



Office of the Public Advocate

Side by Side

A guide to appointing supportive attorneys

Appointment form included

Easy English fact sheet included



September 2015

The Office of the Public Advocate (OPA) acknowledges Victoria's Aboriginal communities and their rich culture. OPA pays respect to their Ancestors, Elders and communities, who are the custodians of the land on which we work.

Changes to the law

Powers of attorney laws changed in Victoria on 1 September 2015 with the commencement of the new *Powers of Attorney Act 2014*. The Powers of Attorney Act introduced supportive attorney appointments.

To find out more and to check for changes to the law, visit OPA's website or contact OPA's Advice Service.

OPA Advice Service: 1300 309 337

TTY: 1300 305 612

www.publicadvocate.vic.gov.au

Side by Side: a guide to appointing supportive attorneys

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Disclaimer: This publication is intended to be used by readers considering whether to make a supportive attorney appointment. The information in this publication is of a general nature and readers may require legal advice for specific circumstances. The Office of the Public Advocate expressly disclaims any liability howsoever caused to any person in respect of any action taken in reliance on the contents of this publication.

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About this guide

The Victorian Office of the Public Advocate (OPA) aims to protect and promote the rights and interests of people with disability. This guide has been produced by OPA to assist people to make supportive attorney appointments. It contains step-by-step instructions and the supportive attorney appointment form.

Personal stories

The personal stories in this booklet are hypothetical examples. Any resemblance to any person is entirely coincidental.

Easy English information

Making a supportive attorney appointment is a legal process. Some people will need the help of another person to use this guide and to complete the appointment of supportive attorney form.

i This guide contains an Easy English fact sheet on page 15 with introductory information. The Easy English information can help a person think about whether they would like to make a supportive attorney appointment.

Other powers of attorney

OPA produces information about other powers of attorney.

Enduring powers of attorney

Enduring powers of attorney are for planning for the future. Enduring powers of attorney are legal documents that let a person appoint substitute decision makers who can make decisions for them. The powers endure (continue). This means if the person who made the appointment becomes unable to make decisions about matters, whoever they have appointed will be able to make decisions for them. To make an enduring power of attorney the person needs to be 18 years of age or older and have the decision making capacity to make the appointment.

For information about enduring powers of attorney see OPA's website or call OPA's Advice Service.

OPA Advice Service: 1300 309 337

TTY: 1300 305 612

www.publicadvocate.vic.gov.au

Making decisions with support

Everyone has the right to make their own decisions about the things that affect them.

Supportive attorney appointments are one way a person can be supported to make decisions. A supportive attorney appointment is a legal document where a person appoints one or more people to support them to make and give effect to (act on) their decisions.

Why make a supportive attorney appointment?

Supportive attorney appointments are designed to promote the right of people with disability to make their own decisions about things that affect them. However, there can be many reasons why a person may want support to make some types of decisions. Anyone 18 years of age or older can make a supportive attorney appointment if they have decision making capacity to make the appointment.

i See page 5 for an explanation of decision making capacity.

People can be supported to make decisions informally. However, sometimes the formal arrangement of a supportive attorney appointment is helpful. If a person makes a supportive attorney appointment it means that organisations must recognise the authority of the person in the support role.

What happens when a person makes a supportive attorney appointment?

A person who makes a supportive attorney appointment, known as the **principal**, gives power to the person they appoint to:

- access or provide information about them to organisations (such as hospitals, banks and utility providers)
- communicate with organisations
- communicate their decisions
- give effect to their decisions.

The person who the principal appoints can also assist the principal to do these things.

The person who the principal appoints is known as their **supportive attorney**.

When a supportive attorney can't help

Sometimes a person isn't able to make some types of decisions, even with support. The principal needs to have the capacity to make the decision themselves for their supportive attorney to be able to act in their role as supportive attorney.

How the supportive attorney can provide support

The supportive attorney can help the principal by:

- providing support (even if they don't always agree with the principal's decision)
- assisting to solve problems
- breaking the decision making process into smaller steps
- obtaining and explaining information
- assisting with weighing up information
- assisting the principal to communicate and act on their decision
- attending appointments with the principal
- assisting the principal to link in with self-advocacy or other ongoing support.

A supportive attorney who supports the principal to make and act on their own decisions can increase the independence and self-reliance of the principal.

OPA's website has links to resources about supported decision making.

Call OPA's Advice Service for:

- more information about supportive attorney appointments
- any queries about the things to consider when thinking about who to appoint as a supportive attorney.

This booklet has a tear-out Advice for Supportive Attorneys fact sheet.

[i](#) See page 19 for this fact sheet.

Purpose of the *Convention on the Rights of Persons with Disabilities*

“... to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

Australia ratified the United Nations *Convention on the Rights of Persons with Disabilities* in 2008.

How to make a supportive attorney appointment

To make a supportive attorney appointment the principal (the person making the appointment) completes the supportive attorney appointment form, and signs it in front of witnesses.

i If the principal is unable to physically sign the form, they can direct someone else to sign for them (see page 18).

On the form the principal specifies the powers they are giving their supportive attorney. The supportive attorney agrees by signing the acceptance section of the form.

To make a supportive attorney appointment the principal must be:

- 18 years of age or older and
- have decision making capacity to make the supportive attorney appointment.

No one else can make a supportive attorney appointment on behalf of another person.

Decision making capacity

A person is presumed to have decision making capacity unless there is evidence they do not have decision making capacity. They may have decision making capacity for some matters and not for others. A person has decision making capacity for a matter if they are able to make a decision with practicable and appropriate support.

Decision making capacity to make a supportive attorney appointment

A person has capacity to make a supportive attorney appointment if they are able to:

- understand the information relevant to this decision and the effect of this decision
- retain that information to the extent necessary to make the decision
- use or weigh that information as part of the process of making the decision
- communicate the decision and their views and needs as to the decision in some way, including by:
 - speech
 - gestures or
 - other means.

Understanding the effect of the decision

Having decision making capacity to make a supportive attorney appointment includes understanding the effect of the decision. This includes understanding that the appointment:

- enables the principal to make and give effect to their decisions with support
- allows the principal to choose a person to support them to make and give effect to their own decisions.

It also includes understanding

- that supported decisions are decisions of the principal and not the supportive attorney
- when the appointment commences
- that the principal may revoke (cancel) the appointment at any time when the principal has decision making capacity to do so.

Supportive attorney appointments are made in Victoria under the *Powers of Attorney Act 2014*.

Turn over for step-by-step instructions.

Step 1: Decide what, who and when

What types of decisions

The principal can give their supportive attorney(s) powers to support them in making and giving effect to their decisions.

This support can be for making decisions about:

- all financial matters
- all personal matters
- all personal and financial matters or
- specific personal or financial matters.

Note: The appointment form also allows the principal to specify “other matter(s)”. Most matters that people make decisions about are either personal or financial matters. If the principal is uncertain whether a matter is a personal matter, financial matter or “other matter” they can contact OPA’s Advice Service for help.

Financial matters are any matter relating to the principal’s financial or property affairs.

Examples of financial matters are:

- paying expenses
- withdrawing money from, or depositing money into, an account with a financial institution
- paying rates, taxes and insurance premiums or other outgoings for the principal’s property.

Financial matters include any legal matter that relates to the financial or property affairs of the principal.

Personal matters are matters relating to the principal’s personal affairs and lifestyle affairs.

Personal matters include:

- health care matters
- access to support services and
- where and with whom a person lives.

Personal matters include any legal matter that relates to the principal’s personal and lifestyle affairs.

Lucas’ story

Lucas has a disability which affects his ability to communicate, particularly when he is stressed. He has just been diagnosed with a serious illness. He asks his brother, Jose, to be his supportive attorney for health care matters. Jose attends medical appointments with Lucas. Lucas finds it easier to make difficult decisions about his health care with this support.

Lucas knows that Jose could have provided this type of support informally. However, Lucas has chosen to formally appoint Jose as his supportive attorney to make Jose’s role clear to organisations that provide him with services. Because of the appointment Jose can get access to personal health information about Lucas.

Lyn's story

Lyn has a communication impairment and uses a communication device.

Lyn wants to apply for a family violence intervention order to protect her from her ex-partner Tom. She feels intimidated by the idea of going to court and knows the court process can be complicated.

Lyn appoints her friend, Jan, as her supportive attorney for decisions about her safety and protection.

Jan goes to court with Lyn and supports Lyn to communicate effectively with the court staff and duty lawyer, and to make sure that Lyn is able to navigate the process smoothly.

Ishan's story

Ishan has been diagnosed with motor neurone disease. He has many difficult decisions to make. He thinks he may find it increasingly difficult to act on his decisions. He wants to maintain his independence and asks his son, Aarav, to be his supportive attorney. Aarav agrees and Ishan appoints Aarav as his supportive attorney.

Ishan wants to make a complaint about a service provider. Aarav makes a phone call to the service provider, puts the call on speaker phone and assists Ishan to communicate his complaint. The service provider and Ishan agree to have a meeting to discuss the complaint and Aarav negotiates the time and place of the meeting with the service provider. Aarav also attends the meeting to support Ishan. The complaint is resolved to Ishan's satisfaction.

Filip's story

Filip's short-term memory has been affected because of a car accident. He operates his own business. He has ways to do things that allow him to manage with his short-term memory loss. He wants to make his own decisions but thinks that having his mother, Lena, as his supportive attorney for financial matters could be helpful, especially when he has lots of decisions to make.

What powers to give

The three powers that the principal can give their supportive attorney(s) are:

- information power
- communication power
- power to give effect to decisions.

Information power

The principal can authorise their supportive attorney to obtain personal information about them from any person. They can authorise the supportive attorney to:

- access, collect or obtain this information
- assist the principal in accessing, collecting or obtaining this information.

The information must be:

- relevant to a supported decision and
- information that may lawfully be collected or obtained by the principal.

This power means organisations (such as banks, utility providers, and health care providers) can disclose personal information about the principal to the principal's supportive attorney.

Communication power

The principal can authorise their supportive attorney to:

- communicate any information about the principal that is relevant or necessary to the making of, or giving effect to, (acting on) a decision
- communicate, or to assist the principal to communicate, a decision of the principal.

This power means that organisations are able to communicate with the supportive attorney as if they were communicating directly with the principal.

Power to give effect to decisions

The principal may authorise their supportive attorney to:

- take any reasonable action or
- do anything that is reasonably necessary to give effect to a decision.

However, this authority does not include giving effect to decisions about a significant financial transaction.

Hana's story

Hana has been diagnosed with post-traumatic stress disorder. There are times she needs support to manage her financial affairs. She would like help finding the information she needs to make decisions, and with breaking the decision-making process into steps. Her close friend, Kate, is keen to support her but is often told she can't obtain information for 'privacy reasons'. Hana decides to appoint Kate as her supportive attorney with information power for financial matters. This means that Kate will be able to obtain information from Hana's bank, utility providers and other businesses with which Hana has contact.

Significant financial transaction

A supportive attorney can't give effect to a significant financial transaction. Significant financial transactions include (but are not limited to):

- making an investment for the principal or continuing an investment of the principal
- undertaking any real estate transaction for the principal
- dealing with land on behalf of the principal, including taking out a loan on behalf of the principal, or giving a guarantee on behalf of the principal

- undertaking a transaction for the principal involving the use of the principal's property as security for an obligation
- buying and selling substantial personal property on behalf of the principal.

There are two exceptions. A supportive attorney can give effect to the decision of the principal to:

- enter into a residential tenancy for a premises in which the principal lives or intends to live
- invest, or continue to invest, an amount that is \$10,000 or less in total, if it is in one or more interest-bearing accounts of an authorised deposit-taking institution. (For a list of authorised deposit-taking institutions see: www.apra.gov.au)

Who to appoint

The most important decision when making a supportive attorney appointment is choosing who to appoint. Whoever is appointed should be someone the principal trusts, and who respects and values the principal's rights, dignity, autonomy and independence.

The principal may appoint more than one supportive attorney. If more than one supportive attorney is appointed, each supportive attorney acts separately. The principal specifies in the appointment form the matters for which each supportive attorney is to act.

The person (or people) that the principal appoints needs to:

- be eligible to be appointed as a supportive attorney and
- agree to be a supportive attorney.

Who is eligible to be a supportive attorney?

A person is eligible to be a supportive attorney if the person is:

- 18 years of age or older
- not a care worker, a health provider or an accommodation provider for the principal and
- not insolvent under administration.

Note: A person who is an undischarged bankrupt is an example of a person who is “insolvent under administration”.

A person who has been convicted or found guilty of an offence involving dishonesty is only eligible to be appointed as a supportive attorney for financial matters, if they have disclosed the conviction or finding of guilt to the principal. That the person has disclosed the conviction or finding of guilt needs to be recorded in the appointment form.

Dan’s story

Dan recently had a horse-riding accident and now has quadriplegia. When he was first injured and in hospital his wife, Ida, was appointed by the Victorian Civil and Administrative Tribunal (VCAT) as his guardian and administrator to make decisions for him. Ida was appointed to make decisions for Dan because Dan’s injury meant he didn’t have capacity to make personal and financial decisions for himself.

However, Dan has now recovered his decision making capacity and is able to make his own decisions, and VCAT has revoked (cancelled) the guardianship and administration orders. Dan and Ida discuss that it might be helpful for him to appoint her as his supportive attorney to help with decisions about future accommodation and support services.

Appointing an alternative supportive attorney

The principal may want to appoint someone who can act as a back up to their supportive attorney, if their supportive attorney is ever unable to act.

This person is known as an **alternative supportive attorney**. The alternative supportive attorney must be eligible to be a supportive attorney.

The principal can appoint an alternative supportive attorney for any supportive attorney they have appointed.

Cara’s story

Cara has just turned 18 years. She has a mild intellectual disability. She is well-supported by her parents. Cara is excited about being an adult and making her own decisions, but feels that she would benefit by having her parents formally involved with supporting her decision making.

Cara’s parents want to encourage Cara’s growing independent living skills as she moves from school to TAFE, and are pleased to be her supportive attorneys.

When an alternative supportive attorney acts

An alternative supportive attorney can act if the supportive attorney for whom they are appointed:

- dies
- does not have the decision making capacity for the matters to which the appointment applies
- is otherwise not willing or able to act or
- is no longer eligible to be a supportive attorney.

The principal can also specify in the appointment form if they want the alternative supportive attorney to act in specific circumstances.

When the appointment starts

The principal can specify in the appointment form when the appointment starts.

The appointment can start:

- immediately or
- from another time, circumstance or occasion that the principal specifies.

If the principal does not specify when the appointment starts, it begins as soon as the appointment is made.

Step 2: Complete the form

The principal completes the supportive attorney appointment form but should not sign it until witnesses are present.

If the principal has a physical disability that prevents them from signing the form, they may direct another person to sign for them in their presence and in the presence of the witnesses. The person who signs for them must be 18 years of age or older, not be a witness and not be a supportive attorney.

If an interpreter is needed

If the principal can't read English, they should only sign the form once it has been interpreted and they are satisfied that they understand what the document says.

i The Information for Witnesses fact sheet explains how the form should be completed, signed and witnessed if the principal needs an interpreter. See page 18.

Step 3: Sign the form in front of witnesses

Witnessing requirements

Two witnesses who are 18 years of age or older are required to witness the principal signing the form. One must be someone authorised to witness statutory declarations. **i** See page 12 for a list of people who are authorised to witness statutory declarations.

The witnesses must:

- not be a supportive attorney or alternative supportive attorney under the appointment
- not be a person who is signing at the direction of the principal (where the principal is unable to physically sign the supportive attorney form themselves).

In addition one witness must:

- not be a relative of the principal or relative of the supportive attorney(s) and
- not be a care worker or accommodation provider for the principal.

Each witness must certify that:

- the principal appeared to freely and voluntarily sign in their presence and
- the principal appeared to have decision making capacity in relation to making the supportive attorney appointment.

Supportive attorneys sign a statement of acceptance in front of a witness

Each supportive attorney and alternative supportive attorney appointed must sign a statement of acceptance in front of a witness who is 18 years of age or older. This can happen on a later date. It is important that the supportive attorney(s) understands their role and their responsibilities. **i** See the tear-out Advice for Supportive Attorneys fact sheet on page 19.

After the appointment is made

Forms are not registered

Appointment of supportive attorney forms are not registered in Victoria. They should not be sent to the Office of the Public Advocate (OPA).

Storage and copies

The principal should keep the original form in a safe place, and give the supportive attorney(s) a certified copy.

Supportive attorneys may need to deal with a number of people and organisations when supporting the principal. These organisations and people are entitled to see the form of appointment, and check that the supportive attorney is acting within their powers. This is why supportive attorneys will need a certified copy.

Who can certify copies?

People authorised by law to administer an oath can certify that a photocopy of the form is a true and complete copy of the original form. Someone authorised by law to administer an oath means someone authorised to witness affidavits. Turn over for a list of people authorised to witness affidavits.

People authorised to witness affidavits and statutory declarations

People who are commonly asked to witness statutory declarations and affidavits are listed below. Some of these people may charge a fee.

People authorised to witness statutory declarations

The following people are authorised to witness statutory declarations in Victoria:

- a Justice of the Peace or a bail justice
- a legal practitioner under the *Legal Profession Uniform Law Application Act 2014 (Vic)* (a lawyer)
- a police officer
- a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student (a medical doctor)
- a person registered under the Health Practitioner Regulation National Law to practise in the dental profession as a dentist, other than as a student
- a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student (a pharmacist).

i For a full list see: www.justice.vic.gov.au/statdec

People authorised to witness affidavits (authorised to administer an oath)

The following people are authorised to witness affidavits in Victoria:

- a Justice of the Peace or a bail justice
- a public notary
- a legal practitioner under the *Legal Profession Uniform Law Application Act 2014 (Vic)* (a lawyer)
- a police officer of or above the rank of sergeant or for the time being in charge of a police station.

i For a full list see: www.justice.vic.gov.au/affidavit

Justices of the Peace

Justices of the Peace are authorised to witness both statutory declarations and affidavits. This means they can witness supportive attorney appointments and can certify that a photocopy of a document is a true and complete copy of the original document. Justices of the Peace are volunteers and do not charge for their services.

i Find the locations and times that members of the community can access Justices of the Peace on the Department of Justice & Regulation website: www.justice.vic.gov.au

A person who wants a Justice of the Peace to witness a supportive attorney appointment will need to organise another person who is eligible to be a witness to come with them to the Justice of the Peace, because two witnesses are required. Neither of the two witnesses can be one of the people appointed. See page 10 for information about who can be a witness.

When the appointment ends and when the supportive attorney can't act

When the appointment ends

A supportive attorney appointment ends if:

- the principal revokes (cancels) the power (while they have decision making capacity to do so)
- VCAT revokes the power
- the principal dies
- the supportive attorney dies and there is no alternative supportive attorney who can act
- the principal loses decision making capacity permanently (see below 'When the supportive attorney can't act').

How the principal revokes (cancels) a supportive attorney appointment

The principal can revoke the appointment of a supportive attorney at any time, as long as they have the decision making capacity to do so. They must complete a revocation of supportive attorney appointment form. See the OPA website for the form and instructions or call OPA's Advice Service for more information.

When the supportive attorney can't act

A supportive attorney appointment doesn't have effect, and the supportive attorney can't act, during any period that the principal does not have decision making capacity for the matters to which the supportive attorney appointment applies.

A person who wishes to have someone make decisions for them when they are unable to make their own decisions should consider making an enduring power of attorney appointment. Enduring

powers of attorney are for planning for the future. They let a person appoint substitute decision makers who can make decisions for them. The powers endure (continue), so if the principal becomes unable to make decisions about matters, whoever they have appointed will be able to make decisions for them.

To make an enduring power of attorney, the person needs to be 18 years of age or older, and have the decision making capacity to make the appointment. This is different to having the decision making capacity to make a supportive attorney appointment. See OPA's website or contact OPA's Advice Service to find out more.

Kim's story

Kim has a mental illness and knows that, at times, she needs support to make decisions because she can become stressed and overwhelmed. Her sister, Ella, has often helped her, but sometimes it has been difficult because organisations have not always recognised Ella's support role. Kim hopes a more formal arrangement will overcome these obstacles and appoints Ella as her supportive attorney.

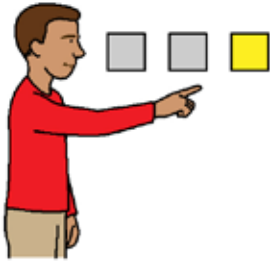
These arrangements work well until Kim is hospitalised. Kim is assessed as unable to make decisions and Ella is unable to act as supportive attorney during that time.

Summary of supportive attorney appointments

What types of decisions can a supportive attorney support the principal to make?	The principal decides what types of decisions the person they appoint can support them to make and give effect to. These can be decisions about personal matters, financial matters or both. However, a supportive attorney can't give effect to decisions about significant financial transactions such as buying or selling a house.
When does the appointment begin?	The principal can choose whether it will start immediately or from another time, circumstance or occasion. If the person does not specify, it begins immediately the appointment is made.
When does the appointment end?	<p>It ends when the principal cancels it, VCAT cancels it, the person who made the appointment dies, the supportive attorney(s) dies (and there is no alternative supportive attorney), or the principal loses decision making capacity permanently.</p> <p>The appointment has no effect during any period that the principal does not have capacity to make decisions about the matter(s).</p>
What powers can a supportive attorney be given?	<p>The principal can give their supportive attorney all, or any, of three powers to support them in making and giving effect to decisions about personal and/or financial matter(s). The three powers are:</p> <ul style="list-style-type: none"> • information power • communication power • power to give effect to decisions.
Who can cancel it?	The principal (while they have decision making capacity to do so) or VCAT.
Can the person appoint more than one supportive attorney?	Yes.
Can the person appoint an alternate supportive attorney?	Yes, this person is called an 'alternative supportive attorney'.
Witnessing requirements	<p>Two witnesses. One of the two witnesses must be authorised to witness statutory declarations. Witnesses can't be a supportive attorney or alternative supportive attorney. One can't be a relative of the principal or of the supportive attorney, or a care worker or accommodation provider for the principal.</p> <p>If the principal can't physically sign the form and directs someone else to sign, this person can't be a witness.</p>



What is a Supportive Attorney?



You have the right to make your own decisions. You might want help to make some big decisions.

For example,

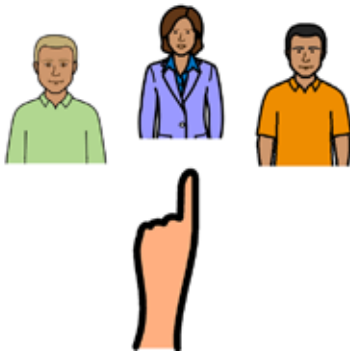
- where to live
- where to work.



There are lots of ways to get help.

The law says you can choose a person to help you make decisions. This is called a supportive attorney.

How to choose a supportive attorney



The person you choose can say yes or no.

If they say **yes** they can be your supportive attorney. A paid carer can **not** be your supportive attorney.

You can only choose a supportive attorney if you understand what this means.

This is the law.



Fill out a form

To choose a supportive attorney you need to fill out a form.

You can get help to fill out the form.

On the form you say

- who you choose to help you
- what types of decisions you want help with
- how you want your supportive attorney to help you.



Your supportive attorney can help you

- get information you need to make a decision
- talk to people and organisations about you and about a decision you need to make
- tell people and organisations the decisions you have made.



If you do not want help anymore

If you do **not** want your supportive attorney to help you anymore, you need to fill out another form.



Questions

Phone 1300 309 337

TTY 1300 305 612

Information for witnesses

Tear-out fact sheet
for witnesses

The responsibility of witnesses goes beyond making sure that the signature of the person making the appointment is genuine. This fact sheet has information for witnesses who witness a person making a supportive attorney appointment.

If a witness has doubts about the person's decision making capacity to make a supportive attorney appointment they should refuse to witness the form. They should also refuse to witness the form if the person appears to be signing it under duress, undue influence or pressure from another person. The witness should contact the Office of the Public Advocate Advice Service if concerned.

Office of the Public Advocate (OPA)
www.publicadvocate.vic.gov.au
OPA Advice Service: 1300 309 337
TTY: 1300 305 612

When witnessing a supportive attorney appointment

Each witness to someone making a supportive attorney appointment must certify that:

- the principal (the person making the supportive attorney appointment) appeared to freely and voluntarily sign in their presence; and

- that, at the time the principal signed the instrument, the principal appeared to have decision making capacity to make the supportive attorney appointment.

Decision making capacity

A person has capacity to make a supportive attorney appointment if they are able to:

- understand the information relevant to this decision and the effect of this decision
- retain that information to the extent necessary to make the decision
- use or weigh that information as part of the process of making the decision and
- communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

Witnesses need to be satisfied that the person making the supportive attorney appointment understands the effect of this decision and should ask questions to check this.

Understanding the effect of the decision to make a supportive attorney appointment includes understanding:

- that the appointment enables the principal to make and give effect to their decisions with support
- that the appointment allows the principal to choose a person to support them to make and give effect to their own decisions
- that supported decisions are decisions of the principal and not the supportive attorney

- when the appointment commences and
- that the principal may revoke (cancel) the appointment at any time when the principal has decision making capacity to do so.
- the interpreter is not a relative of the principal, a relative of a supportive attorney appointed under this document, or a witness under this document.

[Witnesses sign under this statement]

If a person can't physically sign the form

If the principal can't physically sign the supportive attorney appointment form themselves, the form has a space for another person who can sign the form in the presence of the principal and at the direction of the principal. This person must be 18 years of age or older, not be a witness and not be a supportive attorney or alternative supportive attorney.

The witnesses will need to certify that:

- in their presence the principal appeared to freely and voluntarily direct the person to sign for them
- the person signed the form in the presence of the principal and the witnesses
- at the time the person signed the form, the principal appeared to have decision making capacity in relation to making the supportive attorney appointment.

If an interpreter is needed

It is important that the witnesses are satisfied that the form has been explained in a language that the person making the appointment understands. OPA recommends using an independent and qualified interpreter accredited by the National Accreditation Authority for Translators and Interpreters. It is recommended that the witnesses complete and sign the statement below:

Certificate of witnesses

To the best of our knowledge and belief:

- this [supportive attorney appointment] was read out and interpreted to the principal in [language] by [name and address of interpreter]

Witnessing requirements for supportive attorney appointments

Two witnesses who are 18 years of age or older are required to witness the principal signing the form. One must be someone authorised to witness statutory declarations.

The witnesses must:

- not be a supportive attorney or alternative supportive attorney under the appointment
- not be a person who is signing at the direction of the principal (where the principal is unable to physically sign the supportive attorney form themselves).

In addition one witness must:

- not be a relative of the principal or relative of the supportive attorney(s) and
- not be a care worker or accommodation provider for the principal.

Advice for Supportive Attorneys

Tear-out fact sheet for supportive attorneys

When a supportive attorney (or alternative supportive attorney) formally accepts their appointment, they state that they understand their obligations under the *Powers of Attorney Act 2014* and the consequences of failing to comply with those obligations.

A supportive attorney is appointed by a person (known as the principal) who gives their supportive attorney(s) powers to support them to make their own decisions. Only someone who is eligible to be a supportive attorney can be appointed. A person who has been convicted or found guilty of an offence involving dishonesty is not eligible to be a supportive attorney for financial matters unless they have disclosed this.

i For more information about who is eligible to be a supportive attorney, see page 8 of the *Side by Side* booklet.

When the role starts

The appointment form will specify when the supportive attorney appointment starts. If it doesn't specify when it starts, the appointment starts as soon as the appointment is made.

Support for what types of decisions?

The principal will have specified on the appointment form the types of decisions that their supportive attorney is able to support them to make. These can be decisions about:

- financial matters
- personal matters
- both personal and financial matters or

- specific personal, financial or other matters.

Financial matters are any matter relating to the principal's financial affairs or property affairs and include any legal matters that relate to the financial or property affairs of the principal. Personal matters are matters relating to the principal's personal and lifestyle affairs.

i Find examples on pages 31 and 32 of the *Side by Side* booklet.

What types of powers?

The principal will have specified on the appointment form the types of powers they have chosen to give their supportive attorney(s). These can be:

- information power
- communication power
- power to give effect to decisions.

The **information power** means the supportive attorney can access, collect or obtain personal information about the principal from any person or organisation (such as hospitals, banks and utility providers), or assist the principal to access, collect or obtain this information. The information must be relevant to a decision the principal is making and information that may lawfully be collected or obtained by the principal.

The **communication power** means the supportive attorney can communicate any information about the principal that is relevant or necessary to the making of, or giving effect to, a decision of the principal, or can communicate, or assist the principal to communicate, their decision.

The **power to give effect to decisions** means the supportive attorney can take

any reasonable action or do anything that is reasonably necessary to make the decision happen. However, this authority does not include giving effect to decisions about **significant financial transactions**.

Significant financial transactions

A supportive attorney can't give effect to a significant financial transaction. Significant financial transactions include (but are not limited to):

- making an investment for the principal or continuing an investment of the principal
- undertaking any real estate transaction for the principal
- dealing with land on behalf of the principal, including taking out a loan on behalf of the principal or giving a guarantee on behalf of the principal
- undertaking a transaction for the principal involving the use of the principal's property as security for an obligation
- buying and selling substantial personal property on behalf of the principal.

There are two exceptions. A supportive attorney can give effect to the decision of the principal to:

- enter into a residential tenancy for a premises in which the principal lives or intends to live
- invest or continue to invest an amount if it is \$10,000 or less in total, and if it is in one or more interest bearing accounts of an authorised deposit-taking institution. (For a list of authorised deposit-taking institutions see: www.apra.gov.au)

The duties of the supportive attorney

A supportive attorney must:

- act honestly, diligently, and in good faith
- exercise reasonable skill and care and
- discuss anything about a supported decision with the principal in a way the principal can understand and that will assist the principal to make the decision.

Conflict of interest

Generally, a supportive attorney must avoid acting where they have, or may

have, a conflict of interest. If the supportive attorney does act to support the principal where they have a conflict of interest, they **must** make sure that the interests of the principal are the primary consideration.

Supportive attorneys must not use their role for profit

A supportive attorney must not use the position for profit. This means that a supportive attorney can't receive any payment for supporting the principal.

When a supportive attorney appointment doesn't have effect

A supportive attorney appointment doesn't have effect, and the supportive attorney can't act, during any period that the principal does not have decision making capacity for the matters to which the supportive attorney appointment applies.

Offences

A supportive attorney can be charged with a criminal offence if they dishonestly use or obtain their supportive attorney appointment to:

- obtain financial advantage for themselves or for another person or
- cause loss to the principal or another person.

If a supportive attorney is no longer eligible or wants to resign

If a supportive attorney wants to resign or is no longer eligible to be a supportive attorney they must take steps set out in the *Powers of Attorney Act 2014*. Find information about these steps and the required form on the Office of the Public Advocate (OPA) website.

For more information visit OPA's website or call OPA's Advice Service.

Tel: 1300 309 337

TTY: 1300 305 612

www.publicadvocate.vic.gov.au

i See also page 4 of the *Side by Side* booklet for information about ways a supportive attorney can support the principal.

Appointment Form

About the supportive attorney appointment form

The Department of Justice & Regulation has produced an online form for appointing supportive attorneys. Visit OPA's website for the online form or use the hard copy of the form that is provided here.

If you use the form in this booklet the principal can only appoint one supportive attorney and one alternative supportive attorney on the form.

A principal who wants to appoint more supportive attorneys should use the online form.

For an example of how to fill out the form visit OPA's website.

For the online appointment form, visit OPA's website.

www.publicadvocate.vic.gov.au

This page is intentionally blank.

Keep all pages of this form together.

Appointment of Supportive Attorney

This supportive attorney appointment is made under Part 7 of the **Powers of Attorney Act 2014**.

Section 1: Principal (You)

The person making this supportive attorney appointment is known as the 'principal'. Whenever you see the word 'principal' in this form, it means you.

Name of principal

Residential address

Street name and number

Suburb or town

State

Postcode

Section 2: Your supportive attorney

The next two pages allow you to appoint a supportive attorney and an alternative supportive attorney (if required). You also need to specify what types of decisions your supportive attorney can make.

I appoint the person listed below to act as my supportive attorney.

Name of supportive attorney

Residential address

Street name and number

Suburb or town

State

Postcode

What types of decisions can this supportive attorney help me make?

I authorise my supportive attorney to exercise powers for the **matters** specified in this appointment.

Select **all** options that apply.

Personal matters

Financial matters

Any other matters **Specify**

If you only want to authorise the exercise of power for specific personal, financial or other matters, provide details below.

What powers will this supportive attorney have?

I authorise my supportive attorney(s) to exercise the powers specified below.

Select as many options as you need.

Information power

To access, collect or obtain from or assist me in accessing, collecting or obtaining from any person any personal information about me that:

- (a) is relevant to a supported decision; and
- (b) may lawfully be collected or obtained by me.

Communication power

To communicate any information about me that is relevant or necessary to the making of or giving effect to a supported decision, or to communicate or assist me to communicate a supported decision.

Power to give effect to decisions

To take any reasonable action or to do anything that is reasonably necessary to give effect to a supported decision, other than a decision about a significant financial transaction.

Section 3: Start date

If you do not complete this section, your supportive attorney(s) can start helping you to make decisions immediately on the making of this supportive attorney appointment.

This supportive attorney appointment commences:

Please choose **one** option.

Immediately, on its making

At any other time, circumstance or occasion **Specify**

.....
.....
.....
.....
.....
.....
.....
.....
.....

Section 4: Principal's signature

You need to sign and date this form by hand. You must sign the form in front of two witnesses. They must then sign and date the form in front of you and each other. One witness must be a person who is authorised by law to witness the signing of statutory declarations. A list of people who are authorised to witness the signing of statutory declarations can be found at justice.vic.gov.au/statdec.

If you need someone to sign for you due to a physical disability, do not fill out this section. Fill out **Section A1**

In this section, the word 'we' means the witnesses. The word 'principal' means the person making this supportive attorney appointment.

Name of principal

Signature

Date

Witnesses

Each witness **certifies** that:

- the principal appeared to freely and voluntarily sign this supportive attorney appointment form in our presence, and
- at that time, the principal appeared to us to have decision making capacity in relation to making this supportive attorney appointment.

Each witness **states** that:

- we are not supportive attorneys under this appointment.

Name of authorised witness

Residential or business address

Street name and number

Suburb or town

State

Postcode

Signature

Qualification (as a person who is authorised by law to witness the signing of statutory declarations)

Date

Name of other witness

Residential or business address

Street name and number

Suburb or town

State

Postcode

Signature

Date

Section 5: Statement of acceptance of appointment by supportive attorney

This section needs to be read and signed by each supportive attorney being appointed. A witness must also sign the witness certificate for each supportive attorney.

The word 'principal' means the person making this supportive attorney appointment.

Supportive attorney

I accept my appointment as supportive attorney for the principal under this supportive attorney appointment and state that:

- I am eligible under the **Powers of Attorney Act 2014** to act as a supportive attorney under a supportive attorney appointment, and
- I understand the obligations of a supportive attorney under the **Powers of Attorney Act 2014** and the consequences of failing to comply with the **Powers of Attorney Act 2014**, and
- I undertake to act in accordance with the **Powers of Attorney Act 2014**.

If appointed for financial matters and you have been convicted or found guilty of an offence involving dishonesty

I have disclosed to the principal that I have been convicted or found guilty of an offence involving dishonesty

Name of supportive attorney

Residential address

Street name and number

Suburb or town

State

Postcode

Signature

Date

Witness

I witnessed the signing of the statement of acceptance by the supportive attorney.

Name of witness

Residential address

Street name and number

Suburb or town

State

Postcode

Signature

Date

Section 6: Statement of acceptance of appointment by alternative supportive attorney

This section needs to be read and signed by each alternative supportive attorney being appointed. A witness must also sign the witness certificate for each alternative supportive attorney.

The word 'principal' means the person making this supportive attorney appointment.

Alternative supportive attorney

I accept my appointment as an alternative supportive attorney under this supportive attorney appointment and state that:

- I am eligible under the **Powers of Attorney Act 2014** to act as a supportive attorney under a supportive attorney appointment, and
- I understand the obligations of a supportive attorney under the **Powers of Attorney Act 2014** and the consequences of failing to comply with the **Powers of Attorney Act 2014**, and
- I undertake to act in accordance with the **Powers of Attorney Act 2014**, and
- I understand the circumstances in which the alternative supportive attorney is authorised to act under the **Powers of Attorney Act 2014**, and
- I am prepared to act in place of the supportive attorney for whom I am appointed when authorised to do so under the **Powers of Attorney Act 2014**.

If appointed for financial matters and you have been convicted or found guilty of an offence involving dishonesty

I have disclosed to the principal that I have been convicted or found guilty of an offence involving dishonesty

Name of alternative supportive attorney

Residential address


Street name and number

Suburb or town

State

Postcode

Signature


.....

Date

Witness

I witnessed the signing of the statement of acceptance by the alternative supportive attorney.

Name of witness

Residential address


Street name and number

Suburb or town

State

Postcode

Signature


.....

Date

Section A1: Signed at the direction of the principal

Name of principal

Name of person signing
at the direction of the principal

Residential address


Street name and number

Suburb or town

State

Postcode

Signature


.....

Date

Witness

Each witness **certifies** that:

- in our presence, the principal appeared to freely and voluntarily direct the person to sign for the principal and that person signed this supportive attorney appointment in our presence and in the presence of the principal, and
- at that time, the principal appeared to us to have decision making capacity in relation to making this supportive attorney appointment.

Each witness **states** that:

- we are not supportive attorneys under this appointment, and
- we are not the person who is signing at the direction of the principal.

Name of authorised witness

Residential or business address


Street name and number

Suburb or town

State

Postcode

Signature


.....

Qualification (as a person who is authorised by law to witness the signing of statutory declarations)

Date

Name of other witness

Residential or business address


Street name and number

Suburb or town

State

Postcode

Signature


.....

Date

What these words mean

This list explains words that appear in this guide.

accommodation provider: a person who is, in a professional or administrative capacity, directly or indirectly responsible for or involved in the provision of accommodation to the individual.

affidavit: a written statement that is confirmed by the oath or affirmation of the party making it before a person authorised to receive affidavits. The statement is witnessed by a person authorised under section 123C of the *Evidence (Miscellaneous Provisions) Act 1958*.

care worker: a person who performs services for the care of an individual and receives remuneration for those services. A care worker does not include a person who receives a carer payment or other benefit from the government for providing home care for the individual, or a person who is a health provider.

certified copy: copy of a document which an authorised person has certified as a true and complete copy of the original.

decision making capacity: having the ability: to understand the information relevant to the decision and the effect of the decision; to retain that information to the extent necessary to make the decision; to use or weigh that information as part of the process of making the decision; and to communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

financial matters: any matter relating to the principal's financial or property affairs and includes any legal matter that relates to the financial or property affairs of the principal.

Examples of financial matters are: paying expenses, paying debts, receiving and recovering money payable, carrying on any trade or business, performing contracts entered into by the principal, paying rates, taxes and insurance premiums or other outgoings, and withdrawing money from or depositing money into an account of the principal with a financial institution. The OPA website has more examples.

health provider: a person who provides health care in the practice of a profession or in the ordinary course of business.

legal matters: use of legal services for the principal's benefit; or bringing or defending a legal proceeding or hearing in a court, tribunal or other body on behalf of the principal, including settling a claim before or after a legal proceeding or hearing starts.

personal matters: any matter relating to the principal's personal or lifestyle affairs. Personal matters include any legal matter that relates to the principal's personal or lifestyle affairs. Examples of personal matters are: where and with whom the principal lives; whether the principal works or undertakes education or training and, if so, what type; daily living issues; and health care matters.

principal: the person who makes the supportive attorney appointment.

statutory declaration: a document in which a person makes a statement and acknowledges that it is made in the belief that, if the statement is false, the person is liable to penalties for perjury. The statement is witnessed by a person authorised under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958*.

supportive attorney: a person appointed to support another person to make and give effect to decisions.

Victorian Civil and Administrative Tribunal (VCAT): deals with disputes, including guardianship and administration matters and powers of attorney matters.

witness: a person who is present when someone signs a document and who confirms that the signature is genuine by adding their own signature.

Where to get help

Office of the Public Advocate (OPA)

Call OPA's Advice Service for information about supportive attorney appointments or find more information on the OPA website.

OPA's website has links to resources about supported decision making.

Level 1, 204 Lygon St
Carlton VIC 3053
OPA Advice Service: 1300 309 337
TTY: 1300 305 612
Fax: 1300 787 510
www.publicadvocate.vic.gov.au

Victoria Legal Aid Legal Help

For free information about the law and how Victoria Legal Aid can help you, call Legal Help on 1300 792 387, Monday to Friday, from 8.45 am to 5.15 pm.

More information is available on the Victoria Legal Aid website
www.legalaid.vic.gov.au

Victorian Civil and Administrative Tribunal

Level 5, William Cooper Justice Centre
223 William Street,
Melbourne Victoria 3000
Tel: 9628 9911
Toll Free: 1300 079 413
Fax: 9032 1155
www.vcat.vic.gov.au

Federation of Community Legal Centres

Call or visit the FCLC website for your nearest community legal centre or specialist legal centre for people with disability or mental illness.

Tel: 9652 1500
www.communitylaw.org.au



If you need an interpreter:

Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is usually free.

Tel: 131 450



If you are deaf or have a hearing or speech impairment:

Use the National Relay Service to phone any of the agencies in this section.

This is free. To make an internet relay call and for more information about the NRS visit: www.relayservice.com.au

TTY users: Call 133 677 and then ask for the phone number you need. Include the area code.

Speak and Listen users: Call 1300 555 727 and then ask for the phone number you need. Include the area code.

Office of the Public Advocate

Level 1, 204 Lygon St
Carlton 3053

OPA Advice Service: 1300 309 337

TTY: 1300 305 612

Fax: 1300 787 510

www.publicadvocate.vic.gov.au

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