

Understanding Substitute Decision-Making (QLD)



Your right to make your own decisions

At Opal HealthCare, we recognise the importance of encouraging older Australians to be as physically, socially, and emotionally autonomous as possible.

That's why we safeguard and support your right to make decisions about your care and services. If you lack the capacity to make certain decisions in your own best interest, it's important you have the right support, and a substitute decision-maker to make decisions on your behalf.

This resource will support you or someone you care about, to appoint a substitute decision-maker.

It's intended for general information only and doesn't constitute legal or financial advice. We recommend you consider your personal circumstances and seek professional advice, if needed.





What does it mean to have capacity? It means you can...

- Understand the nature and effect of your decisions about the matter.
- Freely and voluntarily make decisions about the matter.
- Communicate your decision in a way that can be understood.

Registered Supporters

You may wish to consider appointing and registering a trusted family member or friend as a 'Supporter' to help you to make decisions.

The Supporter's role is to help you understand options, access information and communicate your decisions if you would like them to, but unlike substitute decision-makers, **they can't make decisions on your behalf.**

Supporters can only act with your consent and always in your best interest. Supporters do not replace authorised decision-makers. Supporters must be registered with My Aged Care.

Guiding Principles

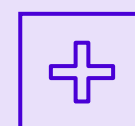
- The presumption is that you have capacity to make your own decisions and that substitute decision-making is a last resort.
- Your age, disabilities, appearance or behaviour are not indicators of whether or not you can make your own decisions.
- A substitute decision-maker may make decisions about the matters for which they were appointed but not others.
- Medical practitioners provide advice and support in assessing capacity, but they do not make decisions.
- Substitute decision-makers must always act in your best interest and take into account your views and wishes, be these expressed verbally, in writing or via any other way of communication.

What type of decision needs to be made?



Financial decisions

An **Enduring Power of Attorney** document appoints an **Attorney** to make financial decisions on your behalf.



Personal and health decisions

An **Enduring Power of Attorney** document appoints an **Attorney** to make personal (including health) decisions on your behalf.



What type of decisions can your EPOA make for you?

- **Financial matters** relate to decisions about your financial or property affairs, including decisions about paying expenses, making investments, selling property (including your home) or carrying on a business.
- **Personal matters** relate to decisions about your care and welfare such as where and with whom you live and support services you may need. They include **legal matters** that do not relate to your financial or property matters.
- **Health matters** are a personal matter and relate to decisions about your health care. Health care includes most medical treatments, procedures and services to treat both physical and mental conditions. When you are nearing the end of your life, health care also includes treatments aimed at keeping you alive or delaying your death (life-sustaining treatments).



Substitute decision-making for financial and personal and health matters

Enduring Power of Attorney (EPOA)

An Enduring Power of Attorney (EPOA) is a **legal document** that allows you to appoint a trusted person to make **financial decisions** and **personal and health decisions** for you if you are unable to make these types of decisions for yourself.

Who can be an EPOA?



A trusted person (or persons) legally appointed by you.

OR

A person (or persons) appointed for you by a court or tribunal.



A family member, next of kin, health professional or representative under the Aged Care Act **cannot** act as your EPOA unless they have been legally appointed by you with an authorising document or by a tribunal.

Appointing an EPOA yourself

If you have capacity to do so, you can appoint anyone you choose over the age of 18 years to assist you with personal, health, legal, and financial decisions.

- An EPOA can be a **relative or friend** and doesn't need to be a solicitor or professional.
- You can appoint **the same person** to make financial and personal decisions, or you can appoint **different people** to make financial and personal decisions.
- You can appoint **multiple people** to the same role.
- You can appoint **alternative attorneys** to step in if your preferred attorney is unable to carry out their responsibilities for any reason.

When does an EPOA come into effect?

For **personal (including health and legal) decisions**, your Enduring Power of Attorney can only operate during those times when you do not have capacity to make those decisions. This may become a permanent arrangement if your loss of capacity becomes permanent.

For **financial matters**, you can specify when the authority comes into effect. This can be immediately, at a specific time of your choosing or when you no longer have capacity to make financial decisions for yourself.





What is an Advance Health Directive?

An Advance Health Directive (AHD) is a document that enables you to give directions about your future health care. It allows your wishes to be known and gives health professionals direction about the treatment you want. In your AHD, you can also name people you wish (or do not wish) to be involved in decision-making about your health care.

What is a Statutory Health Attorney?

If you **have not** appointed an EPOA to make health decisions for you (and a guardian has been appointed for you by a tribunal) and you **do not** have an Advance Health Directive in place, a Statutory Health Attorney can make medical decisions for you because of their relationship with you.

By law, a Statutory Health Attorney is the first available and culturally appropriate adult over the age of 18 from the following list: a spouse or de facto partner (as long as the relationship is close and continuing), an unpaid carer (carer's pension allowed) or a close friend or relative.

Next steps

1. You must select a person (or persons) to be your EPOA while you have capacity.

Contact a private solicitor to assist you with the forms or call the Public Trustee on **1300 360 044** for assistance.
2. Discuss your wishes and requests with the person you hope to appoint as your EPOA.
3. Download and complete the relevant EPOA appointment form from **qld.gov.au**
 - Short form to appoint an attorney(s) for personal (including health) matters only OR financial matters only OR the same attorney(s) for personal (including health) matters and financial matters.
 - Long form to appoint different attorneys for personal (including health) matters and financial matters.
4. The form must be signed by both you and the person you appoint – in the presence of eligible witnesses.

* Eligible witnesses include a Justice of the Peace (JP), commissioner for declarations or a lawyer.
5. Store your document securely and ensure that your Care Community has a copy.
6. Remember that the Power of Attorney only takes effect when you decide or when you lose capacity to make financial and personal decisions for yourself.

What happens if you lose capacity before you have appointed an Enduring Power of Attorney?

If you have lost capacity and have **not** appointed an EPOA, the only option is for a trusted person to apply to **Queensland Civil and Administrative Tribunal (QCAT)** to appoint a person to manage your financial and personal and health affairs.

What orders can QCAT make?

Appoint an Administrator to manage your financial affairs.



QCAT may appoint a family member, friend or trusted professional to be your Administrator if one is available. If **no** family member, friend or trusted professional is willing or able to take on the role of Administrator, then QCAT will appoint the **Public Trustee of Queensland** to assume these responsibilities.

AND/OR

Appoint a Guardian to manage your personal (including health and legal) affairs.



QCAT will appoint a family member or friend who is willing and able to take on the role of Guardian. If **no** family member or friend is willing or able to take on the role of Guardian, then the **Public Guardian** can be appointed to manage all or part of your personal affairs including health affairs and legal affairs that are not related to property or finance.

OR



QCAT may decide that you still have capacity and can either appoint your own EPOA or make financial and personal and health decisions for yourself.



What sort of decisions can Court or tribunal-appointed decision-makers make on your behalf?

If you have lost capacity to appoint an EPOA, a tribunal may appoint an **Administrator** to make financial decisions on your behalf and a **Guardian** to make personal (including health and legal) decisions on your behalf.

Powers of court or tribunal-appointed decision-makers

	Financial	Personal	Health
Administrators	✓	✗	✗
Guardians	✗	✓	✓ *

*If you have an Advance Health Directive in place, this has priority in decisions related to health and medical treatment.

If you believe that someone has lost capacity to make decisions for themselves, you should discuss this with the General Manager in the Care Community or contact QCAT directly on 1300 753 228.





Frequently asked questions

Q.

Who can assess a resident's capacity to make decisions?

A.

To safeguard the rights of our residents to make autonomous decisions, Opal HealthCare will involve a medical practitioner such as a general practitioner (GP) or geriatrician to make a determination when capacity is in question.

What's the difference between a General Power of Attorney (POA) and an Enduring Power of Attorney (EPOA)?

A General Power of Attorney is valid only while a person has capacity. A General Power of Attorney ceases when a person loses capacity. An Enduring Power of Attorney remains in place even when a person loses capacity to make decisions.

Q.

What's the difference between a Registered Supporter and a Substitute Decision-Maker?

A.

A Registered Supporter is a close family member or friend chosen by you to help you to make your own decisions. Registered Supporters need to be registered with My Aged Care. The Supporter's role is to help you understand options, access information and communicate your decisions if you would like them to, but **not to make decisions on your behalf**.

Only an authorised substitute decision-maker legally appointed by you can make a decision on your behalf. If a Registered Supporter is also an authorised substitute decision-maker, they should support you to make decisions, and only step in and make a decision on your behalf if you are unable to assess the information and make an informed decision for yourself.

Can I appoint more than one EPOA?

If you have appointed more than one EPOA, you can specify if you want decisions to be made jointly (all decision-makers must agree for a decision to be binding) or if you are satisfied for decisions to be made by any one of the appointed decision-makers (severally).

You can also appoint your substitute decision-makers to act either jointly or severally, which means they can act either together or severally in making decisions on your behalf. You can also appoint an alternative substitute decision-maker so that if the first is unwilling or unable to act (or relinquishes their role), the second person may step in to assume their responsibility.

Can I revoke or change an EPOA?

Yes. As long as you still have capacity, you can revoke any appointment you have made by filling out the Revocation of EPOA form and giving a certified copy to the previously appointed EPOA. You should let any relevant bodies know (such as banks) that you have terminated their appointment and destroy the appointment document. Appointing a new EPOA does not automatically cancel an existing EPOA. The appointing document must clearly state that it revokes previous appointments.



Contacts

The Public Trustee of Queensland

Phone: 1300 360 044

Email: clintenq@pt.qld.gov.au

Website: pt.qld.gov.au

Office of the Public Guardian (OPG)

Phone: 1300 653 187

Email: publicguardian@publicguardian.qld.gov.au

Website: publicguardian.qld.gov.au

Queensland Civil and Administrative Tribunal (QCAT)

Phone: 1300 753 228

Website: qcat.qld.gov.au

Older Persons Advocacy Network (OPAN)

Phone: 1800 700 600

Website: opan.org.au

Aged Care Quality and Safety Commission

Phone: 1800 951 822

Email: info@agedcarequality.gov.au

Website: agedcarequality.gov.au

Resources

For a comprehensive range of resources to help you navigate substitute decision-making, please visit:

opalhealthcare.com.au/welcome/substitute-decision-making



HealthCare