

A Guide to Enduring Powers of Attorney

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

What is a Power of Attorney?

A power of attorney is a legal document in which you give another person(s) the authority to make financial and legal decisions on your behalf. You must have legal capacity to grant a power of attorney, ie. you must be able to understand the nature of what you are signing and be over the age of 18 years.

The person giving the power of attorney is called the “**donor**” and the person who accepts the power is called the “**donee**”.

What is an Enduring Power of Attorney?

While an ordinary power of attorney ceases to have effect as soon as the donor is found to be incapable of making decisions, an Enduring Power of Attorney (“EPA”) grants the donee the authority to make decisions with respect to the donor’s property and financial affairs:-

- a) during the donor’s life; and/or
- b) after the donor has lost the ability to make decisions regarding his or her affairs.

The powers granted to the donee, however, are limited to those matters which can be lawfully handled by an attorney, and it does not confer on the donee the power to do things which cannot be delegated to an agent. For example, your attorney cannot vote on your behalf at a State or Federal election.

When does an Enduring Power of Attorney have effect?

An “EPA” can come into effect either :-

- a) immediately and to continue after the donor loses capacity; or
- b) only when the donor loses capacity.

Why an Enduring Power of Attorney?

Accidents, certain illnesses or disability can occur at any time and may disrupt your lifestyle and affect your legal capacity. During these times it is likely that you will need someone to manage your legal and financial affairs.



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If you lose your decision-making ability and have not provided for another person to manage your financial and property affairs on your behalf, an Administrator may be appointed by the State Administrative Tribunal to make those decisions for you.

Choice of Donee(s)

We recommend that you choose whomever you feel you can trust to look after your affairs. You should feel confident that the individual(s) you choose are competent to deal with the management decisions that may arise and are capable of keeping accurate records of all transactions.

This may be your spouse or partner, another family member, trusted friend, accountant, lawyer or a trustee company. Equally important, the persons you appoint must be willing to take on the responsibility on your behalf.

You may choose one person as your sole attorney. However, you are allowed by law to choose up to two attorneys who can act either:

- a) Jointly, in which case both individuals must act together; or
- b) Jointly and severally, in which case each individual can either act together or separately

Obligations of Donee

The donee of an EPA has a number of obligations under the Guardianship and Administration Act 1990. These include:-

- a) to exercise his or her power with reasonable diligence to protect the interests of the donor;
- b) to keep and preserve accurate records and accounts of all dealings and transactions made under the power;
- c) to continue to exercise (not renounce) a power during any period of legal incapacity of the donor, except by application to the State Administrative Tribunal.

If the donee fails to comply with these obligations, he or she is liable to the donor for any loss occasioned by the failure.

Effect of Enduring Power of Attorney

An EPA ensures that your best interests will be looked after. If any problem arises after you have lost capacity, the matter can be referred to the State Administrative Tribunal by any person who can demonstrate a proper interest.

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Why Register Your Enduring Power of Attorney?

The main benefit of registering your EPA with Landgate is that, if necessary, your attorney(s) can deal with your real property quickly and efficiently. If you do not register your EPA and your attorney(s) needs to deal with your real property, and if it is more than 3 months since the date of signing your EPA, your attorney(s) will have to lodge a statutory declaration in order to register the EPA with Landgate. This will involve further expense and delay. For every other purpose other than dealings with land, your EPA is valid without registration.

Cost

As at July 2011 we will prepare a single EPA for \$150.00 and EPAs for a couple for \$200.00 if not prepared with a Will. If we are also preparing a Will, we will prepare a single EPA for \$75.00 and EPAs for a couple for \$100.00. Please note that this does not include GST, the time spent advising you or disbursements. We refer you to our Cost Agreement and our Letter of Engagement for more details. If an EPA is to be registered at Landgate this will cost a further \$160.00 for each EPA, being the Landgate registration fee.

Butlers

At Butlers we pride ourselves on being "The Personal Law Firm". Our commitment at Butlers is to make the law more accessible, affordable, understandable and human. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family's accountant, bank manager, financial adviser, and other professionals as required. We therefore encourage you to contact us if we may be of any assistance.

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