

# Update: 18 November 2013 Dealing with incapacity in business



Fleming Muntz  
Solicitors



## Summary

Unfortunately, many of us or our clients will suffer from a loss of capacity at some stage in our lives.

Whilst a loss of capacity can have a significant impact on our personal lives, it can also have a detrimental impact for those of us that act in the role of company director or secretary.

### What are the problems?

As part of our personal estate planning, most of us have signed an enduring power of attorney to appoint an attorney to manage our personal affairs in the event of incapacity.

What is often misunderstood is that the position of company director and/or company secretary cannot be delegated to the person we appoint as our attorney under an enduring power of attorney.

Whilst the constitution of a company is unique and would need to be reviewed to clarify its position, many constitutions require that a company can only execute a document if the document is signed by:

- Two directors of the company (this may not be possible if one has lost capacity), or
- A director and a secretary (again, this may not be possible if either the director or secretary have lost capacity), or

- A sole director (which is not possible if that person has lost capacity).

The result of the above scenarios may be some disruption to the company's operation.

### What is the solution?

One way in which a company can avoid interruptions to its business operations is by signing a corporate power of attorney. A corporate power of attorney is a power of attorney executed by the company, in which the company appoints a nominee to do most things that a company could do through its directors.

### How can Fleming Muntz help?

Fleming Muntz has solicitors experienced in both business law and estate planning law who would be pleased to assist you or your clients with a corporate power of attorney or other ways to plan for incapacity.

#### Important fine print

**This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.**

Like you, we prefer to avoid unwanted emails. If you would rather not receive any further updates, please telephone us on (02) 6021 2222 or email to [enquiries@flemingmuntz.com.au](mailto:enquiries@flemingmuntz.com.au).

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