

Living Wills

In Western Australia, there are 3 documents that you can use to provide for decisions to be made even if you lose mental capacity:

1. **Enduring Power of Attorney**
2. **Enduring Power of Guardianship**
3. **Advance Health Directive**

An explanation of each of them follows.

Enduring Power of Attorney

An Enduring Power of Attorney enables you to appoint someone to make financial and property decisions.

A power of attorney is a power for one person to sign on behalf of another. Ordinarily, your signature is needed to write a cheque, sign a legal document or give an authority. When you give someone else a power of attorney, you give that person power to do those things on your behalf.

A normal power of attorney ends when you revoke it, when you die or when you become mentally incapable.

An Enduring Power of Attorney does not end when you become mentally incapable. Indeed, it is designed to help you to manage your affairs even if you do become mentally incapable. Without an Enduring Power of Attorney, someone must apply on your behalf to the State Administrative Tribunal for the power to manage your affairs and this application both takes time and costs money.

Because an Enduring Power of Attorney allows your chosen attorney to make decisions for you when you are no longer able to make them for yourself (or to stop your attorney from making them), they are very powerful documents. You must only appoint people you trust. For example, even a child of yours may prefer to put you in a care facility and sell your home to pay for it.

Even though an attorney is under a duty to act in your best interests, this still allows a wide discretion. In addition, there may be no third party who is willing and able to supervise your attorney's decisions.

The attorney's duty to act in your best interests limits his or her ability to make gifts on your behalf. If you wish the attorney to have this power, please consider carefully what limits you wish to place on it.

You do not need to register the Enduring Power of Attorney unless you are the registered owner of land in Western Australia. However, if you are, the Enduring Power of Attorney cannot be used for that land unless and until it is registered.

In addition, registration means that a copy of the Enduring Power of Attorney is always available in a form acceptable to many institutions.

Whenever you register the Enduring Power of Attorney, there is a fee payable to Landgate (currently \$135.00 each). However, unless you register it within 3 months of signing it, you will also have to sign a statutory declaration that it has not been revoked.

You may choose one or two attorneys. If you choose two, you may require them to act jointly (so that both their signatures are needed, which may cause logistical problems. In addition, the Enduring Power of Attorney is void if one of them dies or becomes mentally incapable) or individually (so that only one signature is needed).

You may choose a replacement, if your first choice cannot act. Here, too, you may choose one attorney or two and, if two, to act jointly or individually.

You give to your attorney authority to do anything that you can lawfully do by an attorney.

You may impose conditions or restrictions on the power. For example, you may make it a condition that annual accounts are produced to other members of your family or you may restrict the power to the operation of your bank accounts. There is a limit to the type of conditions and restrictions that you may impose.

You may choose whether the power is effective immediately or only after a declaration by the State Administrative Tribunal that you do not have legal capacity. If you choose the latter, the application to the State Administrative Tribunal takes time and costs money.

Enduring Power of Guardianship

An Enduring Power of Guardianship enables you to appoint someone to make personal, lifestyle and treatment decisions.

An Enduring Power of Guardianship is effective only when you are unable to make reasonable decisions about your personal, lifestyle or treatment matters.

The person giving the power is called the appointor.

The person accepting the power is called the guardian.

You may choose one or two guardians. If you choose two, you may choose whether or not the survivor can continue to act on his or her own.

You may choose a replacement, if your first choice cannot act. Here, too, you may choose one guardian or two and, if two, to act jointly or individually.

You may choose to give your guardian full authority to make health care and lifestyle decisions on your behalf or you may list the authorities that you give.

The form includes the following listed authorities but you may add to the list or delete authorities from the list:

- (a) decide where I am to live, whether permanently or temporarily
- (b) decide with whom I am to live
- (c) decide whether I should work and, if so, any matters related to my working
- (d) consent, or refuse consent, on my behalf to any medical, surgical or dental treatment or other health care (including palliative care and life sustaining measures such as assisted ventilation and cardiopulmonary resuscitation)
- (e) decide what education and training I am to receive
- (f) decide with whom I am to associate
- (g) commence, defend, conduct or settle on my behalf any legal proceedings except proceedings relating to my property or estate
- (h) advocate for, and make decisions about, which support services I should have access to
- (i) seek and receive information on my behalf from any person, body or organisation

You may describe the circumstances in which your guardians can act, for example:

- only if your doctor says that you have a diagnosed mental illness;
- only if your guardian is living within 10 kilometres from you.

You may give directions how your guardians are to act, for example:

- that your guardian must continue to consult your GP;
- that any aged care facility must be within 10 kilometres of your daughter.

Advance Health Directive

An Advance Health Directive is a document that contains your decisions about future medical, surgical and dental treatment and other health care.

An Advance Health Directive is effective in relation to a treatment only if you are unable to make reasonable judgments about a treatment decision at the time that the treatment is required. In these circumstances, the Advance Health Directive acts as your 'voice'.

You are able to describe the circumstances that the treatment decision should apply to, and then describe the treatment you either want (give consent to) or do not want (refuse consent to).

Some examples of common circumstances include:

Coma	Life sustaining measures
Dementia	Paralysis
Dialysis	Stroke
Disability	Terminal illness
Disease	Unable to feed, dress or walk by yourself
Life limiting condition	Unable to recognise your family
	Unable to communicate

Some examples of common treatments include:

Antibiotics	Dialysis
Artificial feeding (may also be called Tube feeding/naso-gastric feeding or PEG feeding)	Intensive care
Blood products	Intravenous
Blood transfusion	Intubation
Chemotherapy	Life saving surgery
Cardiopulmonary resuscitation (CPR)	Palliative care
	Pain relief medication
	Ventilation

You may indicate in your Advance Health Directive that you consent to particular treatments. However, doctors and other health professionals are not required to provide treatment that you do not need.

An Advance Health Directive cannot require or authorise a doctor or other health professional to take active steps to unnaturally end your life.

However, the Advance Health Directive can deal with the difficult decision whether your life is to be maintained if it is entirely reliant on life support machines with no prospect of recovering your normal faculties.

One good reason for making this decision for yourself is to avoid the need for your family to make it for you (or to disagree whether or not to make the decision).

You are encouraged to seek both medical and legal advice before making an Advance Health Directive but you are not obliged to do so.

Order of priority for decisions

If urgent treatment is required to save your life or prevent unnecessary pain, health professionals can provide this treatment without seeking consent. However they will need to seek consent for ongoing treatment.

If you are unable to make reasonable judgments about non urgent treatment decisions or ongoing treatment at the time that the treatment is required, the following is the order of priority for making that decision:

- You (by use of an Advance Health Directive)
- Your guardian (with authority in relation to that treatment)
- Your spouse (which includes someone in a de facto relationship with you)
- Your adult child
- Your parent
- Your sibling
- Your primary unpaid caregiver

Where an AHD does not exist or does not cover the treatment decision required, the health professional must obtain a decision for non-urgent treatment from the first person on the list who is 18 years of age or older, has full legal capacity and is willing and available to make the decision.
