

Review of Enduring Powers

What is an enduring power of attorney?

An enduring power of attorney is a legal document that enables a person (the donor) to appoint another person (the attorney) to make financial decisions on their behalf after they lose the mental capacity to make such decisions for themselves. For further information about making an enduring power of attorney you should seek legal advice.

The Tribunal can make orders and declarations and give advice and directions in relation to enduring powers of attorney created under the *Powers of Attorney Act 2000*.

Who can make an application to the Tribunal?

An application may be made by an attorney, the donor or someone on his or her behalf or by any other person that the Tribunal believes has a proper interest in the matter. If you would like to make an application to the Tribunal to review an enduring power of attorney, please contact the Tribunal to discuss your concerns.

What orders can the Tribunal make?

If satisfied of the need to do so, after a review hearing the Tribunal may make the following orders:

- **vary a term or a power granted by the enduring power of attorney**

For example, the Tribunal may make an order that requires the attorney to submit an annual report to the Tribunal that details the income and expenses and any significant dealings with the estate.

- **appoint a substitute attorney**

If an attorney decides that he or she no longer wishes to act as attorney, or is not exercising the power of attorney appropriately, the Tribunal can substitute a new attorney.

- **revoke the enduring power of attorney**

The Tribunal may revoke an enduring power of attorney if the attorney is acting inappropriately or negligently or for any other reason if it is in the donor's best interest to revoke the power.

- **appoint an administrator of the donor's estate**

If the Tribunal is satisfied that the enduring power of attorney should be revoked but that the donor needs someone to administer his or her estate the Tribunal can appoint an administrator under the *Guardianship and Administration Act 1995*.

In emergency circumstances, the Tribunal can suspend an enduring power of attorney and may appoint the Public Trustee as attorney or administrator for up to 28 days without a hearing.

What declarations can the Tribunal make?

The Tribunal may declare:

- the enduring power of attorney is invalid, because:
 - the donor did not have the mental capacity to make the enduring power of attorney; or
 - it does not comply with other requirements of the Act for example, it was not witnessed correctly.
- the donor was induced to make it because of dishonesty or undue influence.

What is mental capacity?

The test for mental capacity to make an enduring power of attorney requires that the donor understands:

- that the donor can specify or limit the power to be given to the attorney and give the attorney instructions or how to exercise the power; and
- when the power begins; and
- that subject to any directions contained in the power, the attorney will be able to do anything with property that the donor could have done; and
- that the power will continue to operate if the donor loses the ability to make financial decisions; and
- that the donor can revoke these powers whilst the donor has mental capacity; and
- once the donor loses mental capacity the donor will not be able to supervise the use of the powers.

How can the Tribunal assist an attorney?

The Tribunal may direct or offer advice to an attorney about any matter arising under the enduring power of attorney.

Matters may include:

- the approval or disapproval of any act proposed by the attorney.
- advice about the terms of the powers and how they should be exercised
- advice on the role and responsibilities of an attorney

More information

Please refer to the application forms