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Your Reference: Enduring Power of Attorney  
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Monday, 12 April 2022

Nathan Hughes  
12 Brockman Road  
Narrabundah ACT 2604  
Australia

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*[enduring-poa-introduction/](#) -*

*telephone us, we can help you  
complete the questions.*

*Adj Professor, Dr Brett Davies - Partner*

Dear Nathan Hughes,

## Enduring Power of Attorney

Thank you for instructing us to prepare your attached Australian Capital Territory (ACT) Enduring Power of Attorney - restricted to 'financial matters' (ACT Enduring POA).

This ACT Financial POA only works in the ACT. If there are assets in another State or Territory, then you need to also build and sign POAs for that other State or Territory as well.

### How to print your document

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print double sided (duplex).
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document.)

### Free and ongoing advice for your attorney

The advantages of having our law firm prepare your ACT Financial POA:

1. Included in the cost of your POA is free advice for your attorney. They are not alone. Our law firm, forever and as often as needed, helps your attorneys and shows them how to use the POA. We give you and your family ongoing support.

When a parent loses mental capacity, the children are welcome to telephone us for help and assurance. There is no additional cost.

2. Many homemade POAs are incorrect. Sadly, it is only after they are needed does this become apparent. Your POA is protected by our law firm's professional indemnity insurance.
3. There is information on how to use the document in this covering letter. (Keep this letter with the POA after you sign the POA.)
4. Finally, there are unlimited updates on the POA. The POA can be updated as often as you wish for free.

### **Medical POAs and Financial Matters POAs – look identical**

In the ACT you can put both the:

1. 'personal/health'; and
2. 'property matters (includes financial matters)'

in the same document POA. An additional tick is all that is required. However, do not do this.

It is legally better to have a separate Medical POA and a separate Financial POA, because:

1. There is ambiguity as to whether you can have two ACT POAs. However, there is no ambiguity as to having one as a medical and one for financial.
2. When a doctor or nursing home reads your ACT Medical POA, there is no reason for them to know who holds your financial POA. Privacy and information are protected.
3. Similarly, when you hand over an ACT POA dealing with only 'financial matters' to a government department, they do not find out who holds your ACT Medical POA.
4. Finally, there have been occasions where a nursing home has seen fit to keep the original ACT Medical POA. Sometimes, as well as refusing to hand it back, it has been lost. Because you have two POAs, you have kept the financial POA out of the clutches of the nursing home and medical facility.

If the person witnessing your POA has a different view, they can telephone me personally. My after hours number is 0477 796 959.

### **Does my Power of Attorney have to be lodged or registered anywhere?**

There is no lodgment required. It is valid once it is signed.

### **Does the Power of Attorney need to be stamped?**

Your POA is not dutiable.

### **Get a Doctor's Certificate to say you are of sound mind**

1. You must have full legal capacity to sign a legal document such as a POA or Will.
2. Also, your attorneys must be able to prove you were of sound mind when you signed the POA.

Ask your doctor to give you a note to say you are of sound mind. Keep the doctor's note with the POA. (Do not staple the doctor's note to the POA.) Without a doctor's note your POA may not be valid. Doctors usually have their preferred wording, or they can use:

*I have examined my patient, [your full name] I am satisfied my patient has full mental capacity to sign legal documents.*

You can get the doctor's note either before or after you sign the POA. Usually, you do not need to get the note on the day that you signed the POA.

### **Making copies**

Don't let the original POA out of your hands. Ask the bank (or whoever needs it) to take a copy. The bank can then "certify" the POA (confirm it is a true copy) and keep the copy on the bank's file.

### **Can the 'attorney' override my wishes?**

By law the ACT Financial POA can only be used for your **best interests**. It cannot be used to benefit anyone else. It is in place to protect you. If you lose confidence in your 'attorney' then you need to revoke the POA. You can do this revocation while you remain of sound mind.

### **Can I revoke a Power of Attorney?**

While you are of sound mind, you can revoke an ACT Financial POA at any time. If you are of unsound mind then, obviously, you can't make any such decisions.

Your document is revoked at death. (Conversely, your Will only takes effect at death.) The Court can also revoke a POA.

### **How do I revoke the Power of Attorney?**

Telephone us if you wish to revoke the Power of Attorney.

### **What happens if I separate, divorce or get married?**

Telephone us if your status changes.

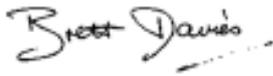
### **How do the persons I nominate use the Power of Attorney?**

Here are some examples:

**Example 1 - Using your bank account:** The persons you appoint walk into the bank and present to the bank clerk with your Savings Account book and an original POA. The bank clerk stares blankly at them. The bank clerk goes to see the bank manager. The bank manager explains to the bank clerk that those persons "now stand in your shoes". They can do whatever you could do with the bank account. The bank manager asks to take a copy of the POA for future reference. The bank manager tries to keep the original POA but the persons you nominate decline and get back the original POA. The transaction on the bank account takes place.

**Example 2 – Signing your legal documents:** You have asked the persons that you nominated, to sign a lease agreement as you are on holidays overseas and email is unavailable. They contact the landlord and tell the landlord that there is a POA. They tell the landlord that they are signing the lease on your behalf. They sign in their usual signature area and write under the signature "signed as attorney for \*your name\* under a POA dated ## Month, year". You are now bound to the lease. The landlord may photocopy the POA to attach to the lease.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD  
National Taxation Partner  
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

*This is a sample of the document you are building on our law firm's website.*

*Depending how you answer the questions the document and our letter may be different.*

*We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.*

*Dr Brett Davies  
Partner  
Legal Consolidated Barristers & Solicitors*

## Persons who may witness statutory declarations

### Who can witness a Australian Capital Territory ("ACT") Power of Attorney?

Two witnesses are required. Both must be 18 years of age or older. One must be someone authorised to witness statutory declarations. Under *Statutory Declarations Act 1959* and *Statutory Declaration Regulations 2018*, the list of persons who may witness statutory declarations includes:

- |  |
|--|
| <p>1. a person who is currently licensed or registered under a law to practise in one of the following occupations</p> <ul style="list-style-type: none"><li>a Architect</li><li>b Chiropractor</li><li>c Dentist</li><li>d Financial adviser or financial planner</li><li>e Legal practitioner</li><li>f Medical practitioner</li><li>g Midwife</li><li>h Migration agent registered under Division 3 of Part 3 of the <i>Migration Act of 1958</i></li><li>i Nurse</li><li>j Occupational therapist</li><li>k Optometrist</li><li>l Patent attorney</li><li>m Pharmacist</li><li>n Physiotherapist</li><li>o Psychologist</li><li>p Trade marks attorney</li><li>q Veterinary surgeon</li></ul>  |
| <p>2. a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or</p>   |
| <p>3. person who is in the following list;</p> <ul style="list-style-type: none"><li>a Accountant who is:</li><li>b a fellow of the National Tax Accountants' Association; OR</li><li>c a member of any of the following:<ul style="list-style-type: none"><li>i Chartered Accountants Australia and New Zealand;</li><li>ii the Association of Taxation and Management Accountants;</li><li>iii CPA Australia;</li><li>iv the Institute of Public Accountants</li></ul></li><li>d Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public;</li><li>e APS employee engaged on an ongoing basis with 5 or more years of continuous service who is not specified in another item of this part</li><li>f Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the <i>Consular Fees Act 1955</i>);</li><li>g Bailiff;</li><li>h Bank officer with 5 or more continuous years of service;</li><li>i Building society officer with 5 or more years of continuous service;</li><li>j Chief executive officer of a Commonwealth court;</li><li>k Clerk of a court;</li><li>l Commissioner for Affidavits;</li><li>m Commissioner for Declarations;</li><li>n Credit union officer with 5 or more years of continuous service;</li><li>o Employee of a Commonwealth authority engaged on a permanent basis with 5 or more years of continuous service who is not specified in another item in this Part</li><li>p Employee of the Australian Trade and Investment Commission who is:<ul style="list-style-type: none"><li>i in a country or place outside Australia; AND</li><li>ii authorised under paragraph 3 (d) of the <i>Consular Fees Act 1955</i>; AND</li><li>iii exercising his or her function in that place;</li></ul></li><li>q Employee of the Commonwealth who is:<ul style="list-style-type: none"><li>i in a country or place outside Australia; AND</li><li>ii authorised under paragraph 3 (c) of the <i>Consular Fees Act 1955</i>; AND</li></ul></li></ul> |

- iii exercising his or her function in that place;
- r Engineer who is:
  - i a member of the Engineers Australia, other than at the grade of student; OR
  - ii a Registered Professional Engineer of Professionals Australia; OR
  - iii registered as an engineer under a law of the Commonwealth, a State or Territory; OR
  - iv registered on the National Engineering Register by Engineers Australia
- s Finance company officer with 5 or more years of continuous service;
- t Holder of a statutory office not specified in another item in this list;
- u Judge;
- v Justice of the Peace;
- w Magistrate;
- x Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*;
- y Master of a court;
- z Member of the Australian Defence Force who is:
  - aa an officer; OR
  - bb a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; OR
  - cc a warrant officer within the meaning of that Act;
  - dd Member of the Australasian Institute of Mining and Metallurgy
  - ee Member of the Governance Institute of Australia Ltd
  - ff Member of:
    - i the Parliament of the Commonwealth;
    - ii the Parliament of a State; OR
    - iii a Territory legislature; OR
    - iv a local government authority
  - gg Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*
  - hh Notary Public, including a notary public (however described) exercising functions at a place outside:
    - i the Commonwealth; and
    - ii the external Territories of the Commonwealth
  - ii Permanent employee of:
    - i a State or Territory or a State or Territory authority; OR
    - ii a local government authority;
  - jj with 5 or more years of continuous service; other than such an employee who is specified in another item in this Part
  - kk Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office providing postal services to the public
  - ll Persons before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
  - mm Police Officer
  - nn Registrar, or Deputy Registrar, of a court
  - oo Senior executive employee of a Commonwealth authority
  - pp Senior executive employee of a State or Territory;
  - qq SES employee of the Commonwealth;
  - rr Sheriff;
  - ss Sheriff's officer;
  - tt Teacher employed on a permanent or full-time or part-time basis at a school or tertiary education institute

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On our law firm's website, you:

1. Retain legal professional privilege
2. Receive legal advice
3. Get a signed letter on our law firm's letterhead with the legal document
4. We take responsibility for the legal document

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*Adj Professor, Dr Brett Davies - Partner*



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## **Enduring Power of Attorney – Australian Capital Territory (Financial Power of Attorney)**

**Nathan Hughes**

# ENDURING POWER OF ATTORNEY

## *Powers of Attorney Act 2006*

*(Note 1: Please refer to the guidelines in 'The Power to Choose' published on the Public Trustee and Guardian's website before completing this form.)*

*Note 2: Please carefully complete each applicable section, including schedule 1 (Revocation of an Enduring Power of Attorney). You may delete the explanatory material on this form after you have read it. You may also change the look of the form; for example, by changing the font type or size, or by setting the document out in a format which is easier for you to use.)*

### 1 APPOINTOR AND ATTORNEY

I,

<i>Appointer (Principal)</i>	[name] Nathan Hughes
	[address] 12 Brockman Road, Narrabundah ACT 2604, A

appoint the following as my attorney/s:

<i>Attorney</i>	[name] Jacinta Walters
	[address] 2 Finn Drive, O'Connor ACT 2602, Australia

*(Add additional boxes to accommodate the number of attorneys being appointed (Attorney 3, Attorney 4 etc). If only one attorney is being appointed, cross out and initial or delete the box for Attorney 2.)*

An Enduring Power of Attorney (POA) is a legal document. It allows you to appoint a person to make decisions about your assets. The POA deals with your assets e.g. real estate and bank accounts.

### 2 SUBSTITUTE ATTORNEY

*(Cross out and initial or delete this section if not applicable.)*

Not applicable

*(Add additional boxes to accommodate the number of Attorneys being appointed Attorney 3, Attorney 4 etc). If only one Attorney is being appointed, cross out and initial or delete the box for Attorney 2.)*

### 3 MULTIPLE ATTORNEYS

*(Indicate whether you want the attorneys to act together and separately, in any combination, or in any other manner, such as different attorneys to act in different circumstances, on the happening of different events or in relation to different matters. Choose your option below by initialling in the appropriate box. Cross out and initial or delete this section if not applicable, or any option that does not apply.)*

I appoint my attorneys to act:

- together
  - separately
  - together and separately
  - in the following manner –
- 
- 
- 

#### 4 FUNCTIONS

(Choose your option below by initialling in the appropriate box/es. Cross out and initial any option that does not apply. DO NOT DELETE.)

I authorise my attorney/s to do, on my behalf, anything that I can lawfully do in relation to the matters listed below:

- property matters (includes financial matters)
- personal care matters
- health care matters
- medical research matters (This authorisation must be carried out in accordance with part 4.1 of the *Attorney Act 2006*.)

#### 5 DIRECTIONS, LIMITATIONS AND CONDITIONS

(Choose your option below by initialling in the appropriate box/es and completing the directions, limitations or conditions you wish to impose. Cross out and initial any option that does not apply. DO NOT DELETE.)

My attorney/s shall only exercise power under section 5 above, subject to the following directions, limitations and conditions –

- property matters (includes financial matters)

No limitation

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- personal care matters

Not applicable

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The POA is an “economic” document. Your POA does not deal with your health, medical treatment or lifestyle. To do this, instead build a [Medical POA](#) on our website.

health care matters

Not applicable

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medical research matters

To carry out the powers in accordance with part 4.3A of the *Powers of Attorney Act 2006* and:

Not applicable

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## 6 REFUSAL OR WITHDRAWAL OF MEDICAL TREATMENT

(Choose your option below by initialling in the appropriate box. Cross out and initial apply.)

My attorney/s must not refuse, or require the withdrawal of, medical treatment

My attorney/s may, on my behalf -

refuse, or require the withdrawal of, medical treatment generally

refuse, or require the withdrawal of, the following kinds of medical treatment

Not applicable

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Also, the person receiving your EPA cannot:

- vote in any elections
- make a Will (but you can build a Will for your parents)
- sign another POA
- act as a Trustee
- control your body (instead, you need a Medical POA)

## 7 COMMENCEMENT

(Choose your option below by initialling in the appropriate box. Cross out and initial or delete any option that does not apply.)

My attorney's power in relation to my property (including financial) matters comes into effect

immediately

from \_\_\_\_\_ (specify date or event)

only when I become a person with impaired decision-making capacity

My attorney's/attorneys' powers in relation to personal care matters, health care matters and medical research matters will be exercisable while I am a person with impaired decision-making capacity.

(Your attorney/attorneys cannot exercise powers in relation to your personal care matters, health care matters or medical research matters while you have decision-making capacity.)

## 8 STATEMENT OF UNDERSTANDING AND SIGNATURE

I fully understand that, by making this enduring power of attorney, I authorise my attorney/s to act on my behalf in accordance with the terms set out in this enduring power of attorney. I also understand the nature and effect of making an enduring power of attorney as set out in Schedule 3 to this document.

<i>Signature of Appointor (Principal)</i>	[name] Nathan Hughes
<i>Date</i>	

OR

*(Cross out and initial or delete if not applicable.)*

I directed the following person to sign and initial this enduring power of attorney on

*(Another person can sign the enduring power of attorney on your behalf if you are u*

<i>Name and address of person signing by direction</i>	[name]
	[address]
<i>Signature of person signing by direction</i>	
<i>Date</i>	

However, the person receiving your Enduring Power of Attorney, can open and close bank accounts, pay debts, and buy and sell land. This is provided it is in your 'best interests' to do so.

## 9 CERTIFICATE OF WITNESSES

*Note 1: only one witness can be a relative of the principal or of a person appointed as an attorney under this enduring power of attorney.*

*Note 2: witness 1 must be a person authorised to witness the signing of a statutory declaration.*

*Note 3: the witnesses must sign in the presence of each other and the appointor.)*

### WITNESS 1

I, witness 1 described below:

- (i) am an adult;
- (ii) am authorised to witness the signing of a statutory declaration;
- (iii) am not appointed as attorney under this enduring power of attorney; and
- (iv) did not sign this enduring power of attorney for the principal.

I certify that:

- (a) the principal signed this enduring power of attorney voluntarily in my presence; and
- (b) at the time the principal signed this enduring power of attorney, the principal appeared to me to understand the nature and effect of making it as set out in Schedule 3 to this document.

OR (if a person signed and initialled the enduring power of attorney on behalf of the principal)

- (c) the principal directed the person to sign and initial the enduring power of attorney for the principal;
- (d) the principal gave the direction voluntarily in my presence;
- (e) the person signed and initialled the enduring power of attorney in the presence of the principal and me; and
- (f) at the time the principal gave the direction, the principal appeared to me to understand the nature and effect of making this enduring power of attorney.

*(If a person signed and initialled the enduring power of attorney on behalf of the principal, cross out and initial or delete (a) and (b). Otherwise, cross out and initial or delete (c), (d), (e) and (f).)*

<i>Signature of witness 1</i>	
<i>Name</i>	
<i>Qualification</i>	
<i>Address</i>	
<i>Date</i>	

**WITNESS 2**

I, witness 2 described below:

- (i) am an adult;
- (ii) am not appointed as attorney under this enduring power of attorney; and
- (iii) did not sign this enduring power of attorney for the principal.

I certify that:

- (a) the principal signed this enduring power of attorney voluntarily in my presence;
- (b) at the time the principal signed this enduring power of attorney, the principal appeared to me to understand the nature and effect of making it as set out in Schedule 3 to this enduring power of attorney.

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<https://www.legalconsolidated.com.au/enduring-poa-introduction/>

**OR (if a person signed and initialled the enduring power of attorney on behalf of the principal)**

- (c) the principal directed the person to sign and initial the enduring power of attorney for the principal;
- (d) the principal gave the direction voluntarily in my presence;
- (e) the person signed and initialled the enduring power of attorney in the presence of the principal and me; and
- (f) at the time the principal gave the direction, the principal appeared to me to understand the nature and effect of making this document.

*(If a person signed and initialled the enduring power of attorney on behalf of the principal, delete or cross out (a) and (b). Otherwise, delete or cross out (c), (d), (e) and (f).)*

<i>Signature of witness 2</i>	
<i>Name</i>	
<i>Qualification</i>	
<i>Address</i>	
<i>Date</i>	

## 10 ACCEPTANCE BY ATTORNEY OF APPOINTMENT

I have read this enduring power of attorney which appoints me as attorney for the principal and in signing this acceptance of my appointment, I undertake the responsibility of exercising the powers that have been given, including the responsibilities and obligations set out in Schedule 2 to this document.

I accept my appointment as attorney

<i>Attorney</i>	[name] Jacinta Walters
<i>Signature of Attorney</i>	
<i>Date</i>	

(Add additional boxes to accommodate the number of attorneys or substitute attorneys being appointed (Attorney 1, Attorney 2, Attorney 3, Attorney 4 etc). If only one attorney is being appointed, cross out and initial or delete the box for Attorney 4 etc.)

<i>Attorney</i>	[name]
<i>Signature of Attorney</i>	
<i>Date</i>	

(Add additional boxes to accommodate the number of substitute attorneys being appointed (Attorney 5, Attorney 6 etc). If only one substitute attorney is being appointed, cross out and initial or delete the box for Attorney 4.)

We give you and your family ongoing support on the POA. Often when a parent loses mental capacity the children telephone us for help and assurance. For free, we explain how to use the Enduring POA and what they need to do.

SCHEDULE 1 TO THE ENDURING POWER OF ATTORNEY

# REVOCAATION OF AN ENDURING POWER OF ATTORNEY

(Choose your option below by initialling in the appropriate box. Cross out and initial or delete any option that does not apply.)

- I have not made an enduring power of attorney before
- I revoke all of my previous enduring powers of attorney
- The following enduring powers of attorney will continue to operate even after the revocation of this enduring power of attorney - (Give the date of making the continuing enduring power/s of the attorney/attorneys appointed under it/them. Add or delete lines if necessary. This power/s will be revoked to the extent of any inconsistency with a later power of attorney.)

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_

You can update your POA for free. If you ever want to update your POA just email us and we send you a voucher. With the voucher, you can change the POA as you want. You can update your POA as often as you wish for free.

Appointor (Principal)	[name] Nathan Hughes
Signature Nathan Hughes	
Date	

(Refer to the guidelines in 'The Power to Choose' published on the Public Trustee and Guardian's website in relation to revocation of a power of attorney.)

## SCHEDULE 2 TO THE ENDURING POWER OF ATTORNEY

# OBLIGATIONS OF THE ATTORNEY UNDER AN ENDURING POWER OF ATTORNEY

### PART 1

Your obligations as attorney include the following:

1. Unless expressly authorised by this enduring power of attorney, you must avoid transactions which result, or may result, in conflict between your duty to the principal; and either the interests of you, or your relative, business associate or close friend of the attorney; or another duty you may have.
2. You must notify other attorneys when you resign as attorney or you are removed as attorney. You must notify other attorneys and anyone who has had dealings with the principal as the principal's attorney, about any court or guardianship tribunal matter or matter requiring the principal's authorisation.
3. If the principal's decision-making capacity is impaired:
  - a you must, to the maximum extent possible, comply with the provisions of Schedule 1 to the *Powers of Attorney Act 2006* (an extra-territorial schedule);
  - b if you are an attorney for property matters, you must:
    - i keep accurate records and accounts of all dealings and transactions entered into under this power of attorney, and
    - ii keep the principal's property separate from yours, unless the property is held jointly by you and the principal;
  - c if you are an attorney for medical research matters, you must make decisions about medical research matters in accordance with part 4.3A of the *Powers of Attorney Act 2006*; and
  - d you must not ask for medical treatment *to be withheld or withdrawn from the principal, unless you have been expressly authorised to consent to the withholding or withdrawal of treatment under this enduring power of attorney, and you have consulted a doctor about the nature of the principal's illness, any alternative forms of treatment available, and the consequences of the principal remaining untreated. Your decision should be on the basis of what the principal would ask for if the principal could make a rational judgment, and were to give serious consideration to the principal's own health and wellbeing.*

People think when you appoint someone under a POA you give them 'power'. It is quite the opposite. Your enduring attorney is in a fiduciary relationship with you.

*(In the event that the principal's decision-making capacity becomes impaired, you have the right to all the information that the principal would have been entitled to if the principal had decision-making capacity. If you are in doubt about your responsibilities as attorney you may seek advice or assistance from Public Trustee and Guardian.)*

## PART 2

### General principles for enduring powers of attorney

(Schedule 1 to the *Powers of Attorney Act 2006* (section 44))

#### 1.1 Access to family members and relatives

- (1) An individual's wish and need to have access to family members and relatives, and for them to have access to the individual, must be recognised and taken into account.
- (2) An individual's wish to involve family members and relatives in decisions affecting the individual's life, property, health and finance must be recognised and taken into account.

#### 1.2 Human worth and dignity

An individual with impaired decision-making capacity has an inherent right to have their individual's human worth and dignity as an individual.

#### 1.3 Role as a member of society

- (1) An individual has a right to be a valued member of society.
- (2) Because of this right, it is important to encourage and support the individual to fulfil their social roles valued in society.

#### 1.4 Participation in community life

It is important to encourage and support an individual to live a life in the community and to take part in activities enjoyed by the community.

#### 1.5 Quality of life

An individual's need and wish to have a reasonable quality of life must be taken into account.

#### 1.6 Participation in decision-making

- (1) An individual has a right to take part in decisions affecting the individual's life to the greatest extent practicable.
- (2) Without limiting subsection (1), an individual also has a right to take part in decisions affecting the individual's property and finance to the greatest extent practicable.
- (3) The right of the individual to make the individual's own decisions must be preserved to the greatest extent practicable.

#### *Examples of preserving individual's right to make own decisions*

- <sup>1</sup> The individual must be given any necessary support, and access to any necessary information, to allow the individual to take part in decisions affecting the individual's life to the greatest extent practicable.
- <sup>2</sup> To the greatest extent practicable, the individual's views and wishes must be sought and taken into account before exercising power in relation to the individual.
- <sup>3</sup> Power in relation to the individual must be exercised in the way that is least restrictive of the individual's rights.

Note: An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (4) If an individual's wishes or needs cannot be expressed by the individual, the person exercising power in relation to the individual must try to work out, as far as possible, from the individual's past actions, what the individual's wishes and needs would be if the individual could express them and take those wishes and needs into account.
- (5) However, a person exercising a function in relation to an individual must do so in a way consistent with the individual's proper care and protection.
- (6) An individual's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

*Fiduciary relationships are where the person acts in your best interest. They put your interest above their own. A financial planner, accountant, lawyer, director and trustee all bear that difficult burden.*

### 1.7 Individual taken to be able to make decisions

An individual must not be treated as unable to take part in making a decision only because the individual makes unwise decisions.

### 1.8 Maintenance of existing supportive relationships

The importance of maintaining an individual's existing supportive relationships must be taken into account.

### 1.9 Maintenance of environment and values

- (1) The importance of maintaining an individual's cultural and linguistic environment and values (including any religious beliefs) must be taken into account.
- (2) For an individual who is a member of an Aboriginal community or a Torres Strait Islander community, this means the importance of maintaining the individual's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal or Torres Strait Islander custom) must be taken into account.
- (3) In this section:

#### Aboriginal tradition—

- (a) means the body of traditions, observances, customs and beliefs of Aboriginal people generally, or of a particular community or group of Aboriginal people; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

#### Island custom, known in the Torres Strait as Ailan Kastom—

- (a) means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally, or of a particular community or group of Torres Strait Islanders; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

### 1.10 Confidentiality

An individual's right to confidentiality of information about the individual must be respected.

### 1.11 Health care and medical research

- (1) An individual is entitled to have decisions about a health care matter or a medical research matter made by an attorney—
  - (a) In the way least restrictive of the individual's rights and freedom of action; and
  - (b) only if the exercise of power—
    - (i) is, in the attorney's opinion, necessary and appropriate to maintain or promote the Individual's health and wellbeing; or
    - (ii) is, in all the circumstances, in the individual's best interests.
- (2) An individual's wishes in relation to a health care matter or a medical research matter, and any information provided by the individual's health care provider, must be taken into account when an attorney decides what is appropriate in the exercise of power for a health care matter or a medical research matter.

Your enduring attorney does not profit from their role as your enduring attorney. They cannot gain a personal benefit. They cannot benefit to a third party.

## SCHEDULE 3 TO THE ENDURING POWER OF ATTORNEY

# UNDERSTANDING NATURE AND EFFECT OF MAKING POWERS OF ATTORNEY

*(Powers of Attorney Act 2006, section 17)*

Understanding the nature and effect of making a power of attorney includes understanding:

1. that the principal may, in the power of attorney, state or limit the power to be given to an attorney;
2. that the principal may, in the power of attorney, instruct the attorney about the exercise of the power;
3. when the power under the power of attorney ceases to have effect;
4. that, if the power under a power of attorney ceases to have effect, the power to make decisions in relation to, and the terms or information about exercising the power, are not affected;
5. that the principal may revoke the power of attorney or make the power of attorney subject to a condition that the principal may revoke the power of attorney;
6. for enduring powers of attorney only—
  - a that the power given by the principal continues to have effect if the principal becomes, or remains, with impaired decision-making capacity; and
  - b that, at any time the principal is not capable of revoking the power of attorney, the principal cannot effectively oversee the use of the power.

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<https://www.legalconsolidated.com.au/ending-poa-introduction/>

*(A person has decision-making capacity if the person can make decisions in relation to the person's affairs and understands the nature and effect of the decisions (see Powers of Attorney Act 2006, s 9 (1).)*