

INTRODUCTION

When making plans for the future, most people presume they will always be capable of making their own decisions. The possibility however, of what would happen to your personal, financial and legal affairs if you were severely injured in a car accident, suffered a stroke or developed dementia should always be taken into consideration.

People that view this possibility as a morbid or taboo subject only place the security of their family and loved ones at risk. Planning ahead whilst you are still capable of doing so is of utmost importance. Life does not offer certainties and the future reality may be that you are in a position of being incapable of making decisions for yourself. The law calls this losing 'mental capacity'.

Don't leave it until it is too late.

WHAT DO I NEED?

It is important to ensure your future plans include a Will, Power of Attorney and Medical Guardianship. You may also consider an Advanced Health Care Directive.

WHO CAN MAKE A WILL, POWER OF ATTORNEY OR MEDICAL GUARDIANSHIP?

Anyone over 18 can make a Will, Power of Attorney or Medical Guardianship so long as at the time of executing the documents they have mental capacity. Capacity is a legal word. A person is deemed to have the mental capacity to make a decision when they:

- have the ability to comprehend verbal or written information;
- can reflect on the information that has been provided to them and assess the choices and consequences;
- can understand how their decision will affect them; and
- are then able to effectively communicate their decision

A person with a mild cognitive disability, such as early stages of dementia or learning difficulties, may still have the mental capacity to make a Will. People have capacity when they are able to make decisions on their own preferences. They also have the right to then, either take or leave the advice, even if others disagree with their decision. However, if a person's capacity to make a decision is in doubt then an assessment of the person's ability to understand and make a decision accordingly, will need to be made by a Medical Professional.

WILL

A Will is a legal document that sets out how you want to distribute your assets such as property, money, possessions and jewellery after you die. Not having a Will means you don't have a say about how your estate is distributed. This can lead to legal problems and cause family disruption. Having in place a legally valid, clear, concise and up-to-date Will is the best way to ensure that your assets are protected and distributed according to your wishes.

Even if you consider you have very few assets it is an important part of planning for the future to provide for the people you care about. Having a Will removes any later doubts that will arise when the family is not clear about your wishes.

An executor/trustee is the person appointed in your will to be responsible for dealing with your estate after you die. This person should be someone over 18 whom you trust and also who is willing to take on the duties and responsibilities as it can be an onerous task. The role of the executor is to manage the estate within the terms of your Will and with protecting the assets of the estate. A trustee looks after ongoing bequests to family and friends for a specific time stated in a Will such as when a trust is created in your Will for your dependent children or your grandchildren.

It is important to note that a marriage revokes a Will. Legal advice should be obtained if your circumstances change such as for example if children or grandchildren are born or on the separation or death of a partner and your Will updated accordingly.

FACT SHEET

PLANNING FOR YOUR FUTURE



Ph: 02 6645 3669

POWER OF ATTORNEY

A power of attorney is a legal document that appoints someone to be your attorney to act on your behalf to make decisions for you in property and financial matters.

You do not lose the right to make your own decisions and you still have authority to deal with your property and finances. You can specify in the document that you only want your attorney's power to start if and when you lose capacity and are unable to make your own decisions.

You can also decide how much power you give your attorney. You can give your attorney an extensive range of powers or limit your attorney's powers to do specific things such as buy or sell a property.

An attorney must act in your best interest at all times and must not benefit themselves or others from your finances or assets.

A **General Power of Attorney** remains legal only whilst you still have capacity. If you want your attorney to continue to operate if you lose capacity, you will need to create an Enduring Power of Attorney.

A general power of attorney is often used in cases where a person is holidaying overseas and wishes an attorney to operate for a limited period and maybe even for specific duties.

An **Enduring Power of Attorney** continues to have effect even after you have lost mental capacity. This is particularly important for elderly people.

MEDICAL GUARDIANSHIP

A medical guardianship is a legal document that appoints someone to be your guardian to make personal and/or lifestyle decisions should, in the future, you lose the capacity to make your own decisions.

Only when you no longer have capacity will your guardian then take on the responsibility for making the decisions such as what accommodation, services and health treatment you receive. Whilst you still have capacity you should express to your family, Doctor and/or other health professionals, your wishes regarding any medical conditions you have.

A guardian cannot make decisions about your money or assets.

REVOCATION

A Power of Attorney and/or Medical Guardianship can be revoked at any time whilst you still have capacity by filling in a Revocation Form, having it witnessed and giving it to your attorney and/or guardian. A new attorney and/or guardian can then be appointed.

DO YOU NEED AN ADVANCED HEALTH CARE DIRECTIVE?

No. The decision is yours. If you have appointed a guardian under a Medical Guardianship you may prefer to leave those decisions to your loved one. What is important is that your loved ones or family know of your wishes regarding your future care.

If you want to complete an advanced health care directive you can download a form at <http://www.dwdnsw.org.au/page/ahcd.php> or simply write a letter and attach it to your Medical Guardianship.

An Advanced Health Care Directive is simply a written acknowledgement of your wishes or directions.

For more details call Clarence Valley's Older Parent Carer Program on 02 6645 3669
