



Planning Ahead



## Legal, medical and financial planning

Even though dementia affects everyone differently, sooner or later the person's abilities will decline and they may become unable to make their own decisions about their financial, medical and legal affairs. Most people would like to have these issues managed by people that they trust, usually family or carers.

Planning ahead can make it easier for everyone, as it ensures that an individual's wishes are understood and observed. This requires the person with dementia to be legally competent – that is, able to understand the implications of what is being discussed, agreed and signed. It is also important to make sure that a trusted family member or carer knows where the legal documents are kept once this process has been completed.

To obtain advice on planning ahead, consult your geriatrician or psychiatrist. They may advise you to speak with a solicitor, the Law Society or Law Institute, a local community legal centre or Legal Aid in your State or Territory. The Public Advocate or Public Guardian can also be contacted for advice about decision making involving someone with dementia.

## Power of Attorney

A Power of Attorney is a formal document appointing another person to act for someone in relation to their financial and personal affairs.

There are two types of Powers of Attorney, a general Power of Attorney and an enduring Power of Attorney. A general Power of Attorney is only valid while the person granting the power is legally competent. An enduring Power of Attorney remains valid after the person granting the power loses competence and continues until either it is revoked or the grantor's death.

A Power of Attorney can only be made while a person has the capacity to understand the significance of their actions in signing

the document. It is advisable that the issues surrounding the appointment of a person pursuant to an enduring Power of Attorney are considered. This should be done as soon as possible after diagnosis if there is no enduring Power of Attorney in place.

The law and practice in relation to enduring Powers of Attorney varies between the States and Territories, so always seek advice before granting an enduring Power of Attorney.

## Wills

A will sets out how the estate of a deceased person should be administered and distributed. It is important to keep wills up-to-date. A will is only valid if the person making the will has capacity to give instructions for the will. If the person does not have that capacity the will can be declared invalid.



## Decisions about medical treatment

If a person with dementia loses the legal capacity to make decisions about their medical treatment someone else will need to make these decisions. If somebody has not been appointed to make these decisions the Guardian Boards or Tribunals (see below) will appoint somebody. The person with dementia may not know this person.

An enduring Power of Attorney covering health matters enables a person to be appointed as a substitute decision-maker for medical decisions.

An advance directive is a written document expressing wishes about medical treatment. Although the advance directive will give those responsible for the treatment an indication of the person's wishes, the directive does not bind those treating the person to follow these wishes. Different names may be used in some States and Territories for advance directives, but the function of the documents is similar.

## Guardianship

In each State and Territory there is a Guardianship Board or Tribunal that can appoint a guardian or administrator to look after the affairs of a person who is no longer able make decisions for themselves.

The Guardianship Board or Tribunal will appoint a guardian or administrator for a person where no other person has been previously appointed. Making an application to appoint a guardian or administrator should be considered if for example a person previously appointed:

- cannot or does not wish to look after the other person's affairs, or
- there is conflict in the family about the person's best interests.

You can contact a local Guardianship Board to discuss any concerns and find out how to make an application for the appointment of a guardian or administrator.