

POWER OF ATTORNEY

Having a power of attorney is just as important as having a will. While a will operates on your death, a power of attorney operates during your life.

The Power of Attorney Act (Qld) 1998 increased the scope of matters that can be covered by an enduring power of attorney and allows you to give directions about your future health care.

WHAT IS A POWER OF ATTORNEY?

A power of attorney is a legal document authorising another person, such as a trusted friend or relative, to act on your behalf in your affairs. This person is known as your “attorney”.

It is a convenient method of allowing someone to handle your affairs if you: go overseas; take an extended holiday; suffer poor health; or reach an age when you need greater assistance.

Knowing you have an attorney capable of dealing with your affairs when you are absent or infirm gives you peace of mind.

APPOINTING AN ATTORNEY

Your appointed attorney must be 18 years of age; must not be your health care provider (for example your doctor); must not be a bankrupt; or must not be a paid carer (receiving a carer’s pension does not stop a person from being an attorney).

It is important you choose someone you trust, who is capable of looking after your affairs. You may wish to appoint more than one attorney.

To appoint an attorney you must be able to understand fully what the appointment means.

TYPES OF POWERS OF ATTORNEY

A power of attorney can be: a general power of attorney, or an enduring power of attorney.

- GENERAL POWER OF ATTORNEY

A general power of attorney is used in a business context by a corporation or an individual. It can authorise your attorney to deal with your personal or financial affairs, or both, and comes into effect on the date you elect. It may limit the extent to which your attorney may deal with those matters.

A general power of attorney does not operate when you lose capacity to make decisions.

- ENDURING POWER OF ATTORNEY

An enduring power of attorney comes into effect on the date or event (e.g. incapacity) you elect and continues to operate when you lose capacity to make decisions.

Under an enduring power of attorney, you may give your attorney the power to deal with all or any part of your financial, personal and health matters. Everyone over 18 years of age should have an enduring power of attorney.

Having arranged an enduring power of attorney, you may continue to handle your affairs while you have the mental capacity to do so. Your attorney, however, can deal with your affairs at the same time unless you specify otherwise.

WHY HAVE AN ENDURING POWER OF ATTORNEY

Everyone is at risk of accident or unexpected mental illness. If you lose your mental capacity and do not have an enduring power of attorney, your personal and business affairs may be handled by a government official, for a fee, or a family member or friend will be required to apply to the Guardianship and Administration Tribunal for an order to act as your administrator. The person who obtains such an order may not be the person you would have chosen to administer your personal and business affairs.

POWER OF ATTORNEY

MAKING A POWER OF ATTORNEY

Speak to us at **Cooke & Hutchinson** about:

- the type of power of attorney you require
- your choice of attorney and number of attorneys
- the scope of power given to your attorney
- when you would like the power of attorney to commence

We at **Cooke & Hutchinson** will arrange for the appropriate form to be signed and for its proper witnessing.

To be valid, your power of attorney must be in the approved form and comply with strict witnessing requirements.

REVOKING A POWER OF ATTORNEY

Your power of attorney is automatically revoked:

- on your death
- when you marry, unless your new spouse is your existing attorney
- when you divorce, if your attorney was your spouse
- when you appoint a new power of attorney
- if your attorney dies or loses their decision-making capacity
- if your attorney becomes unqualified e.g., bankrupt or a paid health care provider.

You can also choose to revoke your power of attorney. This must be done in the form specified under the Act.

ADVANCE HEALTH DIRECTIVES

An advance health directive allows you to give directions about your future health care should you lose the capacity to make these decisions. It can include instructions to withdraw medical treatment designed to prolong life.

The Act is not to be interpreted to allow euthanasia which is performing an act designed to cause death.

Your advance health directive only comes into effect after you have lost decision-making capacity and acts to give your attorneys guidance in relation to your health care.

When making your power of attorney, speak to us **at Cooke & Hutchinson** about giving an advance health directive. Before entering into a health directive it is advisable to discuss the matter with your doctor and enlist their help to complete the document.

YOUR OPTIONS IN OBTAINING A POWER OF ATTORNEY

You can draw your own power of attorney, but you do so at your own risk.

Certain legal requirements must be followed to ensure a valid power of attorney is drawn.

The Public Trustee and some trustee companies offer free drawing of powers of attorney on the condition that they are appointed your attorney. They then charge a fee on transactions carried out on your behalf.

At **Cooke & Hutchinson** we charge you a one-off fee for drawing the document and you can choose your attorney. Your attorney cannot charge a fee for their service.

NEED A SOLICITOR

We invite you to telephone us on 3284 9433 to discuss any of the information contained in this report.

The information contained in this report is merely a guide and is not meant to be a detailed explanation of the law relating to this subject. We recommend that you see us about any particular legal problem.