



Powers of Attorney (POA) in Australia:

General Overview and VIC/NSW Specific Rules

General Overview: How Powers of Attorney Operate

A Power of Attorney (POA) is a legal document by which a person (the principal) appoints another individual (the attorney) to make decisions on their behalf. These decisions may relate to financial, legal, personal, or medical matters—as specified in the document.

BankWAW and other financial institutions have processes to manage 'attorneys' who have been appointed to make financial decisions that relate to a 'principal's' bank account.

Types of POAs

1. General (Non-Enduring) Power of Attorney:

- Effective only while the principal retains decision-making capacity.
- Typically used for temporary or specific purposes, such as handling transactions while travelling or during short-term incapacity.
- Terminates when the principal becomes incapacitated or upon their death.

2. Enduring Power of Attorney (EPOA):

- Remains effective even if the principal loses capacity, unless explicitly revoked beforehand.

- Commonly used for long-term planning to ensure financial/legal matters continue smoothly.
- The scope of authority is defined in the document and may be tailored with limitations.

3. Supportive Attorney (Victoria only):

- Designed for individuals with cognitive disabilities.
- Assists the principal in making decisions rather than making decisions on their behalf.

Duties of an Attorney under a Power of Attorney

An Attorney appointed under a Power of Attorney must always act in the best interests of the principal. Their duties include:

- Acting honestly, diligently, and in good faith.
- Making decisions within the authority granted by the POA.
- Avoiding conflicts of interest and not using their position for personal gain.
- Keeping accurate financial records and keeping the principal's money and property separate from their own.
- Where possible, consult with the principal to ensure their wishes are respected.
- Complying with any conditions or limitations set out in the POA document and relevant state legislation.

Powers of Attorney in Victoria (VIC)

Victoria's POAs are governed by the Powers of Attorney Act 2014 (Vic).

Available types include:

- General Non-Enduring POA: Expires if the principal loses capacity.
- Enduring Power of Attorney (EPOA): Continues if capacity is lost.
- Supportive Attorney: Assists with decisions but does not take over.

Financial powers under an EPOA in Victoria may include managing bank accounts, bill payments, investments, and property transactions. The scope and restrictions must be clearly defined in the document, and attorneys owe strict fiduciary duties, including acting in the principal's best interests and avoiding conflicts of interest.

Execution requires prescribed forms, signing, and proper witnessing under strict guidelines. Revocation is possible while the principal has capacity.

Automatic termination occurs in situations such as insolvency of the attorney, loss of capacity, or the principal's death.

Powers of Attorney in New South Wales (NSW)

In NSW, the law distinguishes between:

- General Power of Attorney: Valid only while the principal retains capacity.
- Enduring Power of Attorney (EPOA): Continues after the principal loses capacity.

An EPOA in NSW is strictly for financial and legal decisions—not health or personal decisions. For health/lifestyle decisions, an Enduring Guardian must be appointed separately. Financial powers include managing bank accounts, bill payments, property transactions, and investments. Real estate transactions require the EPOA to be registered with NSW Land Registry Services.

Witnessing requirements are stricter for EPOAs, which must be signed in front of a solicitor, barrister, conveyancer, registrar, or other authorised professional. Revocation is possible while the principal has capacity, and the POA automatically ends on the principal's death.

Access to POA Forms and Assistance

Victoria (VIC)

In Victoria, POA forms can be accessed through the Office of the Public Advocate (OPA):

- Website: <https://www.publicadvocate.vic.gov.au>
- The OPA provides free downloadable forms for Enduring Powers of Attorney, General POAs, and Supportive Attorneys.
- Assistance is available through the OPA Advice Service (1300 309 337), which provides guidance on completing the forms and understanding legal obligations.
- Legal practitioners and community legal centres can also assist in completing the documents.

New South Wales (NSW)

In NSW, POA forms can be obtained from the NSW Trustee & Guardian:

- Website: <https://www.nsw.gov.au/family-and-relationships/planning-for-end-of-life/make-power-of-attorney>
- Forms are available for both General and Enduring POAs.
- The NSW Trustee & Guardian provides guidance and can assist with preparing and registering the forms. They can be contacted on 1300 364 103.
- Solicitor, community legal centres, and the LawAccess NSW service (1300 888 529) also provide assistance.