

## ***Estate Planning***

### **Enduring Powers of Attorney**

#### **1. What is an Enduring Power of Attorney?**

An Enduring Power of Attorney is a legal document that allows someone to make decisions on your behalf particularly if you are incapacitated it continues even if you lose capacity to make decisions.

You can appoint attorneys for financial, personal and health matters. You can appoint more than one attorney and nominate the way in which your attorney makes decisions (for example, any one, all or a majority can make decisions for you). You can have a different person as a financial attorney and personal/health attorney.

#### **2. Commencement of Your Power of Attorney**

You can specify that your attorney's powers in relation to financial matters begin immediately (the date you sign the document) or commence on a date specified by you or on a specified occasion.

Your attorney's powers in relation to personal and general health care matters begin only if you are incapable of understanding the nature of and foreseeing the effects of a decision or of communicating that decision.

#### **3. What are Personal and Health Matters?**

Personal matters include decisions such as where and with whom you live. Health matters include all decisions about your health care. Your attorney can consent to the withdrawing or withholding of life-sustaining medical treatment if, for instance, you become terminally ill or are in a state of permanent or persistent unconsciousness.

You can give instructions about health care decisions if you make an Advance Health Directive. This overrides any decision of your attorney.

#### **4. What are your Attorney's Responsibilities?**

The duties of your attorney include:

- (a) acting with honesty and care;
- (b) recognising your right to confidentiality and dignity;
- (c) taking into account your existing relationships, values and culture; and
- (d) respecting your views and wishes.

#### **5. What happens if you do not have an attorney to act for you?**

Depending on your individual circumstances, the problems could be far-reaching if you are injured or become ill and do not have the capacity to make your own decisions.

Financial matters may be dealt with on an informal basis in some cases. However if you do not have an Enduring Power of Attorney and formal authority is needed for a transaction, or if disagreements between family members arise, the Guardianship and Administration Tribunal decides the appointment of an administrator. By making an Enduring Power of Attorney you choose the trusted person to administer your financial, personal and health affairs for you.



Also, if you are a member of a self-managed superannuation fund you may not be able to remain a member, and your benefits may have to be transferred to a retail fund.

## **6. Advance Health Directives**

An Advance Health Directive is a document which provides instructions about your choices for future health care and comes into effect only if you are unable to make your own decisions. If you wish to complete an Advance Health Directive, you will need to consult with a doctor in relation to the document.

*These comments and opinions are of a general nature and are based on Cooper Grace Ward's interpretation of the law as at the date the document was prepared. The position may alter if the law changes as a result of legislation, new rulings or cases.*

