

Guide for service providers:

understanding power of attorney

What is a power of attorney?

A power of attorney (POA) is a legal document that allows a person (donor) to give another person (donee) the power to act on their behalf. This can include decisions about finances, property, or legal matters.

The donee is required to exercise powers with reasonable diligence to protect the interests of the donor.

The person appointed to act on behalf of the donor must agree to the role and responsibilities.

Who can make a power of attorney?

Any person who is over 18 and has decision-making capacity (for example, they can understand the nature and effect of making the document and can communicate this).

If there are concerns that someone does not have decision-making capacity, a doctor's written opinion is recommended. This can include a geriatrician or a neuropsychologist.

Types of power of attorney

General power of attorney:

- used to manage financial or legal matters for a limited time or specific purpose
- only valid while someone still has capacity to make decisions
- ends if someone loses decision-making capacity or passes away.

Enduring power of attorney (EPA):

- a person can appoint someone to manage their financial and legal matters in the event they suffer a mental incapacity (such as illness, dementia, or injury) or
- a person can specify when the EPA comes into effect
- continues even after someone loses decision-making capacity.

When is it needed?

A person might set up a power of attorney if they:

- are going overseas or into hospital
- are preparing for future planning as they age
- want peace of mind that someone they trust can help if they become unwell or unable to manage their affairs.

What can a donee do?

A donee can:

- make financial decisions in a person's best interests
- pay bills and manage bank accounts
- buy or sell property
- sign legal documents.

A donee **cannot** make lifestyle, healthcare, or medical decisions. Those decisions are made under **Advance Care Directives**.

Where to get a power of attorney

In South Australia, here is where to get help:

- A private lawyer
- Use the do-it-yourself **Enduring Power of Attorney Kit** produced by the Legal Services Commission and the Office of the Public Advocate
- Download a copy from the Legal Services Commission website:

 lsc.sa.gov.au

- Purchase hard copy forms from any Service SA centre

It's best to get legal advice before setting up a power of attorney.

How to cancel (revoke) power of attorney

A person can cancel (revoke) a power of attorney at any time as long as they still have decision-making capacity.

To revoke it:

1. Complete a **Revocation of Power of Attorney** form (included in the **Enduring Power of Attorney Kit**).

2. Notify the donee(s) in writing.
3. Inform any organisations or institutions (such as the bank) that held a copy of the document.

What if the power of attorney is not doing the right thing?

If there are concerns that someone is misusing a power of attorney:

- Consider the type of power of attorney document.
- Document specific examples or evidence of the misuse.
- Speak with the person (donor) about your concerns and establish their wishes, and help them take safeguarding actions (for example, changing online banking details)
- If you are concerned about the donor's decision-making capacity, report it to the relevant bank or financial institution and seek advice about whether an administration order may be required to protect the person's finances.

If you are unsure the Adult Safeguarding Unit can provide free, confidential information, advice and support.

A copy of the **Contacts for Safeguarding Assistance Information Sheet** is available for agencies.

Contact us:



1800 372 310

(weekdays 9:00am to 4:00pm)



adultsafeguardingunit@sa.gov.au



adultsafeguardingunit.sa.gov.au

More contacts

Legal Services Commission:



1300 366 424

Office of the Public Advocate:



1800 066 969



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