



# WHAT IS A POWER OF ATTORNEY AND HOW CAN THEY SUPPORT ME?

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If you have an acquired brain injury or neurological disorder (such as Huntington's or MS) that affects your ability to remember things and make decisions, you can organise to have people help you with your decision-making.

For day-to-day decisions, the NDIS can provide funding for assistance to help make things easier, such as setting up Centrepay to pay your bills. But for important decisions, such as where you live, you may need to appoint someone you trust to assist you – this person is called an 'attorney'.

This guide will help you understand the role of an attorney and the legal frameworks involved.

## Why appoint an attorney?

If you lose the capacity to make your own decisions – or you are assessed as not having the capacity to make your own decisions – and you haven't appointed an attorney, a government tribunal may appoint someone to make decisions for you. It's possible for the tribunal to appoint someone to manage your money and make big decisions for you who doesn't even know you, or understand what's important to you. So it's generally preferable to choose someone that you know and trust to make these decisions for you.

If there is a person that you know and trust that you would like to assist you with decision-making, or to make decisions on your behalf, and they have agreed to do this, it's important that they fill out the right forms. Depending on which state or territory you live in, the rules (and forms) are different. This guide explains what's involved in appointing an attorney.

We have also prepared a guide that explains the things to think about when choosing an attorney, as well as a guide designed to help your chosen attorney when they have to make important decisions for you see: [summerfoundation.org.au/wp-content/uploads/2018/10/how-do-i-choose-someone-to-support-me-web-2.pdf](https://summerfoundation.org.au/wp-content/uploads/2018/10/how-do-i-choose-someone-to-support-me-web-2.pdf)

## What is a power of attorney?

A power of attorney is a legal way to appoint another person to support you to make decisions, or to make decisions for you.

For the appointment of your attorney to be legally valid, both you and the attorney must be able to understand the document you are signing and the powers that you are giving your attorney. The power of attorney document must also be witnessed.



This information sheet was prepared by Health & Finance Integrated in collaboration with the Summer Foundation.



Each state and territory has slightly different rules about who can witness these documents so check the forms you download from your state or territory government website to make sure your forms are correctly witnessed

There are two types of powers of attorney:

### 1. General power of attorney

- Usually for a set amount of time.
- The powers given to your attorney stop if you are no longer able to make decisions.

A general power of attorney is someone you appoint to make financial and legal decisions for you, usually for a set period of time. For example, if you are going away, or are too ill to get out into the community to do your banking, you might appoint someone as a general power of attorney to make decisions for you.

To appoint a general power of attorney (and for the power of attorney to continue), you need to have the legal capacity to make decisions. If you lose your capacity to make decisions – for example, you go into a coma – the attorney is no longer allowed to make decisions on your behalf.

### 2. An enduring power of attorney

- Continues ('endures') even if your own ability to make decisions changes or stops.
- You can determine what decisions the attorney can make for you. For example, you can limit your financial attorney's powers to access only one bank account.

Unlike a general power of attorney, an enduring power of attorney can keep making decisions for you, even if your own capacity to make decisions declines and you no longer meet the legal capacity requirements.

You can appoint an enduring power of attorney to make decisions about your:

- Financial matters
- Personal matters
- Both financial and personal matters
- Specific financial and/or personal matters

## How much does it cost to set up a power of attorney?

The website of the Office of the Public Guardian (known in some states as the Office of the Public Advocate) in your state or territory will have forms that you can download and fill in for free.

Alternatively, your State Trustees or local lawyer may be able to help you appoint an attorney for a fee. Ask them to let you know how much it will cost before they begin.

## Stopping ('revoking') an enduring power of attorney

There are forms that you can use to revoke an enduring power of attorney. See the website of the Office of the Public Advocate in your state or territory.

## Other types of attorney

### Substitute attorney

You can also nominate a replacement ('substitute') attorney, so that if your attorney is not available when a decision needs to be made, the substitute can step in.

### Supportive attorney (available in Victoria)

- Unlike the other types of attorney, with a supportive attorney, you still make the decisions.
- You can have different supportive attorneys to do different things. For example, you can appoint one person to assist you with Centrelink and another person to assist you with the NDIS and the health system.

In Victoria, you can appoint supportive attorneys. A supportive attorney can assist you to gather the information required to make a decision related to Centrelink, the NDIS, the health system, your bank, etc.

As the principal you will still need to make all your own decisions, but your supportive attorney has the legal power to make them happen.

For more information on supportive attorneys, see:

🌐 [publicadvocate.vic.gov.au/your-rights/your-supported-personal-and-financial-decisions](https://publicadvocate.vic.gov.au/your-rights/your-supported-personal-and-financial-decisions)

## Guardians and administrators

If your ability to think or remember things means that you aren't able to make important decisions, but you haven't appointed an enduring power of attorney, your state or territory's Public Guardian (in some states known as Public Advocate) may ask a tribunal to appoint people to make decisions on your behalf.

The tribunal will assess whether you need someone to make decisions about your personal matters (a 'guardian') and/or someone to make decisions about your financial and legal matters (an 'administrator'). The tribunal will then consider who are the best people to do these things.

The tribunal writes its decisions in a document called an Order, which will name your guardian and/or administrator, outline what they are allowed to do on your behalf and set a date for the Order to either 'expire' (end) or be reviewed.

## Who can begin this process?

Anyone who is worried about your legal capacity to make your own decisions can begin this process. Here's an example:

Adam was admitted to hospital after an accident where he sustained a severe acquired brain injury. After several weeks in hospital, Adam's treating team declared him to be medically stable. This meant that Adam no longer needed to be in hospital, but he wasn't yet able to make his own decision about where he should live.

Because Adam had not appointed an enduring power of attorney, either a member of Adam's family or a hospital social worker could begin the process of having the tribunal appoint Adam a guardian and/or financial administrator.

If a family member or friend tells the tribunal that they would like to be your guardian and/or administrator, the tribunal usually appoints them. If no one is available, the tribunal will appoint the Public Guardian to be your guardian and usually appoints the State Trustees to be your administrator.

## How much does it cost?

The Public Guardian acts as your guardian for free.


Sometimes, the tribunal may decide that you need a professional administrator to manage your legal and financial decisions, and you will need to pay for this. Professional administrators (also called 'trustees') include the Public Trustee/Advocate, or a registered private trustee company.

Professional administrators take over your financial decisions and are not required to ask your permission for the decisions they make on your behalf. The tribunal takes the appointment of a professional administrator very seriously, as they effectively take away your right to manage your own money. A professional administrator will be expected to act in your best interest.

## Financial advisers

Financial advisers can help you with financial decisions, but their role is limited. You can pay a financial adviser to help you maximise particular entitlements, such as Centrelink, or to oversee particular investments, such as superannuation, but they must always ask for your permission before making a decision for you (or for your appointed financial decision maker).

If you are going to pay a financial adviser to help you, find out if they are licensed to give you the type of advice you need and have experience in that area. You can check your financial adviser's qualifications and licensing on the financial adviser register:

 [moneysmart.gov.au/financial-advice/financial-advisers-register](https://moneysmart.gov.au/financial-advice/financial-advisers-register)

## Each state and territory has its own requirements for appointing attorneys

Check the website in your state or territory for the correct forms.

### NSW Public Guardian

🌐 [tag.nsw.gov.au/forms](http://tag.nsw.gov.au/forms)

### Victorian Office of the Public Advocate

🌐 [publicadvocate.vic.gov.au/your-rights/enduring-power-of-attorney](http://publicadvocate.vic.gov.au/your-rights/enduring-power-of-attorney)

### Queensland Office of the Public Guardian

🌐 [publicguardian.qld.gov.au/guardianship/planahead/the-forms/enduring-power-of-attorney](http://publicguardian.qld.gov.au/guardianship/planahead/the-forms/enduring-power-of-attorney)

### South Australian Office of the Public Advocate

🌐 [opa.sa.gov.au/information-service/about-the-information-service/enduring-power-of-attorney](http://opa.sa.gov.au/information-service/about-the-information-service/enduring-power-of-attorney)

### Western Australian Office of the Public Advocate

🌐 [wa.gov.au/service/justice/civil-law/enduring-power-of-attorney](http://wa.gov.au/service/justice/civil-law/enduring-power-of-attorney)

### Tasmania's Public Trustee

[publictrustee.tas.gov.au/enduring-power-of-attorney](http://publictrustee.tas.gov.au/enduring-power-of-attorney)

### ACT Public Trustee and Guardian

🌐 [ptg.act.gov.au/enduring-powers-of-attorney](http://ptg.act.gov.au/enduring-powers-of-attorney)

### Northern Territory Government

[nt.gov.au/law/processes/power-of-attorney/introduction](http://nt.gov.au/law/processes/power-of-attorney/introduction)

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