



## ENDURING POWERS OF ATTORNEY ORDINANCE Law Society's Comments

The Law Society reviewed the Department of Justice's Consultation Paper on the Enduring Powers of Attorney (Amendment) Bill 2011 in July 2010 and has the following comments:

**1. Amendment to Section 5(2) of the Enduring Powers of Attorney Ordinance ("EPAO") to abolish the requirement that an enduring power of attorney ("EPA") must be signed before a registered medical practitioner.**

*The Law Society supports the proposal.*

**2. The Law Society to issue a Practice Note with guidance and commentary on the EPAO.**

*The Law Society supports the proposal*

**3. Promotional Use of EPAs:**

*The Law Society will invite the Academy of Law to conduct courses on the EPAO and the Mental Health Ordinance.*

**4. Distribution of User Friendly Forms**

The Law Society recommended hard copies of the forms be widely distributed to the community. DOJ's commented that members of the public can obtain copies of the statutory forms from the BLIS site or from the hard copy of the Laws of Hong Kong. We do not consider this to be sufficiently pro-active.

This policy assumes the community at large has wide knowledge and access to the internet - it fails to acknowledge that many members of the population being targeted are not computer literate.

We suggestion hard copies of the forms should be made available at District Offices, public libraries, post offices, Court Registries, the Judiciary's Resource Centre for Unrepresented Litigants, Social Welfare Offices etc.

The Government should prepare information packages with clear instructions on how to complete the form together with details of the procedures to register the document with the Registrar of the High Court. We note in other jurisdictions these forms have been made widely available. In Australia, hard copies of such forms can be picked up at Post Offices.

Extracts from an information pack on *Enduring Powers of Attorney and Advanced Directives* produced by the State of Queensland is attached for reference.

Soft copies of the forms can be provided to the Law Society so that Word/PDF versions of the documents can be circulated to solicitors with the Law Society's circulars.

**Section 8(1)(b) of the EPAO and Advanced Directives**

We note that EPAs and Advanced Directives should be reviewed *together as a comprehensive policy*. It is difficult to understand why the review has been split between the DOJ and the Food and Health Bureau as this produces reforms on a piecemeal basis.

**5. High Court Registry**

The High Court Registry should publicise the procedural steps to file the executed EPA together with the fee praecipe, the amount of the fee and details of any other documents on its website.

**The Law Society of Hong Kong**

**7 December 2010**

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The  
Prepare-Your-Own  
**Enduring  
Power  
of  
Attorney**  
and  
Advance Health Directive  
Pack

**Queensland**

# What does this booklet contain?

By using this booklet, you will be able to prepare your own:-

Enduring Power of Attorney  
and/or  
Advance Health Directive  
and/or  
General Power of Attorney

The Prepare-Your-Own Enduring Power of Attorney Pack contains all of the forms that are available for you to use under the (Qld.) *Powers of Attorney Act 1998*. You will need to complete exactly the same forms whether you 'prepare your own' or use a lawyer.

By having access to all of these forms, you will be able to make a more informed choice about which particular form or forms best suit your personal needs. The information contained in the first sections of this booklet will help you to decide which forms you need to use.

## **PLEASE BE REASSURED**

Although this booklet appears to be quite lengthy, this is because it contains all of the forms that are available for you to use.

You only need to choose the one or two forms you require and follow the instructions on how to complete that particular form or forms.

## **PHOTOCOPYING OF FORMS**

Because there are a number of different forms available to be used and some are quite lengthy, there is only one copy of each form in this booklet.

Therefore, before you start to fill out the particular form or forms you wish to use, **it is recommended that you make one or several photocopies of the blank form(s)**. This will enable you to make a 'practice' or 'draft' copy as well as being able to make the number of copies you require for your attorney/s or others who may need an original of the form(s).

Photocopying the blank forms also allows you to make use of this booklet for more than one person, if needed.

## **SPECIAL NOTE**

The Director-General of the Department of Justice and Attorney-General has granted permission for the use of all of the forms contained in The Prepare-Your-Own Enduring Power of Attorney Pack.

It is acknowledged that:-

- copyright of the forms belongs to the State of Queensland and the material is reproduced with permission; and
- the reproduced material is in compliance with the approved format.

The Forms in this booklet are current as at the date of this edition of the booklet.

The  
Prepare-Your-Own  
**Enduring Power  
of  
Attorney**

and  
**Advance Health  
Directive**

**Pack  
(Queensland)**

*Fold back this flap for a list of key words which will help you to read and understand this booklet and to fill out the forms correctly.*

*You can leave this flap open for easy reference to these words as you read through the booklet.*

## UNDERSTANDING THE KEY WORDS

(as used in this booklet)

**PRINCIPAL:** The person who makes an Enduring Power of Attorney or an Advance Health Directive.

**ATTORNEY:** The person to whom some power is given to act on behalf of another person under an Enduring Power of Attorney or an Advance Health Directive.

**Note:** Don't be confused by the use of the word attorney.

In this context, it does not mean a lawyer or solicitor. It is merely the word used to describe the person to whom the power is given under the documents described in this booklet.

**POWER OF ATTORNEY:** A legal document by which you (the **principal**) give to another person (called the **attorney**) the power to act on your behalf — including making decisions on your behalf — in relation to your assets, your financial affairs and most of the other things that you are legally entitled to do yourself.

A Power of Attorney is no longer valid once the principal becomes 'incapable', that is, loses the capacity to make decisions.

(but now see 'ENDURING POWER OF ATTORNEY')

**ENDURING POWER OF ATTORNEY:** A legal document by which you (the **principal**) give to another person (called the **attorney**) the power to act on your behalf — including making decisions on your behalf — in relation to personal matters and/or health matters and/or financial matters.

An Enduring Power of Attorney remains legally effective even after the principal becomes 'incapable', that is, loses the capacity to make decisions.

**INCAPABLE:**

**LEGALLY INCAPABLE:**

**MENTALLY INCAPABLE:**

**LEGALLY INCAPACITATED:**

**MENTALLY INCAPACITATED:**

When used throughout this booklet, these expressions mean that a person is incapable:

- of understanding the nature and foreseeing the effects of a decision about a matter
- of freely and voluntarily making decisions about the matter, and
- of communicating those decisions.

**Note:** Sections 41 and 42 of the *Powers of Attorney Act 1988* contain further references to a principal's capacity to make an enduring power of attorney and/or an advance health directive.

**PERSONAL MATTERS**

**HEALTH MATTERS**

**FINANCIAL MATTERS**

} See page 4 of this booklet for full definitions of each of these terms.

**ADVANCE HEALTH DIRECTIVE:** A document by which you state your wishes or directions regarding your future health care for various medical conditions. It comes into effect only if you are unable to make your own decisions.

**VALID:** Means legally effective.

**REVOKE:** Means to cancel or to make invalid (i.e. of no legal effect).

**WITNESS:** A person who witnesses an Enduring Power of Attorney document or an Advance Health Directive document.

One witness only is required but this person must be a justice of the peace, commissioner for declarations, lawyer or notary public.

**Note:** There are also certain other restrictions on who can act as a witness and these are explained in the appropriate parts of this booklet.

## IMPORTANT READING

Ensuring that you have an Enduring Power of Attorney is one of the most sensible and financially responsible things that you can do.

Circumstances can arise in which you may be unable to make decisions about matters that are vitally important to you — matters such as your own finances, personal affairs and health matters. These circumstances can arise due to illness, accident, the onset of advanced age or simply not being available at the time (for example, absent overseas).

An Enduring Power of Attorney enables you to appoint someone you know and trust to look after your financial and personal affairs and to be responsible for certain health decisions for you — should you be unable to make these decisions yourself.

Without it, your financial affairs could, in certain circumstances, be taken over by legal process — that is, by the law — whilst you are still living.

*An Enduring Power of Attorney is as essential as a legal Will.*

The Prepare-Your-Own Enduring Power of Attorney Pack helps you to make a legal and valid Enduring Power of Attorney by taking you through each step and making sure that you understand as you go.

This booklet also contains step-by-step instructions on how to make an Advance Health Directive — for those who may wish to give directions about their future health care.

The Prepare-Your-Own Enduring Power of Attorney Pack has been legally approved by qualified legal professionals. It is a valid means of preparing your own Enduring Power of Attorney and/or Advance Health Directive in Queensland.

**Please be aware that The Prepare-Your-Own Enduring Power of Attorney Pack is not a substitute for legal advice. If you are uncertain about any aspect of this booklet or if you need specific advice on your own personal circumstances, a suitable legally-qualified person should be consulted.**

**REMEMBER — It is important that the user of The Prepare-Your-Own Enduring Power of Attorney Pack accurately follows the instructions given throughout the booklet and carefully reads the information relating to the form or forms that the user chooses to complete.**



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# Page Numbering and Colour Coding

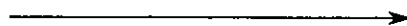
## PAGE NUMBERING

The page numbers throughout this booklet are shown on the inside edge of each page, that is, in this position



The reason is that each of the 'forms' contained within the booklet have their own separate page numbers at the bottom of each page. The forms must be reproduced in this way to comply with Queensland law.

By using the 'Contents' directory on the previous page, you can quickly and easily locate any Section of the booklet or any of the forms by turning to the page numbers shown in this position



## COLOUR CODING

Different colours have been used throughout the booklet to help you to identify the various Sections of the booklet and the different forms.

The 'Contents' directory on the previous page shows the colour used for each Section and/or form.

### THE NEXT STEPS

**You should now read Sections 1, 2 and 3 of this booklet.**

**You will then be able to decide which form or forms you need to complete.**

**Using the 'page numbering' and 'colour coding' as explained above, you should locate the form or forms you require. Carefully read the information relating to the form/s you select and then complete the form/s as instructed.**

**Note: Apart from reading Sections 1, 2 and 3 of this booklet, you need only read the information relating to the particular form or forms you have chosen to complete.**

## Section 1

# ENDURING POWER OF ATTORNEY

## Why should you have one?

The answer is — for many reasons.

During your lifetime, there will be many circumstances in which you may want another person to act on your behalf — both in expected and unexpected circumstances. Some examples are:

### **If you are absent or unable to attend to matters yourself**

- for example, on an overseas trip and you want somebody to be able to withdraw money from your bank account and send it to you in case of an emergency — *your attorney could do this.*

### **If you merely want somebody else to be able to act on your behalf**

- for example, if you had to sign documents or a contract but you were not available to do so personally — *your attorney could sign on your behalf.*

### **If you were accidentally injured**

- for example, involved in a motor accident and confined to hospital or just physically incapable of attending to your own affairs because of injuries — *your attorney could act for you.*

### **If you became ill**

- for example, a mild or a serious illness can mean that you are confined to bed and unable to go about your normal day-to-day business — *your attorney could act for you.*

### **If you became mentally incapacitated**

- this can occur through the onset of advanced age, certain health conditions or diseases but can also be brought about through accident — for example, brain damage — *your attorney could handle your affairs for you and also make certain health care decisions on your behalf.*

So an Enduring Power of Attorney can be used in many day-to-day situations as well as being there as a safeguard or a precautionary measure in the event of more serious circumstances arising.

Your financial and other affairs could be thrown into disarray or even “frozen” if another person is not authorised to legally act on your behalf.

*An Enduring Power of Attorney solves this problem.*

# ENDURING POWER OF ATTORNEY

## What is it used for?

The answer is — to empower another person (or persons) to legally act on your behalf in both expected and unexpected circumstances.

In simple terms, an Enduring Power of Attorney is a document that gives another person (or persons) — **nominated by you** — the legal power to act on your behalf *while you are still living*.

The other person (or persons) is called your attorney and he or she can legally act on your behalf even if you become mentally incapable of looking after your own financial and personal affairs (including health care). In other words, the legal power of your chosen attorney “endures” (or continues) even if you lose the mental capacity to manage your own affairs.

This is one reason why an Enduring Power of Attorney is sometimes referred to as a “living will” because another person can take charge of your assets and financial affairs whilst you are still living.

**Note:** Don't be confused by the term **attorney**. In this context, it does not mean a lawyer or solicitor. It is merely a word used for the person you appoint to legally act on your behalf under an Enduring Power of Attorney document.

As already mentioned, an Enduring Power of Attorney can be used in **both expected and unexpected circumstances**.

In **expected circumstances**, it can be used if you (the principal) are of sound mind but you merely want your appointed attorney/s to act on your behalf because it is more convenient to do this in certain circumstances.

In **unexpected circumstances**, such as when you (the principal) may become mentally incapable of looking after your own affairs, the Enduring Power of Attorney remains legally in force so that your attorney/s still has the power to make financial, personal and health care decisions on your behalf.

An Enduring Power of Attorney is therefore a very useful and flexible document that can be used for your (you being the principal) benefit in many day-to-day situations as well as being there as a safeguard or a precautionary measure in the event of more serious circumstances arising.

### **REMEMBER**

**Accident and illness can strike without warning and regardless of age.**

**It is therefore sensible to appoint another person (or persons) through an Enduring Power of Attorney to legally act on your behalf for financial matters and/or personal matters (including health care).**

# ENDURING POWER OF ATTORNEY

## Which form should you use?

In Queensland, there are two different forms that can be used to make an Enduring Power of Attorney and these are:

♦ The **SHORT FORM**

or

♦ The **LONG FORM**

The difference between these two forms is:

### The **SHORT FORM**

Use this document if you wish to appoint **the same** attorney/s for both:

- financial matters
- and
- personal matters (including health care)

**OR**

You may also use this document if you wish to appoint an attorney (or attorneys) for:

- financial matters **only**
- or
- personal matters (including health care) **only**.

### The **LONG FORM**

Use this document if you wish to appoint:

- an attorney for personal matters (including health care)
- and
- **a different attorney** for financial matters.

## **IMPORTANT**

You complete **either** the **SHORT FORM** or the **LONG FORM** — but not both.

## **What do these terms mean:**

**Personal Matters?**

**Health Matters?**

**Financial Matters?**

### **Personal Matters**

Matters relating to your care (including health care) or welfare.

Examples are - where you live, with whom you live, whether you work and if so the kind and place of work and the employer, what education or training you undertake, whether you apply for a licence or permit, day to day issues including diet and dress.

### **Health Matters**

Matters relating to your health care.

Health care is care or treatment of, or a service or a procedure, to diagnose, maintain or treat your physical or mental condition and carried out by or under the supervision of a health provider.

### **Financial Matters**

Matters relating to your financial or property affairs. It also includes a legal matter relating to your financial or property affairs.

Examples are - paying maintenance and accommodation expenses for you; paying your debts; receiving and recovering money payable to you; carrying on a trade or business for you; performing contracts entered into by you; discharging a mortgage over your property; paying rates, taxes, insurance premiums and other outgoings for your property; insuring you or your property; otherwise preserving or improving your estate; investing for you in authorised investments; continuing investments for you including taking up rights to issues of new shares or options for new shares; undertaking a real estate transaction for you; dealing with land under the *Land Act 1994* or *Land Title Act 1994*; undertaking a transaction for you involving the use of your property as security (for example, for a loan or by way of a guarantee) for an obligation the performance of which is beneficial to you; or dealing with a legal matter\* relating to your financial or property affairs.

\*A legal matter includes the use of legal services to obtain information about your legal rights; use of legal services to undertake a transaction; use of legal services to bring or defend a proceeding before a Court, Tribunal or other entity including an application under Part IV of the *Succession Act 1981* or an application for compensation arising from a compulsory acquisition; and bringing or defending a proceeding (including settling a claim) whether before or after the start of a proceeding.