

## **INFORMATION BROCHURE-** **ENDURING POWERS OF ATTORNEY**

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

A power of attorney is a document authorising a person to act on behalf of another person. A power of attorney which is described as an enduring power of attorney continues to operate even after the person giving the power (the “Donor”) loses legal capacity. Hence enduring powers of attorney are useful tools from an estate planning perspective.

If, for example, you were going overseas or required hospitalisation, signing a power of attorney would allow someone you trust to act on your behalf in your absence.

The three types of enduring powers of attorney are:

- Enduring Power of Attorney (Financial);
- Enduring Power of Attorney (Medical Treatment); and
- Enduring Power of Guardianship

### **2. (a) What is an Enduring Power of Attorney (Financial)?**

An Enduring Power of Attorney (Financial) allows you to appoint someone you trust to handle your financial affairs. The most powerful feature of the Enduring Power of Attorney (Financial) is that it will continue to operate if you become mentally or physically incapable of managing your own affairs.

#### **(b) Why have an Enduring Power of Attorney (Financial)?**

- If you travel overseas, you can appoint someone to look after your financial affairs at home.
- If you are involved in an accident at home or at work you can appoint a close relative or friend to handle your financial affairs whilst you are sick.
- Unless you have a financial power of attorney, banks, phone carriers, utility companies etc will not deal with any person other than is named on the account regardless of circumstances.
- If you are too sick to look after your own financial affairs, if you do not have a financial power of attorney, your family will have to apply to Court for an administration order which can be time consuming and costly.

### **3. (a) What is an Enduring Power of Attorney (Medical Treatment)?**

An Enduring Power of Attorney (Medical Treatment) gives the person you appoint the authority to make decisions about medical treatment on your behalf if you become incompetent through ageing, physical or mental illness or injury. The authority only becomes effective if you become legally incompetent ie. unable to make decisions on

your own behalf. Your attorney cannot authorise the refusal of palliative care or facilitate euthanasia.

**(b) Why have an Enduring Power of Attorney (Medical Treatment)?**

An Enduring Power of Attorney (Medical Treatment) gives the person to whom you have given the authority, power to refuse medical treatment generally, or specific medical treatment, if he/she believes that it would cause you undue distress, or if he/she believe you would have thought the treatment was unwarranted. Without an Enduring Power of Attorney (Medical Treatment), your family will not legally be able to make decisions about your medical treatment if you can't make those decisions yourself.

**4. (a) What is an Enduring Power of Guardianship?**

An enduring power of guardianship is a legal document where you (the donor) appoint someone (the guardian) to make personal and lifestyle decisions for you - like where you live and the health care you receive. Enduring means it continues (endures) when you are unable to make these types of decisions for yourself.

**(b) Why have an Enduring Power of Guardianship?**

You can give your guardian any lifestyle decision-making powers you like. For example, where you will live, how your health care should be maintained or who can visit you. It is the only way you can have control over who will make lifestyle decisions on your behalf if you are ever unable to do so yourself. You could lose the capacity to make decisions permanently, such as through dementia or an acquired brain injury from a car accident, or temporarily, by becoming unconscious as a result of an illness.

**5. Who should I appoint as my Attorney?**

By appointing an attorney you are giving the attorney all your powers to make decisions and execute documents relating to your financial and/or medical affairs and/or guardianship matters on your behalf. Therefore it is very important that you only appoint someone that you trust to act as your attorney each power of attorney document. It is common for people to appoint their spouse or adult children as their attorney.

**6. What safeguards exist to ensure that my attorney acts in my best interest?**

The Victorian State Government has enacted legislation which sets out the responsibilities and duties of persons who are appointed to act under either an Enduring Power of Attorney (Medical Treatment) or Enduring Power of Attorney (Financial).

In essence the *Instruments Act 1958 (Vic)* requires an attorney appointed to handle a persons financial affairs to ensure that they act at all times in the best interests of the donor. An attorney must keep detailed and accurate records of any financial transactions made on behalf of the donor. Further, the scope of the attorney's power can be limited when drafting the power of attorney document.

The *Medical Treatment Act 1988 (Vic)* sets out a very strict regime for the making of decisions about medical treatment by an attorney on behalf of a donor. In order for a doctor to act on the instructions of the attorney the attorney must be counselled about

the medical condition of the donor and the options available for treatment. Only if the doctors believe that the donor understands the medical options available will the doctors agree to act on the attorney's instructions.

Likewise, the *Guardianship and Administration Act 1986 (Vic)* outlines a similar set of safeguards for the making of decisions by an attorney for a donor about living, lifestyle and health matters under an Enduring Power of Guardianship.

Another safeguard mechanism which could be incorporated into the power of attorney documents is to appoint two (or more) people that you trust to act as attorneys jointly. That is, no decision that is made may be made by one person unilaterally, rather the decision must be agreed by both attorneys together.

## **7. Where to now?**

Should you be interested in having a medical and financial power of attorney drawn, please call our office on 9692 6500 to make an appointment to discuss your estate planning requirements with one of our lawyers.