

Enduring Power Of Attorney

Working together.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document that operates whilst you are alive and allows another person or persons to make financial and legal decisions on your behalf, for your benefit. These persons may be a friend, relative, solicitor or accountant. You can appoint more than one person to act as your Attorney. In that event, you will need to nominate whether those people have to make decisions together.

What about a General Power of Attorney?

An Enduring Power of Attorney differs from a General Power of Attorney slightly, but significantly. While a General Power of Attorney is revoked automatically if you become legally incapacitated, an Enduring Power of Attorney will still be effective notwithstanding your subsequent incapacity. It is for this reason that we always recommend that an Enduring, rather than a General, Power of Attorney be drafted.

Who can make an Enduring Power of Attorney?

In South Australia any person who is over 18 years and who has 'legal capacity' (can make a power of attorney. No-one else can make a power of attorney for you.

When does the Enduring Power of Attorney come into effect?

An Enduring Power of Attorney can come in to effect:

- + Immediately upon execution; or
- + Upon your incapacity.

Unless there are good reasons for having it operate immediately (for example, if you are going on an overseas holiday and need someone to manage your finances whilst you are away), it is advisable to have it operating upon your subsequent incapacity. There is rarely a reason for you not to be in control of your won finances if you are of sound mind. Further, the Attorney may dispose of an asset contrary to your intentions and this may cause disagreement.

What can your Attorney do?

As stated, your Attorney must always act in your best interests. This includes taking such actions as:

- + Operating bank accounts;
- + Paying bills;
- + Entering into contracts
- + Commencing or defending legal proceedings; and
- + Purchasing and selling assets.


We suggest that you do not impose any limitations on the Attorney. This is because it could also prove burdensome on the Attorney if a need arises for the Attorney to act contrary to the limitation you have imposed.

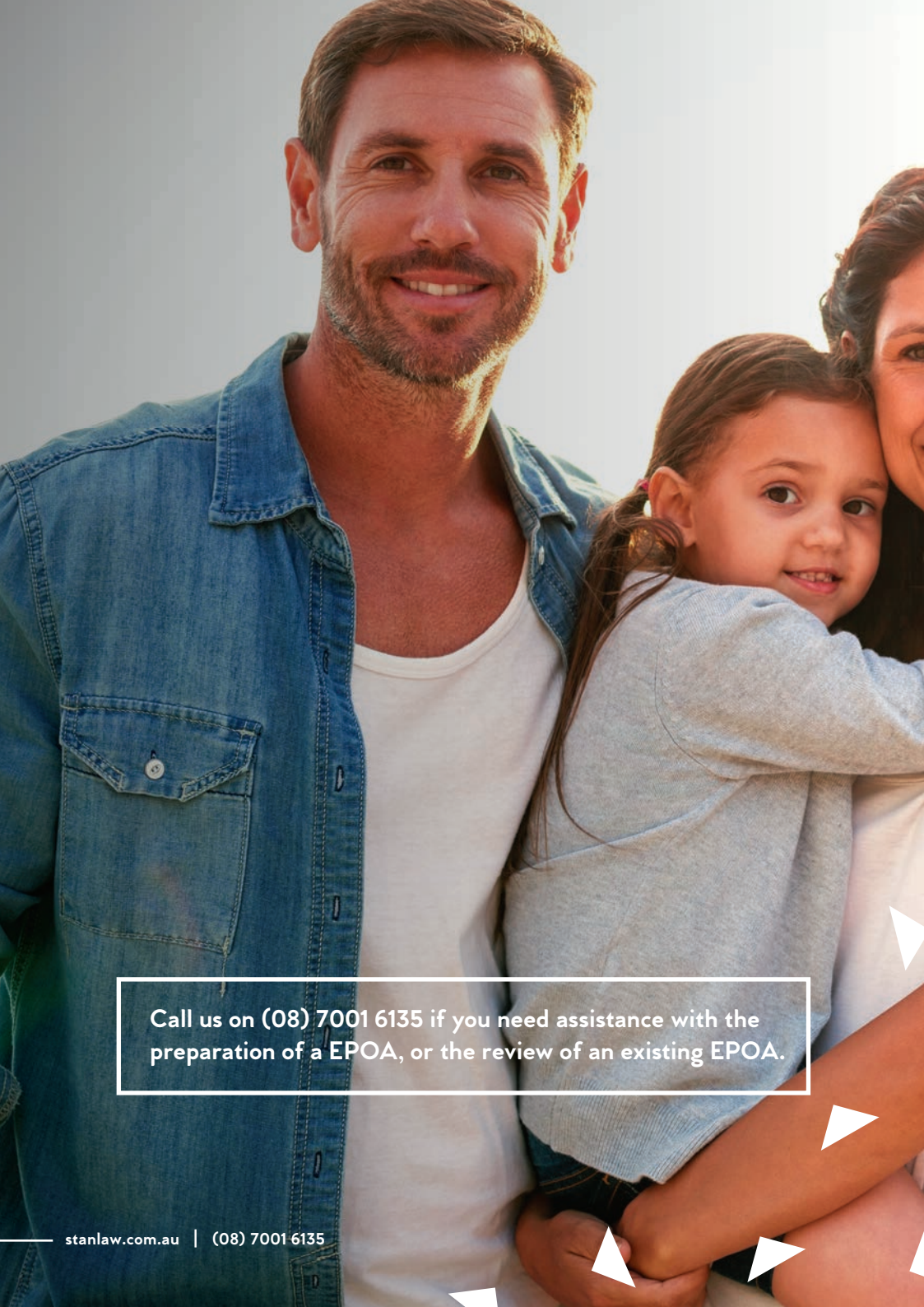
The Attorney would then need to make an application to the Court to deal with your affairs contrary to the limitation.

There may be some occasions where it may be appropriate to limit the power of your Attorney. If you consider this may be applicable to you, please let us know and we can provide you with advice accordingly. This may apply to circumstances where you will be travelling overseas

When does an Enduring Power of Attorney come to an end?

An Enduring Power of Attorney comes to an end in one of the following circumstances:

1. You revoke it formally by subsequently executing a Revocation of Enduring Power of Attorney (only if you are still of sound mind); or
 2. When you die (in which case your Will comes into effect).
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Call us on (08) 7001 6135 if you need assistance with the preparation of a EPOA, or the review of an existing EPOA.