

PAYMENT  
INSTALMENT PLANS

Duncan. Legal is continuing to provide flexible Payment Instalment Plans through the ongoing COVID-19 Pandemic.

We understand that the current economic climate is very difficult and we also know the importance of ensuring that a Will and Powers of Attorney are in place particularly for those who have disability in the family.

To ease the costs of Estate Planning, we are happy to discuss the option of a Payment Instalment Plan.

Instalments can be made **weekly, fortnightly or monthly** by arrangement, at a rate that you can comfortably manage.

## My child with a disability is turning 18 yrs – Can I get Power of Attorney over him or her?

The short answer is “no”. An Enduring Power of Attorney (“EPOA”) document is not a document that one person can “get over” another person.

A person must have **capacity** to make an EPOA. The level of capacity required to make a document varies according to the complexity of the document sought and the rights surrendered.

A EPOA is a powerful and complex document. It gives another person the legal authority to make any substituted decisions of a financial and/or personal nature in relation to the maker of the document and their assets. This can be a huge level of control to have over another human being!

Because it is such a powerful document, a **high level** of understanding needs to be demonstrated by a person wanting to make this document.

A person must understand what it means to give another person substituted decision making power over them, and what the dangers are if the appointee does not act honestly. They must also have an understanding of their personal assets.

Where capacity is present, the person must be able to **give instructions** regarding the creation of such a document to a solicitor. Additionally, the person must demonstrate that they **want** an EPOA to be created in relation to themselves, and that they are not acting under any duress or in response to any inducements.

If a person lacks this capacity, then application would need to be made to VCAT for Guardianship and/or Administration Orders on their behalf by an interested person. VCAT will only make orders where there is proper evidence of the **need** for such orders to be made.

## Guardianship & Administration Applications

We are frequently asked about appointments of a Guardian and/or Administrator for a vulnerable family member. Clients ask us if we can 'arrange' this for them.

The Appointment of a Guardian and/or Administrator is made by VCAT. Orders are only made where need is demonstrated, and even then only if there is no less restrictive alternative available to safeguard the interests of an adult with a disability. These orders are often expressed as operating for a specified period of time only.

VCAT prefer families to make a personal application. Proceedings at VCAT are more relaxed and informal and lawyers usually only represent clients in complex matters. Duncan.Legal frequently assists clients by providing support and information in the background when preparing such applications for VCAT. In more complex matters, Duncan.Legal is available to engage a Barrister if needed and provide support as an instructing Solicitor.

Below is a link to the VCAT website which is a good starting point when seeking Guardianship & Administration.

<https://www.vcat.vic.gov.au/case-types/guardians-and-administrators/apply-guardians-and-administrators>

Once on the VCAT website, find out all that you can about Guardianship & Administration applications, the items that you may need to gather, relevant fees and timelines.

## Hello Regional Victoria!

Duncan.Legal is now reaching out right across regional Victoria to offer our estate planning services to families with disability in the mix. We can provide disability specific advice and information, and are often told that this is difficult to find locally. We currently have clients connecting with us from Sale, Colac, Bendigo, Ballarat, Shepparton, Queenscliff, Apollo Bay, Lara and the Mornington Peninsula.

Initial appointments can be held via teleconferencing (eg Zoom) with only 1 trip to Melbourne required to execute (sign) the final documents.

A great place to start is to view our Disability Estate Planning Webinar (see below). This is an inexpensive way to receive relevant disability specific information you need to commence your estate planning journey.

## Duncan.Legal Webinar Recordings



'Disability Estate Planning' Webinar	\$77.00 (incl GST)
'Supported Decision Making' Webinar	\$55.00 (inc GST)
'Special Disability Trusts' Webinar	\$55.00 (inc GST)

Visit our website: [www.duncanlegal.com.au](http://www.duncanlegal.com.au)



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