



# Dementia Australia

## Planning Ahead

With a diagnosis of dementia, planning for the future becomes important. Legal issues are usually low on the list of concerns of the family and person who has just been diagnosed with dementia. Yet if not dealt with in the early stages of the disease, legal matters can become an extra burden in what may already be a difficult situation.

The diagnosis of dementia in a person does not automatically mean the person has lost the mental capacity to sign legal documents. As long as the signature is made in a rational or lucid period, the person is said to have the required mental capacity. If there is any doubt, written expert medical evidence is required in support of the signing.

It is therefore very important to address legal matters as soon as the person has been diagnosed with dementia. It is too late to attend these legal matters once the dementia has progressed to the point where mental capacity is deemed lost.

### What does capacity mean?

Capacity is a legal term that means a person is capable of making decisions about matters that affect them, such as personal or financial decisions. To have capacity a person must be able to:

- Understand the nature & effect of a decision
- Freely and voluntarily make those decisions

- Be able to communicate these decisions in some way

Dementia causes a decline in mental abilities to the point where loss of understanding and comprehension are dominant features. This is referred to as loss of mental capacity.

Having dementia does not automatically mean a person does not have the capacity to make decisions. However, as the disease progresses decision-making abilities will decline, and it is important to have measures in place.

### Advanced Health Directive

An Advance Health Directive (AHD) allows an individual to state their wishes in relation of future health care. It might include instructions about resuscitation, life support, tissue donation, artificial feeding or any particular treatment you would not wish to have. It will only come into effect when the person is unable to make their own decisions due to loss of mental capacity. At the time of making an AHD, a doctor must discuss your instructions with you and complete a certain section of the document.

A person can have an Enduring Power of Attorney (see below) who can make personal and health care decisions for them. However you can also appoint an attorney for health matters by completing an Advance Health Directive. If you have both an EPOA for personal matters and an AHD attorney, the person specified in your AHD will be responsible for health decisions.

To complete an AHD you must be over the age of 18 and have capacity.

## **Enduring Power of Attorney**

An Enduring Power of Attorney (EPOA) is a legal document that allows you to appoint a substitute decision maker for when you are no longer able to. You can have an EPOA for financial matters, personal matters (including health decisions) or both.

An EPOA is different to a Power of Attorney, as a Power of Attorney becomes invalid if the principal loses mental capacity, such as in dementia. However an Enduring Power of Attorney continues to be effective even if the principal loses mental capacity.

Deciding on who your attorney should be is a big decision, as they will have a legal right to make decisions for you.

## **Statutory Health Attorney**

If a person has not appointed someone as their Enduring Power of Attorney or made an Advance Health Directive, and loses their mental capacity, then a Statutory Health Attorney can make decisions for them in relation to health matters. There are no special forms for becoming a Statutory Health Attorney (unlike the other three documents mentioned above). The law simply recognises the authority of particular people to make decisions about health matters on a decision-by-decision basis.

If there isn't anyone eligible to become a Statutory Health Attorney then the Adult Guardian may be appointed to make decisions. The Adult Guardian can also be called upon to intervene when there is a dispute between Statutory Health Attorneys of equal status.

## **Will**

By making a Will, we make a conscious decision to ensure that after our death our assets are distributed to the people (/organisations) that we have chosen to benefit from our estate. A Will comes into effect only after we have died.

A will can be contested on a number of grounds, or be invalid, if the person who made the Will is found not to have had capacity at the time of signing the Will. As such updating your will in the early stages of the disease can be important to avoid issues like this arising in the future.

If no valid Will has been made, the law will decide in what proportion and to whom the assets of the deceased person will be distributed.

## **Financial Planning**

It is important to plan ahead with regard to your finances. A financial advisor can help by ensuring your finances are structured to be able to provide for your future care needs. With new changes to Aged Care, individuals undergo means testings and may need to contribute across all aspects of care. Seeking financial advice can help you tailor your finances and prepare for the future.

## **Planning ahead**

It is extremely important for the person diagnosed with dementia to attend to the above matters as soon as possible after the diagnosis is made. Early consultation with your solicitor can assist in avoiding problems that may arise later when the person with dementia no longer has the mental capacity to conduct their own affairs.

This fact sheet gives a brief overview about planning for the future. If you would like more detailed information you can contact the following organisations:

- Queensland Office of the Public Guardian  
<http://www.publicguardian.qld.gov.au/>
- The Public Trustee  
<http://www.pt.qld.gov.au/>
- My Aged Care  
<http://www.myagedcare.gov.au/>