

Being a Brilliant Attorney

How to support the people you care for when acting as an attorney

Have you been nominated as an Attorney under an Enduring Power of Attorney in Queensland for a family member or friend?

It is important you understand your duties and obligations as an attorney. This includes key principles which support a person's human rights, autonomy and dignity.

Are you aware of your role?

The Enduring Power of Attorney document may have been drawn up in good faith many years ago. Attorneys should review the document to understand:

- the areas they been appointed as a decision maker for - financial decisions only, personal decisions only, or both;
- any specific limitations placed on the attorney and
- when an attorney's authority takes effect.

Attorneys can be nominated to make financial decisions straight away or at a later date, perhaps once a person has lost capacity.

An attorney's authority to make personal decisions only commences when the loss of a person's capacity has been confirmed.

Have you checked in?

The key to being a good attorney is keeping a human rights focus, remembering that all adults, be they younger or older, have the same human rights as others in the community, and allowing the person to be informed and participate in decisions that concern them.

Have you talked to the person you are supporting to get their views and wishes? Ask questions and use what you know about the person. It might need to be a repeated conversation breaking it down into small pieces over time. Talk to other family members and friends to get their knowledge of what the person's preferences are.

Supported decision-making

Everyone must be afforded the opportunity to give an indication about what their wishes and preferences are. People of all cognitive abilities must be asked. Attorneys should not simply make decisions on their own.

It needs to be a supported decision-making process. It is the responsibility of Attorneys to support someone to make decisions, and otherwise make decisions that they would have normally made (Substituted Judgement).

You can use helpful resources such as Supporting Decision-Making - A guide for people living with dementia, family members and carers (available at www.adalaw.com.au/future-planning).

What happens if I don't agree with the person's wishes?

We know people usually want to make decisions for others from a place of well-meaning and what they think is the best thing to do, but the person's views and preferences must be kept at the forefront.

The right to make decisions is fundamental to the person's dignity and includes the right to make decisions which others may not agree.

ADA Australia can provide support and advice.



The Right things to do

Be aware

.....do you know your responsibilities and legal obligations as stated in the Powers of Attorney Act 1998 (Qld), including the General and Health Principles?

Be prepared

.....have you revisited the Enduring Power of Attorney document and know your scope of powers?

Be inclusive

.....have you talked to the person and shared information to understand their views and preferences?

Be collaborative

.....are you talking with the person's other attorneys or family and supporters to get their knowledge and views?

Use resources

.....have you looked at resources available online to assist with communication and supported decision making?

Ask for advocacy

.....did you know there are free advocacy services available to assist people with impaired decision making capacity.

Supported Decision Making Steps and Principles

Supported Decision Making with people who have cognitive challenges

1. **What** is the decision to be made. Assume the person can make decisions with assistance.
2. **Prepare** for making the decision. Get all the information you both will need.
3. **Consider the best situation** for making a decision. The best time for and wellness of the person.
4. **Communicate** with the person. Involve the person and provide the information in a way they can understand to get their views.
5. **Facilitate** the decision. Provide the implications of all options, consider the balance of dignity versus risk and safety, and avoid applying your own bias.
6. **Uphold** the decision. Keep the person updated, and seek feedback.

The seven decision making principles¹



¹Victorian Government Department of Human Services, 2012, *Supporting decision making: a guide to supporting people with a disability to make their own decisions*.

Powers of Attorney Act 1998

www.legislation.qld.gov.au

ADA Law

www.adalaw.com.au

Office of the Public Guardian

www.publicguardian.qld.gov.au

Dementia Australia

www.dementia.org.au

Enduring Power of Attorney forms

www.publications.qld.gov.au

Public Trustee of Queensland

www.pt.qld.gov.au

Queensland Civil and Administrative Tribunal (QCAT)

www.qcat.qld.gov.au

 **ADA Australia**
Your aged and disability advocates



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Community Legal Service

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www.adaaustralia.com.au