

# Enduring Power of Attorney

## What is an Enduring Power of attorney (EPOA)?

An EPOA is an important legal document giving someone else the power to make personal, health and/or financial decisions on your behalf. The appointment may be for a fixed or undefined period, and can be revoked at any time providing you still hold legal capacity (see below).

## Why would I give someone this power?

There many scenarios where you may be unable to make independent decisions about your health, finances or personal care. These include sudden illness, accident, planned/unexpected absences or inability to cope with making decisions. Appointing someone you know and trust with the power to make these decisions, ensures that your wishes are respected.

## Why does Blue Care recommend I appoint an EPOA before I need one?

Legally, you can only appoint an attorney while you hold the required legal capacity. If you lose capacity before appointing an attorney, then an application must be made to either the Queensland Civil and Administrative Tribunal (QCAT) or the Guardianship Tribunal of NSW (Tribunal) to appoint an attorney to manage your affairs. This person may not be your preferred choice.

You can appoint an attorney at any time while you hold capacity, and can delay the time from which the attorney commences to act on your behalf. You can also trigger the attorney's commencement upon the happening of an event, such as your written authority or your loss of legal capacity. This way, the documentation is signed and ready to be implemented in the event you lose capacity or

can no longer make certain decisions. By having this document signed and in your file, Blue Care is confident it is dealing with your health and finance related decisions in a way that you want, and with a person you trust.

Blue Care will not accept a contract signed by any person other than the applicant (the person requiring residential care, if they currently have fully capacity) or the applicant's legally appointed attorney (as evidenced by an EPOA or tribunal order).

## Legal requirements of appointing an Attorney

To be an attorney, your parent, relative, friend, etc. must be an adult capable of making their own personal and financial decisions. Having capacity to make these decisions means they can:

1. understand the nature and effect of a decision,
2. freely and voluntarily make those decisions, and
3. communicate those decisions in some way.

It is recommended you consult with your preferred nominee before completing the documentation. In any event, the attorney must sign the EPOA documents to acknowledge and accept the obligations of their appointment.

You can download an EPOA form at [www.justice.qld.gov.au](http://www.justice.qld.gov.au) or [http://www.gt.nsw.gov.au/gt/gt\\_tribunalworks/gt\\_enduringguardianship.html#Forms](http://www.gt.nsw.gov.au/gt/gt_tribunalworks/gt_enduringguardianship.html#Forms). Alternatively you can engage the services of the Public Trustee or a solicitor to complete one for you.

There are different legal requirements for each state, but generally an EPOA is recognised across states if it complies with the applicable legislation. However, this will be assessed on a case by case situation.

## Who can Blue Care discuss my application with if there is an EPOA?

If the EPOA has been set up to take effect immediately, then we can automatically discuss the application with both you and your attorney/s. However, you can give approval for us to discuss your application with any other person.

## What should I do if there is no EPOA in place, and a parent, relative or friend has lost capacity to make their own decisions?

You will need to apply to either QCAT or the Tribunal, who will appoint a suitable representative to make decisions on that person's behalf. If there is no suitable candidate, then the Public Trustee can be appointed for financial decisions and /or the Adult Guardian can be appointed for health decisions.

## What documentation does Blue Care require if a non-immediate EPOA is triggered?

We will require evidence that the trigger event has occurred. If the trigger event is loss of capacity, then we will require a letter from your GP, registered person or ACAT Representative confirming the loss of, or diminishment of, capacity.

## What happens if my attorney dies or cannot continue for some reason?

This depends on how you have appointed your attorney/s. If you have appointed several attorneys, then you can appoint them to act:

1. jointly (the attorneys must agree on all (decisions)
2. severally (this means any one of the enduring attorney's can make decisions independently of the other enduring attorney/s)
3. jointly and severally (this means the enduring attorney's can make decisions together or separately).

If you appoint them to act jointly and one attorney dies, resigns or becomes incapacitated, then this automatically ends the appointment of enduring attorneys. If you do not want this to happen, then you will need to be clear that the remaining attorney/s can keep making decisions (by appointing the attorneys "severally") .

If you have appointed a sole attorney and they die, resign or become incapacitated, then you can make a new enduring appointment and appoint someone else to be your attorney. If you do not have the mental capacity to do this, QCAT or the Tribunal can order another person to be appointed as your enduring attorney. An application must be made to the relevant tribunal for this to be done. Otherwise, an enduring attorney ends automatically when you die, revoke the appointment, or you get married (unless you marry the attorney).

## Certification of EPOA

We need to confirm the EPOA you provide is a complete and true copy of the original document. To do this, a Justice of the Peace (JP) or other certified witness (solicitor, police officer, etc) must compare the copy to your complete original document and ensure they match. If they do, then the certifying person will sign, or paginate and initial, **each and every** page of the copy (including any blank pages) to say the copy is true and complete.

A JP will certify your copies for free and can usually be found at the local court house, police station or large shopping centre at designated times throughout the week. You can also search on the [www.justice.qld.gov.au](http://www.justice.qld.gov.au) or <http://www.jp.nsw.gov.au/jp/findjp.html> websites for your nearest JP. Remember to take the complete original document along with however many copies you want certified.