

# Your life, your choice

Planning for your future



Victorian Aboriginal  
Legal Service

Victorian Legal Services  
BOARD + COMMISSIONER



Office of the  
Public Advocate

## **Your life, your choice**

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Original artwork by Gary Saunders, a Bangerang-Wiradjuri man.

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## Making decisions

In Aboriginal families, decisions are made in a number of ways such as:

- ◉ by talking to other family members
- ◉ the head of the family may be expected to make decisions for other family members
- ◉ adult children may be expected to make decisions for other family members.

## Decision-making capacity

When you are able to make your own decisions, you have **decision-making capacity**.

Decision-making capacity is when you can:

- ◉ understand, remember, and use information to make a decision
- ◉ communicate your decision.

The law in Australia says: **you** make the decision. No one else has the legal authority to make decisions for you, not even your partner or parents, if you are 18 years of age or over.

## When you can't make decisions

Life is unpredictable and accidents and illness can happen which may prevent you from making your own decisions. This could lead to your family disagreeing about who can make decisions for you about matters such as your money, who can visit you or your medical treatment.

## Planning for your future

You have the right to make your own decisions. But, in the future, you might have an illness or accident that means you can't make decisions.

You can choose someone **now** to make decisions for you, just in case something happens to you.

It's called 'making an **enduring power of attorney**'. A power of attorney is made in a legal form but you don't need a lawyer to prepare it.

An attorney is the person you choose to make decisions for you should anything happen to you. This can be a family member or a friend.

You should choose someone you trust and who knows you well.

Anyone over 18 years of age can make an enduring power of attorney, as long as they understand what they are doing.

You can make an enduring power of attorney for both **personal and financial** matters on the one form, and you decide when that power starts. You can choose more than one person to be your attorney, and you can also choose a back-up person, called 'an alternative'.

**Remember:** The person you choose is called an ‘attorney’ and you can choose more than one person.

## Enduring power of attorney for financial and personal matters

You can choose someone **now** to make decisions for you about personal or financial matters if, in the future, you cannot make these decisions. You can choose one person or more than one.

Examples of personal matters:

- ◉ where you live
- ◉ what services you need
- ◉ who can see you.

Examples of financial matters:

- ◉ paying your bills
- ◉ going to the bank and withdrawing money
- ◉ selling your house, if this needs to happen.

There is one form for making this enduring power of attorney. You must sign the form in front of two witnesses. One of the witnesses must be a doctor, a Justice of the Peace or a sergeant at your local police station. Members of your family cannot be one of the witnesses.

**Remember:** Only make an enduring power of attorney if there is someone you trust to make decisions for you.

### Vera's story



Vera makes an **enduring power of attorney**.

Vera chooses her husband to be her attorney for **financial matters**.

Vera chooses for the power to start immediately for financial matters. She did this because she wants her husband to be able to help her with the finances.

Because Vera can make her own decisions, she will tell her husband what she wants him to do. For example, if Vera is feeling unwell she might ask her husband to withdraw money from her bank account to pay a bill.

**Remember:** While Vera can make her own decisions, she is the one who tells her husband what to do for her. If one day, she becomes ill or has an accident and cannot make her own decisions, then her husband will make financial decisions which are in Vera's best interests.

Vera also chooses her husband to be her attorney for **personal matters**. Vera chooses for the power to start only when she cannot make these types of decisions.

Vera also chooses a back-up for her attorney, called an ‘**alternative attorney**’.

Vera chooses her daughter as back-up for her husband.

Vera chooses her daughter in case her husband dies before her, or becomes ill and is unable to act.

Vera’s daughter:

- is trusted by Vera
- lives close by
- is good at paying bills on time.

Vera doesn’t choose her oldest son as back-up attorney because she knows he’s busy with his work and doesn’t have a lot of time.

**Remember:** You can choose more than one attorney. It can be a family member or a friend. The person you choose should know you well and they should understand what it means to be your attorney. It is important that you talk to them and the rest of your family about what you want or don’t want in case you become ill or have an accident. Sometimes it isn’t easy to have these types of conversations but it will help your attorney and your family to make the best decisions for you.

## Supportive attorney

A supportive attorney appointment is a little different to an enduring power of attorney. It is where you continue to make your own decisions, however, you choose someone to help you to do this. It is designed to promote the rights of people with a disability to make their own decisions. Sometimes it is not easy making decisions or talking to organisations such as hospitals, banks and or electricity, gas and phone companies. You may have a disability that makes it hard to communicate or maybe you are just not comfortable with making those kinds of calls or enquiries.

You can appoint a ‘supportive attorney’ where you choose someone, a family member or friend, to **support you** to make your own decisions. It is made in a legal form, where the person you choose has the authority to talk to services on your behalf, get information about you on your behalf and talk about what you want.

You are still in charge!

### Kevin’s story



Kevin’s short-term memory has been affected because of a car accident. He runs his own business but sometimes needs a little help with the finances due to his memory loss. He asks his friend to be his supportive attorney to help him when talking to the banks and managing his finances. If Kevin’s memory gets worse and he loses his capacity to make decisions, then the arrangement is no longer valid.

## Medical treatment decisions

You can choose someone now to be your **medical treatment decision-maker** if something happens to you in the future and you can no longer make these decisions for yourself.

By doing this, you are giving this person the legal authority to consent to or refuse treatment on your behalf. The person you choose should be someone you trust to respect and carry out your wishes. This could be your partner or an adult child. You can only choose one person.

If it is an emergency, the doctors can treat you without getting consent.

If you haven't chosen a medical treatment decision-maker, don't worry; the doctors can talk to a family member such as, your partner, carer, adult child, parent or brother or sister.

If you don't have anyone, the Office of the Public Advocate can act on your behalf.

## Advance care planning

Advance care planning is when you make a plan for your future health and personal care.

You do this by writing down what you want or do not want if you get sick. This is called an '**advance care plan**'. It can help your family to make medical treatment decisions for you so they don't have to guess or disagree about what you would want.

For example, under certain circumstances, you might decide that you don't want to be revived.

### Vera's story cont'd.



Vera chooses her daughter to be her medical treatment decision-maker and talks to her daughter about her advance care plan.

Her daughter understands Vera's wishes and is confident speaking to doctors, unlike Vera's son who doesn't understand medical terms that well.

## When things go wrong

In any family there can be family problems. The person you have chosen to be your attorney might do something wrong, like take your money and spend it on themselves. Sometimes it isn't easy to talk about these issues and it might help to talk to other family members about your concerns.

## Archie's story



Archie appointed his son, Simon, as his financial attorney. Archie isn't doing too well and has dementia.

Archie's brother is worried about the decisions Simon is making for Archie. He thinks Simon is not doing the right thing and is not acting the way an attorney should. He thinks Simon is using Archie's money for himself.

Archie's brother can talk to the Victorian Aboriginal Legal Service or the Office of the Public Advocate about his concerns. He can also ask VCAT for help.

## VCAT

The Victorian Civil and Administrative Tribunal (VCAT) has the power to cancel an enduring power of attorney.

VCAT might decide that Simon can't be an attorney anymore. VCAT might ask the Office of the Public Advocate to investigate the matter.

## What if I don't make a power of attorney?

If you don't make a power of attorney and something happens to you, like an illness or an accident and you can't make decisions for yourself, then you may need a guardian.

## Guardianship

VCAT can appoint a guardian to make lifestyle decisions such as where you live.

VCAT can only appoint a guardian if:

- there is medical evidence of your disability or illness
- there is a current lifestyle decision (such as where you live) that needs to be made
- there is conflict in your family about the decision that needs to be made.

A guardian is given the legal authority by VCAT to make decisions for you. A guardian could be a family member or an advocate guardian from the Office of the Public Advocate.

A guardian can make decisions for you about:

- where you live
- what medical treatment you should have
- what support or services you should have
- who can have contact with you.

You can tell your guardian how you feel about these things. The guardian must think about your wishes when they make decisions.



## Administration

The management of your financial and legal affairs is called 'administration'. If you cannot make decisions about your financial affairs because of an accident or illness, then VCAT can appoint an administrator to look after your money. An administrator can be a family member, friend or a financial organisation.

An administrator can:

- pay your bills
- sell your property, if you need this to happen
- give you money to live on.

An administrator must not use your money for their own personal use. They can only use your money to pay your expenses and must make decisions which are in your best interests.

## Where to get help?

### **Office of the Public Advocate (OPA)**

Level 1, 204 Lygon St  
Carlton VIC 3053  
Phone: 1300 309 337  
TTY: 1300 305 612  
Email: [opa\\_advice@justice.vic.gov.au](mailto:opa_advice@justice.vic.gov.au)  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

### **Victorian Aboriginal Legal Services (VALS)**

273 High Street  
Preston Vic 3072  
Phone: (03) 9418 5999  
Toll free: 1800 064 865  
Email: [reception@vals.org.au](mailto:reception@vals.org.au)  
[www.vals.org.au](http://www.vals.org.au)



## Victorian Aboriginal Legal Service

**Victorian Aboriginal Legal Service**  
273 High Street, Preston, 3072  
Free call: 1800 064 865  
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## Office of the Public Advocate

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