

POLICY	Accepting appointments to act as Attorney for Health/Personal matters
Version/Date	ver. 1 (July 2014)

1. Policy statement

This Policy governs the Public Guardian’s decisions with respect to accepting appointments to act as a person’s attorney for personal/health matters under an enduring document. The term *enduring document* includes both Enduring Powers of Attorney and Advance Health Directives.

Consistent with the *Guardianship and Administration Act 2000*, the *Public Guardian Act 2014* and the *Powers of Attorney Act 1998*, the Public Guardian:

- encourages all Queensland adults to put plans in place for their future decision making, in the event they lose capacity to make financial and/or personal decisions for themselves
- acknowledges the role given to the Public Guardian under legislation to act as attorney for personal/health matters in certain limited circumstances
- acknowledges the important roles (both formal and informal) that family/friends play in the lives of adults with impaired capacity, including with respect to decision making
- exercises judicious involvement in the personal lives of adults with impaired capacity, in observance of the *least intrusive* and *last resort* principles.

In electing to accept an appointment to act as attorney for personal/health matters under an enduring document, the Public Guardian will make a considered decision based on the circumstances of each case.

The Public Guardian will seek to balance an adult’s right to adequate and appropriate decision- making with the statutory obligations to act as decision maker of last resort, and the obligation as a public official to allocate resources to areas of greatest need and risk.

The Public Guardian may accept a **successive appointment**: that is, to act as attorney in the event that all other nominated attorneys are unable to perform their duty at the time of activation of the document.

The Public Guardian will accept a **sole appointment** only when there is no one else in the adult’s life who is appropriate, willing and able to be appointed.

2. Making an application for the Public Guardian to act as attorney

Persons wishing to nominate the Public Guardian as their attorney for personal/health matters must submit to the Office of the Public Guardian (OPG) the following **three (3) documents**. All three are freely available from the Public Guardian’s website:

<http://www.publicguardian.qld.gov.au>

2.1 Enduring document

Persons seeking to nominate the Public Guardian as their attorney for personal/health matters should submit to the OPG:

- a) a completed Enduring Power of Attorney form (either Long Form or Short Form), appropriately witnessed by a person authorised to do so

or

- b) a completed Advance Health Directive form, appropriately witnessed by a person authorised to do so.

In completing the document, persons are advised to consult the following OPG publications (available from the Public Guardian's website):

Guidelines for witnessing enduring documents

Advance Health Directive (fact sheet)

Enduring Power of Attorney (fact sheet)

2.2 Application form

In addition, the *Application for the Public Guardian to act as Attorney* must be completed and submitted to the OPG. Sufficient detail should be included to enable the Public Guardian to make an informed decision about acceptance of the appointment.

2.3 Personal Profile form

In addition, the *Personal Profile form* must also be completed and submitted to the OPG. This form provides details of people who the Public Guardian should consult when making personal/health decisions, and any personal views/wishes of the person with respect to decisions which may need to be made for them.

3. Applicable legislation

Section 12(1)(e) of the *Public Guardian Act 2014* provides for the Public Guardian to act as attorney in the following circumstances:

- (i) *for a personal matter under an enduring power of attorney; or*
- (ii) *under an advance health directive; or*
- (iii) *for a health matter if authorised as a statutory health attorney; or*
- (iv) *if appointed by the court or the tribunal*

Section 29 of the *Powers of Attorney Act 1998* includes the Public Guardian in the definition of *eligible attorney* for:

- *a personal matter under an Enduring Power of Attorney, as per s.29(1)(d) or*
- *a matter under an Advance Health Directive, as per s.29(2)(c)*

Section 44(8) of the *Powers of Attorney Act 1998* stipulates that an enduring document:

...is effective in relation to an attorney only if the attorney has accepted the appointment by signing the enduring document.

Section 14(2) of the *Guardianship and Administration Act 2000* permits the Queensland Civil and Administrative Tribunal to appoint the Public Guardian as guardian for a matter:

...only if there is no other appropriate person available for appointment for the matter.