



# FAQ

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## FAQs POAs, Guardianship & Health Care Directives

*This document summarises some of the more commonly asked questions regarding Powers of Attorney, Guardianship and Health Care Directives. If your question is not answered on this page or you need further advice on these or any related matter please phone us on 02 6651 8440 or email [info@bryantmckinnon.com.au](mailto:info@bryantmckinnon.com.au).*

### POWER OF ATTORNEY

#### What is a Power of Attorney?

A Power of Attorney (POA) is a legal document which appoints an attorney to deal with property and financial matters on your behalf. Your attorney can sign legally binding documents or otherwise manage your finances, for example while you are overseas or unwell.

A general POA will cease to have effect if you lose mental capacity. An Enduring Power of Attorney still has effect even after you lose mental capacity.

Neither a general POA, nor an Enduring POA gives your attorney the ability to make decisions about



your medical treatment, welfare or other lifestyle matters.

#### Does my Power of Attorney retain control after my death?

No. On your death any Power of Attorney will cease to operate. Your Will should set out your intentions for your affairs after your death and appoint an executor.

The executor of your Will can make decisions after you die but not beforehand, while an attorney can manage your affairs while you

are alive but not after your death. You can appoint the same person to both roles if you choose, but it is important to understand that they are different roles and require separate appointments. Refer to our [FAQ document on Wills](#).

#### Who is the best person to be my Power of Attorney?

Your attorney must be somebody that you trust to make competent decisions on your behalf. That means choosing someone who has the right skill set to manage your



affairs, including record keeping and decision making, and who will be impartial and trustworthy. They must also be willing to take on the responsibility, so do discuss it with them and make sure they understand the role before appointing them.

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## At what stage does my Power of Attorney take control of my finances?

A general Power of Attorney takes effect at the time specified in the document. That might mean that it takes effect immediately upon signing, or at a later specified date. For example, if you are travelling overseas you might choose that it takes effect on the date you leave.

An Enduring Power of Attorney most frequently will only come into effect once you have lost capacity to make decisions, and therefore no specific date can be set out in the document appointing them.

## Can I revoke or override my Power of Attorney once it's been granted?

Yes. As long as you retain the capacity to understand what you are doing, you may revoke the POA at any time. To do so, you must inform

your attorney in writing that you are revoking their appointment. You should also inform any relevant businesses, including your bank, with whom the attorney may have been dealing.

With an Enduring POA, once you lose mental capacity, you will no longer be able to revoke the POA.

## ENDURING GUARDIAN

### What is an Enduring Guardian?

An Enduring Guardian is somebody who can make specific health and medical decisions on your behalf

if you are incapable of doing so yourself. These might include arranging in-patient stays in a care facility, organising services for you and giving consent to medical procedures. Enduring Guardianship comes into effect only if you lose capacity.

As with Powers of Attorney, Enduring Guardianships cease to operate when you die.

## Who is the best person to be my Enduring Guardian?

An Enduring Guardian is taking on a position of trust, and should be chosen carefully. They should know you well enough to act in accordance with your values and beliefs, have the capacity to do so and be available and willing. A person who is paid to provide care, accommodation or support services to you cannot be your Enduring Guardian, unless they are a relative who only receives the carers' pension.

## What decisions are my Enduring Guardian able to make?

Enduring Guardians can only make medical, health and lifestyle decisions. These might include specific decisions about where you live, including respite care or an aged care facility, which doctors or specialists you see, consent to medical treatment including palliative care, and which personal services you should receive. When you appoint an Enduring Guardian you may choose the extent to which they can make decisions, so if you want to exclude some of the above, you may.

## Can I cancel or override an Enduring Guardianship once it's been granted?

You may cancel or override the Enduring Guardianship at any point while you retain legal capacity. You will need to complete an official



Revocation of Appointment form which must be witnessed, and advise the Enduring Guardian in writing of the revocation.

## Do I need an Enduring Guardianship if I have a Power of Attorney?

The two documents are complementary, so it's a good idea to have both in place. A Power of Attorney allows your attorney to deal with your financial affairs on your behalf but not your medical treatment or lifestyle decisions. An Enduring Guardian makes the decisions related to your health and welfare if you lose capacity to do so but cannot deal with your financial affairs.

## ADVANCED HEALTH CARE DIRECTIVE

### What is an Advanced Health Care Directive?

An Advanced Health Care Directive (AHCD), or 'living will', is a document in which you set out your preferences for future care and treatment. It must be written and signed by you while you

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still have capacity to do so.

The AHCD form includes a portion that must be completed by a doctor. This ensures that you understand your options, including any unfamiliar medical terms, before finalising the document. It must also be witnessed by a justice of the peace, commissioner for declarations, lawyer or notary public.

If you choose, you can appoint a substitute decision-maker to make specific decisions about your health care and treatment once you have lost capacity.

### When should I consider having an Advanced Health Care Directive set up?

The most common reason for setting up an Advanced Health Care Directive is if you are anticipating a decline in your health such that you won't be able

to make decisions for your own care. An Advanced Health Care Directive acts as a guide to your family, medical staff or Enduring Guardian. It helps them to know what decisions you want them to make, including refusing treatment.

An Advanced Health Care Directive represents your intentions whilst you are still alive, and as with a POA and Enduring Guardianship, ceases to take effect when you die.

*This is general information only. We are here to advise you on your specific circumstances; please get in touch to set up an initial consultation.*