



The Public Trustee

**Policy for
Acceptance as Attorney
Where
Nominated Person Appointed**

14 December 2020



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Version	Approved by	Approval date	Effective date	Next review
1.0	Board of Management	14 December 2020	14 December 2020	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 Attorney under an Enduring Power of Attorney where 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, has been appointed.			
Scope	This policy applies to all Public Trustee employees including permanent, temporary and casual employees and contractors.			
Policy Provisions				

1. Background:

- 1.1 A Principal is able to appoint the Public Trustee as an Attorney in an Enduring Power of Attorney document.
- 1.2 As from 30 November 2020, the Public Trustee is only able to be appointed as Attorney for financial matters, and not personal (including health) matters.
- 1.3 Pursuant to section 27 (3) of the *Public Trustee Act 1978*, the appointment of the Public Trustee as Attorney is subject to the Public Trustee consenting to act in that role..
- 1.4 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.
- 1.5 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.
- 1.6 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”)

- 1.7 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.
- 1.8 Additional costs will be incurred by the Public Trustee as Attorney if the Public Trustee is directed by the Enduring Power of Attorney to provide the Requested Information to the Nominated Person and such additional costs will be charged to the Principal.
- 1.9 An Attorney can apply to QCAT for directions or for a decision to vary or revoke all or part of an Enduring Power of Attorney.
- 1.10 The Public Trustee is obliged to comply with the *Information Privacy Act 2009* and *Privacy Act 1988*.
- 1.11 This policy is intended to only apply to Enduring Powers of Attorney where the Public Trustee has been appointed as Attorney for financial matters and where a Nominated Person has been appointed for financial matters.

2. The Role of the Public Trustee

- 2.1 The additional costs incurred by the Public Trustee 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; the regularity of the need to send the Request Information to the Nominated Person; and on the complexity of the financial affairs of the Principal.
- 2.2 The Public Trustee’s delegates at Regional Manager Level in Customer Services 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);
 - The Public Trustee has received a certified copy of a fully executed Enduring Power of Attorney that appears to be validly executed;
 - 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 Nominated Person is not the Public Trustee;
 - The Public Trustee 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;
 - The directions to the 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, can, in the opinion of the Public Trustee, be met from the documents routinely created by the Public Trustee and within existing practices of the Public Trustee when acting as Attorney;
 - The level of service required can be readily met within the Public Trustee’s existing resources.

- The Terms and Instructions in the Enduring Power of Attorney include the following provisions:
 - the Attorney can provide a copy of documents to the Nominated Person and is not required to provide the original documents;
 - 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; and
 - the Attorney is authorised to provide the Requested Information even if the Public Trustee would otherwise be prohibited from providing the Requested Information pursuant to the *Information Privacy Act 2009* and *Privacy Act 1988*; and
- The Public Trustee is satisfied that the Principal has sufficient funds to pay the Public Trustee’s fees.
 (“the Consent Conditions”).

2.3 In the event that the conditions in 2.2 are not met, the decision as to whether to accept the appointment as Attorney must be referred to a Regional Director.

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

2.5 Where the Public Trustee has accepted role of Attorney and, in the opinion of a Regional Director, the Public Trustee ought not continue to act as Attorney under the conditions in the Enduring Power of Attorney, the Public Trustee will:

- a) If the Principal is capable of making a new Enduring Power of Attorney, retire as Attorney; or
- b) 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*.

2.6 An application to QCAT under 2.5(b) will be only be made if approved by the Public Trustee’s QCAT Referral Panel.

3. Reporting and Contact

3.1 The Knowledge Management Unit in Customer Services will update the Public Trustee’s Internal Manuals to detail the procedures for providing the Requested Information to the Nominated Person.

3.2 The Executive Director, Customer Experience and Delivery, will provide Reports to the Board of Management on the Public Trustee accepting appointment as Attorney where there is a Nominated Person, when requested by the Board of Management.

Accountabilities	
Policy Owner	Executive Director, Customer Experience and Delivery, has the ultimate responsibility for developing, implementing, managing and revising this Policy and related policy documents
Policy Delegate	Executive Director, Customer Experience and Delivery
Contact Details	Email Address: amanda.macdougall@pt.qld.gov.au

Supporting Information				
Legislative Compliance	This Policy supports the Public Trustee's preparedness to accept appointment as Attorney where there is a 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	Enduring power of attorney – long form (Queensland) - Link Enduring power of attorney – short form (Queensland) - Link Enduring power of attorney explanatory guide (Form 9) Version 1 - Link Recommended clauses for insertion in your Enduring Power of Attorney document where the Public Trustee is your Financial Attorney and you are appointing a Nominated Person for Financial Matters – Link			
Related Documents	Updated Internal Procedures Manual outlining the procedures for Document Makers and for Financial Management Services. Amended Delegations which provides for decision-making in relation to consenting to the role of the Attorney where there is a Nominated Person named in the Enduring Power of Attorney.			
Superseded Documents	NIL			
Definitions and Acronyms				
Attorney	Attorney includes Substitute Attorney			
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