

## Mental Health Act 2016 Checklists

# Advance health directives and enduring powers of attorney

## Checklists for enduring documents

In Queensland, an enduring document is an advance health directive form or enduring power of attorney form.

The *Mental Health Act 2016* promotes enduring documents as a 'less restrictive way' for a person to receive treatment and care for mental illness.

When a consumer gives an enduring document to an authorised mental health service, the service must ensure it is valid before uploading it to CIMHA.

This document sets out:

- general information about enduring documents
- checklists to help authorised mental health service staff confirm a document if valid
- questions and answers about enduring documents.

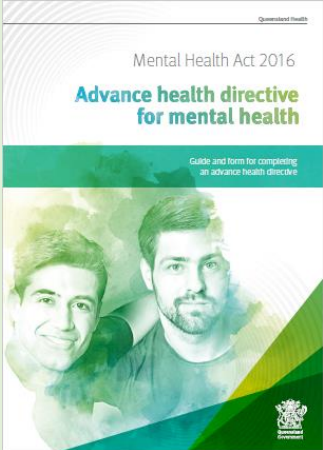


To find out more about enduring documents, read the [Guide to advance health directives, enduring powers of attorney, guardians and administrators](#)

# General information

## There is no mandatory advance health directive form

A person can make a valid advance health directive if it follows [section 44 of the Powers of Attorney Act 1998](#).

However, these are the advance health directive forms publicly available in Queensland—

	<h3>Advance health directive for mental health guide and form</h3> <p>The Office of the Chief Psychiatrist created this form with the introduction of the <i>Mental Health Act 2016</i>.</p> <p>It is common for directions for mental health.</p>
	<h3>Form 4 – Advance health directive (Queensland)</h3> <p>The Department of Justice and Attorney-General created and approved this form for use from 30 November 2020.</p> <p>This form can also be used to make mental health directions but is standard for physical health matters, such as end-of-life matters.</p>
	<h3>The previous version of Form 4 – Advance health directive (Queensland)</h3> <p>The Department of Justice and Attorney-General created and approved this form for use before 30 November 2020.</p> <p>This form can also be used to make mental health directions but is standard for physical health matters, such as end-of-life matters.</p>

# There is a mandatory enduring power of attorney form

It's available in both a 'short form' and 'long form' version–

The image shows the cover of Form 2, titled 'Enduring power of attorney – short form (Queensland)'. It includes the Queensland Government logo and the text: 'This form allows you to appoint someone you trust (an "attorney") to make decisions for you during your lifetime. Use this form to appoint: • attorney(s) for personal (including health) matters only • attorney(s) for financial matters only • the same attorney(s) for both personal (including health) matters and financial matters. Before you complete this form, read Form 3 – Enduring power of attorney – long form. Consider how you want to appoint and talk to them. This is a legal document that can significantly affect your legal rights. It is recommended that you seek independent legal advice before completing this form.' A URL for forms and explanatory guides is provided at the bottom.

## Form 2 – Enduring power of attorney–short form (Queensland)

The Department of Justice and Attorney-General created and approved this form for use from 30 November 2020.

The image shows the cover of Form 3, titled 'Enduring power of attorney – long form (Queensland)'. It includes the Queensland Government logo and the text: 'This form allows you to appoint someone you trust (an "attorney") to make decisions for you during your lifetime. Use this form to appoint different attorneys for personal (including health) matters and for financial matters. Before you complete this form, read Form 2 – Enduring power of attorney – short form. Consider how you want to appoint and talk to them. This is a legal document that can significantly affect your legal rights. It is recommended that you seek independent legal advice before completing this form.' A URL for forms and explanatory guides is provided at the bottom.

## Form 3 – Enduring power of attorney–long form (Queensland)

The Department of Justice and Attorney-General created and approved this form for use from 30 November 2020.

The image shows the cover of an old version of the enduring power of attorney form, titled 'ENDURING POWER OF ATTORNEY'. It includes the text: 'Form 2 (Queensland) Powers of Attorney Act 1998 (Section 46(1))'. Below the title, it says 'Short Form Use this document if you wish to appoint the same attorney(s) for both financial matters and personal matters (including health care). You may also use it to appoint an attorney (or attorneys) for financial matters only or for personal matters (including health care) only. This document can be used by non-English speakers if a qualified interpreter/translator reads it to the person in the person's own language and a signed Statement of Interpreter/Translator is attached.' A URL 'www.qld.gov.au' is at the bottom.

## Old versions of the enduring power of attorney form

You can identify older versions by reading the reference number on the first page:

- ver: 2-1/06/02 for the old 'short form.'
- ver: 2-1/06/03 for the old 'long form.'

These forms are valid if they were completed before 30 November 2020.

## Enduring documents from interstate or overseas

Services should contact their Hospital and Health Service's legal unit or the Office of Advance Care Planning for further advice regarding enduring documents made outside of Queensland.

# Key terms used in enduring documents

## Principal

The person making the document—an advance health directive or an enduring power of attorney.

## Eligible attorney

The person(s) appointed by the principal to make decisions about their health care on their behalf.

Confirming if a person is an eligible attorney depends on the circumstances. The checklists in this document set out the requirements for the following forms:

- an advance health directive form (on page 5)
- an enduring power of attorney form (on page 7).

## Eligible signer

The person who signed the enduring document because the principal was unable to do so. This generally occurs when the principal is physically unable to sign it.

The person is an eligible signer if they are:

- at least 18 years of age
- not the witness for the enduring document
- not an attorney for the enduring document.

## Eligible witness

The person who witnesses (and confirms that) the principal signed the enduring document in their presence. They also certify that the principal appeared to have capacity at the time.

Confirming if a person is an eligible witness depends on the circumstances. The checklists in this document set out the requirements for the following forms:

- an advance health directive form (on page 5)
- a revocation of an advance health directive form (on page 6)
- an enduring power of attorney form (on page 7)
- a revocation of an enduring power of attorney form (on page 8).

If necessary, you can verify online if a witness is a Justice of the Peace, Commissioner for Declarations, lawyer, or notary public. For example, see the following sites for Queensland:

- the [justice of the peace or commissioner for declarations](#) register
- the [register of solicitors](#) or [barristers' directory](#)
- the [list of members of the Society of Notaries Queensland](#).

If you need to verify a witness from interstate or overseas, services should seek advice from their **Hospital and Health Service's** legal unit.

# Checklists for enduring documents

## How to confirm a valid advance health directive form

### Does it have a doctor's certification?

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- A doctor certified that the principal had capacity when they made the document.

If the principal was under a treatment authority, forensic order, or treatment support order when the doctor certified the document, seek legal or clinical advice before uploading it to CIMHA.

### Is it correctly signed and dated?

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- Signed by the principal, or a person signing for the principal.

For a person signing for the principal, they must:

- confirm that the principal instructed them to sign the form
- be 18 years of older
- not be the witness for the form
- not be the principal's attorney (under an advance health directive/enduring power of attorney).

### Was it witnessed correctly?

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- Signed and dated by an eligible witness—the person is an eligible witness if they are:

- a justice of the peace, commissioner for declarations, lawyer, or notary public
- not a person signing for the principal (above)
- not the principal's attorney (under an advance health directive/enduring power of attorney)
- not related to the principal or the principal's attorney
- not a paid carer or health provider for the principal
- not a beneficiary under the principal's will.

### Does it confirm the attorney(s) accepted their appointment?

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- The appointed attorney(s) signed the original copy of the form.

They do not need their signature witnessed, or to sign the form on the same day as the principal.

To be an eligible attorney, they must:

- have capacity to make the same decisions
- be 18 years or older
- not be a paid carer or health provider for the principal
- not be a person who provides services in a residential service where the principal resides.

### Is it an original or certified copy?

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- The principal provided the original or a certified copy.

Copies of an original form are correctly certified if the person who certified it—

- is either the principal, a justice of the peace, commissioner for declarations, lawyer, notary public, a trustee company, or a stockbroker, and
- signed and stated on any page that it is a 'true and complete copy of the original.'

If you were provided an original copy, you must return it to the person.

## How to confirm if a principal has correctly cancelled (revoked) their advance health directive

### Is it correctly signed and dated?

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- Signed and dated by the principal.

The 'principal' is the person who made the advance health directive.

(or)

- Signed and dated by a person signing for the principal.

To be an eligible signer, they must:

- confirm that the principal instructed them to sign the form
- be 18 years of older
- not be the witness for the form
- not be the principal's attorney (under an advance health directive/enduring power of attorney).

### Was the form witnessed correctly?

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- If the revocation was signed by the principal—having it witnessed is optional.

(or)

- If the revocation was signed by a person signing for the principal—the witness must:

- not be a person signing for the principal (above)
- not be the principal's attorney (under an advance health directive/enduring power of attorney)
- not be someone related to the principal or the principal's attorney
- not be a paid carer or health provider for the principal
- not be a beneficiary under the principal's will.

## How to confirm if an appointed attorney has correctly resigned from an advance health directive

### Has the appointed attorney correctly resigned?

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- The principal has capacity to make healthcare decisions at the time—the appointed attorney resigned by giving the principal either:

- written notice (signed and dated)
- the [Revocation or resignation of attorney appointed under an advance health directive](#) form.

The appointed attorney does not need to have their signature witnessed for either of the above.

(or)

- The principal doesn't have capacity to make healthcare decisions** at the time—the attorney got approval from the Queensland Civil and Administrative Tribunal or the Supreme Court.

# How to confirm a valid enduring power of attorney

## Did they use the mandatory form in Queensland?

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- The principal used the approved versions available on the [Queensland Government website](#).

## Does it confirm the appointed attorney(s) can consent to healthcare?

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- The appointed attorney(s) can make decisions about personal (including health) matters for the principal.

## Is it correctly signed and dated?

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- Signed by the principal, or a person signing for the principal.

For a person signing for the principal, they must:

- confirm that the principal instructed them to sign the form
- be 18 years of older
- not be the witness for the form
- not be the principal's attorney (under an advance health directive/enduring power of attorney).

## Was it witnessed correctly?

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- The person witnessing the document is an eligible witness if they are:
- a justice of the peace, commissioner for declarations, lawyer, or notary public
  - not a person signing for the principal (above)
  - not the principal's attorney (under an advance health directive/enduring power of attorney)
  - not related to the principal or the principal's attorney
  - not a paid carer or health provider for the principal.

## Does it confirm the attorney(s) accepted their appointments?

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- The appointed attorney(s) signed the original copy of the form.

They do not need their signature witnessed, or to sign the form on the same day as the principal.

To be an eligible attorney, they must:

- have capacity to make the same decisions
- be 18 years or older
- not be a paid carer for the principal within the past 3 years
- not be a health provider for the principal
- not be a person who provides services in a residential service where the principal resides.

## Is it an original or certified copy?

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- The person provided the original or a certified copy.

Copies of an original form are correctly certified if the person who certified it–

- is either the principal, a justice of the peace, commissioner for declarations, lawyer, notary public, a trustee company, or a stockbroker, and
- signed and stated on any page that it is a 'true and complete copy of the original.'

If you were provided an original copy, you must return it to the person.

## How to confirm if a principal has correctly cancelled (revoked) their enduring power of attorney

### Is it correctly signed and dated?

---

- Signed and dated by the principal.  
The 'principal' is the person who made the enduring power of attorney.  
(or)
- Signed and dated by a person signing for the principal.  
For a person signing for the principal, they must:
  - confirm that the principal instructed them to sign the form
  - be 18 years of older
  - not be the witness for the form
  - not be the principal's attorney (under an advance health directive/enduring power of attorney).

### Was the form witnessed correctly?

---

- The person witnessing the document is an eligible witness if they are:
  - a justice of the peace, commissioner for declarations, lawyer, or notary public
  - not a person signing for the principal (above)
  - not the principal's attorney (under an advance health directive/enduring power of attorney)
  - not related to the principal or the principal's attorney
  - not a paid carer or health provider for the principal.

## How to confirm if an appointed attorney has correctly resigned from an enduring power of attorney

### Has the appointed attorney correctly resigned?

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- The principal has capacity to make healthcare decisions at the time—the appointed attorney resigned by giving the principal written notice (signed and dated).  
The appointed attorney does not need to have their signature witnessed.  
(or)
- The principal doesn't have capacity to make healthcare** decisions at the time—the attorney got approval from the Queensland Civil and Administrative Tribunal or the Supreme Court.



## Questions and answers

These questions are intended to assist authorised mental health service staff that receive an enduring document from a consumer.

### **Where can I refer consumers that have questions about making an enduring document?**

Most answers are in the explanatory guides on the [Queensland Government website](#)—that is either:

- the *Advance health directive explanatory guide*
- the *Enduring power of attorney explanatory guide*.

Otherwise, services can refer them to an Independent Patient Rights Adviser or information in the [Advance health directive for mental health](#) guide and form.

### **Should I send a copy of the enduring document to the Office of Advance Care Planning (OACP)?**

No, you don't need to. Uploading an enduring document to CIMHA will automatically make it visible to the OACP (under the 'advance care plan' tab on The Viewer).

### **Should I upload a copy of the enduring document to the consumer's My Health Record?**

Yes, it is encouraged if the consumer agrees to having it uploaded to their My Health Record.

The enduring document is still valid regardless of whether it is uploaded. See 'What to do with your completed [enduring document]' in the instructions section of the relevant explanatory guide.

Consumers may choose to [add an advance care plan](#) (an enduring document) on the My Health Record website.

### **What do I do if the consumer has appointed a different attorney(s) in their advance health directive form and enduring power of attorney form?**

You should follow the later enduring document where there is any inconsistency with an earlier document.

See 'Other circumstances when your [enduring document] may be revoked (cancelled)' in the further information section of the relevant explanatory guide.

### **Are there other ways that an enduring document can be revoked?**

Yes. See 'Other circumstances when your [enduring document] may be revoked (cancelled)' in the further information section of the relevant explanatory guide.

### **The consumer has included an extra page with more appointed attorneys, can they do this?**

Yes. See 'How do I appoint extra attorney(s) if there is not enough space in the [enduring document]?' in the FAQs section of the relevant explanatory guide.

There is also no limit on the number of attorneys that the principal appoints in an enduring document. See 'How many attorneys can you appoint?' in the instructions section of the relevant explanatory guide.

### **Can a consumer replace just one page (or section) of their existing enduring document?**

It's not recommended. See 'How do I make changes to an [enduring document] once it has been completed and signed?' in the FAQs section of the relevant explanatory guide.

### **The consumer made an enduring document using a previous version of a form, is it still valid?**

It depends—there's different rules for the advance health directive form and enduring power of attorney form.

See 'I completed an [enduring document] under the other previous approved form...' in the FAQs section of the relevant explanatory guide.

### **Can an appointed attorney(s) in either enduring document consent or refuse consent to electroconvulsive therapy (ECT), including emergency ECT?**

No, because it is 'special health care' under the *Guardianship and Administration Act 2000*.

See section 2.1.2 of the Chief Psychiatrist policy for [Electroconvulsive therapy](#).