



The Public Trustee

Nominated Person Policy

15 March 2021



Nominated Person Policy

Version	Approved by	Approval date	Effective date	Next review
2.0	A/Executive Director Investment & Finance Services & CFO	15 March 2021	15 March 2021	30 June 2021
Policy Statement				
Purpose	The purpose of this policy is to outline the basis on which the Public Trustee of Queensland (“the Public Trustee”) will consent to act as a Nominated Person, a role that can be created by an Enduring Power of Attorney made pursuant to the <i>Powers of Attorney Act 1998</i> on or after the 30 th of November 2020.			
Scope	This policy applies to all Public Trustee employees including permanent, temporary, and casual employees and contractors. This policy does not apply to appointments of the Public Trustee as Attorney for financial matters pursuant to s. 35 of the <i>Public Guardian Act 2014</i> .			
Policy Provisions				

1. Background:

- 1.1 The Nominated Person is a new role introduced by the Enduring Power of Attorney forms approved for use from 30 November 2020, pursuant to s. 11 and s. 161 of the *Powers of Attorney Act 1998* (“the Approved Forms”). From 30 November 2020 a Principal may, in addition to appointing an Attorney under an Enduring Power of Attorney, also nominate one or more persons to receive from the Attorney notifications for personal (including health) matters and for financial matters.
- 1.2 It is intended that the Principal can appoint a trusted person who their Attorney is required to notify of certain information at certain intervals. This trusted person is called the Nominated Person in the Approved Forms.
- 1.3 For financial matters, the suggested information in the Approved Forms that a Principal can require an Attorney to provide to the Nominated Person includes: -
 - 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; and
 - 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.

(“the Requested Information”)
- 1.4 The Enduring Power of Attorney allows the Principal to not only specify the timeframe within which the Attorney must provide the Nominated Person with the Requested Information, but also allows the Principal to give the Nominated Person the ability to seek the Requested Information at any time.

2. The Role of the Public Trustee

- 2.1 Section 27 (3) the *Public Trustee Act 1978* provides that the Public Trustee’s appointment to any office or capacity shall be subject to the Public Trustee consenting to it.
- 2.2 The level of service required of the Public Trustee as a Nominated Person will depend on the amount of the Requested Information which the Principal requests the Attorney to send to the

Nominated Person, the extent to which the Attorney complies with any terms of the Enduring Power of Attorney s to provide the Requested Information, and on the complexity of the financial affairs of the Principal.

The level of service required may also depend on whether the Attorney for financial matters is the same as the Attorney for personal matters and whether a Nominated Person for personal matters has been appointed. The Public Trustee will, if necessary, liaise with the Attorney for personal matters and/or the Nominated Person for personal matters.

2.3 The Public Trustee is prepared to offer a service based on an hourly rate to those customers wishing to appoint the Public Trustee as a Nominated Person but will retain the discretion to refuse to accept an appointment as a Nominated Person if the level of service required cannot be readily met within the Public Trustee's existing resources.

2.4 The Public Trustee's delegate may consent to acting as the Nominated Person only in the following circumstances:-

- The proposed role relates to financial matters, not personal (including health matters);
- The Public Trustee is the sole Nominated Person for financial matters;
- The Public Trustee has been notified in writing that the Public Trustee has been named as the sole Nominated Person for financial matters;
- The Public Trustee has received a certified copy of a fully executed Enduring Power of Attorney that appears to be validly executed and effective;
- The Public Trustee has received no information that gives the Public Trustee reasonable cause to question whether the Enduring Power of Attorney is valid;
- The Public Trustee has been provided with current contact details for the Principal and the Attorney;
- The terms in the Enduring Power of Attorney as to the Requested Information to be provided to the Nominated Person, and the regularity in which the Requested Information is to be provided to the Nominated Person is, in the opinion of the Public Trustee, reasonable;
- The Public Trustee is not the named Attorney in the Enduring Power of Attorney;
- The Public Trustee is satisfied that the Principal has sufficient funds to pay the Public Trustee's fees; and
- The Principal has entered into a Nominated Person Service Fee Agreement in the form issued by the Public Trustee from time to time or, in the event this has not occurred, the Attorney, when the Enduring Power of Attorney has become operative, has executed a Nominated Person Service Fee Agreement on behalf of the Principal.

("the Consent Conditions")

2.5 The onus of notifying the Public Trustee that the Public Trustee has been named as the sole Nominated Person for financial matters, and the provision of a certified copy of the Enduring Power of Attorney and the current contact details for the Attorney and the Principal will be the responsibility of the Principal and/or the Attorney.

3. The Public Trustee's Nominated Person Service Fee Agreement

3.1 The Public Trustee will charge fees for acting as a Nominated Person. Those fees may vary over time and are intended to be paid out of the assets of the Principal regardless of the value of the net assets of the Principal.

3.2 The Principal, or in the event the Attorney is proposing to sign the Nominated Person Service Fee Agreement on behalf of the Principal, may wish to obtain independent financial and legal advice before entering into the Nominated Person Service Fee Agreement.

3.3 The Public Trustee's Nominated Person Service Fee Agreement will be published on the Public Trustee's website, together with this Policy, and will outline: -

- the fees that the Public Trustee will charge to undertake the role of Nominated Person on an hourly basis at the "hourly rate" as that term is defined in the Public Trustee's Fees and Charges Notice issued from time to time;
- the payment conditions;

- the obligation on the Principal or the Attorney (if the Principal has impaired capacity) to notify the Public Trustee if the Principal does not have sufficient resources to pay for the fees under the Nominated Person Service Fee Agreement;
- the role of the Public Trustee will undertake for the fees (Nominated Person Services);
- the basis on which the Public Trustee will consent to provide Nominated Person Services;
- the role the Public Trustee will play in the event that the Attorney fails to provide payment of the Public Trustee's fees; and
- the circumstances when the Public Trustee can terminate the Nominated Person Services.

4. The Role of the Financial Attorney

- 4.1 A financial attorney must comply with the relevant provisions of the *Powers of Attorney Act 1998*; with the terms and instructions provided to the Attorney in the Enduring Power of Attorney; and any directions given to the Attorney by QCAT or the Supreme Court.
- 4.2 Subject to paragraph 4.3, if the Principal has not signed a Nominated Person Service Fee Agreement whilst the Principal is capable, the Public Trustee will send a Nominated Person Service Fee Agreement to the Attorney and request that the Attorney either complete the Nominated Person Fee Agreement or apply to QCAT for a change to the terms of the Enduring Power of Attorney pursuant to the *Powers of Attorney Act 1998*.
- 4.3 If the Attorney is not prepared to sign a Nominated Person Service Fee Agreement in the standard form approved by the Public Trustee's delegate from time to time, the Public Trustee may consider any variations to the standard form of the Nominated Person Service Fee Agreement proposed by the Attorney. The Public Trustee may refuse to agree to any proposed variations to the standard form of the Nominated Person Service Fee Agreement at the Public Trustee's discretion.
- 4.4 If the Attorney has procedural questions regarding the Attorney's obligations to comply with the Enduring Power of Attorney; the relevant provisions of the *Powers of Attorney Act 1998*; or the application to QCAT; the Public Trustee will make attempts to assist the Attorney however the Public Trustee cannot provide legal advice to the Attorney and cannot agree to any amendments to the Enduring Power of Attorney. If the Attorney does not:
- complete the Nominated Person Service Fee Agreement (including any varied Nominated Service Fee Agreement referred at paragraph 4.3) within a reasonable time from being requested to do so by the Public Trustee; or
 - apply to QCAT for a change to the terms of the Enduring Power of Attorney pursuant to the *Powers of Attorney Act 1998* within a reasonable time from being requested to do so by the Public Trustee; and/ or
 - comply with the terms in the Enduring Power of Attorney for the Attorney to provide information to the Public Trustee as the Nominated Person

and /or the Principal and the Attorney, or the Attorneys for financial matters (where there is more than one), cannot agree on any of the actions set out above in this paragraph 4.4, the Public Trustee may take the action at paragraph 4.5, unless there are directions to the contrary in the Enduring Power of Attorney or directions to the contrary issued by QCAT or the Supreme Court.

- 4.5 If the events at paragraph 4.4 occur, the Public Trustee may at the Public Trustee's discretion apply to QCAT for:
- a. directions on the Public Trustee's continued role as Nominated Person and/or a change to the terms of the Enduring Power of Attorney pursuant to the *Powers of Attorney Act 1998*; and
 - b. payment of the Public Trustee's costs of the application.
- 4.6 An application to QCAT under paragraph 4.5 will be only be made if approved by the Public Trustee's QCAT Referral Panel. The Public Trustee will not seek an Order for the Public Trustee to be appointed as Attorney providing however this will not prevent QCAT appointing the Public Trustee as Attorney or Administrator on its own initiative.

4.7 The Public Trustee's costs and any legal costs associated with the steps referred in paragraph 4.5, that cannot be recovered from the Principal, will be recorded as advised by the Executive Director, Investment & Finance Services & CFO.

5. The Role of the Public Guardian

5.1 The Office of the Public Guardian promotes and protects the rights and interests of adults with impaired decision-making capacity under the *Public Guardian Act 2014*. The Office of the Public Guardian has power to investigate any complaints or allegations of abuse, neglect, exploitation and inappropriate or inadequate decision-making arrangements related to adults with impaired capacity, including actions by an Attorney.

5.2 The Public Trustee will notify the Office of the Public Guardian if, after performing the Nominated Person Services, it appears to the Public Trustee the Attorney may be acting in a way that is inconsistent with the Attorney's duties under the Enduring Power of Attorney in relation to the adult's financial matters, the *Powers of Attorney Act 1998*; or any order of QCAT or the Supreme Court.

6. Reporting and Contact

6.1 The delegation to consent to the Public Trustee acting as Nominated Person will initially be given to the Executive Director, Investment & Finance Services & CFO.

6.2 The Nominated Person Services will be initially provided by Customer Services. A review of the volume and complexity of the work required to provide the Nominated Person Services will be undertaken after this Policy has been in place for 6 months.

6.3 The communications between the Attorney and the Public Trustee when undertaking the role of Nominated Person will be outlined in the Public Trustee's Internal Manuals.

6.4 The Knowledge Management Unit in Customer Services will update the Public Trustee's Internal Procedure Manuals: -

- for Document Makers as regards taking instructions for the completion of the Approved Forms; and
- for providing the Nominated Person Services and any associated procedures necessary to provide such services.

6.5 The Executive Director Investment & Finance Services & CFO will provide Reports to the Board of Management on the Nominated Person Services when requested by the Board of Management.

Accountabilities	
Policy Owner	Executive Director Investment & Finance Services & CFO, Investment & Finance has the ultimate responsibility for developing, implementing, managing, and revising this Policy and related policy documents.
Policy Delegate Contact Details	Executive Director Investment & Finance Services & CFO Email Address: Shane.Sullivan@pt.qld.gov.au
Supporting Information	
Legislative Compliance	This Policy supports the Public Trustee's preparedness to offer a service of Nominated Person, a new role envisaged by the Enduring Powers of Attorney forms issued for commencement on the 30 th of November 2020 in accordance this s.11 and s. 161 of the <i>Powers of Attorney Act 1998</i> .

Supporting Documents	<p>Enduring power of attorney – long form (Queensland) - Link</p> <p>Enduring power of attorney – short form (Queensland) - Link</p> <p>Enduring power of attorney explanatory guide (Form 9) Version 1 - Link</p> <p>Nominated Person Service Fee Agreement - Link</p> <p>Nominated Person Fact Sheet - Link</p> <p>Recommended clauses for insertion in your Enduring Power of Attorney document where the Public Trustee is your Nominated Person for Financial Matters - Link</p> <p>Form 12 – QCAT Application for miscellaneous matters - Link</p> <p>Form 10 – QCAT Application for administration - Link</p>			
Related Internal Documents	<p>Updated Internal Procedures Manual outlining the procedures for Document Makers and for providing the Nominated Person Services.</p> <p>Amended Delegation which provides for decision-making in relation to consenting to the role of the Nominated Person.</p>			
Superseded Documents	NIL			
Definitions and Acronyms				
QCAT	QCAT means the Queensland Civil and Administrative Tribunal			
Revision History				
Version	Approved by	Approval date	Effective date	Sections modified
1	Board of Management	14 December 2020	14 December 2020	Nil
2	A/Executive Director Investment & Finance Services & CFO	15 March 2021	15 March 2021	Scope; original paragraphs 2.2; 2.4; 3; 4.2; 4.3; 4.4; 4.5; 4.6; 5.1, 5.2; and Supporting Documents