

Acceptance as Attorney where Nominated Person Appointed

Version: 1.1 | **Version effective date:** 06/02/2024
Supersedes: Version 1.0 (June 2021)

Scope

This policy applies to all Queensland Public Trustee (QPT) employees including permanent, temporary, and casual employees and contractors.

Purpose

The purpose of this policy is to outline the basis on which QPT will consent to act as Attorney under an Enduring Power of Attorney where a Nominated Person has been appointed.

Policy statement

Consistent with the *Guardianship and Administration Act 2000*, the *Public Trustee Act 1978* and the *Powers of Attorney Act 1998*, QPT:

- Encourages all Queensland adults to put plans in place for their future making, in the event they lose capacity to make financial and / or personal decisions for themselves
- Acknowledges the role QPT can play under the legislation to act as Attorney

Principles

QPT is dedicated to advancing and safeguarding the rights, interests and wishes of Queenslanders in need of financial management and planning support, empowering them to plan and prepare for key life events.

Requirements

The Role of QPT

This policy is intended to only apply to Enduring Powers of Attorney where QPT has been appointed as Attorney for financial matters and where a Nominated Person has been appointed for financial matters.

The appointment of QPT is subject to QPT consenting to act in that role.

Consent Conditions

QPT may only consent to acting as Attorney where there is a Nominated Person named in the Enduring Power of Attorney in the following circumstances:

- The proposed role as Attorney relates to financial matters, not personal (including health matters)
- QPT has received a certified copy of a fully executed Enduring Power of Attorney that has been validly

executed

- QPT has received no information that gives QPT reasonable cause to question that the Enduring Power of Attorney is valid
- The Nominated Person is not QPT
- QPT has been provided with current contact details for the Principal and the Nominated Person
- The Principal or the Nominated Person has confirmed that the Nominated Person is willing to accept the role of Nominated Person
- Where QPT believes that the documents they usually produce and the way they work as an Attorney can satisfy the requirements of the Nominated person
- Where the Nominated person wants to receive certain information from the Attorney on a regular basis and QPT can provide this information without changing their normal practices or creating new documents
- The level of service required can be readily met within QPT's existing resources
- The Terms and Instructions in the Enduring Power of Attorney include the following provisions:
 - i. The Attorney can provide a copy of documents to the Nominated Person and is not required to provide the original documents
 - ii. The Attorney can apply to QCAT for directions at the Attorney's discretion and the reasonable costs of such an application can be paid from the Principal's estate
 - iii. The Attorney is authorised to provide the Requested Information even if QPT would otherwise be prohibited from providing the Requested Information pursuant to the *Information Privacy Act 2009 and Privacy Act 1988*
- QPT is satisfied that the Principal has sufficient funds to pay QPT's fees

Costs

- The additional costs incurred by QPT as an Attorney will depend on:
 - the volume and detail of the Requested Information which the Principal requests the Attorney to send to the Nominated Person; and
 - the complexity of the financial affairs of the Principal
- Such additional costs will be charged to the Principal

Delegation and procedural matters

- The Principal must inform QPT that they have appointed QPT as their financial Attorney
- The Principal must also give QPT the original or a certified copy of the Enduring Power of Attorney document and the current contact information of the Principal and the Nominated Person
- QPT delegates Regional Managers in Customer Experience and Delivery can consent to act as Attorney when the consent conditions are met
- If the consent conditions are not met, the decision as to whether to accept the appointment as Attorney must be referred to the respective Regional Director
- Where QPT has accepted the role of Attorney and, in the opinion of a Regional Director, QPT ought not continue to act as Attorney under the conditions in the Enduring Power of Attorney, QPT will:
 - If the Principal is capable of making a new Enduring Power of Attorney, retire as Attorney, or
 - If the Principal is not capable of making a new Enduring Power of Attorney, apply to QCAT for an order under S116 of the Powers of Attorney Act 1998.
- An application to QCAT will only be made if approved by QPT's QCAT referral panel.

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Reporting

The Executive Director, Customer Services, will provide reports to the Board of Management (BoM) on QPT accepting appointment as Attorney where there is a Nominated Person, when requested by BoM.

Policy controls and managing non-compliance

Compliance with this policy is mandatory for all staff. Managers must ensure the policy is embedded into practice with their teams, and staff are required to report any instances of non-compliance immediately through their manager to the policy owner or policy delegate listed in this document.

Roles and responsibilities

Position	Responsibility	Audit criteria
Executive Director Customer Services (Policy owner)	<ul style="list-style-type: none">• Ultimate responsibility for developing, implementing, managing, and revising this Policy and any other related documents.• Nominate a Policy Delegate as and when required• Provide reports to BoM when requested• Approve minor amendments to this policy	Policy remains current and reviewed in line with QPT Policy Framework.
Policy Delegate	<ul style="list-style-type: none">• Undertake tasks associated with the development, review or management of the policy, under direction of the policy owner.• Develop policy documents in according with QPT Policy Framework• Undertake consultation with stakeholders as and when required to inform policy content.	
Public Trustee of Queensland and CEO	<ul style="list-style-type: none">• Approve significant changes to this policy• Approve discontinuation of this policy	<ul style="list-style-type: none">• Record of CEO approval retained in QPT's records management system
Board of Management (BoM)	<ul style="list-style-type: none">• Endorse versions of this policy• Request reports regarding QPT accepting appointment as Attorney where there is a Nominated Person.	<ul style="list-style-type: none">• BoM endorsement captured in BoM minutes
Regional Managers	<ul style="list-style-type: none">• Consent to act as Attorney when the consent conditions are met	<ul style="list-style-type: none">• Decisions are documented in QPT's customer information management system

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	<ul style="list-style-type: none"> Where consent decisions are not met, refer to the relevant Regional Director 	
Regional Directors	<ul style="list-style-type: none"> Retire as Attorney when consent decisions have not been met if the Principal has capacity to make a new EPA Apply to QCAT via the QCAT Referral Panel if the Principal does not have capacity to make a new EPA 	<ul style="list-style-type: none"> Decisions are documented in QPT's customer information management system

Definitions

Term	Definition
QCAT	Queensland Administrative Tribunal
QPT	Queensland Public Trustee
EPA	Enduring Power of Attorney is a legal document that allows a person to appoint someone to make decisions for them during your life time, if they no longer have the capacity to do so.
Principal	The person who makes the Enduring Power of Attorney document and is able to appoint the QPT as an Attorney.
Attorney	The person chosen by the Principal to manage their affairs in the event that they are unable to do so.
Nominated person	The person appointed by the Principal to receive certain information at certain intervals from their Attorney.
Requested Information	<p>For financial matters, the suggested information in the Approved Forms that a Principal can require an Attorney to provide to the Nominated person includes:</p> <ul style="list-style-type: none"> Written notice that the Attorney intends to begin exercising power for financial matters under the Enduring Power of Attorney before exercising the power for the first time All financial records and accounts Records relating to transactions above a nominated amount that is specified in the Enduring Power of Attorney Records and accounts for all assets including property, investments and vehicles Summaries of income, expenditure and assets Copies of financial management plans and financial advice obtained Any other information that the Principal completes as being required to be provided by the Attorney to the Nominated Person in substitution for or in addition to those above options chosen by the Principal.

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The Approved Forms	The Nominated Person was a new role introduced by the Enduring Power of Attorney forms approved for use from 30 November 2020, pursuant to s11 and s161 of the Powers of Attorney Act 1998.
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Legislation and other compliance obligations

- [Powers of Attorney Act 1998 - Queensland Legislation - Queensland Government](#)

Supporting documents

- [Power of attorney and advance health directive forms - Dataset - Publications | Queensland Government](#)

Related resources and information

- Customer Experience & Delivery - CED Nominated Person Manual (for PT staff)
- CED Delegations (for PT staff)
- [Nominated person service - The Public Trustee of Queensland \(pt.qld.gov.au\)](#)

Contact

For further information, please contact: Customer Experience & Delivery Executive

Email: cse@pt.qld.gov.au

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