

Making Decisions Supporting clients and assisting Attorneys

Inclusion not substitution

It is important that aged care providers understand the legislation and best practice when it comes to interacting with client decision makers such as an attorney appointed under Enduring Powers of Attorney.

Have you seen the documentation?

The Enduring Powers of Attorney document must be reviewed to confirm:

- the document is valid, that is, it has been signed and witnessed
- that the person has in fact been nominated as the attorney; and
- the areas the attorney has been appointed as a decision maker for: financial decisions only, personal decisions only, or both.

Has the attorney checked in?

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

Attorneys should have a conversation with the person they are supporting about the matter. Also, if clients have fluctuating capacity, arrange for them to talk with their Attorney at a time which works best for them. It might need to be a repeated conversation breaking it down over time.

How should decisions be made?

Everyone must be afforded the opportunity to say what their wishes and preferences are, including people with cognitive impairment. Attorneys should not simply make decisions on their own.

Decisions should be made through a supported decision making process, and it is the responsibilities of Attorneys to include the person, support their decision making and otherwise make decisions that they normally would make (called Substituted Judgement).

What happens when there is disagreement?

The person's views and preferences must be kept at the forefront. The right to make decisions is fundamental to a person's dignity and includes the right to make decisions which the Attorney or others may not agree.

Check if the decision is within the Attorney's scope. Often, a client can have their Attorney managing their finances, but can continue making their own decisions about personal or health matters.

Refer the person to contact ADA Australia. We have a network of advocates across Queensland who can support older people to talk to their Attorney and represent their views. These services are free, independent and confidential.

When does an Attorney need to be involved?

On a day-to-day operational level it is useful for aged care staff to think about the significance of the decision at hand. If it is something you can easily ask the person, then do so. Assume that the client can make decisions with some assistance. If you think the decision is outside of the person's capacity, then you may also need to speak to their Attorney.



The Right things to do

Be aware

.....do you know the responsibilities and legal obligations for attorneys?

Be vigilant

.....is the attorney informing and including or overstepping?

Be prepared

.....do you have the information you need about the attorney's powers - have you seen the Enduring Power of Attorney document?

Support advocacy

.....support access to advocates and mediation processes.

Important information

Powers of Attorney Act (Qld) 1998

.....the General and Health Principles

Dementia Australia

.....tools for communication and supported decision making

ADA Law

.....information on duties, responsibilities and rules for acting as an attorney in Queensland.

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 the information all parties 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

 **ADA Law**
Community Legal Service

1800 700 600
www.adaaustralia.com.au