of the Powers of Attorney Act (the Act).

Upon signing the acceptance, you must be witnessed by one adult witness.

The requirement to act honestly is simple. You must not lie or cheat in acting as an enduring attorney.

The Act requires that you be at least 18 years of age. You cannot be an attorney if you are an accommodation provider, care worker or health provider for the principal. An accommodation provider, in the case of an individual, is defined under the Act as a person who is in a professional or administrative capacity directly or indirectly responsible for or involved in the provision of accommodation to the principal.

If you do not provide such care, treatment or accommodation now, but do so in the future, then you will be ineligible to continue to act as attorney and the appointment lapses.

You must always act in the best interests of the principal. This means that you must act, as far as possible:

- as an advocate for the principal;
- in such a way as to encourage the principal to participate as much as possible in the life of the community;
- in such a way as to encourage and assist the principal to become capable of caring for himself or herself and of making reasonable judgements on matters relating to his or her person;
- in such a way as to protect the principal from neglect, abuse or exploitation; and
- in consultation with the principal, taking into account, as far as possible, the wishes of the principal.

### Important

This document is a guide only. It is not comprehensive legal advice.



## Powers

You are appointed to exercise the powers listed in the document relating to the principal's personal circumstances. The document may contain a commencement date or stipulate particular circumstances which must exist before the power commences, for example, the power may only be effective upon the principal not having decision making capacity.

If a principal does not have decision making capacity, you must carry out the function in a manner which is least restrictive of the principal's ability to act in the circumstances, and ensure that the principal is given practicable support to participate in decision making. You must also give all practicable and appropriate effect to carrying out a principal's wishes, encourage the principal to participate in decision making, and act in a way that promotes the wellbeing of the principal, including by recognising the dignity of the principal, having regard to their relationship, religion and cultural environment, and respecting the confidentiality of confidential information of the principal.

In general terms, the powers given under an enduring power of attorney in relation to personal matters are the same powers and duties which a parent has in relation to his or her child. However, these may be expressly limited by the document itself. You must therefore be familiar with the specific terms of the document appointing you.

The power given to you does not authorise you to control or make decisions about the principal's assets or finances. Those powers are given by an enduring power of attorney in respect of financial matters.

Note that the same document may have been prepared in respect of financial and personal/lifestyle matters. You will need to check the terms of the document to see what matters you have been appointed as an attorney for the principal.

An enduring power of attorney in respect of personal matters can enable the attorney to make decisions about healthcare and lifestyle matters. If you are given powers to make decisions about healthcare, you will

be able to consent or withhold consent to medical or dental treatment. However you cannot refuse medical treatment on behalf of the principal. That can only be done by a person specifically appointed as a medical treatment decision maker.

## Joint, joint and several or majority appointments

If two or more attorneys are appointed the document can require that you act jointly, severally or by majority. If the appointment is not specified, it is presumed that the attorneys are to act jointly.

## What if you wish to resign?

If the principal still has decision making capacity, and you wish to resign, you can give the principal a signed notice of your resignation. However, if the principal no longer has decision making capacity and there is no continuing attorney or alternative attorney then you can only resign with the consent of VCAT or the Supreme Court.

## What if you lose decision making capacity?

If you become incapable of understanding the nature of the power then the power is revoked.

## What if you become bankrupt?

If you become bankrupt the power is revoked.

## Revocation of the power

The principal may revoke the appointment by a prescribed form. If you become aware that this has happened you must cease to act as attorney.

## Certified copies of the enduring power of attorney

If you need to exercise your powers under the appointment you will need certified copies of the document. These are available upon request to the manager of our deed register at Sladen Legal, subject to you providing appropriate identification.

## Further advice

If you seek further information concerning your appointment you can contact the Office of the Public Advocate or visit its website, [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

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