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Legal Matters

At any time in life it is important to have your legal matters in order. This is especially important when you have a life threatening illness.

A Will

Making a will gives you and your family peace of mind as it ensures that your assets and belongings are bequeathed to the people and organisations that are important to you. If you do not make a will your estate is shared out by the Public Trustee according to a legislative formula that may not reflect your wishes. To make a will you need to contact either a solicitor or the Public Trustee. The Public Trustee has an outreach service that will come to your home if it is difficult for you to visit their office.

Power of Attorney and Advance Health Directive

It is important to put in place arrangements so that one or more people you trust can make financial, personal and health care decisions for you should the time come that you are unable to do this yourself.

Please note that although the underlying legal principles are similar, each Australian State or Territory has its own legislation in this area. Consequently, the forms (& much of the terminology) used for appointing attorneys and for health directives vary from State to State¹.

Power of Attorney

It is helpful to have a trusted person(s) who can make decisions on your behalf if you are no longer capable to make decisions and/or communicate your wishes. You can also provide this person with instructions about your future financial, personal and healthcare preferences ahead of time.

Appointing this trusted person(s) as your attorney(s) means you give them legal authority to look after your affairs should you not be in a position to do this yourself. This is called giving them Power of Attorney (POA).

You must use the correct form to appoint your attorney (for further information see <http://australia.gov.au/content/powers-of-attorney>). It is also prudent to see your solicitor about your POA.

¹ For example, in Queensland you can use the *Enduring Power of Attorney (EPOA)* to appoint someone to make both financial and medical decisions. Alternatively you can use the *EPOA* to nominate someone for financial matters only and then give more specific directions about your wishes in relation to health matters under an *Advance Health Directive*. In New South Wales and South Australia an *EPOA* is referred to as an *Enduring Power of Guardianship*.

An explanation of the different types of POAs follows:

Enduring Power of Attorney (EPOA)

An EPOA is when you appoint someone to make your decisions for you, such as:

- *Legal and financial decisions* – this may include receiving income, paying bills, taxation and contractual issues, investment and financial planning, legal actions or property management; and/or
- *Personal and/or health decisions* – this may include making decisions such as where you live, who you live with, daily issues like diet and dress, giving approval for you to receive certain types of health care, or ceasing life support.

An EPOA allows you to plan for the unexpected, such as an unanticipated downturn in health. It enables you to set out what actions your attorney(s) can perform on your behalf. You can nominate one or more attorneys and say when their power will begin. You can give your attorney(s) the authority to make any decision that you could legally make yourself or you can limit the attorney(s) powers to terms set by you.

Your solicitor or the Public Trustee (<http://australia.gov.au/content/powers-of-attorney>) can prepare an enduring power of attorney for you.

General POA

A general power of attorney (POA) is used to appoint someone to make legal and financial decisions on your behalf for a specific amount of time, such as while you are away overseas. The appointment is invalid if you lose the capacity to make your own decisions. Importantly, the nominated person(s) with general POA cannot make personal or health decisions for you.

When no POA has been put in place

Before a doctor, nurse or other health professional can examine or treat you they need your consent or permission. It is important that they provide you (and/or your attorney) with adequate information about the advantages and disadvantages of any proposed treatment. You and/or your attorney may decline any medical treatment.

Statutory Health Attorney

If you are unable to make your own decisions and you have not nominated a trusted person to act on your behalf, by law the person immediately available and closest to you may be able to make those decisions for you. Again, this varies from state to state.

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This role is called Statutory Health Attorney (in some states or a spouse or de facto partner; 'Authority' in others) and their relationship with you is usually:

- an unpaid carer (note that they can be in receipt of a carer's pension); or
- a close friend or relative (over the age of 18).

A Statutory Health Attorney cannot be a health professional involved directly or indirectly with your care. Usually the Statutory Health Attorney, being in a position to understand what you may desire in such circumstances, will be asked by the doctor to consent to treatment on your behalf. An example of this would be if you were unconscious and your 20 year old son was the only person with you, he would be the person the doctors would require to give consent.

A Statutory Health Attorney can consent to most health care decisions (eg. medical & dental treatment), including withdrawing and withholding life-sustaining measures. Usually this role is not ongoing and their role ends when you regain the capacity to make decisions for yourself.

If there is no one suitable or available, the Adult Guardian may be asked to act as the Statutory Health Attorney of last resort.

The Adult Guardian

The statutory role of the Adult Guardian is to protect the rights and interests of adults who are unable to make decisions for themselves. A lack of decision-making ability—known as impaired capacity—may be caused by acute illness or injury, temporary illness such as delirium, intellectual or psychiatric disability, acquired brain injury or dementia.

Relevant state-based information about adult guardianship in Australian jurisdictions is available at:

[Australian Capital Territory](#)

[New South Wales](#)

[Northern Territory](#)

[Queensland](#)

[South Australia](#)

[Tasmania](#)

[Victoria](#)

[Western Australia](#)

Advance Health Directive

An Advance Health Directive (AHD) is a statement of your wishes. It enables you to leave specific instructions about your choices for future health care and comes into effect only if you are unable to make your own decisions.

An AHD form can be obtained from newsagents or from government agencies listed at www.advancecareplanning.org.au.

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The AHD form is relatively simple to follow. Please note that for it to be valid, your doctor must discuss it with you before signing. It is also important that you discuss the AHD with your family, and in particular the person(s) to whom you have given power of attorney.

Advance Care Planning may also include a **Statement of Choices** documenting your choices for health care in the future in the event you are unable to speak for yourself. There may be variations across Australian jurisdictions. More information about Statement of Choices is available at www.advancecareplanning.org.au.

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**Karuna also has experienced people you can talk with on:
07 3632 8300 or karuna@karuna.org.au**



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SLID 1011 V3