

Freecall 1800 621 071

www.attwoodmarshall.com.au

info@attwoodmarshall.com.au

ACN 126 248 208



Attwood Marshall
LAWYERS



Enduring Powers
of Attorney and
Appointments of Enduring
Guardian (NSW)

Freecall 1800 621 071

www.attwoodmarshall.com.au

info@attwoodmarshall.com.au

ACN 126 248 208



Attwood Marshall
LAWYERS



What is an Enduring Power of Attorney?

Power of Attorney is the legal power to make financial decisions on someone else's behalf. 'Enduring' simply means that the power continues even if the person giving it loses the capacity to make decisions.

A Power of Attorney is a convenient method of allowing someone to handle your affairs if you go overseas, take an extended holiday, suffer from poor health, have an accident or reach a stage in your life when you need greater assistance.

An attorney under an Enduring Power of Attorney cannot make decisions about your lifestyle or health; these decisions can only

be made by a guardian (whether an enduring guardian appointed by you or a guardian appointed by the New South Wales Civil and Administrative Tribunal (NCAT) or the Supreme Court).

An Appointment of Enduring Guardian appoints someone to make medical and lifestyle decisions on your behalf in the event that you lose your mental capacity.

A Power of Attorney and Appointment of Enduring Guardian are just as important as a Will.

Whilst a Will operates on your death, a Power of Attorney and Enduring Guardian operate during your lifetime.



Why give someone Enduring Power of Attorney or Enduring Guardian?

There are some circumstances in which you may be unable to make decisions about matters that concern you. For example, you may be overseas, or you may be too ill or incapacitated.

If you give someone a general power of attorney, for instance to sign documents for you in your absence, that power will come to an immediate end if for some reason you lose your capacity to make decisions. This could be extremely inconvenient if your attorney is in the process of conducting business affairs for you.

Giving someone enduring power means that they are able to continue to act for you if you lose capacity to act for yourself. For example, if you develop a medical condition (such as Alzheimer's or dementia), suffer a head injury or have a stroke which results in you being left in a vegetative state, you may still live for quite a long time but be completely unable to handle your own financial affairs.

If you required medical or dental treatment (which usually requires a consent form to be signed) this could not be undertaken if you have lost your mental capacity. Your appointed guardian can do this for you.

Similarly, if you need to be moved into a nursing home or similar care facility because your condition has deteriorated, your guardian can make the necessary arrangements on your behalf with the health authority.

You should safeguard your affairs by making an Enduring Power of Attorney and Appointment of Enduring Guardian now, whilst you are in good health and able to decide who you wish to be legally appointed to act on your behalf.

What types of decisions can an attorney/guardian make?



Financial Decisions

An example of a financial matter that can be made by your attorney is deciding how your income should be invested, buying/selling property or dealing with government departments such as Centrelink.



Health & Lifestyle Decisions

This can include decisions about where and with whom you live, whether you work or undertake education or training, whether you apply for a licence or permit, day-to-day issues like diet and dress, and whether to consent, refuse to consent or withdraw consent to particular types of health care for you (such as an operation).



Who should I appoint as my attorney/guardian?

Your appointed attorney must be over the age of 18 years and must not be bankrupt. Your appointed guardian must be over the age of 18 years, must not be your health care provider (ie your doctor) or a paid carer (receiving a carer's pension does not preclude a person from being your guardian). Your attorney/guardian could be a close family member (such as a spouse or child), a trusted friend or professional advisor (such as an accountant or lawyer).

You should ask the person you want to appoint if they will agree to be your attorney/guardian. You should only appoint a person you can trust to look after your affairs. You may want to appoint more than one attorney/guardian.

Most couples appoint each other as their sole attorney and guardian and this is usually fine. However, there can be some difficulties when couples have children from previous marriages. Sometimes it might be wise to appoint one of your own children or an independent person as a co-attorney/guardian with your spouse.

Many parents appoint the eldest child or one of their children to be their attorney/guardian in the event that something happens to one or both of them. This can be fraught with difficulty. If you appoint a single person, no matter how trustworthy they are, this can place a lot of pressure on them and leaves the door open for abuse or just bad decisions to be made.

You should consider always appointing 2 or 3 children jointly as a simple majority to make sure that your affairs are handled correctly. Many parents have difficulty in appointing their children either singularly or together because they

do not trust them or their children do not get on. In these circumstances, it may be appropriate to consider appointing an independent person to handle your affairs, especially for financial matters (e.g. your lawyer or accountant).

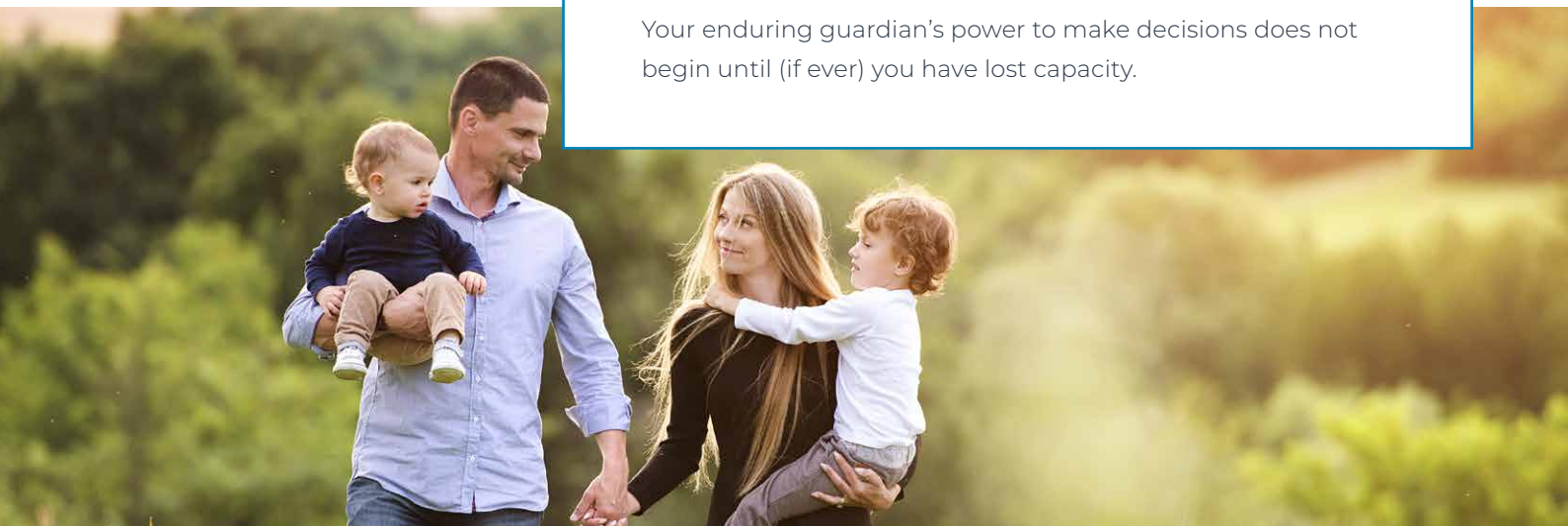
Another variation of this is to appoint a professional person to act jointly with 1 or 2 of your children. There are fees payable to a professional person if you appoint them to conduct this role but in many cases these fees are quite modest and are worth every penny if this guarantees that your affairs will be handled correctly when you are unable to make your own decisions.

When does the attorney's power begin?

You may nominate when your attorney's power is to begin. If you do not name a date or an occasion, it begins immediately. On the other hand, if you lose the capacity to make such decisions before the date or occasion you name, the power begins at that point. Even if you give your attorney power immediately, you may also continue to make decisions yourself while you are able to do so.

When does the guardian's power begin?

Your enduring guardian's power to make decisions does not begin until (if ever) you have lost capacity.



Freecall 1800 621 071

www.attwoodmarshall.com.au

info@attwoodmarshall.com.au

ACN 126 248 208



Attwood Marshall
LAWYERS



What happens if you do not have an attorney/ guardian to act for you?

Depending on your circumstances, the problems could be far-reaching if you lose capacity without appointing an attorney/guardian. There is a possibility that your affairs may be handled by a government department, for a fee.

In some circumstances financial matters may be dealt with on an informal basis. 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 Tribunal decides the appointment of an administrator.

This can be a lengthy and frustrating experience at a time when stress levels are very high. By making an Enduring Power of Attorney and Appointment of Enduring Guardian you choose the trusted person to administer your financial, personal and health affairs for you.

What is 'capacity'?

To make an Enduring Power of Attorney and Appointment of Enduring Guardian you must be an adult capable of making your own personal and financial decisions. Having the capacity to make decisions means that you can:

- understand the nature and effect of a decision
- freely and voluntarily make those decisions; and
- communicate the decisions in some way

You also need to understand the nature and effect of an Enduring Power of Attorney and Appointment of Enduring Guardian including the contents of the document, consequences of preparing the document and when the power begins.

Freecall 1800 621 071

www.attwoodmarshall.com.au

info@attwoodmarshall.com.au

ACN 126 248 208



Attwood Marshall
LAWYERS

Meet our Wills & Estates team:



Jeff Garrett
Legal Practice Director
07 5506 8201 | 0419 304 174
jgarrett@attwoodmarshall.com.au



Donna Tolley
Department Manager
07 5506 8241 | 0423 772 555
dtolley@attwoodmarshall.com.au



Angela Harry
Partner
07 5506 8211 | 0423 773 686
aharry@attwoodmarshall.com.au



Debbie Sage
Partner
02 6670 1006 | 0421 666 663
dsage@attwoodmarshall.com.au



Hayley Condon
Senior Associate
07 5553 5805 | 0413 486 402
hcondon@attwoodmarshall.com.au



Zoe Booth
Associate
07 5506 8243 | 0418 169 797
zbooth@attwoodmarshall.com.au



Xara Coassin
Associate
07 5506 8249 | 0499 799 511
xcoassin@attwoodmarshall.com.au



Larisa Kapur
Associate
07 5506 8205 | 0449 731 979
lkapur@attwoodmarshall.com.au



Alison Kelly
Associate
07 5506 8209 | 0473 121 136
akelly@attwoodmarshall.com.au



Natalie Comerford
Lawyer
07 5506 8231 | 0499 533 844
ncomerford@attwoodmarshall.com.au



Romy Garrett
Law Graduate
07 5506 8275
romy@attwoodmarshall.com.au



Rhiannon Garrett
Law Graduate
07 5553 5804
rgarrett@attwoodmarshall.com.au



Joseph Dove
Paralegal
07 5536 9777 | 0498 188 422
jdove@attwoodmarshall.com.au



Dakota Rowles
Paralegal
07 5536 9777 | 0452 057 223
drowles@attwoodmarshall.com.au



Bindy Marshall
Paralegal
07 5536 9777
bmarshall@attwoodmarshall.com.au



Melinda Southon
Paralegal
07 5536 9777
msouthon@attwoodmarshall.com.au

HELPFUL ARTICLES

Our legal team consistently produces informative blogs covering topics related to Wills, estates and pertinent legal cases. To read any of our articles, please visit: <https://attwoodmarshall.com.au/news/>

Helping people and changing their lives for the better.

Integrity. Understanding. Responsibility.

Coolangatta

72 – 80 Marine Parade,
Coolangatta
PO BOX 334,
Coolangatta
QLD 4225

Open:

Mon: 7.30am - 5.30pm
Tue: 7.30am - 5.30pm
Wed: 7.30am - 5.30pm
Thur: 7.30am - 5.30pm
Fri: 7.30am - 5.30pm
Sat: Closed
Sun: Closed

Robina Town Centre

Shop 4135, Robina
Town Centre,
Robina
PO BOX 4358 Robina
QLD 4230

Open:

Mon: 8.30am - 5.00pm
Tue: 8.30am - 5.00pm
Wed: 8.30am - 5.00pm
Thur: 8.30am - 9.00pm
Fri: 8.30am - 5.00pm
Sat: 9.00am - 12.00pm
Sun: Closed

Southport

Suite 10, Level 10,
36 Marine Parade
(Commercial Tower),
Southport QLD 4215

Open:

Mon: 8.30am - 5.00pm
Tue: 8.30am - 5.00pm
Wed: 8.30am - 5.00pm
Thur: 8.30am - 5.00pm
Fri: 8.30am - 5.00pm
Sat: Closed
Sun: Closed

Kingscliff

Level 2, Suite 24,
42 Pearl Street,
Kingscliff
PO BOX 1413 Kingscliff
NSW 2487

Open:

Mon: 8.30am - 5.00pm
Tue: 8.30am - 5.00pm
Wed: 8.30am - 5.00pm
Thur: 8.30am - 5.00pm
Fri: 8.30am - 5.00pm
Sat: Closed
Sun: Closed

Brisbane

Level 27 Santos Place
32 Turbot Street Brisbane
QLD 4000

Sydney

Level 25, 100 Mount Street,
North Sydney
NSW 2060

Melbourne

Level 2, Riverside Quay,
1 Southbank Blvd, Melbourne
VIC 3006

Contact Attwood Marshall Lawyers on **1800 621 071** or email info@attwoodmarshall.com.au to speak to one of our experienced lawyers today.



Attwood Marshall
LAWYERS