

Witnessing an enduring power of attorney

Date ___/___/___ Time commenced _____ Time finished _____

Location _____

In attendance

Principal: _____

Solicitor: _____

Other Witness: _____

- Photo identification of principal.
***Specify form of identification produced eg driver's licence, passport**

- Principal over 18 years of age.
- Principal has read pages 3-24 of the booklet entitled [Take Control – a kit for making powers of attorney and guardianship](#) published by the Department of Justice (Vic).
- Current medical certificate produced to me (if applicable).
***Specify medical practitioner's name and address**
***Attach copy of medical certificate to these notes**

- Principal stated to me that they were signing the power of attorney freely and voluntarily.
- Interpreter used (if applicable) and certificate signed by interpreter obtained.
***Attach interpreter's certificate to these notes**

The following concepts were discussed with the principal:

- I explained to the principal that an enduring power of attorney allows the person they have nominated (the attorney) to make financial and/or personal decisions for them subject to any limitations or conditions or instructions they have included in the enduring power of attorney. I also discussed any limitations or conditions or instructions included in the subject enduring power of attorney.
- I asked the principal to tell me what they understood my explanation to mean.
***Record what the principal's response was**

I told the principal that they can specify a time or event when the enduring power of attorney starts to operate and/or finishes. I discussed when the subject enduring power of attorney will start and end.

I asked the principal to tell me what they understood my explanation to mean.

***Record the principal's response**

I explained to the principal that once the enduring power of attorney commences the attorney can stand in the principal's place and do anything the principal could do (eg financial: withdraw money from the principal's bank account, mortgage the principal's property, sell the principal's property; eg personal: choose where they live), subject to any limitations in the power.

I asked the principal to tell me what they understood my explanation to mean.

***Record the principal's response**

I explained that the principal may revoke or cancel the power of attorney as long as they had the legal capacity to do so. I explained that if the principal lost legal capacity they could not revoke a power or appoint a new attorney.

I asked the principal to tell me what they understood my explanation to mean.

***Record the principal's response**

I explained that an attorney can continue to deal with the principal's affairs and act in their name after the principal has lost legal capacity.

I asked the principal to tell me what they understood my explanation to mean.

***Record the principal's response**

I believe the client understood the information relevant to making the power of attorney (the decision) and the effect of the decision to make an enduring power of attorney.

The client appeared to be able to retain that information for the purpose of making the decision.

The client appeared to be able to use and weigh that information as part of the process of making the decision.

The client was able to communicate the decision and their views about the decision to me.

Any other comments on capacity:

The other witness

The other witness is:

- 18 years of age or older
- not the attorney under the power of attorney
- not a relative of the principal or the attorney under the power of attorney
- not a care worker or accommodation provider for the principal.

The power of attorney form

The form contains the following information:

- A certification that the principal appeared to freely and voluntarily sign the instrument in the presence of both witnesses.
- A certification that the principal appeared to have decision-making capacity at the time of signing.
- A statement that the witness is not:
 - an attorney under the power of attorney
 - a relative of the principal or of an attorney
 - a care worker or accommodation provider for the principal
- A statement of the legal or medical practitioner's qualifications.

Execution of the documents

- The principal signed the power of attorney in the presence of both witnesses, either in person or via audio visual link.
- Each witness saw the principal sign the power of attorney either in person or via audio visual link.
- Each witness signed the form acknowledging the certification and statements above in the presence of each other and the principal, either in person or via audio visual link.

Execution of the documents with remote witnesses

- As the special witness (legal practitioner), I signed the document last.
- I certified that the power of attorney was signed and witnessed in accordance with the remoting witnessing procedure.
- The power of attorney contains a statement:
 - that I am a special witness as I am a legal practitioner
 - whether an audiovisual recording was made.

Independent check

- The power of attorney has been checked against this checklist to confirm all steps have been completed.