

Supporting your clients

with Wills and Powers of Attorney

Geordie Stapleton
Principal Lawyer

Melissa Purcell
Lawyer

Emma Cvitak
Community Development Manager



COMMUNITY LEGAL SERVICE

ACKNOWLEDGING COUNTRY

Barwon Community Legal Service acknowledges the Wadawurrung people of the Kulin Nation, the Traditional Custodians of the land on which we learn and work, and all Aboriginal and Torres Strait Islander People who are part of our Barwon region.

Artwork sourced from:

www.bellarinebayside.com.au/about-us/acknowledging-traditional-owners/

Billy-Jay O'Toole website:

www.facebook.com/papulaborginalart



Artwork: *Bellawiyn* – original Wadawurrung name for the Bellarine which means place of resting by the fire.

Artist: *Billy-Jay O'Toole, Wadawurrung artist.*

TRAINING OVERVIEW

01

Spot legal
issues

02

Documents
relevant
now

03

When
someone
has lost
capacity

04

When
someone
has passed
away

05

Questions

Free legal assistance



- Provide free legal information, advice and casework
- FV Intervention Order Applicant duty lawyer service - at Geelong and Colac Magistrates' Courts
- aCommunity legal education, awareness initiatives and systemic advocacy
- We offer free training and secondary consultations for community workers

We co-locate our lawyers across a wide range of community organisations including:

- The Orange Door
- SAFVC
- Barwon Health
- Colac Area Health
- Meli
- Western Heights College
- Cultura
- Deakin Student Legal Service
- fOrT Youth Centre
- Colac and Geelong Magistrates' Courts
- Other community health settings

Areas of law

Family	Safety	Money	Housing and neighbours	Senior years	Other legal issues	Criminal law
Family law - Parenting/ property arrangements	Family Violence Intervention Orders (Duty lawyer representation and pre-court advice)	Consumer law, credit and debt	Neighbourhood disputes*	Elder abuse	Motor vehicle accidents*	Summary Criminal offences**
Separation and divorce*	Personal Safety Intervention Orders*	Fines and Infringements	Tenancy (for FV clients only)	Powers of Attorney, Guardianship and Administration	Employment law*	**Advice only (run by volunteer solicitors)
Child support	Victims of Crime Applications	Centrelink and social security		Wills*		Referrals to Victoria Legal Aid

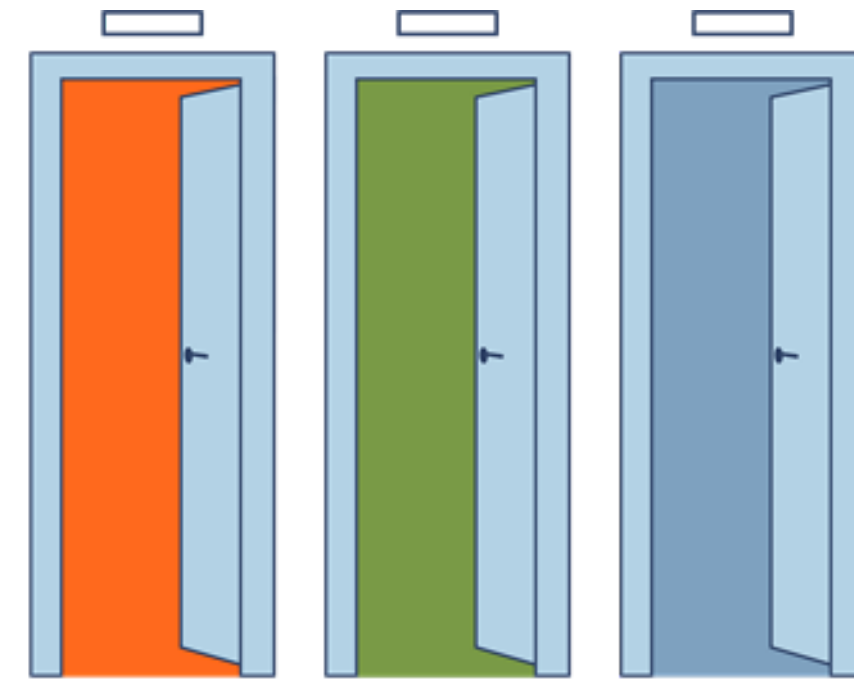
* Indicates where we provide advice only or only as part of a specific outreach or program.

For an overview of our areas of law please see our website: <https://www.barwoncommunitylegal.org.au/areas-of-law/>

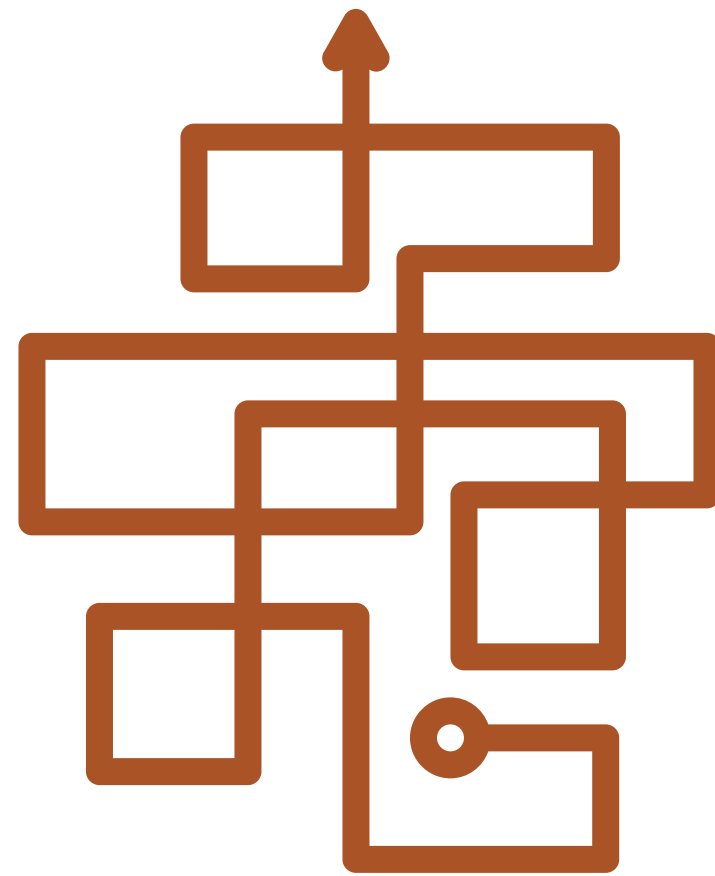
Community workers as trusted intermediary

Spot legal issues

- You play a vital role in spotting legal issues and connecting clients to legal help earlier
- Best legal outcomes when client is supported to engage with the legal process
- Not asking you to solve legal issues



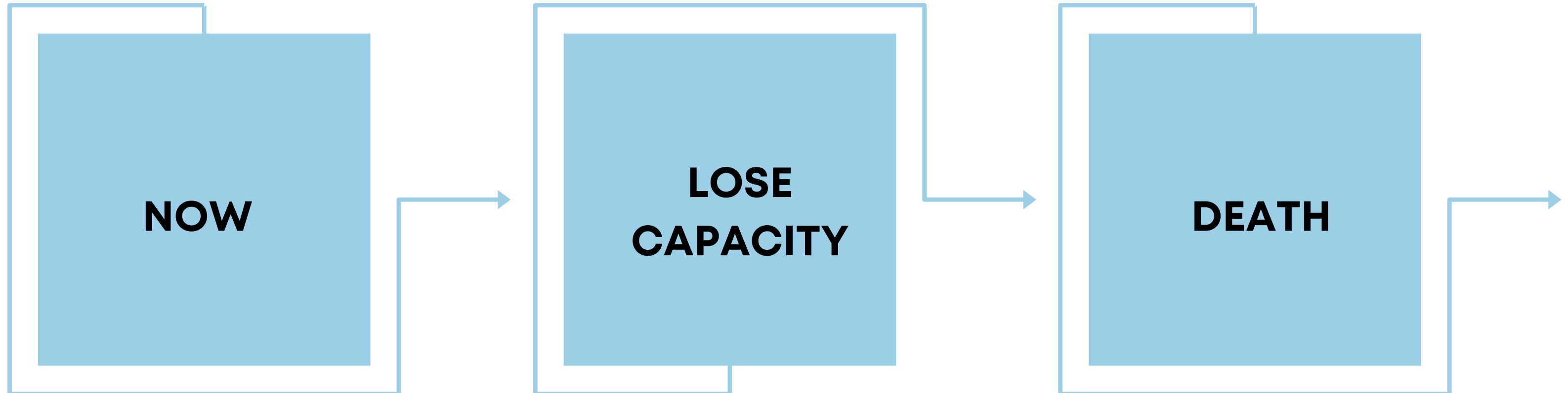
SPOTTING LEGAL ISSUES



Legal Issues:

- feel complex and stressful
- arise in clusters
- escalate if not addressed
- disproportionately impact communities experiencing disadvantage, social and health issues
- are easily ignored by clients who are unlikely to access a lawyer for help

TIMELINE



Enduring Power of Attorney (financial and lifestyle decisions)

Supportive Attorney

Medical Support Person



Advanced Care Directives

Medical Treatment Decision Maker

Wills



Who can make financial and lifestyle decisions for me?

Enduring Power of Attorney

You can give your attorney(s) the power to make decisions about:

- your financial and personal matters
- your financial matters only
- your personal matters only
- only some of your financial or personal matters.

Enduring Power of Attorney

Financial and Lifestyle decisions

Financial and property affairs.
Legal matters related to above.

Eg: paying expenses, carrying on a business or undertaking a real estate transaction

Personal and lifestyle affairs.

Eg: where you live, who can visit you, how you dress or your diet

Meet Sam

He has made an enduring Power
of Attorney



Who can help me make financial decisions for myself?

Supportive Attorney

Supportive Attorney

- Appoint someone to help them give effect to their own decisions whilst they still have capacity
- The 'Principal' can give the person they appoint power to access information to help the Principal make a decision (eg. utility providers) and communicate their decisions to give them effect
- A case worker or accomodation provider are ineligible to be appointed. Attorney must be over 18, not bankrupt or guilty of dishonesty offences.
- Attorney cannot give effect to significant financial decisions



Who can help me make my own decisions about my own medical treatment?

Medical Support
Person

Medical Support Person

- Any person (even a child) who has capacity can appoint one
- The support person has the legal authority to access your health information and help you make a decision
- They can make, communicate; and act on your medical treatment decisions when you want support



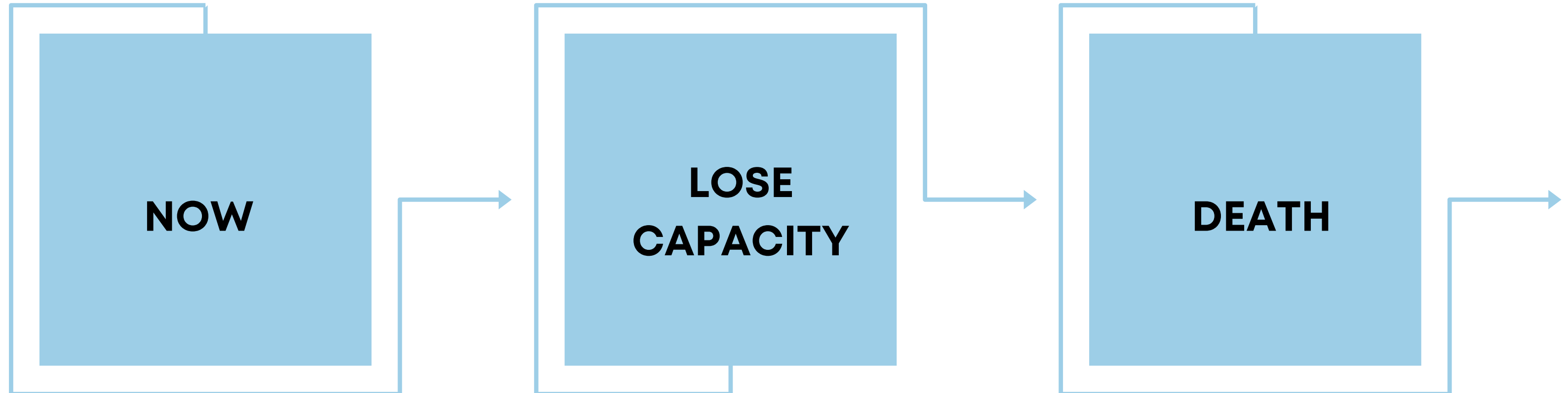
Meet Allison



Meet Andrew

He has appointed his sister Julie
as his Supportive Attorney

TIMELINE



Enduring Power of Attorney (financial and lifestyle decisions) →

Supportive Attorney →

Medical Support Person →



Advanced Care Directives →

Medical Treatment Decision Maker →

Wills →

How can I control my future health planning?

Advance Care Directives

- Allow any person to document preferences for future medical treatment in the case they lost capacity
- Can include general statements about someone's values, preferences to help guide decision makers and/or specific instructions for consenting or refusing specific types of treatment.
- Legally binding on health practitioners
- Cannot instruct a refusal of palliative care as a whole



Meet Simon

Who can I appoint to make decisions about my medical treatment if I can't?

Medical Treatment
Decision Maker

Medical Treatment Decision Maker

- Used to be called medical power of attorney
- Any person over 18 who has capacity can appoint one
- The person appointed will have legal authority to make medical treatment decisions for you when you don't have the capacity to make a decision
- Examples are treatment for an injury, an operation or dental treatment.





Meet Naveen

It's been suggested he appoint a
medical treatment decision
maker

What happens where there is no Power of Attorney or MTDM?

- If person has lost capacity and they did not have a Power of Attorney in place, the Victorian Civil and Administrative Tribunal ('VCAT') can make orders that allow someone to deal with a person's financial and personal affairs
 - These are called orders for Guardianship and Administration
- If there is no MTDM appointed, than there is a process that involves family, next of kin and treating health professionals. VCAT CANNOT appoint a MTDM. However, VCAT in this instance may appoint a Guardian who is able to make health care decisions.

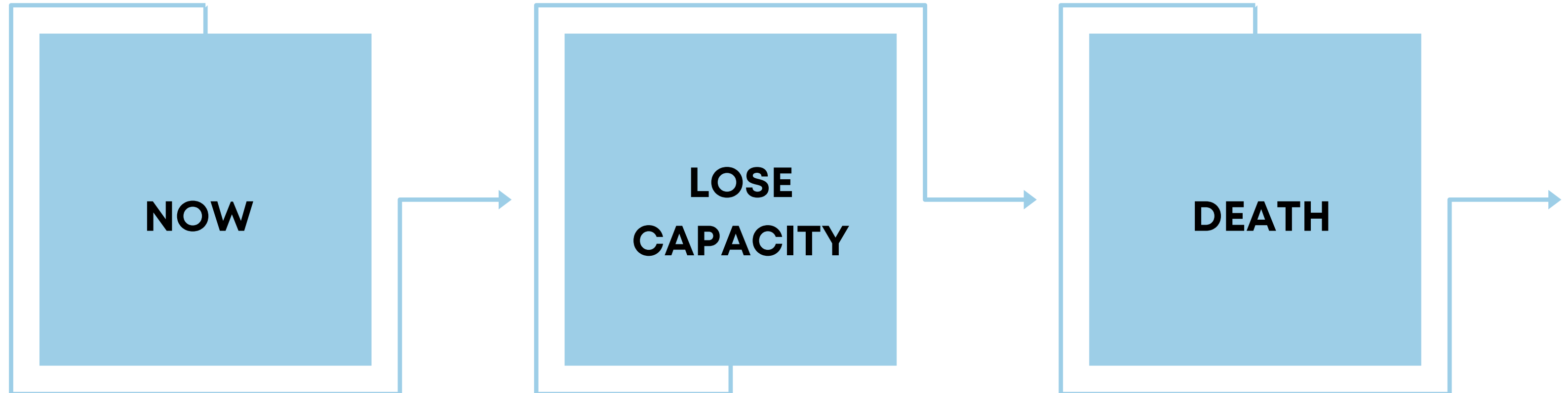


What happens when the person appointed does the wrong thing?

- If an attorney is doing the wrong thing (such as taking money without authorisation) or the principal no longer feels comfortable with the decision you made, you can revoke your POA/MTDM as soon as you are aware and a new appointment can be made
- The only time someone cannot revoke documents already made is if they have lost their capacity to do so. In that situation VCAT can look at the documents in place and possibly remove them.



TIMELINE



Enduring Power of Attorney (financial and lifestyle decisions) →

Supportive Attorney →

Medical Support Person →



Advanced Care Directives →

Medical Treatment Decision Maker →



Wills →

What happens when I pass away?

Wills

- A document that someone can sign that states what they want done with their money, house, investments and all belongings when they die
- A person must have capacity at the time of making a Will - this is called testamentary capacity
- If someone passes away without a will (this is called dying intestate) the law decides how property will be distributed



Meet Anton

Wills continued...

- Certain things are generally excluded from a Will and may need to be dealt with separately - for example: Superannuation
- Life insurance
- Expressions of wishes - you can put things in a will but they are not necessarily binding

DID YOU KNOW?



Meet Asha

Asha has been appointed as an
executor

Some general points to note

- Wills and Powers of Attorneys only need to be updated if circumstances have changed such as the principal being unhappy with the person/s they have appointed as your power of attorney or executor
- It is always a good idea to check with a Lawyer whether previous documents in place are sufficient for a person purposes
- Older documents will be accepted however the law that were in place at the time they were signed will apply. For example, even though an enduring POA may cover financial or personal matters under today's lawyer, this has not always been the case
- If someone is going to a Lawyer to update existing documents or create new ones, the Lawyer will need to assess their capacity and may request a medical opinion. Ultimately it is up to the Lawyer witnessing the documents to attest to the fact that the person signing has capacity.

LEGAL HEALTH CHECKS FOR CLIENTS



A legal health check can identify whether your problem is a legal problem.

A few simple steps can help to improve your legal health. By knowing your rights and knowing where to go for help, you can avoid, reduce or resolve your legal problems. This can save money, time and stress.

If you answer yes to any of these questions contact our service for free legal assistance.

1. Your Safety

- Do you feel scared in your relationship or in your home?
- Does another person's behaviour makes you feel unsafe?
- Is there a current or previous intervention order you have questions about?

2. Your Family & Relationships

- Are there issues with contact arrangements, plans or orders about siblings and/or children?
- Are there any issues with child support payments or proving who is the father of a child?
- Do you need advice about your rights in any personal or family relationship, including property rights when moving out?

3. Your Money

- Do you have any issues to do with Centrelink or another payment you receive? (Eg. eligibility for payment, cancellation / payment of benefit, debts)?
- Is anyone chasing you for money?
- Do you have payments due or unpaid accounts (credit cards, loans, bills)?
- Do you have any unpaid fines?

4. Your Housing

- Do you owe rent or been given an eviction notice?
- Have you recently been evicted and having trouble getting your bond returned?
- Did you leave any belongings behind at recent accommodation?
- Are there repairs your landlord is not fixing?
- Are you on any tenancy blacklists?

Referrals to Barwon Community Legal

Connect to legal help



Scan to refer

- conflict checks
- Secondary consultations
- in person or phone appointments
- online referral form via our website:
www.barwoncommunitylegal.org.au
- We can be contacted:
 - via phone: 1300 430 599 or
 - email: bcls@barwoncls.org.au

Want to learn more about how to support clients with legal issues?

Free Law for Community Workers Online Training

- How to access

<https://www.barwoncommunitylegal.org.au/courses/law-for-community-workers/>

- What to do if you have tech issues
- Not expected to answer legal questions

Beginner Module

Spot Legal Issues and Refer 30 Minutes

Learn how to spot legal issues and make effective referrals to legal services. An introduction for workers who do not regularly assist clients with legal issues. Includes videos and downloadable resources for your daily work.

ACCESS THIS MODULE

Intermediate Module

Law for Community Workers 60-90 Minutes

Learn all the skills you need to help your clients who have legal issues. An in-depth training including videos, case studies, quizzes and downloadable resources for your daily work. Recommended for any worker who regularly has clients with legal issues.

ACCESS THIS MODULE

Optional Module

Legal System Basics 30 Minutes

Learn the basics of the legal system in Victoria, to help you understand your clients' legal issues sooner. Recommended as an introduction or refresher to build knowledge and give confidence to workers in talking to their clients about legal issues.

ACCESS THIS MODULE

Law for Community Workers Training

We offer our free Law for Community Workers training to non-legal organisations to assist workers to better support their clients experiencing legal issues and understand the law.

LEARN MORE

Questions!

