



## Supportive Attorneys

### Choosing a person to help you make and act on your decisions

When a child turns 18 they can begin to make important decisions for themselves.

Sometimes these decisions are hard, and they might want to ask another adult that they trust to help make good decisions, or to make these important decisions happen.

Privacy laws can make it difficult for an adult to support a person with an intellectual disability. The law in Victoria now enables a person over the age of 18 years to appoint a **Supportive Attorney** to help them make and implement decisions.

This is done by creating a legal document called a Supportive Attorney Appointment.

This document can be presented to Organisations to overcome Privacy barriers. Organisations must recognise that a Supportive Attorney Document gives them permission to speak about the Principal to any person named as a Supportive Attorney in the legal document.

#### A Supportive Attorney can:

Support a person (called the '**Principal**') to help them make decisions and give effect to those decisions. This includes:

- Getting important information about the Principal from places like hospitals and banks
- Talking to organisations (e.g. banks or phone companies) for the Principal

- Making sure the decisions the Principal makes are carried out

*“There are many things to consider as your child becomes a young adult, and giving them some extra support to make their own decisions is one way that we, as parents, can help to secure their future.”*

A Supportive Attorney cannot make decisions for the Principal, but rather can help them make the decision for themselves.

#### Who can be a Supportive Attorney?

A Supportive Attorney can be a family member, friend, or someone else who

- the Principal trusts
- respects the Principal's rights and independence
- lives nearby and has the time to help

They must be at least 18 years of age. You can have one or more Supportive Attorneys, and appoint an alternate to act as a back-up if your usual Supportive Attorney is unavailable.

#### Your Supportive Attorney cannot be:

- the Principal's care worker or aide
- the Principal's doctor or anyone related to their health
- someone who provides the Principal with accommodation if they live away from home

## Creating a Supportive Attorney

To appoint a Supportive Attorney the Principal needs to complete an 'Appointment of Supportive Attorney' form. This is a legal document that needs to:

- Have all the details filled in.
- Be signed by both the Principal and the Supportive Attorney.
- Have two people witness the signing, and have them both sign the document also.

A Lawyer can assist you with this or you can find this form on the [Office of the Public Advocate website](#) or consult a lawyer to assist you.

## A Principal must have mental capacity

It is very important that the people witnessing the Supportive Attorney Document are satisfied that the Principal really understands the legal document they are signing. This means that the Principal must:

- want help to make decisions
- want help to:
  - understand choices
  - communicate a decision to others
  - get information
  - sort out misunderstandings
- understand that a Supportive Attorney Appointment is a legal document
- understand what a Supportive Attorney is and does
- understand that they are the decision maker and that a Supportive Attorney only helps them
- know that they can change their mind about having a Supportive Attorney, or change who they want as a Supportive Attorney, at any time
- understand what a decision/choice is

- understand they are an adult and can make their own choices
- can sign their name or make a personal mark or communicate their acceptance
- understand that if they sign their name it means that they agree with what is written in the legal document

## A Principal must freely want to create a Supportive Attorney Document

It is VERY important that the Principal acts freely.

There must be no pressure put on a Principal to create a Supportive Attorney document, in the form of gift or inducements. Equally there can be no penalties or adverse consequences threatened if the Principal does not proceed with a Supportive Attorney appointment.

## Handling a Supportive Attorney Appointment

You can only use this document when it is properly signed and dated.

- Keep the original document in a very safe place, and in a plastic sleeve.
- Make copies and have a Lawyer certify or sign them.
- Give your Supportive Attorneys a certified copy also.

### **Never give the original appointment document away.**

However, other organisations may be allowed to make and keep a copy for their records so that they can give information to the Supportive Attorney.

## Cancelling a Supportive Attorney Appointment

The Supportive Attorney appointment can be changed or cancelled by the Principal at any time.

## For more information

The Office of the Public Advocate has all of the information and documents you need to appoint a Supportive Attorney.

[www.publicadvocate.vic.gov.au/power-of-attorney/supportive-attorney-appointments](http://www.publicadvocate.vic.gov.au/power-of-attorney/supportive-attorney-appointments)

**Office of the Public Advocate**  
**Phone 1300 309 337**

This information has been put together with the generous assistance of Duncan Legal, a law firm who offers legal assistance in the areas of estate planning, special trusts, disability and mental capacity.

If you need more guidance in appointing a supportive attorney please email Duncan Legal at: [reception@duncanlegal.com.au](mailto:reception@duncanlegal.com.au)