

Powers of Attorney

1. **A Power of Attorney is a document by which a person or company ('donor') appoints another person or company (the 'Attorney') to act for the donor generally in all affairs or for a particular period or for a particular purpose.**

Each Australian State and Territory has its own laws in relation to Powers of Attorney. The Commonwealth does not have laws in this regard.

An Attorney is an agent for the donor of the Power. Consequently an Attorney is subject to the donor's direction.

A donor may give notice to the Attorney terminating the authority to act. Death automatically brings an Attorney's authority to an end.

The most recent changes to Powers of Attorney provide for **"Enduring Powers" which enable an Attorney to act even when a donor is incapacitated eg. in coma. Enduring Powers are now in wide use.**

Anyone in business or who is 'an older citizen' should appoint an Attorney. The Attorney does not have to act continuously for them, but can simply be there as a 'backstop'. It is very easy to make a Power. The documents are publicly available from Public Trustees and we will be more than happy to send you a draft.

What's in a Power of Attorney and why you need to think about having one?

What should be in the Power -

Will you appoint your spouse or family member an Attorney or perhaps even your Solicitor? **You need to have utmost faith in your Attorney.** If you have two Attorneys, are they to act jointly or may they act individually?

Do you give the Attorney **full Powers, specific (eg. to sell your home) or limited Powers.** If an Attorney is to benefit from a transaction, then the Attorney must be specifically authorised to benefit.

When is the Power to commence - immediately on signing, on a given date or only when you are incapacitated? This last option will require medical evidence and may lead to unnecessary costs for doctor's reports.

Will you **pay the Attorney** to act for you?

If you are incapacitated, will your Attorney have Power to decide where you live, when you go on holidays or what medical treatment you should receive?

Can medical treatment be withheld on the say of an Attorney who may also be a beneficiary under your Will?

Whatever you decide upon, it is very important that an **Attorney keeps his / her /their affairs totally separate** from those of the donor. The Attorney must act in good faith and unless specifically authorised, must not benefit from the Power!

A Power of Attorney does not have to be in continuous use by an attorney. If you make **trips overseas or interstate**, it may be handy to leave a power for your wife or child to act for you. Likewise if you are going to have a serious medical operation that may have you 'out of action' for some time, then you should consider one.

Anyone in business should have one. If you are the sole operator of a business and you were in a coma for some weeks after an accident, your business may be ruined because there is not anyone to look after the business in a legal sense.

Although it may be possible to have someone appointed as your guardian or manager under other laws, a **Power of Attorney is a quick and economic way** of ensuring that your absence does not hinder the administration of your affairs.