

New Guardianship Laws



ENDURING POWER OF ATTORNEY FORMS

From 30 November 2020 new enduring power of attorney (EPA) forms came into effect. An EPA short form is used to appoint the **same decision maker** for financial matters, health matters or for both matters. An EPA long form is used when you wish to appoint **different decision makers** for personal and financial matters. The new EPA forms enable you to clearly specify your views, wishes and preferences, and give you the option of providing set instructions about how your attorneys are required to make decisions for you if or when you can no longer make decisions yourself. There is a new EPA explanatory guide, which provides step-by-step instructions about how to complete the forms.

ADVANCE HEALTH DIRECTIVE FORM

An advance health directive (AHD) allows you to specify what you want for your future health care. The AHD Explanatory Guide provides step-by-step instructions about how to complete the form.

What if I already made an EPA or AHD before 30 November 2020?

Your existing EPA will remain valid. You do not need to make a new EPA using the new form unless you want to make changes. From 30 November 2020, you have to use the new forms if you want to change your EPA or make a new EPA.

Your existing AHD will remain valid. You do not need to use the new AHD form unless you want to change it or the person you previously appointed to make decisions for you is a service provider for a residential service where you live (if this applies then you will need to make a new AHD using the new form).

What if I do not have an EPA for financial matters and I cannot make my own decisions?

If you have not appointed someone to make decisions about your financial matters and you

lose capacity (are no longer able to make your own financial decisions) at a later date, no one will have the authority to make those decisions on your behalf. If this happens, the Queensland Civil and Administrative Tribunal (QCAT) will need to decide who can make those decisions for you. If you do not have an EPA there is a risk that QCAT could appoint someone you do not agree with as your decision maker.

What if my decision maker breaches their duties and causes me financial loss?

QCAT can order that a current or former decision maker (e.g. attorney, administrator or guardian) to:

- pay compensation for a loss to you (or your estate) caused by their failure to comply with their duties
- file records and audited accounts of their dealings and transactions that they conducted on your behalf.

Are interstate and New Zealand enduring documents recognised in Queensland?

Yes. Interstate and New Zealand EPAs are recognised as valid under Queensland law, as long as the EPA does not contain anything that would be invalid under Queensland law.

NEW CAPACITY ASSESSMENT GUIDELINES

The new Queensland Capacity Assessment Guidelines are effective from 30 November 2020. The guidelines provide information about capacity, capacity assessment and the legal tests of capacity in Queensland. The guidelines relate to laws under the *Guardianship and Administration Act 2000* (Qld) (Guardianship and Administration Act) and *Powers of Attorney Act 1998* (Qld) (Powers of Attorney Act).

In Queensland it is presumed that every adult has capacity to make all decisions until proven otherwise.

In order to make an EPA you must:

- understand the nature and effect of the document
- be capable of making it freely and voluntarily (not due to pressure from others).

CHANGES TO THE GENERAL AND HEALTH CARE PRINCIPLES

The general principles and health care principles contained in the Guardianship and Administration Act and Powers of Attorney Act have been updated to be more consistent with human rights, in particular the United Nations Convention on the Rights of Persons with a Disability.

The general principles recognise:

- the presumption of capacity
- an adult's right to the same human rights and fundamental freedoms regardless of an adult's capacity
- the importance of empowering an adult to exercise their basic human rights and fundamental freedoms
- the importance of maintaining an adult's existing supportive relationships
- the importance of maintaining an adult's cultural and linguistic environment and values
- an adult's right to privacy
- an adult's right to liberty and security on an equal basis with others

- the importance of maximising an adult's participation in decision making.

The general principles and health care principles must be applied by:

- attorneys, guardians, administrators and statutory health attorneys (i.e. decision makers) when making decisions on behalf of an adult with impaired decision-making capacity
- the Supreme Court and QCAT when determining whether an adult has capacity for a matter or when appointing a guardian or administrator to make decisions for you
- a person making a decision for you on an informal basis.

PROTECTION OF PEOPLE DISCLOSING ABUSE, NEGLECT OR EXPLOITATION

Whistle blowers are now protected from liability when they disclose confidential information about a person with impaired capacity. The person will be protected where they reasonably believe that the information disclosed shows an adult has been subject to abuse, neglect or exploitation, or if the disclosure would help in an investigation about the abuse, neglect or exploitation.



WHERE TO GET FREE HELP

SENIORS LEGAL AND SUPPORT SERVICE

at Caxton Legal Centre for legal advice and social work support and advocacy

Tel: (07) 3187 7187 or 1800 954 494

ELDER ABUSE HELPLINE

Tel: 1300 651 192

ADA AUSTRALIA

for help to speak up for your decision-making rights or your concerns with aged-care services

Tel: 1800 818 338 or 3637 6000

COMPASS

the national website on recognising elder abuse and how to get help

www.compass.info

DIVERSICARE

for help with quality in-home care services for culturally and linguistically diverse people

Tel: 1300 348 377

FINANCIAL COUNSELLORS

for help with common debt problems

Tel: 1800 007 007

POLICE LINK

Tel: 13 14 44 or 000 for emergencies

PUBLIC TRUSTEE OF QUEENSLAND

for drafting of free wills and EPAs (for a fee)

Tel: 1300 360 044

TELEPHONE INTERPRETING SERVICE

Tel: 13 14 50

OFFICE OF THE PUBLIC GUARDIAN

for allegations of abuse against an adult who has impaired decision-making capacity

Tel: 1300 653 187

QUEENSLAND ADVOCACY INCORPORATED

for legal advocacy for people with disability

Tel: 1300 130 582

QUEENSLAND LAW SOCIETY

for contact details for private lawyers

Tel: 1300 367 757

SENIORS ENQUIRY LINE

when you are not sure where to go with a question or problem

Tel: 1300 135 500

Caxton Legal Centre Inc.

© Copyright Caxton Legal Centre Inc.

1 Manning Street

South Brisbane Qld 4101

Telephone: (07) 3187 7187 or 1800 954 494

Facsimile: (07) 3846 7483

Internet: www.caxton.org.au

This information is current at December 2020.



Disclaimer

This factsheet is intended to give general advice only and should not be used as a substitute for legal advice. While every effort has been made to ensure the accuracy at the time of writing, the law is complex and constantly changing.

No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.

