

# **ENDURING POWER OF ATTORNEY (Financial)**

This is a booklet prepared by the Victorian Government Department of Justice to provide information to:

- Part 1 - The person appointing an attorney ("the donor").
- Part 2 - The persons witnessing the donor's signature on the document appointing an attorney.
- Part 3 - The person appointed as attorney.
- Part 4 - The donor revoking the appointment of an attorney.

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The booklet does not constitute legal advice and is provided for general information only.

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## **PART 1: For the person appointing an attorney**

By completing an enduring power of attorney, you can give a person of your choice the power to make decisions on your behalf about financial and legal matters.

These pages explain what you need to know to complete the document properly.

Because you are the person making or donating the enduring power of attorney, you are referred to as 'the donor'.

### **What is an enduring power of attorney?**

This is a legal document that appoints another person (or persons) to make financial and legal decisions for you. Unlike a general power of attorney, an enduring power of attorney continues to be valid even if you lose legal capacity in the future. 'Enduring' simply means that the power continues even if the person giving it loses the capacity to make decisions. It is useful as a means of ensuring that someone, chosen by you, takes control of your financial and legal affairs if and when you are ever unable to do so yourself.

### **Why give someone enduring power of attorney?**

There are some circumstances in which you may be unable to make decisions about matters that concern you. For example, you may be overseas, or you may be too ill.

If you give someone a general power of attorney, for instance, to sign documents for you in your absence, that power will come to an immediate end if for some reason you lose legal capacity to make decisions. This could be very awkward if your attorney is in the process of conducting business for you.

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Giving an attorney an enduring power means that the attorney is able to continue to act for you when you have lost capacity to make decisions for yourself.

### **Can I appoint more than one attorney?**

Yes. Several options are provided for in the Instruments Act 1958. For example, you may choose to appoint a single attorney; or two or more "joint" attorneys; or two or more "joint and several" attorneys; or an "alternative" attorney.

The appointment of "joint" attorneys means that all the attorneys can only act if they all agree, and any documents must be signed by all of them.

The appointment of "joint and several" attorneys means that all the attorneys can act together if they all agree, or any of the attorneys can act and sign documents together or alone.

The appointment of an "alternative" attorney means that an alternative attorney can only act in the event of the death or during the absence or legal incapacity of the attorney for whom the alternative attorney has been appointed.

It is important that your intentions be expressed clearly.

### **Whom should I appoint as my attorney?**

You should appoint someone you trust to manage your property and financial affairs in your best interests. Many people choose their spouse or an adult child, but you may prefer to appoint another family member, a friend with expertise in the area, an accountant, a lawyer, State Trustees Limited, or a trustee company. You should also feel confident that the person or agency is competent to deal with the management decisions that may arise and capable of keeping accurate

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records of all dealings and transactions. The attorney you choose must be willing to take on the responsibility on your behalf.

Your attorney must be over 18 years of age and must not be a bankrupt or insolvent.

### **Should I pay my attorney?**

You do not need to pay your attorney for the power to be effective. Normally, payment is not made unless a trust company is acting as attorney.

### **Can I limit my attorney's powers?**

Yes, you can specify how you want your attorney(s) to carry out their responsibilities to you and any special conditions you want to apply in the decisions they make on your behalf. You can also include particular instructions about what you would like your attorney to do. Your attorney must act in accordance with your instructions.

Once the power to make a decision begins, your attorney will have full control over that decision unless you have explicitly limited that power in this document.

Where you have large capital assets, such as property or shares, you should leave clear instructions for your attorney(s) as to how to deal with or distribute or dispose of these assets.

**Note:** It is better not to place too many restrictions on your attorney's power, as this may make it difficult for your attorney to make decisions on your behalf. If you choose to impose conditions or restrictions on the power you are giving to your attorney(s), it is recommended you seek legal advice.

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## **When does the attorney's power begin?**

You may nominate when your attorney's power is to begin. Under clause 4, you should indicate whether you want the attorney to assume power:

- immediately; or
- on a specified date; or
- on a specified occasion.

If you do not complete clause 4, the power begins immediately.

**Note:** Even if you give your attorney power immediately, you may also continue to make decisions yourself while you are able to do so. While you retain capacity, your attorney must act in accordance with your directions.

## **How long does the power continue?**

The power continues until it is revoked, or upon your death.

(See also part 4 of this package: "For revocation of the power by the donor").

## **How can I be sure that my attorney will act in my interests?**

While (if ever) you are unable to oversee your attorney's decisions, the public advocate, the Victorian Civil and Administrative Tribunal (VCAT) and the court have the power to protect your interests. Your attorney may be required to produce a summary of receipts and expenditure or more detailed accounts, and these may be audited. An attorney who does not adequately protect your interests can be removed or replaced.

## **Can I change or revoke an enduring power of attorney?**

Yes, you may change it or revoke it at any time, so long as you are capable of understanding what you are doing. In other words, so long as you have the

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capacity to make an enduring power of attorney, you also have capacity to change it or revoke it.

### **How can I change or revoke an enduring power of attorney?**

You can change or revoke an enduring power of attorney in exactly the same way as you can change or revoke a general power of attorney. There are different reasons why you may want to change or revoke your power. Maybe your relationship with the attorney has changed, or your own circumstances are different, and the person you appointed is no longer appropriate for the role. It may be simply that either the attorney or you have moved.

Unlike a general power of attorney, however, it is likely that you will still need to appoint someone new to take control of your finances and legal affairs in the event of you no longer being able to make decisions for yourself. Remember - this is something that can happen to anyone.

There are a number of ways you can revoke the power. One way is by telling the attorney that their power is withdrawn, and by destroying the enduring power of attorney document and any copies. Another way is by filling out a 'revocation of enduring power of attorney' and giving a copy of this to your attorney. You should also ask your attorney to return the enduring power of attorney document. It is also a good idea to notify your bank or any other relevant groups, such as financial institutions or businesses, with which your attorney might have been dealing.

**Note:** Your attorney's actions may be binding unless you notify the attorney that their power has been withdrawn.

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If you lose legal capacity in the future, you will not be able to revoke an enduring power of attorney while you lack capacity.

If and when you do not have legal capacity, the guardianship list of VCAT can revoke an enduring power of attorney if the tribunal believes that the attorney is acting improperly, or against your best interests.

### **Is there anything else that will end this power?**

Yes, several other circumstances will bring this enduring power of attorney to an end:

- **If you die.** If you die, the enduring power of attorney is revoked in its entirety.
- **If you make an inconsistent document.** This power is revoked to the extent of any inconsistency with any later document you complete. Where the power is inconsistent with a later enduring power of attorney, then the later power overrides the first.
- **If your attorney resigns.** Your attorney may resign by giving you a signed notice or by getting leave to resign from VCAT or the court.
- **If your attorney becomes incapable.** Your attorney's power is revoked if he/she becomes incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision.
- **If your attorney becomes bankrupt or insolvent.**
- **If your attorney dies.**

### **Prerequisites for appointing an attorney?**

In order to be able to appoint someone with a power of attorney (either general or enduring), the law expects two things of you.

First, you must be 18 years of age or over.

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Secondly, you must have sufficient capacity to make the appointment.

Capacity is a legal term that means:

- you understand the main consequences of a decision;
- you are able to take responsibility for making a choice;
- and you are able to make a choice based on the risks and benefits important to you.

This means that at the time of making the appointment of the enduring power of attorney, you must be able to understand things such as:

- what sorts of powers the attorney will have, and what sorts of decisions they will have the authority to make;
- when and how they will have the authority to exercise that power;
- the effects that their power could have on you and on the things that are important to you; and
- what options are open to you to cancel or change the arrangement in the future.

On the basis of understanding these sorts of issues, you then need to be able to make your own decision. This means that you make the decision:

- without pressure from anyone else; and
- weighing up the pros and cons on the basis of what matters most to you.

When you make a decision in this way, you have made an informed decision or have given informed consent.

## **Who is involved in completing this document?**

At least four people:

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- **You**, as the donor, complete enduring power of attorney clauses 1 to 6 in Form 1.

If you have a physical disability which prevents you from signing, you may instruct another person to sign for you, but you must give the instruction in front of the witnesses, and the signing must be done in your presence. This person must be 18 years old or more, and must not be a witness or your attorney. He/she must complete the statement beside the place for his/her signature.

- **The two witnesses** must sign the certificate of witnesses in form 1.

One of the witnesses must be authorised by law to witness the signing of statutory declarations. The following is a list of persons who are authorised by law to witness statutory declarations:

- a justice of the peace or bail justice
- a notary public
- a barrister and solicitor of the Supreme Court
- a clerk to a barrister and solicitor of the Supreme Court (including a barrister's clerk)
- the prothonotary or a deputy prothonotary of the Supreme Court
- the registrar or deputy registrar of the Supreme Court
- the principal registrar of the Magistrates' Court
- the registrar of probates or an assistant registrar of probates
- the associate to a judge of the Supreme Court or the County Court
- the secretary of a master of the Supreme Court or the County Court
- a person registered as a patent attorney under part XV of the Patents Act 1952 (Cth)

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- a member of the police force
- the sheriff or a deputy sheriff
- a member or former member of either house of the parliament of Victoria or the Commonwealth
- a councillor of a municipality
- a senior officer of a council as defined in the Local Government Act 1989
- a registered medical practitioner within the meaning of the Medical Practice Act 1994
- a registered dentist within the meaning of the Dental Practice Act 1999
- a veterinary practitioner
- a pharmacist
- a principal in the teaching service
- the manager of an authorised deposit-taking institution
- a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or the National Institute of Accountants
- the secretary of a building society
- a minister of religion authorised to celebrate marriages (not a civil celebrant)
- a person who holds an office in the Victorian Public Service or a statutory authority that is prescribed as an office to which this section applies
- a fellow of the Institute of Legal Executives (Victoria).

The witnesses must not be either yourself as the donor, or your attorney. At least one of the witnesses must not be a relative of yours or of the person(s) you appoint as your attorney(s).

The witnesses must sign the certificate together in your presence and must choose one of the available options by crossing out the option (a) which does not apply:

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- either (a) that you signed the document freely and voluntarily in the presence of the witnesses;
- or alternatively (a) that the document was signed in the presence of the witnesses by another person at your direction which was given freely and voluntarily;

and (b) at the time of signing you appeared to understand what you were doing, that is, you had sufficient capacity.

If a witness is not sure that you understand the nature and effect of the document, he/she should refuse to sign the document.

- **The attorney** must sign and date the statement of acceptance.

Your attorney must be at least 18 years old.

### **Where can I go for advice?**

The office of the public advocate, your local community legal centre or a solicitor can advise you about the enduring power of attorney and how to complete this document.

### **What happens to this document when it is completed?**

You should leave the original in a safe place, such as with your bank, but it is important to keep a copy to refer to. You should also give a copy to anyone else who may need to be involved, such as:

- your attorney
- your doctor
- your solicitor

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- your accountant
- your stockbroker.

You may also wish to carry a card in your purse or wallet, stating that you have made an enduring power of attorney and giving details of that appointment.

## **PART 2: For the witnesses**

Your role goes beyond ensuring that the signature of the donor (the person giving the power) is genuine. You certify that the donor has signed the document freely and voluntarily in your presence, that is, without any undue influence or duress. You also certify that the donor appeared to understand the nature and effect of the document. For example, the donor should show an understanding of the nature and effect of his/her estate as far as this is practicable. This means you should make allowance for circumstances in which a donor may not reasonably be expected to have this knowledge, for example, where one member of a domestic relationship has not been responsible for, or involved in decision-making for, their estate during his/her lifetime.

In examining the capacity of the donor, you should respect the privacy of the donor and therefore do not need to know the specific details of the estate, such as the balance of the donor's bank accounts or exactly how many properties the donor may own. Rather, you should make sure that the donor understands that he/she is giving the attorney the same power that the donor has to deal with any of the donor's assets, but only in the donor's best interests.

In the future, you may have to provide information about the donor's capacity to understand these matters when giving the power. If you are doubtful about the donor's capacity, you should make appropriate inquiries with the consent of the

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donor, for example from the donor's doctor. (See page 8 of this package for an explanation of "capacity".)

Where it is possible that there may be some doubt in the future as to the donor's capacity at the time of signing the document, then a medical certificate confirming capacity at the time of signing should be obtained by the donor and attached to the document.

Where an interpreter is required, it is important that you are satisfied that the document has been explained in a language that the donor understands.

It is strongly recommended that, if you are in any doubt, you make a written record of the proceedings and of any questions you asked to determine the donor's capacity. Otherwise, if you are not satisfied that the donor understands the nature and effect of the document you should refuse to sign the document. You should also refuse to sign the document if the donor appears to be signing the document under duress or undue influence.

## **PART 3: For the attorney**

### **Important notice**

The donor in choosing you to be his/her enduring power of attorney is entrusting you to act in his/her best interests. If you accept this trust and the enduring power of attorney, you will be taking on serious responsibilities. If you fail to observe these responsibilities, you could be removed as attorney or even convicted of an offence and required to pay compensation.

Besides the particular responsibilities mentioned in part 1 of this document, there are responsibilities imposed by the Instruments Act 1958 and under the common law.

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## **What are these responsibilities?**

They are both general and specific.

### **General responsibilities (to guide you in decision-making)**

You must exercise the power given to you honestly and with reasonable care. It is an offence not to do so, and you may also be required to compensate the donor.

You must comply with the terms of the enduring power of attorney and any other requirement of the court or VCAT. In addition, you must abide by the general principles on which the Act is based.

### **General principles include:**

- presuming that the donor has the capacity to make a particular decision until there is conclusive evidence that this is not the case;
- recognising his/her right to participate in decisions affecting his/her life to the maximum extent for which he/she has capacity;
- respecting the donor's human worth and dignity and equal claim to basic human rights, regardless of his/her capacity;
- recognising the donor's role as a valued member of society and encouraging his/her self-reliance and participation in community life;
- taking into account the importance of the donor's existing supportive relationships, values and cultural and linguistic environment, ensuring that your decisions are appropriate to the donor's characteristics and needs;
- recognising the donor's right to confidentiality of information.

### **Specific responsibilities**

- **Duty to keep records.** You must keep accurate records of dealings and transactions made under the power as VCAT or the court or the public

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advocate may require you to produce them. You must keep these records separate from your own affairs where possible.

For example, if you dispose of an asset you should keep records about the disposal.

Where there are joint attorneys, then it is sufficient that by agreement one of the attorneys will retain a record or account of transactions or dealings.

- **Duty to keep property separate.** You must keep your property separate from the donor's property unless you and the donor own the property jointly.

If the donor's capacity to make decisions is impaired, you must also get approval from VCAT or the court for any transactions that have not been authorised in this document.

- **Duty to avoid transactions that involve conflict of interest.** You must not enter into transactions that could or do bring your interests (or those of your relation, business associate or close friend) into conflict with those of the donor.

However, you may enter into such a transaction if it has been authorised in this document or by VCAT or the court.

### **How do I complete a document for the donor?**

If you have the power to execute (complete) a document for the donor, you do so in the ordinary way, but you must note on the document that you are executing it as the donor's attorney under enduring power of attorney (e.g. 'John Smith, by his duly appointed attorney, Mary Jones').

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## **Proof of your authority**

It is recommended that you keep the enduring power of attorney document in a safe place. Sighting of the document may be a requirement of your authority by financial institutions, banks etc.

## **When does my power to make decisions begin?**

The donor may nominate in this document when your power to make financial decisions begins. If the donor does not nominate a date or event or occasion when a power becomes exercisable, then your power begins immediately.

However, while the donor retains capacity, you must act in accordance with the donor's directions.

## **When does my power end?**

Though there is no time limit on enduring powers of attorney, certain actions by you or the donor or VCAT or the court can bring your power to an end.

### **Your actions:**

- **Your resignation.** So long as the donor is capable of using the power given to you, you can resign by giving the donor a signed notice. However, if the donor is incapable of using the power, then you may only resign by getting leave of VCAT or the court.
- **Becoming incapable.** Your power is revoked if you become incapable of understanding the nature and foreseeing the effects of a decision, and communicating that decision.
- **Becoming bankrupt or insolvent.** If this happens, your power is revoked.
- **Your death.**

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### **The donor's actions:**

- **Revoking your power.** The donor may revoke your power at any time, so long as he/she has the capacity to revoke it, that is, the donor understands the nature and effect of revoking the power.

If the donor revokes your power, the donor has an obligation to inform you. If the donor neglects to advise you that the power is revoked and you continue to exercise the power in good faith, then you will be protected under the legislation.

- **Appointing a new attorney exclusively to have your powers.** If the donor completes a new document giving your powers to another attorney exclusively, your powers are revoked to that extent. Because the new document has a later date and is inconsistent with your powers, it overrides the earlier document.
- **The donor's death.** If the donor dies, your enduring power of attorney is revoked in its entirety.

### **Actions by the court or VCAT**

- Your power may also be changed or revoked by the court or VCAT if you have failed to act in the donor's interests.

### **Can I be held liable?**

Yes, you can be held liable if you use the enduring power of attorney knowing that it has been changed or revoked, or knowing of an event that effectively revokes it, or even if you have reason to believe that it has been revoked.

The court, VCAT and the public advocate have the power to protect the donor's interests. You may be required to produce a summary of receipts and expenditure

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or more detailed accounts, and these may be audited. You may also be required to give evidence in relation to the exercise of your powers. If VCAT, the court or the public advocate believes that you have not adequately protected the donor's interests, you may be removed or your enduring power of attorney may be revoked, and you may be required to compensate the donor.

### **Where can I go for advice?**

The public advocate, a community legal centre, a solicitor, VCAT, the court, State Trustees Limited or a trustee company can advise you about this document and your power and responsibilities under it.

VCAT and the court can also make a declaration about the validity of this document or whether your power to make a decision for the donor has begun.

### **PART 4: For revocation of the power by the donor**

You may change or revoke the power at any time, so long as you are capable of understanding what you are doing, that is, so long as you have capacity.

You can revoke the power by telling the attorney that their power is withdrawn, and by destroying the enduring power of attorney document and any copies.

You can further formalise this by filling out the revocation of enduring power of attorney form and giving a copy of this to your attorney. You should also ask your attorney to return the enduring power of attorney document. It is also a good idea to notify your bank or any other relevant groups, such as financial institutions or businesses, with which your attorney might have been dealing.

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There are also several other circumstances will bring the power to an end:

- If you die, the enduring power of attorney is revoked in its entirety.
- The power is revoked to the extent of any inconsistency with any later document you complete. Where the power is inconsistent with a later enduring power of attorney, then the later power overrides the first.
- Your attorney may resign by giving you a signed notice or by getting leave to resign from VCAT or the court.
- Your attorney's power is revoked if he/she becomes incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision.
- Your attorney's power is revoked if your attorney becomes bankrupt or insolvent.
- If your attorney dies.

**Note:** Your attorney's actions are binding unless you notify the attorney that their power has been withdrawn.

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# **ENDURING POWER OF ATTORNEY**

**WHAT IS AN ENDURING POWER OF ATTORNEY?  
CAN WE HELP YOU?**

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## **Enduring power of attorney (financial)**

Maintaining financial control of your life is all-important, but sometimes things happen to lessen that control. It may be as simple as being unable to attend to your finances because you're overseas, or something more serious like mental illness or dementia. Either way, organising an enduring power of attorney is a smart way to control your financial and legal affairs when you aren't in a position to make decisions yourself.

## **Enduring power of attorney (financial) – a legal and financial life planner**

An enduring power of attorney is a life planning tool that lets you, the donor, choose someone as an attorney to decide financial and legal matters for you – such as managing your banking and income, paying bills, signing contracts or handling your assets. While you retain capacity, your attorney must act in accordance with your directions and wishes. It also provides you with ongoing control that continues even if you lose your legal capacity\*. But remember, an enduring power of attorney (financial) can't be used for making medical treatment or guardianship decisions. For more information about these powers contact the office of the public advocate.

*\*Legal capacity, or capacity, means you understand the main consequences of a decision, can take responsibility for making a choice based on the risks and benefits important to you. See your lawyer if you aren't sure whether you have legal capacity.*

## **Why arrange an enduring power of attorney (financial)?**

None of us know what the future holds. Having an enduring power of attorney provides peace of mind in relation to financial and legal matters by anticipating unforeseen circumstances. For example, you may be in a car accident that leaves

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you unable to talk, write or make important decisions. Without having an enduring power of attorney in place, even something as simple as paying a bill may become difficult and the consequences could overwhelm you, your family and friends.

### **Maintaining control with an enduring power of attorney (financial)**

If you lose legal capacity without an enduring power of attorney in place, someone acting in your best interests, such as a family member or the public advocate, would have to apply to the Victorian Civil and Administrative Tribunal (VCAT) to appoint someone with the legal authority to make decisions for you. This may result in VCAT appointing an independent third party to manage your affairs, in order to avoid conflict amongst family and friends. Organising an enduring power of attorney ahead of time can avoid this situation and ensure legal and financial decisions are made in your best interests by someone you have chosen yourself.

### **Who can appoint an attorney?**

You can appoint an attorney if you are over 18 years of age and understand what you are doing by making the appointment. This means you understand the powers your attorney will have, the decisions they will be allowed to make and when and how they will be able to exercise their powers. It also means you appreciate the effect your attorney's actions may have on you and things important to you, as well as your options to cancel or change the arrangement in future. If you don't have sufficient capacity, the guardianship list of VCAT can appoint an administrator to make financial and legal decisions for you.

### **Choosing your attorney – make the right choice**

It is extremely important to choose your attorney carefully because he or she will assume financial and legal decision-making responsibilities on your behalf, either immediately or whenever you have specified – such as when you go overseas or

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lose legal capacity. Whether the person you are considering is a family member or a close friend, they must be someone competent whom you trust and respect and who feels similarly towards you. Essentially, you want your attorney to look after you the way you'd look after yourself. You must also be sure they are prepared to take on the role as your attorney, and that they fully understand your future needs and expectations. To ensure this, and because our opinions and priorities may change over time, it's a good idea to talk about important matters with them on a regular basis. Remember that once the power to make a decision begins, your attorney will have full control over that decision unless you have clearly spelt out limitations on that power in your enduring power of attorney form.

### **Who can be my attorney?**

When appointing your attorney it is important to remember that they must be over 18 years of age and have legal capacity. You can choose to appoint any person or organisation, as long as they agree to take on the role. An attorney should be someone you trust to manage your affairs and who will respect your best interests. You may decide to appoint more than one person as your attorney. In this case, their power can be exercised in different ways: *"jointly"* (which means they must make decisions together and all sign any documents), *"jointly and severally"* (which means they can make decisions and sign documents together or independently), or *"alternatively"* (the alternate attorney can only make decisions when the first attorney is unable to act). Remember that it is important that your attorney(s) formally accept their appointment.

### **Duties of your attorney**

Your attorney must be someone who always acts in your best interests and, wherever possible, make decisions you would have made. They must keep accurate records of dealings and transactions made for you under the power,

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avoid any conflict of interest, and keep your property and money separate from theirs.

## **Enduring power of attorney changes – more choice, protection & control**

Recent changes to Victorian law means setting up an enduring power of attorney is now more comprehensive and secure for everyone involved – especially donors. If you already have an enduring power of attorney in place it will continue to be valid and these new changes will automatically apply to your current arrangements. The changes include the following:

- **An easy to understand form**

The new look enduring power of attorney form allows you more choice in setting out how your affairs are to be managed. Questions are in plain English and you can choose from a range of straightforward options so the result fits your own circumstances.

- **Choose when your enduring power of attorney starts**

As the donor, you can now determine when your enduring power of attorney begins (previously it began immediately once the form was drawn up). You can indicate on the form whether it should begin immediately, or on a particular date, or on a particular occasion. Even if you want the enduring power of attorney to start immediately, you can continue to make all decisions yourself while you have legal capacity. While you retain capacity, your attorney must act in accordance with your directions.

- **Detailed instructions for your attorney**

You can now specify exactly how your attorney(s) should carry out their responsibilities. For example, if you have large capital assets, like property

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or shares, you can leave clear instructions as to how your attorney(s) must deal with them. But restricting an attorney's power may make it difficult for them to make decisions for you, so it's a good idea to get legal advice before doing this.

- **A required statement of acceptance**

Every enduring power of attorney must now include a statement of acceptance that is signed and dated by the attorney. This ensures that the attorney is aware of, and accepts his or her role and responsibilities.

- **More specific requirements for witnesses**

There are new requirements for witnessing an enduring power of attorney. In order to ensure that a donor has made an enduring power of attorney of their own free will, the form includes a certificate which must be signed by each of two adult witnesses certifying that the donor signed freely and voluntarily in the presence of the witness and that, at the time, the donor appeared to have the capacity necessary to make the appointment. The witness must sign and date the certificate in the presence of the donor and each other. A witness cannot be the donor, or the person appointed as attorney, and only one of the witnesses can be a relative of the donor or of the attorney. One of the witnesses also must be authorised by law to witness the signing of statutory declarations – such as a justice of the peace, a member of the police force, a councillor of a municipality, a pharmacist, or a school principal.

### **What if I change my mind?**

You can change or cancel (revoke) your enduring power of attorney at any time as long as you have legal capacity. You may decide to do this

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because you or your attorney are moving away, or your relationship has changed and the attorney is no longer the best person to look after your interests. You can do this simply by telling your attorney that their power is withdrawn, by destroying the document and any copies, or in writing. For example, you may choose to use the revocation form.

- **VCAT – a user friendly forum**

The other main area of change is the extension of the jurisdiction of VCAT in relation to enduring powers of attorney. VCAT will now have the power to make declarations, orders, directions, recommendations or advice in relation to enduring powers of attorney. VCAT is considered an informal and accessible alternative to going to court. It provides an easier and less expensive forum for making legal decisions and resolving issues about your enduring power of attorney. These powers conferred on VCAT will operate concurrently with the powers of the supreme court.

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# **LEGAL CHECK UP**

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## **A legal check up for diagnosing problems and issues for clients**

Organising and managing your affairs is important in an increasingly complex society.

Nevett Ford's legal check-up assists you in identifying issues and opportunities in the way in which your affairs are managed.

By either completing and returning the form or by making an appointment to see one of our lawyers, you can obtain advice on those specific areas in which you have identified possible concerns.

The check list is categorised under a number of convenient headings, one or more of which may be applicable to you.

### **Small business**

Small business is the largest employer in Australia. Many people are already involved in small business or contemplating becoming involved. Running your own business can provide enormous satisfaction but is also subject to significant risks and pitfalls. Statistics indicate that over 70% of small businesses fail within the first five years of operation. Many have not sought assistance or help in either setting up their business or in the way in which it is conducted.

Nevett Ford, through their business law division have lawyers skilled and experienced in small business. After all, we are in business ourselves. Anyone in small business or contemplating entering business on their own ought avail themselves of our advice.

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Some critical areas which you ought check include:

## 1. Structure

- Do you have a small business? Yes/No

### Are you:

- a sole trader? Yes/No
- in partnership? Yes/No
- operating a trust? Yes/No
- operating a company? Yes/No

### If a partnership:

- Is the agreement in writing? Yes/No
- Have there been changes in composition of the partnership? Yes/No
- If you use a business name, is it registered? Yes/No
- Does the agreement provide an appropriate method of valuation and payment on termination? Yes/No

### If utilising a company structure:

- Is the register relating to directors and officers up to date and have returns been regularly lodged? Yes/No
- Do you conduct formal directors meetings and record minutes? Yes/No
- Have you as a director protected yourself from personal liability? Yes/No
- Do the articles adequately cover issues such as discretion in distribution of dividends between classes of shares or particular shareholders? Yes/No
- Are there restrictions contained in your articles which impede your ability to operate your company? Yes/No

### If a trust is utilised:

- Do you have a copy of the trust deed and are you aware of the rights and obligations contained in it? Yes/No

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- Are the class of beneficiaries, and the powers contained in the deed currently appropriate? Yes/No
- Is the trustee a corporate or individual trustees and are there implications for personal liability? Yes/No

## 2. Franchises

- Are you a franchisor or franchisee? Yes/No
- Are you experiencing any difficulty? Yes/No
- Are you aware of the implications of the Franchising Code of Conduct? Yes/No

## 3. Leasing

- Do you lease the premises from which you conduct your business? Yes/No
- Does the lease contain option entitlements for further terms and if so, have you exercised your option validly? Yes/No
- If your premises are subject to the Retail Tenancies Act, have you considered whether you are entitled to relief from any onerous provisions under the lease? Yes/No
- If your lease contains rent review provisions have you received advice and assistance in negotiating such a review? Yes/No

## 4. Financing

- Is your current financing arrangement, whether by way of mortgage loan, fully drawn accounts, bank bill etc, appropriate? Yes/No
- Should you consider fixing a portion of your debt in long term facilities or fixing interest for a period? Yes/No

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- Have you considered other possible means of funding for your business? Yes/No
- What security have you given for loans and is any of the security personal? Yes/No
- Have you or members of your family provided guarantees for business debts? Yes/No
- Have you considered means of refinancing your business including leasing, government and semi-government grants and loans? Yes/No
- Are you experiencing difficulty in conducting your business and require advice to avoid failure? Yes/No

## **5. General**

- Are you aware of all the obligations of conducting small business with respect to Workcover, superannuation, occupational health and safety and workplace relations? Yes/No
- Are you aware of the impact of consumer legislation such as the Consumer Affairs Act, Fair Trading Act, Trade Practices Act and other specialist legislation relevant to your business? Yes/No
- Are you aware of legislation protecting the environment as it might impact upon your business? Yes/No
- Are you aware of planning restrictions on the use of your land and the need for permits for particular uses? Yes/No
- Have you prepared a business plan, budgets and cash flows? Yes/No

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## 6. Liability

- If you manufacture or supply products or services, are you aware of your increased liability under amendments to the Trade Practices Act in the area of product liability? Yes/No
- Are you aware of your potential liability if negligent advice is given to your customers or clients? Yes/No
- Have you adequately protected yourself against potential personal liability if a director or trustee? Yes/No

## 7. Future plans

- Are you considering expansion or contraction, acquisition of a competitor or amalgamation with another business? Yes/No
- Are you contemplating restructuring your business? Yes/No
- Are you contemplating a sale of your business or retirement from it? Yes/No

## Personal matters

Our experience is that often people organise their business affairs reasonably well but ignore their personal affairs.

It is critical in organising your affairs generally that proper attention is paid not only to your business but also to your personal affairs.

## Will

A will is an essential tool in ensuring your affairs are properly ordered and benefit those you choose when you die.

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Everyone's situation is different and your will needs personal attention in order to reflect your immediate circumstances.

- Do you have a will? Yes/No  
If yes, if it was made more than five years ago it may need to be reviewed.
- Are there any unusual difficulties in your circumstances including a second family, a family business or trust assets? Yes/No
- Are there any defacto arrangements or co-habitation or prenuptial agreements? Yes/No
- Has your will been prepared to fully protect you and your beneficiaries from the effects of capital gains tax? Yes/No

Ask for a copy of our wills and powers of attorney brochure for more information.

### **Power of attorney**

An enduring power of attorney authorises a trusted family member or friend to do almost everything that you could do yourself if for any reason you were unable to do so.

If you do not have a power of attorney and become incapacitated, there is a real danger your affairs will come under the control of VCAT or the State Trustee.

- Do you have a power of attorney? Yes/No
- Do you have a medical treatment power of attorney? Yes/No

### **Illness/injury**

Unfortunately, many people suffer injury, on the roads, at work or at someone else's premises.

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In many circumstances you will be entitled to compensation. Experience tells us that many people are ignorant of their rights and are not therefore receiving their proper entitlement to compensation.

- Have you suffered injury or illness? Yes/No
  - At work? Yes/No
  - On the road? Yes/No
  - On someone else's property? Yes/No
  - As a result of someone's fault? Yes/No
- If so, have you fully explored and received your entitlement to compensation? Yes/No
- If self employed, have you fully investigated your entitlement to compensation under any insurance policies? Yes/No
- If a director of a company, have you investigated your entitlement as an employee of the company at Workcover? Yes/No

It is often only after a question has prodded our thinking that we realise that our affairs need attention.

Nevett Ford offers a wide range of legal services.

Our lawyers are particularly experienced in providing advice in a range of matters but particularly in business and personal matters.

The issues raised in this legal check-up are necessarily limited and there are doubtless many other issues and questions concerning you.

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## Financial planning

Most people take the opportunity of seeking advice on their financial affairs, particularly when facing retirement, when receiving a lump sum, or when in financial difficulty.

Through our financial planning division we are able to assist with advice on your financial affairs.

Nevett Ford Financial Services is a founding shareholder of OzPlan Financial Services, a holder of Australian Financial Services Licence number 221235. Our qualified financial advisors can offer you advice which will assist you in making correct investment decisions.

- Are you contemplating retirement? Yes/No
- Are you considering the investment opportunities available for your savings, superannuation or lump sum? Yes/No
- Are you experiencing financial difficulties in your business or personally? Yes/No
- Are you in default of any loan commitments either mortgage, hire purchase or creditor's trading terms? Yes/No

If you answered yes to any of the above questions we may be able to help you.

Please feel free to contact us and arrange a time to discuss your particular problems.

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# **MAKING A DIFFERENCE**

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## **Making a difference**

Making a decision about a law firm is never easy.

People say a lawyer is a lawyer is a lawyer.

There's no difference, they claim. Well, we think they are wrong.

We think it's people who make the difference. Nevett Ford's people. They are our point of difference. We wouldn't amount to much if it wasn't for our people.

Nevett Ford's reputation is based on the traditional philosophy of a personalised, friendly and prompt delivery of a high quality legal service at reasonable cost.

Our dual development aims are to be large enough to have the expertise yet not to grow to the size where lawyers lose touch with clients and costs become inflated.

Nevett Ford has considerable geographic reach with offices in Melbourne and Ballarat. In addition as members of the Law Australasia group, an independent coalition of law firms throughout Australia, we are able to offer services throughout Australia.

## **Nevett Ford group services**

Nevett Ford offers a comprehensive range of services to clients utilising the substantial knowledge, experience and skills of our people.

Our objective is to provide quality service to clients. Not only in traditional areas of legal service but also in consulting services and financial services.

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Our commitment involves:

- Developing a close working relationship between our people and our clients. We work hard to develop a relationship of trust.
- Playing a key role in helping clients by timely attention to matters, by processing instructions efficiently and by adding value to the client's needs.
- A constant communication flow as the best way to ensure that clients are kept informed.
- Work is handled by people with the right level of competence. That means our experts are consulted on specific or difficult issues and at all times work is managed by a director even when more routine aspects are processed by an associate.

## **A complete legal service**

Nevett Ford provides a wide range of services in all significant areas of law.

We see Nevett Ford as providing an alternative to the very large firms and their complex cost structures and small firms who are unable to provide the necessary breadth of expertise.

Fundamental to our service is awareness of the unique requirements of each client.

By working closely with clients we are able to be flexible and responsive in tailoring our services to meet client's specific needs.

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We have considerable expertise in five key areas:

- Business services
- Property and development
- Dispute resolution
- Deceased estates
- Immigration and Asian business

### **Consulting services**

Nevett Ford has been offering advice to small business for over 150 years. In fact, some of the people and businesses we have helped have been around almost as long as we have!

Business may have changed but Nevett Ford still provides solid consulting advice and service.

We are in business too. We understand the issues faced by our business clients.

With our business experience it is perhaps not surprising that we are actively involved in management consulting.

Our skills, experience and leadership means that we can make a real difference to clients, assisting them in articulating their vision for their business.

Nevett Ford has considerable expertise in four key areas:

- Organisational reviews
- Strategic and business planning
- Advisory boards
- Good governance

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## **Financial planning and advice**

Clients increasingly seek a full service from their professional advisors. A client's affairs, both legal and financial are often interlinked. Nevett Ford have recognised the need for a full service and we offer financial planning advice through our qualified financial advisers, representatives of a financial planning company which has no connection with fund managers, banks or insurance companies. These services complement our traditional legal services.

*OzPlan Financial Services Pty Ltd* holds an Australian Financial Services License and their representatives are employed by our associated company Nevett Ford Financial Services Pty Ltd. They offer clients a range of services including:

- Retirement planning
- Redundancy advice
- Superannuation, managed investments, tax effective investment strategies
- Estate planning, government pension and allowance advice, wealth creation, finance
- Investment monitoring, managed portfolio services
- Short term investment
- Facilitating loans

We welcome the opportunity of discussing with you your lifestyle objectives and financial goals and exploring the ways in which we can assist you in planning your affairs.

We also offer an ongoing service, which can assist you in monitoring your investments to ensure they continue to meet your investment needs.

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# **MEDIATION SERVICES**

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## **Agreement is the best way**

Mediation is a process and set of principles designed to manage and resolve disputes between parties.

Mediation is proving a more efficient method of dispute resolution than other processes and can help preserve relationships through the intervention of a third party.

Mediation provides the opportunity for parties to discover the interests and concerns of each, to define the dispute more clearly, and to agree on procedures or methods of resolving substantive issues. It forces the parties themselves to confront the dispute and assist them in resolving it to their own satisfaction.

## **Mediation - how it works**

Parties who are in dispute enter mediation with the intention of reaching consensual settlement of the dispute.

Mediation is a process and set of principles designed to manage and resolve disputes between parties. Essentially a process whereby the parties, with the assistance of a third party mediator, attempt to define issues, and through structured negotiations, reach a settlement.

The parties, and those attending the mediation with them, should agree and understand that mediation is conducted on the following terms:

- The mediator is a facilitator who through training and experience assists the parties to reach their own settlement. The mediator does not make decisions for the parties, offer legal advice, or tell them what to do.

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- For the mediation to work the parties must co-operate in good faith with each other and with the mediator.
- Full, open and honest communication is essential to mediation.
- Whilst the parties agree to use mediation with a view to reaching settlement it is understood that parties can withdraw from the mediation at any time or the process can be terminated if it proves impossible to resolve the dispute.
- Whilst legal and other advisers are often part of the mediation process, the mediation is conducted as an informal conference with the parties themselves seeking to resolve the dispute. The parties ought freely engage in a frank exchange of views and explore ways in which it might be resolved. Legal advisers are not present as advocates but rather to assist the mediator and the parties towards resolving the dispute.
- The parties to mediation usually enter a written mediation agreement which sets out the basis of the mediation and the terms under which it will be conducted.
- If a party is not present or if, for example, a corporation is involved, then a party should be represented by a representative with full authority and knowledge, able to engage in the process and to settle the dispute. Corporations are generally represented by a chief executive or other senior person who has total authority. When it is recognised that an intensive mediation has a high prospect of settling a dispute that might otherwise occupy a considerable period of time in preparation and in court then the time devoted by such senior personnel is justified.

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At the heart of the mediation process is the opportunity for each party to make an objective appraisal of their own position and the whole dispute. Having heard from another party one is more fully informed of the other party's position and interests and more likely to then explore opportunities for settlement. It forces the parties themselves to confront the dispute and assist them in resolving it to their own satisfaction. Parties to the dispute then feel that they have ownership of the dispute and any settlement reached at mediation.

## **Mediators**

Peter Wilson and Philip Brewin, directors in the firm of Nevett Ford, are trained mediators and approved by the Law Institute of Victoria.

Peter Wilson is an accredited specialist in mediation.

## **Peter Wilson**

- Accredited specialist in mediation (Law Institute of Victoria)
- Accredited mediator The Institute of Arbitrators and Mediators
- Managing director, Nevett Ford
- 30 years in practice, specialising in litigation with an emphasis on personal injury, commercial litigation, insurance law and administrative law
- Previously held appointment as a part-time presiding member of the Administrative Appeals Tribunal of Victoria (1987-1997)

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## **Philip Brewin**

- Admitted 1977
- Litigation director, Nevet Ford
- 23 years in private practice with an emphasis on personal injury, commercial litigation, professional negligence, family law, employment law, and product liability
- Was employed for a period in the United Kingdom practising in professional negligence

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# **MIGRATION SERVICES**

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## **A specialist service. Smoothing the transition for migrants and their families to Australia.**

Nevett Ford's David Stratton is one of only a few accredited specialists in immigration law. (This accreditation is awarded by the specialisation board of the Law Institute of Victoria). He is also a registered migration agent (No 58007).

We help people understand the law, the responsibilities and complexities associated with coming to Australia. And then we help them with their move.

## **Creative migration solutions**

When acting for migration clients it is important to be able to consider a range of alternatives which may be suitable to their needs. In many cases it will not be possible to immediately achieve the desired outcome and it may then be necessary to devise a staged approach over a period of several years.

Because Nevett Ford is a full service law firm we are able to offer creative migration solutions to client's problems. These solutions may involve the use of company and trust structures and are arrived at, having regard to Australia's taxation, corporation and other laws.

In addition to our own extensive skills base we also have access to a wide range of business based resources and as a result, we can assist prospective migrants in identifying and developing a broad range of business proposals including involvement in real estate development, joint ventures and partnerships and import and export operations.

Decisions about migration are often difficult. Nevett Ford has been involved in this area for so long that we understand the way people feel. We are aware of their

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concerns and fears about a new way of life. So our level of service stretches beyond the law to ensure a smooth transition for our clients and their families.

Migration has many facets.

## **Business migration**

If you are already successful in business and you want to settle in Australia, the business skills category might provide the key.

There are now a variety of visas available for business persons wishing to migrate. Nevett Ford can help you choose the most suitable criteria. If eligible, you would be warmly welcomed in Australia because of the contribution you could make to your new homeland through your expertise and capital.

(And, as always, Nevett Ford does more than merely help in meeting the policy requirements. We can also often break down the barriers to help you establish a successful business).

## **Employer nomination scheme**

Skilled workers are welcome in Australia under the employer nomination scheme. Australian employers can sponsor skilled workers from overseas under this scheme if they can't find a suitable employee in the Australian labour market or through their own training efforts.

Of course, employers have to show that the proposed employee is essential to their business.

(Nevett Ford helps in a number of ways through liaison between the applicant and

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the employer, preparing and completing the necessary requirements on behalf of both parties and dealing with the government to complete the complex formalities).

### **Independent applicants**

Individuals can also be welcomed in Australia if they are of the right age and can demonstrate a level of education and experience readily sought by employers.

### **Business executives/specialist workers**

When local staff can't be found, Australian companies can fill short-term positions with skilled personnel from overseas. We can also help companies intending to relocate or expand within Australia.

### **Change of status applications**

Nevett Ford can advise people already in Australia who want to change from a temporary to permanent resident. This may include, for example, people wishing to change status for business reasons, marriage or through a defacto relationship.

### **Business investment in Australia**

We can give advice on the purchase and sale of businesses. We act for several lending institutions, which finance these business transactions.

In addition, we are able to advise how best to structure a business, whether it be incorporation, trading or family trusts, partnerships or as a sole trader. We also work with other experts such as economists and accountants in the preparation of business plans for submission to financial institutions and to government agencies.

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## **Appeals**

For many reasons, applications for migration are sometimes unsuccessful. But often you will have a right of appeal.

Nevett Ford can help you through the appeal maze.

It may be a simple issue or a complex reason, but finding an answer is where our experience counts. Nevett Ford understands the process of preparing appeal applications to the Migration Internal Review Office, the Immigration Review Tribunal and the Federal Court for review on questions of law.

## **Fees**

In acting as accredited specialists our clients are always advised of the expected legal costs before any action is taken. At Nevett Ford we are committed to providing the highest quality service whilst maintaining costs at an affordable level.

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# **BUSINESS SERVICES**

**Experience in providing specialist business advice and support**

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## **Why Nevett Ford?**

Nevett Ford is a medium sized firm providing legal, consulting and financial services.

The firm has been established for over 150 years and has offices in Ballarat and Melbourne. We concentrate our efforts in supporting small to medium business enterprises. We have a rich history of success based on the traditional philosophies of personalised, friendly and prompt delivery of high quality services. We strive to stay in touch with the important issues which affect our clients.

Nevett Ford offers superior client service and is able to apply experience and skill in assisting clients with business strategies and management.

## **Nevett Ford client service charter**

Nevett Ford has adopted a client service charter - *"We build quality relationships with our clients"*. This will be achieved by ensuring all client contact and decisions made about clients:

- creates a positive impact
- offers a timely service
- identifies client needs as a priority
- sets out to develop long term, mutually beneficial relationships
- presents our products and services in simple and easily understood formats
- creates a professional environment

## **A complete business service**

One of the identified strengths of Nevett Ford is our reputation among our

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business clients enabling us to build a strong, business to business, relationship with clients. The directors and staff are experienced professionals who actively seek to understand the client's needs and to clearly communicate how Nevett Ford can meet those needs and add value to their business.

Nevett Ford has considerable expertise in four key areas.

- Private business client services
- Family businesses
- Business consulting
- Financial planning and advice

### **What distinguishes Nevett Ford?**

We place significant emphasis on ensuring our directors and staff efficiently and productively deliver superior client service. We know that developing a close working relationship with clients is vital and by so doing know that we can play a key role in helping clients in their business. We work hard on developing relationships because our aim is to be large enough to have the expertise to service clients yet not to get to the size where we lose touch with clients on a personal level.

What's different about Nevett Ford is that we deliver what clients demand.

Specifically:

- A fast turnaround
- A constant flow of communication
- Being responsive to clients needs
- Providing value for money

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- The personal attention of directors
- A full service

Most importantly our directors and staff are committed professionals who work hard in their client's interest.

### **Private business client services**

Because Nevett Ford concentrates its efforts on small to medium enterprises we are extensively involved in providing all manner of services for private business clients.

We do not act for the very large corporations. The majority of our business clients are, typically, people working hard in their own business. We understand their needs because, after all, we are in business ourselves!

### **Family businesses**

Again because of the nature of our client base we specialise in working with family based businesses. Our directors have close and long established relationships with family business clients, many of whom started business over 150 years ago as did Nevett Ford.

Given the nature of small to medium enterprises, the range and nature of businesses in which our clients are involved is virtually unlimited.

Nevett Ford plays a key role in providing advice and assistance to family businesses particularly:

- Sitting on an advisory board where we act as the outside "eyes and ears" of the business.
- Providing financial advice and assistance.

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- Addressing key issues for family businesses including succession planning and tax effective will making.

## **Business consulting**

Growing naturally from our involvement with businesses has been business consulting.

Our skills, experience and leadership means that we can make a real difference to clients, assisting them in articulating their vision for their business.

Increasingly our directors and staff are involved in assisting business clients with strategic planning; preparation of business plans and providing a sounding board for clients.

## **Financial planning**

Most people take the opportunity of seeking advice on their financial affairs, particularly when facing retirement, when receiving a lump sum, or when in financial difficulty.

Through our financial planning division we are able to assist with advice on your financial affairs.

Nevett Ford Financial Services is a founding shareholder of OzPlan Financial Services, a holder of Australian Financial Services Licence number 221235. Our qualified financial advisors can offer you advice which will assist you in making correct investment decisions.

- Are you contemplating retirement? Yes/No

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- Are you considering the investment opportunities available for your savings, superannuation or lump sum? Yes/No
- Are you experiencing financial difficulties in your business or personally? Yes/No
- Are you in default of any loan commitments either mortgage, hire purchase or creditor's trading terms? Yes/No

If you answered yes to any of the above questions we may be able to help you.

Please feel free to contact us and arrange a time to discuss your particular problems.

### **Director's profiles**

Whilst the directors work in specialised areas, given their experience, many work across a variety of areas or work as part of teams in providing services to clients. Each of the directors are very much able to assist in the traditional "business advisor" role.

The directors and staff working in key areas include:

### **Private business client services**

- Cathy Drake
- Andrew Lumb
- Peter Lumb
- Kent Mallinson
- Paul Stephens
- Frank Vagg

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### **Family businesses**

- Cathy Drake
- Andrew Lumb
- Peter Lumb
- Kent Mallinson
- Paul Stephens
- David Stratton
- Frank Vagg
- Peter Wilson

### **Business consulting**

- David Stratton
- Peter Wilson

### **Nevett Ford Financial Services**

#### **Financial Advisors\***

- Tracey Burns
- Cameron Moore
- John Ives

*\* Our advisors are authorised representatives of OzPlan Financial Services, a holder of Australian Financial Services Licence Number 221235*

### **Litigation**

- Philip Brewin
- Greg Doran
- Peter Wilson

### **Property transactions**

- Paul James
- Andrew Lumb
- Peter Lumb
- Viv Stephens

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### **Tax effective wills/succession planning**

- Cathy Drake
- Andrew Lumb
- Peter Lumb
- Kent Mallinson
- Paul Stephens
- Frank Vagg

### **Family Law**

- Elizabeth Hall
- Annmarie Farrell

### **Contact details**

<b>Ballarat</b>	<b>Melbourne</b>
40 Armstrong Street North Ballarat 3350 Telephone: (03) 5331 4444 Facsimile: (03) 5333 2694 email: ballarat@nevettford.com.au	Level 42, 525 Collins Street Melbourne 3000 Telephone: (03) 9614 7111 Facsimile: (03) 9614 3192 email: melbourne@nevettford.com.au

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# **WILLS AND POWERS OF ATTORNEY**

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## **The importance of a will**

A will is an essential tool in ensuring your affairs are properly ordered and benefit those you choose when you die.

Everyone's situation is different and your will needs personal attention in order to reflect your circumstances.

If you have a current will it may need to be reviewed, particularly if made more than five years ago, or if your circumstances have altered.

Completing the particulars in our will check list in this brochure will assist us in advising you and preparing your will.

## **The importance of a power of attorney**

Equally as important as a will is to have a power of attorney in case you are unable to manage your own affairs through ill health.

A power of attorney means that you delegate to a person you trust the legal authority to act on your behalf. That person is known as your attorney.

The attorney can, when it becomes necessary to do so, manage your affairs.

Without a power of attorney and should you become ill or incapable of managing your affairs then the management and control of your affairs might pass to the State Government Trustees or to some other person appointed by the Guardianship and Administration Board. In either case not someone of your choosing.

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Importantly a power of attorney comes into use only when you become incapable of managing your affairs. Also should you change your mind you can always cancel the power of attorney or appoint some other person to be your attorney.

There are two distinct powers of attorney.

### **Enduring power of attorney**

This is used to enable your attorney to manage your personal, business and financial affairs.

### **Enduring power of attorney (medical treatment)**

This allows your attorney to make decisions about medical treatment only when you are unable to make those decisions yourself.

Importantly it enables your attorney to make decisions such as authorising or refusing medical treatment on your behalf.

### **Nevett Ford will check list**

#### **1. Personal details**

- Surname
- Given names
- Maiden name (where applicable)
- Other names in which your assets may be held (eg. Trusts? Companies?)
- Current address

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- Date of birth
- Place of birth
- Doctor
- Stockbroker/financial advisor
- Accountant
- Banker

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**2. Marriage and children**

- Are you married? Yes/No  
If yes:

- Date & place
- Full name of spouse
- Names of children and date(s) of birth

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- Names of any children which have died before you and date(s) of death

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**3. Family details**

- Given names
- Surname
- Maiden name
- Date of birth
- Place of death
- Date of death

	Father	Mother
	<hr/>	<hr/>
	<hr/>	<hr/>
	<hr/>	<hr/>
	<hr/>	<hr/>
	<hr/>	<hr/>

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	Brothers	Sisters
• Given names	_____	_____
• Surname	_____	_____
• Maiden name	_____	_____
• Place of birth	_____	_____
• Place of death	_____	_____
• Date of death	_____	_____

**4. Notification of death**

On my death please notify immediately the following:

Name	Address	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**5. Funeral arrangements**

I desire:

- Burial/cremation \_\_\_\_\_
- Buried/cremated at \_\_\_\_\_  
\_\_\_\_\_

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- Funeral director \_\_\_\_\_
- Service to be conducted by \_\_\_\_\_
- According to the rites of the denomination \_\_\_\_\_
- Any other special arrangements regarding my funeral \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**6. Directions regarding use of human tissue**

Any such directions should be contained in your will and your next of kin, doctor and any donee institution notified so that your wishes can be complied with. In some cases, special arrangements are necessary including carrying appropriate forms or cards eg. donor card for eye donation or donation of heart or kidney.

**7. Hospital benefits or friendly society**

Name	Address	Membership number
_____	_____	_____
_____	_____	_____
_____	_____	_____

**8. Assets**

**Home**

- Owned singularly/jointly with \_\_\_\_\_
- Title, deed and insurance policies held where \_\_\_\_\_  
 \_\_\_\_\_

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- Mortgage? \_\_\_\_\_
- If mortgage, with whom? \_\_\_\_\_

**Bank, building society or credit union accounts**

Name bank/ building society	Account number	Account name	Current balance
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**Superannuation fund**

- Name of fund \_\_\_\_\_
- Address of trustee \_\_\_\_\_
- I have nominated the following beneficiaries to receive my superannuation entitlement:

Name	Address	Relationship
_____	_____	_____

**Life insurance**

Policy number	Company	Type of policy
_____	_____	_____

**Shares in companies**

Name of company	Number of shares	Type of shares
_____	_____	_____

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**Debentures**

Name of company	Number of debentures	Type of debentures
_____	_____	_____

**Bonds**

Name of company	Number of bonds	Type of bonds
_____	_____	_____

**Motor vehicle**

Type of vehicle	Registration number	Insurance details
_____	_____	_____

**Other assets**

(Here, consider whether you might have any of the following):

- Interest in a deceased person's estate
- Interest in a partnership or trust
- Livestock or crops
- Farming plant or equipment
- Furniture
- Jewellery
- Valuable books or pictures
- Cash

Type of asset	Details of whereabouts	Likely value
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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**Safe deposit**

- Here list any safe deposit packets that you might have with your bank

Bank	Location of bank	Details
_____	_____	_____
_____	_____	_____

**Social security**

If you are in receipt of social security:

- Social security number \_\_\_\_\_
- Pension payable \_\_\_\_\_
- Veterans affairs service number \_\_\_\_\_

**9. Funds**

At the time of your death your estate will need funds which you can provide from your disposable assets or from insurance or cash.

Examples where funds will be required include:

- medical and funeral expense
- family expenses
- repayment of loans, mortgages and other debts

If in any doubt of the capacity as to your estate to meet any such expense, you ought to discuss it with us.

**10. Excluding beneficiaries**

At times people may decide to exclude family members from their will for good reason.

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If you have done so in your will or intend to do so you may wish to list your reasons for so doing.

#### **11. Specific wishes**

At times you may have particular concerns or wishes which you would like to express and these will often not be listed in your will.

Please list any particular wishes.

#### **12. Powers of attorney**

During your lifetime, you have an opportunity of appointing a person to be your attorney should you for any reason be unable to look after your own affairs.

If you do not have a power of attorney and become incapacitated, there is a danger your affairs will come under the control of the Guardianship and Administration Board or the Public Trustee.

- Do you have a power of attorney?
- If yes, who is/are your attorney(s)?
- Address of attorney(s)

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## **Nevett Ford power of attorney authority**

- Your name \_\_\_\_\_
- Your address \_\_\_\_\_  
\_\_\_\_\_
- Name and address of attorney(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- To act jointly or severally? \_\_\_\_\_
- Enduring power of attorney? \_\_\_\_\_ Yes/No
- Enduring power of attorney \_\_\_\_\_ Yes/No  
(medical treatment)?

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## **Our people**

### **Directors**

- Philip Brewin
- Greg Doran
- Andrew Lumb
- Peter Lumb
- Paul Stephens
- David Stratton
- Frank Vagg
- Peter Wilson

### **Senior Associates**

- Cathy Drake
- Elizabeth Hall
- Viv Stephens

### **Associates**

- Annmarie Farrell
- Monika Maedler
- Sean Huggins
- Kent Mallinson
- Alan Farrar
- Meaghan Smyth

### **Legal Executive**

- Paul James

### **Nevett Ford**

#### **Financial Services**

#### **Financial Advisors\***

- Tracey Burns
- John Ives
- Cameron Moore

**Nevett Ford is a member of Law Australasia, the National Association of Law Firms**

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