


## Many heads can be better than one:

The pros and cons of appointing multiple attorneys and nominated persons and how it can reduce your risk of experiencing (financial) elder abuse

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An Enduring Power of Attorney (EPOA) is a document created under the *Powers of Attorney Act 1998* (the Act), to appoint someone you trust to make financial decisions or personal decisions (including decisions about your health) on your behalf. This fact sheet considers making an EPOA for financial decisions.

When you make an EPOA, you decide when your attorney's power to make financial decisions for you begins.<sup>1</sup> The EPOA can commence immediately, at a particular time, occasion or circumstance in the future, or **when you lose capacity to make financial decisions.**<sup>2</sup>

An EPOA is a useful tool for recording how you want your financial affairs managed. However, it's important to bear in mind that a person who does not have capacity to make financial decisions, can be an easier target for financial abuse. Financial (elder) abuse is commonly perpetrated by financial attorneys, so even if you make an EPOA, you should still consider how you can build in safeguards to minimise the chance you will experience elder abuse at the hands of your selected attorney.

The strategies outlined below do not take account of your personal circumstances and may not be suitable for everybody. This fact sheet is intended to raise awareness of some of the issues associated with making an EPOA and is not a substitute for advice.

## 1. Appoint more than one attorney:

- (a) A recent survey found 37% of principals had appointed an attorney who showed risk factors for perpetuating elder financial abuse, like gambling addiction, substance abuse or financial or emotional dependence on the principal.<sup>3</sup> And almost 30% of principals indicated they didn't have anyone they'd feel comfortable discussing concerns they might have about their attorney.<sup>4</sup> These risk factors may make it more likely the selected attorney will have unmanaged conflicts of interest, break the law, be dishonest, have conflict with other people who are close to you, and potentially commit acts of financial abuse.
- (b) Having more than one attorney can help mitigate the risk factors for financial elder abuse, by providing more than one person oversight over your financial affairs. In Queensland, you can appoint up to four attorneys for a financial matter.<sup>5</sup> While the Act allows you to appoint up to four attorneys, there is a risk having so many attorneys can become unmanageable, create delays and even deadlocks when it comes to making financial decisions on your behalf. To reduce these risks, you may wish to appoint three attorneys and stipulate that major decisions must be decided by a majority. We discuss this a little more below.
- (c) Having more than one attorney reduces the risks associated with a single attorney keeping your affairs to themselves, failing to act in accordance with your wishes, being negligent, misusing their position or misusing your money.<sup>6</sup>
- (d) When considering the terms of your EPOA and whom you wish to appoint, it's wise to communicate your wishes and preferences to your proposed attorneys, so everyone understands what those wishes and preferences are.<sup>7</sup>
- (e) When you have more than one attorney, you can also specify how they must make decisions, especially if you cannot participate in those decisions. For example, do they have to make decisions jointly and agree on every decision, by a majority, or can just one of your attorneys decide by themselves.<sup>8</sup> Some principals include a term in their EPOA that major decisions — such as selling a house or investing money — must be made by a majority or unanimously. This can lower the risk that a sole attorney sells parts of your estate for less than full value.<sup>9</sup> You may stipulate that day-to-day decisions, such as selecting a mobile phone contract, buying new shoes, or buying a new TV, can be made by just one attorney.
- (f) In a practical sense, having more than one attorney also allows more than one person to have visibility over your bank accounts. If one attorney is misusing their position, it allows another attorney to investigate irregular transactions and take appropriate action. For example, if one attorney has withdrawn a large sum of money from your bank account, having more than one attorney may allow this transaction to be detected and investigated.<sup>10</sup>
- (g) Having more than one attorney means they can discuss and investigate concerns about your account transactions generally. For example, if a third party accompanied you to the bank, to transfer a large sum of money from your account into their account, the attorneys could discuss what action — if any — was required.<sup>11</sup>
- (h) Once the EPOA is drafted, it's wise to provide all your attorneys with certified copies. This ensures they all know what your instructions are, including any terms and conditions about how the attorneys can exercise their powers, and what each attorney is authorised to do.<sup>12</sup> Certified copies are required by banks and other institutions, so obtaining certified copies of the EPOA document when you make it (even if the power given under it has not commenced) is usually a good move.

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<sup>1</sup> Powers of Attorney Act 1998 (Qld) ss 9, 33(1), but also see s 33(3).

<sup>2</sup> EPOA short form p 5; Enduring power of attorney explanatory guide (Queensland) *Queensland Government* (30 November 2020) p 4 ('EPOA explanatory guide') [Form 9 — Enduring power of attorney explanatory guide](#).

<sup>3</sup> 'Empowering futures: a report on enduring powers of attorney (2024)', Australian Human Rights Commission (Web page, 10th September 2024) p11, 55 ('AHRC report') [Empowering futures: A National Survey on the Understanding and Use of Financial Enduring Powers of Attorney](#).

<sup>4</sup> AHRC report, p 11.

<sup>5</sup> Powers of Attorney Act 1998 (Qld) s 43(3).

<sup>6</sup> For general discussion on perceived risks associated with EPOAs see AHRC report, p 39.

<sup>7</sup> AHRC report, p 39, 58.

<sup>8</sup> EPOA short form p 4, 6; EPOA explanatory guide, p 10.

<sup>9</sup> See for example *Reilly v Reilly* [2018] NSWCA 1419, as discussed in Darryl Browne, 'Best practice to prevent elder financial abuse' (2020) 48 Australian Bar Review, p 250 (Browne).

<sup>10</sup> See for example, HDG [202] QCAT 106 — where one attorney withdrew \$450,000 from the adult's account to purchase a house, without her sufficient knowledge, in conflict of his duty, under the presumption of undue influence [58], [92], [94], [96].

<sup>11</sup> See for example PC [2022] QCAT 147 where adult's attorney daughters queried the adult transferring \$10,000 from his account into on/off partner's account — see [17].

<sup>12</sup> Compass — Guiding Action on Elder Abuse, 'Enduring Powers of Attorney', (Webpage, 27 November 2024) (**Compass**), a resource referred to in AHRC report.



## 2. Appoint nominated person(s):

- (a) Nominated persons (there can be more than one) are persons who the attorney must keep informed about the financial decisions they are making. If you are appointing one of your children as a (sole) attorney, then appointing your other children as nominated persons may be a good strategy.
- (b) Before appointing an attorney, it may be a good strategy to discuss your proposed appointment with a trusted third party.<sup>13</sup> You may then consider listing this trusted third party as your nominated person in your EPOA.
- (c) A nominated person can act as a 'check and balance' on the actions of your attorney(s), ensure they are acting honestly and reasonably. A nominated person can take action if there is evidence your attorney is abusing their position, such as making an application to QCAT for review of the attorney's appointment.<sup>14</sup>
- (d) By providing your nominated person with a certified copy of your EPOA, they will be aware of what your instructions to your attorney(s) are, including any conditions or limitations about how they can exercise their powers — essentially what you've authorised your attorney(s) to do.<sup>15</sup>
- (e) You may also give directions or powers to your attorney(s) to provide certain types of documents and information to certain persons, such as a solicitor or accountant, so they can undertake an audit or an annual review about what actions your attorney has taken regarding your financial affairs.<sup>16</sup>

<sup>13</sup> AHRC report, p 10, 39, 58 which discusses the value of consultation with a trusted third party before creating an EPOA.

<sup>14</sup> See for example RPE [2024] QCAT 109 where the former attorney filed an Application with QCAT for appointment of an administrator and PTQ appointed where current attorney found not to have acted honestly and with reasonable diligence.[58]–[60]

<sup>15</sup> Compass, n 12.

<sup>16</sup> Enduring power of attorney — short form (Queensland)', Queensland Government (30 November 2020) p 8 ('EPOA short form') [Form 2 — Enduring power of attorney — short form](#); also see Compass, n 12.



### Worked examples:

Layla wishes to plan for her future. She is in her 70's, has full mental capacity but of late has been experiencing a number of physical ailments. Layla has 4 children (Adam, Billie, Cora & Dylan). Layla's second husband James died some years ago.

Adam is 43, lives with Layla and has never really left home. Adam is single and unemployed (he receives income from jobseeker payments) but has completed a university degree and has had jobs from time to time. Adam is James' son.

Billie (aged 45) and Cora (aged 47) and Dylan (aged 50) each have partners and live with their own families. Billie & Cora both have jobs in the area local to Layla. Dylan is an accountant with her own practice and lives 50 kilometres away. Billie, Cora & Dylan are the children of Layla and Bob (Layla's first husband). Billie, Cora & Dylan do not get along well with Adam. Only Billie & Cora visit Layla regularly with Dylan seeing her at major events like birthdays, Christmas and Easter.

## How can some of the strategies discussed above be applied by Layla when drafting her EPOA?

1. Layla can choose to appoint some or all of her children as attorneys, but there are risks and benefits associated with this decision.
    - a. The advantage of appointing all four children as attorneys is that they all have some power.
    - b. The disadvantage is that the four children may fight amongst themselves and because there would be an equal number of attorneys, this may make decision making harder than it needs to be.
    - c. The advantage of appointing 1 or 3 attorneys is that there will not be a deadlock in decision making.
    - d. The issue with leaving Adam without power is that Billie, Cora & Dylan may act against Adam.
    - e. Dylan may appear to be the most qualified attorney, but she may also be the busiest and the least able to attend to Layla's needs.
    - f. If Layla appoints Adam as an attorney, he may not be able to receive money, assets or benefits from Layla, unless Layla specifically authorises this in her EPOA, or unless Adam obtains the approval of the Queensland Civil and Administrative Tribunal. This is because the Act requires attorneys to avoid conflict transactions. This would include transactions where Adam receives a benefit from Layla which amounts to a conflict with his interests and Layla's interests.

Aside from conflict transactions there are also conflicts of interest. An example would be if Layla needed to sell her house, so that she could move into aged care, meaning Adam would have to find somewhere else to live.

  - g. If Adam was appointed the only attorney, this may lead to family disputes due to Billie, Cora & Dylan being of the opinion that Adam may not exercise his powers appropriately.
2. If Layla chooses to appoint either one or three of her children as attorneys, she could select the remaining child or children as a nominated person or persons, so that they can still receive information about Layla's financial affairs when the EPOA becomes active.
  - a. As discussed above, providing the nominated person or persons with a certified copy of her EPOA means, they will be aware of what Layla has authorised her attorney or attorneys to do.
  - b. Layla can direct that the attorney(s) provide the nominated person(s) with particular documents or reports — for example bank statements or summaries of expenditure - and the timeframes for doing this, so the nominated person knows how Layla's funds are being used.
  - c. This would allow the nominated person(s) to step in, should they become aware that the attorney(s) are not acting in accordance with Layla's EPOA.
3. What is the right answer?
  - a. It is up to Layla!
  - b. Layla can take advice from a lawyer or speak with those whom she trusts about what terms to include in her EPOA.
  - c. Because Layla's family dynamic is complex, it's recommended Layla take good legal advice, make an appropriate plan, and retain an expert to prepare her EPOA.
  - d. Her plans may include carefully selecting who should be her financial attorney, providing specific directions to her attorneys in the EPOA, limiting their powers appropriately, directing how they can exercise their powers (jointly or severally), and advising who they must keep informed about the decisions and actions they are undertaking as attorney(s). The use of a nominated person may also be a good strategy depending on who Layla decides will be her attorney(s).