

## EXPLANATORY MEMORANDUM

# Powers of Attorney

Power of Attorney is where a person (the Principal) grants to another (the Attorney) the legal power to make decisions on the Principal's behalf. "Enduring" simply means that the power continues even if the Principal loses the capacity to make decisions for themselves.

The Financial Power of Attorney can come into effect even if the Principal has not lost the capacity to make decisions for themselves. This covers situations where the Principal may be overseas, or may be too ill to look after their own affairs.

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### TYPES OF DECISIONS

Principals may give their Attorney power to make decisions about:

1. Personal/Health matters; and/or
2. Financial matters.

Examples of Personal/Health matters include decisions about where and with whom the Principal lives, whether they work or undertake education or training, and whether to consent, refuse to consent or withdraw consent to particular types of health care for you (such as an operation).

Examples of Financial matters includes deciding how your income should be invested, accessing the Principal's accounts to make payments of bills and dealing with the Principal's real property.

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### WHO SHOULD BE AN ATTORNEY?

In appointing Attorneys, a Principal:

1. can appoint more than one Attorney;
2. should appoint someone they trust. Many people choose their spouse or an adult child to act as Attorney, others prefer to appoint another family member or friend with expertise in the area;
3. may appoint different Attorneys for their Financial matters than for Personal/Health matters; and
4. may have the Attorney's act in any manner they choose.

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### WHEN DO THE ATTORNEY'S POWERS BEGIN?

With Personal/Health matters, the Attorney's power to make decisions does not begin (if ever) until the Principal is incapable of making decisions on their own behalf. In other words, they have lost capacity (as assessed by a medical practitioner) and their Attorney must step in to act in their best interests.

With Financial matters, the Principal may nominate when their Attorney's power is to begin. Typically, this power commences immediately, however the Principal may direct that their Attorney's power commences at a particular time or on a particular occasion.

The Principal may change or revoke their Enduring Power of Attorney at any time, so long as they are capable of understanding what they are doing. In other words, so long as the Principal has the capacity to *make* an Enduring Power of Attorney, they also have the capacity to *change* or *revoke* it.

Life events will also impact on the validity of an Enduring Power of Attorney such as getting married, if getting divorced or if the Attorney becomes incapable of acting in this role.