



A B K J LAWYERS  
ADAMSON BERNAYS KYLE & JONES

## THE IMPORTANCE OF AN ENDURING POWER OF ATTORNEY

**What happens to your financial and health if you become incapacitated for any reason (such as a car crash or other accident)?**

**What if you are overseas, or away from home, and cannot sign a document which needs urgent attention?**

**What happens when you become elderly and just can't keep up with the demands of your finances, and everything is just too complicated?**

**Who is able to help you when you can't help yourself?  
Who is able to assist you and make decisions on your behalf?**

May we take this opportunity to draw your attention to the existence of a document called an "Enduring Power of Attorney"? An Enduring Power of Attorney enables a person to appoint one or more persons to act as an attorney to make financial or personal/health decisions (or both) on their behalf. If a financial attorney is appointed, that attorney can be given the power to make decisions on your behalf immediately or at some later date (such as if you lose your decision-making ability, otherwise known as capacity). That power will continue even should you lose the capacity to make decisions yourself in the future. A personal/health attorney is given the power to make decisions on your behalf will only be entitled to do so if you lose the capacity to make your own decisions.

Everyone should face the possibility that through accident, illness or simply old age, they may one day no longer be able to take proper care of their affairs.

Should a person become mentally or physically incapacitated without having executed an Enduring Power of Attorney, The Adult Guardian (formerly the Public Trustee), which is a government body, may assume legal responsibility for their affairs. This would mean your family would need to deal with The Adult Guardian with respect to any financial or commercial matters, and as the decision-maker of last resort where there is no attorney with power to make health care decisions.

If an Enduring Power of Attorney is executed prior to your injury or illness, the person in whose favour the Enduring Power of Attorney has been granted has the authority to act on your behalf. However, we point out that a Power of Attorney is a very powerful document. An Enduring Power of Attorney for financial matters gives the person/s in whose favour it is given the power to carry out a range of activities including the sale of property and withdrawal of proceeds from bank accounts. You must therefore trust the person/s to whom you give an Enduring Power of Attorney for financial matters with everything that you own.

A person appointed under an Enduring Power of Attorney for health matters may make a decision regarding your health care that you may not have chosen yourself. You must therefore trust the person/s to whom you give an Enduring Power of Attorney for health matters to make decisions that you would have made yourself. It is wise to discuss these issues with your attorney when they are appointed.

Should you wish to discuss the need for an Enduring Power of Attorney further, please do not hesitate to contact a solicitor at ABKJ Lawyers.

# WHY SHOULD I HAVE A WILL

A Will is a document that gives your direction as to the distribution of the assets (known as your 'Estate') which you own upon your death.

Australians commonly acquire a number of assets during their lifetime such as their home, a car, money in a bank account, shares in a company, a business, a jewellery collection, etc. We also have various benefits which become owing to us given the right conditions, such as superannuation benefits, life insurance, etc. After spending so much time collecting these assets, we want them to be passed to people of our own choosing.

If you do not have a Will, there is legislation which prescribes what is to happen to your assets when you die (known as 'intestacy'). However, while that may be the case, the distribution of your assets pursuant to the intestacy

rules will probably not be how you wish your assets to be divided if you had been able to make the decision yourself. It will also involve your family and/or friends spending a potentially significant amount of time, money and effort to have your Estate appropriately finalised and distributed pursuant to the relevant law.

Having a Will in the majority of cases simplifies the manner and administration of your Estate, and provides certainty as to what happens with your Estate.

A Will should appoint the person/s who you wish to administer your Estate (known as your 'Executor'), and give direction as to the distribution of your assets after payment of your liabilities. It can also set out your wish (which is not a binding direction) for your burial/cremation, final resting place, and the guardianship of your minor children.

## RECONSIDERING YOUR WILL

We recommend that you review your Will every two or three years, or whenever a major event occurs in your family, your assets, the Superannuation Laws or the Taxation Laws (to make sure the Will is still what you want).

### IN PARTICULAR, YOU SHOULD CONSIDER UPDATING YOUR WILL IF:

- » You change your name or anybody named in your Will changes theirs;
- » An Executor dies or becomes unwilling to act as Executor or becomes unsuitable due to age, ill health or any other reason;
- » A beneficiary (someone who has been left something in the Will) dies;
- » You have specifically left any property which you subsequently sell or give away or put in trust or into a partnership or which changes its character;
- » If you marry, divorce, enter into or end a de facto relationship, or if you have children not provided for in your Will (including adopted or fostered children);
- » A beneficiary becomes a Bankrupt (or is a potential Bankrupt).

Legislation sets out the requirements for creating a proper and valid Will. We recommend that you seek professional advice in that regard because even the simplest changes must be correctly done or the consequences may be disastrous.

Should you wish to discuss the need for a Will, please do not hesitate to contact a solicitor at ABKJ Lawyers.

## LEGAL COSTS

The costs associated with preparation of the usual forms of husband and wife Wills and Enduring Powers of Attorney are set out in the below schedule. More complex documentation would incur additional costs, and we would be able to provide an estimate of relevant fees once a client's requirements are known.

### THE WORK WHICH IS COVERED BY THESE FEES INVOLVES:

- » Meeting with the client to discuss the issues and take instructions for the required documents;
- » Preparation of draft documents and forwarding those drafts to the client for review and approval;
- » Subsequently meeting with the client to sign and witness all documents.

A free service is provided (if required) to hold all signed documents in secure storage, and copies of those signed documents are forwarded to the client.

### USUAL FORM OF HUSBAND & WIFE WILLS & ENDURING POWERS OF ATTORNEY PRICES:-

	WILL	EPOA	PACKAGE (Will & EPOA)
<b>SINGLE PERSON</b>	\$300.00 + GST	\$300.00 + GST	\$400.00 + GST
<b>HUSBAND &amp; WIFE (Couple)</b>	\$500.00 + GST	\$500.00 + GST	\$600.00 + GST