

# Can I Wear Two Hats?

*Carers and Enduring Documents*

*Simon Brown – Guardianship & Advocacy Program*



**AN AUSTRALIA THAT VALUES AND SUPPORTS ALL CARERS**

# OVERVIEW

- Who Are Carers?
- Choosing an Enduring Attorney – Who Should be Appointed?
- Quick & Simple - I can just download the form!
- I think I am Mum's Attorney – Family as Decision-Makers
- Sophia's Story
- Possible Protections

# Who Are Carers?

- There are approximately 2.7 million carers in Australia providing 1.9 billion hours of care each year.
- It would cost our economy \$60.3 billion annually to replace the work undertaken by unpaid (non-salaried) carers.
- Queensland has 474,300 carers and Carers Qld supported just under 10,000 carers in the last financial year.
- Carers Qld's *Guardianship & Advocacy Program* assisted 535 carers over the last 12 months and attended 112 QCAT hearings throughout the state. The program managed 142 complex matters for the same period.



# Choosing an Enduring Attorney

- Prior to completing an enduring document the Principal/Donor/Appointor should have a sound understanding of their personal (including health) and financial circumstances.
- The proposed attorneys should also have a sound understanding of the Principal's views and wishes concerning personal and financial matters. This may include business interests, views on investments as well as banking details (or at least where this information can be located).
- Your attorney/decision-maker must be someone you can trust.



# Enduring Documents – Quick and Simple?

## Quick

- Most enduring documents can be downloaded from the internet or purchased at a news agency.
- Can be completed anywhere.
- Completion does not require meeting with a solicitor, financial planner, accountant or health/service provider (with some variation for advance health directives).

## Simple

- No requirement for complex terms and conditions to be drafted.
- Tick and Flick for many sections of the document.
- Most enduring documents do not have to be registered.
- “Can leave in a draw until needed”.



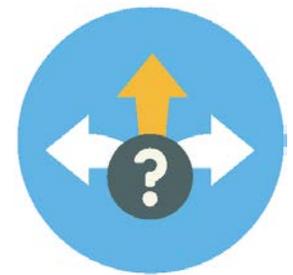
AN **AUSTRALIA** THAT **VALUES** AND **SUPPORTS** ALL **CARERS**



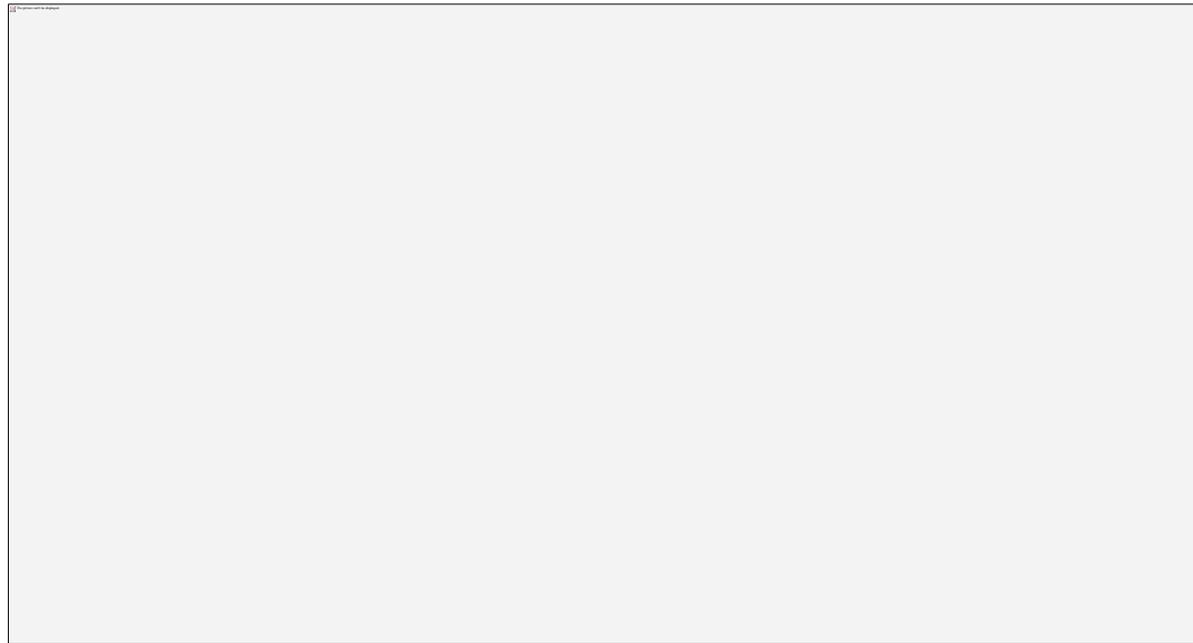
AN **AUSTRALIA** THAT **VALUES** AND **SUPPORTS** ALL **CARERS**

# Family/Carer as Decision-Makers

- It is often appropriate and preferable for a close family member/carer to act as an adult's substitute decision-maker.
- Consider if the relationship is close and continuing and that the person nominated understands your views and wishes for the areas you intend to appoint them.
- What relationship does the proposed decision-maker have with other interested parties?
- Is the decision-maker reliable and contactable if and when required?
- If appointed joint decision-makers, can they work together?



Some Families are very supportive of  
one another.....



Whilst others...



AN **AUSTRALIA** THAT **VALUES** AND **SUPPORTS** ALL **CARERS**

# Which Hat am I Wearing?

***“Hats have power. Hats can change you into someone else”***

(Catherynne Valente).

- Which “hat” are you wearing?
- Being a family member/carer is a ***different role*** to that of an appointed decision-maker.
- Sometimes, what is appropriate for a family carer to do is inappropriate as an adult’s attorney.
- Decisions that you may have made as a carer may be different to those you can make as an appointed decision-maker.
- Attorneys need to be aware of their statutory duties and when they can act on behalf of an adult.



# Case Study: Sophia

## Sophia

- As English is not Sophia's first language does she fully comprehend the executed document.
- Capacity.
- No independent advice.
- Who prepared the enduring document?
- Completed whilst an inpatient.
- Family business structure or Family Trusts.
- Bequests in Sophia's Will.
- No terms or limits to the powers provided to the attorneys.
- Joint appointment of attorneys.
- Sale of family home (impact on Marco?).
- What modifications has Sophia paid for to Lisa's home?
- Regular audit of Attorneys' actions.

# Lisa and Bart

## Attorneys

- Are they appropriate to act as attorneys?
- Lisa receiving payment/salary for care of Sophia.
- Promise that Sophia will never enter residential accommodation.
- Conflict Transactions.
- Communication with other family members/interested parties.
- Consideration of Sophia's views and wishes.
- Resolving Conflicts.



# Protecting Principal/Appointor & Attorneys (Decision-Makers)

- Carefully choose the person/s who will act on your behalf.
- How will your attorneys make decisions (jointly, severally, majority, successively)?
- Consider an independent decision-maker.
- Obtain financial and legal advice (or at a minimum read information on the role).
- Limit the attorney's power.
- Principal/Donor/Appointor should consider – family business arrangements (i.e. farm and business with no formal structures); conflict transactions, assets in Will; superannuation; banking arrangements (PIN and Passwords); digital assets (email, Facebook, PayPal accounts); communication with interested parties; future accommodation, service provision and health care; and contact.
- Who has a copy of the document?



# Key Points

- Enduring documents can be complex!
- Consider seeking professional advice before executing an enduring document.
- Inform appointed decision-maker/s of your views and wishes.
- Principal and decision-makers have copies of the enduring document (or at least know where a copy can be found).
- If you have capacity you can revoke your existing EPOA/Directive.
- Carefully consider who is appropriate to appoint and how decisions should be made.

# How Does Sophia's Story End?

- Attorneys' relationship broke down (i.e. would not speak to one another).
- Attorneys disagreed about the amount Lisa could withdraw to care for Sophia. Bart also had concerns that Sophia required nursing home care.
- Bart lodged a complaint with the Public Guardian/Advocate.
- Investigation resulted in an application to the state Administrative Tribunal.
- Concerns about undue influence, conflict transactions and that the Attorneys could no longer act appropriately.
- State Trustee appointed administrator and Public Guardian/Advocate appointed for accommodation matters.

# Carers Queensland Guardianship and Advocacy Program (GAP)

## Contact:

Carers Queensland

Building 20, Garden City Business Park

2402 Logan Road

Eight Mile Plains

Ph: (07) 3900 8100

Email: [sbrown@carersqld.com.au](mailto:sbrown@carersqld.com.au) or [awolski@carersqld.com.au](mailto:awolski@carersqld.com.au)

[www.carersqld.com.au](http://www.carersqld.com.au)