

4.9 Witnessing general powers of attorney, enduring powers of attorney and advance health directives

General powers of attorney

What is a general power of attorney?

A general power of attorney (GPA) is a formal agreement whereby one person (the ‘principal’) grants another person (the ‘attorney’) the power to make financial decisions on their behalf, but only if the principal still has capacity to make that decision for themselves (unless the GPA is given as security). GPAs only relate to financial matters.

An enduring power of attorney (EPA), on the other hand, is able to make decisions about financial and personal matters for the principal while the principal has lost that capacity to make those decisions. You can find out more about the different powers of attorney and substitute decision making in Queensland by visiting www.qld.gov.au/guardianship-planahead

If the GPA is made under the *Powers of Attorney Act 1998* (the POA Act), it must be in the approved *Form 1—General Power of Attorney*. Only the principal and a witness sign this form. GPAs can also be made in other forms, such as by deed or under common law. GPAs can be made by individuals or corporations.

Sometimes the document specifies a time or a circumstance when the attorney can begin to make decisions on the principal’s behalf. However, unless specified in the document otherwise, the power begins as soon as the document is signed.

Generally, a GPA for an individual may be revoked (cancelled) if:

- the principal dies
- the terms of the GPA provide for its revocation
- the principal revokes it – for example by signing a *Form 5 – Revocation of General Power of Attorney*
- if the principal has impaired capacity for financial matters.

A GPA may also be revoked, to the extent that it gives power to an attorney, if the attorney:

- dies
- resigns
- does not have capacity for the matter for which they have been appointed
- is declared bankrupt—to the extent it gives power for financial matters to the attorney.

The important difference between GPAs and EPAs is that a GPA generally comes to an end if the principal has impaired capacity for the matter. An EPA carries more significant legal consequences because a principal can not effectively oversee the exercise of power by their attorney once they have lost capacity. It is recommended that principals seek independent legal advice before executing an EPA and they should only appoint an attorney they trust.

Why would someone make a GPA?

A person may decide to make a GPA for the following reasons:

- they want someone to handle their financial affairs while they are absent
- they are travelling overseas for an extended period
- Companies also regularly use GPAs to authorise particular people to sign documents for the company.

Who can witness a GPA?

Generally, any independent adult may witness a GPA (i.e. the witness does not have to be a JP (Qual)). However, if the GPA is required to be registered under the *Land Title Act 1994* (LTA) with the Titles Registry Office so that it can be used for a land transaction, section 161 of the LTA requires the GPA to be witnessed by certain qualified witnesses, which include a Justice of the Peace (JP (Qual)), a Commissioner for Declarations, a lawyer, or a notary public.

Some people consider having a GPA witnessed by a JP (Qual) makes the document more authentic or adds legal weight to the document and may therefore request a JP (Qual) to witness the document even if it is not strictly required.

If you are asked to witness one of these documents, follow the general procedure for witnessing documents in chapter 4.1 of your handbook.

Enduring documents – enduring powers of attorney and advance health directives

This section should be read in conjunction with the following documents:

- *Queensland Capacity Assessment Guidelines 2020* (capacity guidelines)
- *Form–9 Enduring power of attorney explanatory guide (EPA guide)*
- *Form 10–Advance health directive explanatory guide (AHD guide)*

What is an enduring power of attorney?

An enduring power of attorney (EPA) is a legal document which allows a person (the ‘principal’) to appoint another person they trust (the ‘attorney’) to make decisions on their behalf about personal (including health matters) and/or financial matters.

The approved *Form 2 – Enduring Power of Attorney – short form* and *Form 3 – Enduring Power of Attorney - long form* must always be used.

An EPA may, subject to the terms of the EPA, continue even if the principal has impaired capacity for the matter.

An attorney may be appointed under an EPA to make decisions about:

- personal (including health) matters only
- financial matters only
- personal (including health) matters and financial matters.

The terms of the EPA set out the types of decisions which an attorney can make.

Personal matters relate to the adult’s care and welfare, for example:

- where the principal lives and who they live with
- services and supports provided to the adult
- whether the adult works and, if so, their role, their workplace location and employer
- who the adult has contact with
- whether the adult applies for a license or permit
- day to day issues (e.g. diet and dress, daily activities)
- legal matters (e.g. seeking legal advice) other than financial or property matters.

Health care is a type of personal matter.

Decisions about health matters relate to the adult’s health care including medical treatments, procedures and services to treat both physical and mental conditions. Most commonly, decisions about health matters are about consenting to or refusing health care. For example, health decisions might include deciding whether or not to go to hospital, to have surgery, or to take a medication. When an adult is nearing the end of their life, health care also includes stopping treatments that are aimed at keeping the adult alive or delaying their death (life-sustaining treatments).

Financial matters relate to finances and property, for example:

- paying everyday expenses, such as rent and bills for electricity, gas and water
- arranging deposits or withdrawals from the adult's bank account
- paying rates, taxes, insurance premiums or other outgoings for the adult's property
- making or seeking advice about investment decisions
- seeking legal advice in relation to the adult's financial or property matters
- carrying on a business or trade
- signing contracts on behalf of the adult and performing contracts entered into by the adult (e.g. signing agreements relating to aged care homes)
- selling, mortgaging or purchasing the adult's property.

When can an attorney begin making decisions?

An attorney appointed by an EPA can only start to make decisions as an attorney when:

- the attorney has signed the 'Attorney(s)' acceptance' in section 5 of the EPA guide
- for personal matters—during times when the principal does not have capacity to make decisions about the matters the attorney is appointed for
- for financial matters—immediately, or when the principal has specified in section 3 of the EPA guide 'When does your attorney(s)' power begin for financial matters?'

What terms or instructions can a principal give to their attorney(s)?

A principal can set terms on how their attorney(s) are required to make decisions and/or give specific instructions that their attorney(s) must follow.

The following are some examples of terms or instructions to their attorney(s).

Example wording for personal (including health) matters:

1. My attorney can make all decisions about personal matters except for decisions about the friends and family members I have contact with.
2. I do not consent to my children or their families living in my home, with or without me.

Example wording for financial matters:

1. My attorney is not to sell my house unless they have exhausted all other options to pay for my aged care accommodation and services.
2. My attorney must not make any investments with my money.

Who can make an EPA?

To make an EPA, the principal must be at least 18 years old and have capacity to understand the document they are signing and the powers it gives. They must also be capable of making the EPA freely and voluntarily, not due to pressure from someone else. To find out more about the capacity to make an EPA see the capacity guidelines.

Why would someone make an EPA?

An adult with decision-making capacity, can make their own decisions about personal, health or financial matters.

At some point in the future, a situation may arise where the adult is unable to make their own decisions about these matters. This might be because of an accident, a medical condition or a mental illness. An EPA allows them to appoint people they trust to make decisions for them if they are unable to. It is a legal document that can significantly affect their legal rights. It is recommended that they seek independent legal advice before completing an EPA form.

Who can a principal appoint as their attorney under an EPA?

To be eligible to be an attorney, a person must:

- have capacity to make the decisions they are appointed for
- be 18 years or older
- not be a paid carer or have been a paid carer in the last three years for the principal
- not be a health provider for the principal
- not be a service provider for a residential service where the principal lives
- not be bankrupt or taking advantage of the laws of bankruptcy, if appointed for financial matters.

An attorney does not have to be a lawyer to carry out this role.

How many attorneys can a principal appoint under an EPA?

There is no limit on the number of attorneys a principal can appoint in an EPA, except that they can only appoint a maximum of four joint attorneys for a matter (i.e. they can only appoint a maximum of four people who must agree on all decisions). Having more than one attorney may be helpful, as it means more than one person may be able to make decisions for them if needed. If one of their attorneys is unavailable, another attorney could make the decision.

Examples of joint attorneys:

1. The principal appoints their spouse and four children and then specifies that their spouse is appointed first and their children will become appointed jointly if their spouse is unwilling or unable to act.
2. The principal appoints four people to act jointly for financial matters and another four people to act jointly for personal matters.

If they appoint more than one attorney, they will need to decide how those attorneys exercise their power (e.g. jointly, severally, by a majority, successively or alternatively—see ‘How must your attorneys make decisions?’ in the EPA guide.

If they need more space to appoint additional attorney(s), they can attach another page with those details to the form. See ‘How to add additional pages’ in the EPA guide for more information on how to do this. It is recommended that the Form 8 – Additional page be used to insert an additional page or pages.

Remember to always insert the total number of pages in the witness certificate section of the document, before signing.

Advance health directives

What is an advance health directive?

At some point in the future, a person may be unable to make decisions about their health care and special health care, even temporarily. This might be due to an accident, dementia, a stroke or a mental illness.

An advance health directive (AHD) lets a person (the ‘principal’) give directions about their future health care. It allows their wishes to be known and gives health professionals direction about the treatment they want.

A person can also use an AHD to appoint someone they trust to make decisions about their health care for them. That person is called their ‘attorney’ and they can appoint more than one if they choose. They don’t need any legal experience to carry out this role.

Who can make an AHD?

To make an AHD, the adult must be at least 18 years old and have capacity to understand the document they are signing and the powers it gives. They must also be able to make the AHD freely and voluntarily.

The adult must not be pressured into making it by someone else.

To find out more about capacity to make an AHD see the capacity guidelines.

When will an AHD be used?

An AHD can be used only during times when the principal does not have capacity to make their own healthcare decisions.

Having capacity to make a decision for a health care matter means that they are capable of:

- understanding the nature and effect of decisions about the matter
- freely and voluntarily making decisions about the matter
- communicating the decisions in some way.

For more information about capacity to make a decision for a health care matter, refer to the capacity guidelines.

Who can a principal appoint as their attorney under an AHD?

To be eligible to be an attorney a person must:

- have capacity to make healthcare decisions
- be 18 years or older
- not be a paid carer or health provider for the principal
- not be a service provider for a residential service where the principal lives.

How many attorneys can a principal appoint under an AHD?

A principal can appoint more than one attorney for health matters under an AHD. Having more than one attorney may be helpful, as it means more than one person may be able to make decisions if needed. If one of their attorneys is unavailable, another attorney could make the decision.

If they appoint more than one attorney, they will need to decide how those attorneys exercise their power (e.g. jointly, severally, by a majority, successively or alternatively—see ‘How must your attorneys make decisions?’ in the AHD guide for more information).

If they need more space to appoint additional attorney(s), they can attach another page with those details to the form. See ‘How to add additional pages’ in the *AHD guide* for more information on how to do this.

It is recommended that *Form 8 – Additional page* be used to insert an additional page or pages.

Remember to always insert the total number of pages in the witness certificate section of the document, before signing.

How do you assess a person’s capacity to make an enduring document?

It is recommended you refer to the capacity guidelines, section 6 ‘Assessing capacity to make an enduring document’. The following information has been extracted from these guidelines.

The legal test to apply

Under Queensland’s guardianship legislation there is a specific legal test of capacity for making an enduring document. In general terms the adult must be capable of:

- a. understanding the nature and effect of the document
- b. making the document freely and voluntarily.

Both criteria (a) and (b) must be met for an adult to have capacity to make an enduring document. To revoke (cancel) an enduring document, the adult must have capacity to make the enduring document that would give the same powers.

a. Understanding the nature and effect of the document

It is not enough for the adult to have a general understanding of the enduring document.

The law requires them to actually understand the nature and effect of the document, the powers that it gives, when it operates and how and when they can revoke (cancel) it.

Capacity to make an EPA

By making an EPA, an adult (the principal) may appoint one or more people they trust to make decisions about either personal (including health) matters or financial matters for them. These people are called ‘attorneys’. An attorney(s) may be given significant powers to make decisions about the adult’s personal or financial affairs. Therefore, it is very important that the adult is capable of understanding the nature and effect of the document, including the powers it gives.

The level of understanding which is required will also depend on the specific powers given under the EPA and the complexity of the adult’s financial and personal affairs. The adult doesn’t need to know all the complexities of the types of transactions the attorney could undertake on their behalf.

However, they should be able to generally understand:

- their own personal and financial affairs that will be managed by the attorney(s)
- the types of decisions which are likely to be made by the attorney(s)
- the scope of the power given to the attorney(s).

Generally, the more complex the adult’s personal and financial affairs are, the greater their understanding must be.

Capacity to make an AHD

By making an AHD an adult can give directions about their future health care and special health care. They can also appoint one or more people they trust to make decisions about health matters on their behalf if they do not have capacity to make the decision themselves. These people are called ‘attorneys’.

To appoint an attorney for health matters under an AHD, an adult must have the same capacity for making an EPA giving the same type of power.

a. Making the document freely and voluntarily

The adult must also be capable of making an enduring document free of coercion or undue influence.

It must be clear that the adult is not being pressured into making the enduring document. Sometimes a family member, friend or carer might behave in a manner that is domineering or overbearing, seeking to pressure the adult to make a decision a certain way.

The legal test in Queensland’s guardianship legislation

The POA Act sets out the test of capacity for making an EPA (section 41) and an AHD (section 42). These tests are reflected in the summary checklists in section 6 of the capacity guidelines.

Witnessing procedures

- It is a good idea to keep a copy of the capacity guidelines with you when conducting a capacity assessment and use the summary checklists from the guidelines.
- Ideally, try to meet with the adult alone. This allows you to have a discussion and develop a rapport with the person and to ensure the adult is not being pressured into making the document. It is a good idea to ask the adult directly whether they feel they have been pressured into making the enduring document.
- Ask the principal for some form of identification and note their name and identification document in your logbook.
- Determine if the document is a GPA, an EPA or an AHD and whether it must be in an approved form.
 - If a GPA is made under the POA Act it must be in the approved form (currently Form 1, Version 3)
 - An EPA must be in the approved form (currently Form 2 Version 4 (Short form) or Form 3 Version 4 (long form))
 - An AHD must be written and may be in the approved form (currently Form 4 Version 5).

You should make a note in your logbook whether an approved form has been used.

Note: You can witness a document that has additional pages attached to it or is formatted in a way that increases the total number of pages, provided that you follow the ordinary witnessing guidelines.

- Ensure the document is signed in front of you. You are witnessing a signature, not someone telling you the signature on a document is their signature. If someone approaches you with a document already signed, ask them to sign the document again. You can rule a line through the unwitnessed signature. Ensure both you and the person initial the alteration.
- Ensure that everyone who needs to be present is present (e.g. the principal – the person making the document, witness (you) and the eligible signer or interpreter/translator, if required). If the principal is unable to read or understand the English language, you should ensure the interpreter/translator completes *Form 7 (Interpreter's/Translator's Statement)*. The attorney need not be present. In fact, ideally you should meet with the adult alone.

Note: Principals who are unable to sign the document themselves may instruct an 'eligible signer' to sign on their behalf. An eligible signer must confirm that the principal instructed them to sign the document, be 18 years or older and must not be either the witness for the document or an attorney for the principal. The eligible signer must sign the document in the presence of the principal and you as the witness at the same time. If an eligible signer signs the document on behalf of the principal, they must complete and sign the 'Person signing for the principal' section of the form which also must be witnessed by you.

- Make sure that you are eligible to witness the document. You must not be:
 - the eligible signer (the person signing the document on the principal's behalf)
 - an attorney for the principal (someone appointed under this EPA, AHD or another power of attorney)
 - related to the principal or to the principal's attorney
 - the principal's paid health carer or health-care provider (if the EPA or AHD appoints an attorney for to personal matters)
 - if the document is an AHD - a beneficiary under the principal's will.
- Set the scene and develop a rapport with the person. Tell the principal that you will be conducting a capacity assessment. Let them know in your own words that:

As a JP (Qual) you must be satisfied that they have the capacity to make the document. This means they must:

- understand the nature and effect of the document
- be capable of making the document freely and voluntarily.
- Tell them that you will ask them some questions to ensure they have capacity to make the document and that:
 - A written record of the process will be made
 - A decision about the person's capacity will be made at the end of the process
 - If you conclude they do have the capacity to make the document at the end of the process you may sign the document as the witness
 - If you conclude the person does not have capacity to make the document at the end of the process you will not sign the document
 - Your conclusion is your opinion only. They can seek a second opinion if they do not agree with your conclusion. This could mean seeking a finding by a tribunal (applying to the Queensland Civil and Administrative Tribunal (QCAT) or seeking an opinion or assessment from a medical professional.
- Explain to the principal the document will need to be read through to ensure that it is correctly completed.
- You must satisfy yourself that the principal has capacity to make the document.
- Read through the document, preferably with the principal. Ask the principal questions to ensure they have capacity to make the document. Refer to the capacity guidelines for examples of questions you can ask. It is recommended you start with open ended questions and then ask more specific questions.

- Check that the principal is not being pressured in any way to make the document.
- Document your conclusions and reasons in your logbook.
- If the document is an AHD, ensure a doctor has already signed the doctor's certificate in the document.
- Determine if the principal is physically capable of signing the document or if an eligible signer is to be used. Ensure the eligible signer meets the criteria specified.
- If you are satisfied that the principal has capacity to make the document, observe the principal (or the eligible signer) sign and date the document and any additional pages attached to the document.
- Complete the witness's certificate, and sign and date the document, including any additional pages. Remember to insert the total number of pages in the witness certificate section of the document, before signing.
- Remind the principal that any nominated attorney/s must read and complete the 'attorney's acceptance section', as soon as possible after the document has been signed and witnessed by both you and the principal for the document to be valid.
- If the principal or their attorney has any questions, you can refer them to the EPA or AHD guides or the capacity guidelines which are available on the Queensland Government publications website or recommend that they seek independent legal advice.

In addition to the notes about the capacity assessment, the information that should be entered into your logbook includes:

- date
- type of document witnessed
- principal's details and, if present, the eligible signer details
- type of identification sighted
- location of signing
- any other relevant details, including the total number of pages.

Things to bear in mind

- An EPA must be in the approved form and an AHD must be in writing and may be in the approved form. Enduring documents must comply with chapter 3, part 4 of the POA Act, and contain all the required information and be executed in accordance with the POA Act.
- Record all questions asked, any responses given and anything else relevant to in your logbook.
- The POA Act places a very serious responsibility on the witness, one that far exceeds your normal duty in witnessing other types of documents.
- If, as the witness, you are not satisfied that the principal has the capacity to make the EPA or AHD, you should refuse to witness the document and refuse to sign the witness's certificate.
- If an adult's capacity to make an EPA is called into question, after the document has been made, you may be required to provide evidence to either the Supreme Court or QCAT of the steps you took to assess the adult's capacity to understand the document.
- Due to the nature of the document, you must satisfy yourself the person asking you to witness the document is, in fact, the principal. Therefore, you must ask for proof of identification prior to witnessing the document.
- You may be called upon to certify a copy of an EPA or AHD as a true and complete copy of the original. Refer to the chapter on certifying copies in this handbook.

Frequently asked questions

The attorney has signed the document before the principal and witness, what should I do or say to the client?

If the attorney has already signed the document, you should not witness it.

When signing an EPA or AHD an attorney is stating they have read the EPA or AHD and understand that they must make decisions in accordance with the EPA or AHD. They can only do this once the document has been finalised, signed and witnessed.

Let the principal know that the attorney must only sign the original document, after both the principal and the witness have signed it.

The principal may wish to complete the document again and have it witnessed before the attorney signs it.

If the person requires further information about making the document, you can refer them to the EPA guide or AHD guide which are available on the Queensland Government publications website.

You could also suggest that they consider seeking independent legal advice about making the document.

A client has approached me to make changes to their signed enduring document. Can they attach a statutory declaration to do this?

No. An enduring document should not be amended after it has been signed and witnessed. It is not recommended to write on an EPA or AHD once it has been signed and witnessed. If changes are required, the client should make a new enduring document and revoke the old one.

For minor changes, like updating an address, the client may not need to make a new document.

What if the principal has an existing EPA or AHD in Queensland or another jurisdiction?

The first step in witnessing an enduring document requires you to ask the principal if they have an existing enduring document in Queensland or in another State or Territory. An interstate enduring document may be recognised in Queensland. Also, if they make a new EPA or AHD, the new EPA or AHD may fully or partially revoke the existing enduring document to the extent of any inconsistency. There may be reasons why the principal needs multiple enduring documents to operate in different jurisdictions. This can sometimes be complex and it is best to recommend that the principal seeks independent legal advice about the effect of making a new EPA or AHD on any existing enduring document.

When inserting additional pages in an enduring document, must *Form 8 – Additional page* be used?

No. It is not essential that *Form 8 – Additional page* be used. A client can add additional pages to the form on any document. The *Form 8 – Additional Page* should be used where possible.

If the additional pages are not on the *Form 8 – Additional page*, the principal should still sign and you should still witness each additional page. You should also ensure that the additional page contains the name of the enduring document that it relates to, the name of the principal and which part of the enduring document it provides additional information for.

Remember to insert the total number of pages (including any additional pages) in the witness certificate section of the document, before signing.

While certifying a copy of an enduring document I have found what I believe to be a discrepancy. Can I give them advice about what I think they should do?

When certifying a copy, you are simply certifying that the document is a true and complete copy of the original document. If there is a discrepancy between the original and the copy, you must not certify the copy.

If there is an obvious error in the original document that would render it and any certified copies invalid for their original purpose, you could suggest that the person consider seeking independent legal advice to ensure the original document is valid.

Note that a JP (Qual) cannot provide legal advice about the validity of a document.

When Solicitors and Public Trustee prepare enduring documents for their clients, sometimes the documents are different in page length. Can I still witness the enduring document if the number of pages is not the same as the form on the website?

Yes. You can witness a document that has additional pages attached to it or is formatted in a way that increases the total number of pages, provided that the document is substantially compliant with the approved form. This may occur because the terms and conditions are longer than the space allocated in the approved form which push back the remaining sections in the document, or if document appoints more than four attorneys. As with any enduring document, you should ensure that the total number of pages is inserted in the witness certificate section of the document, before signing.

If you are concerned that the form does not meet the legislative requirements, you could suggest that the person consider seeking independent legal advice about validity of the document.

Note that a JP (Qual) cannot provide legal advice about the validity of a document.

Is the witnessing officer required to keep a copy of the capacity assessment checklist?

The capacity guidelines provide useful information, checklists, hints and tips for assessing the capacity of a person to make an enduring document. There is no requirement to use the checklists or keep them. However, you may choose to do so if you wish. You should make notes about how you have conducted the assessment. Document the conclusion that you have reached and the reasons for that decision.

If a client is accompanied by a family member appears to be confused when the family member tries to put unwarranted pressure on the principal, can I tell the family member that I would like to be alone with the principal?

Yes. Ideally, you should meet with the adult alone. This allows you to have a discussion and develop a rapport with the person, assess their capacity to make the enduring document and satisfy yourself that they are making the document freely and voluntarily.

If you believe the person is being pressured into making the document, you should not sign the document.

If you suspect that an adult is being physically, financially or emotionally abused or pressured to make the enduring document, the priority must be to ensure the adult's health, safety and well-being.

See Appendix A of capacity guidelines for information about support services, including elder abuse support services. If you think the adult is in immediate danger, call the police.

Which form should be used for an EPA?

You should only use the approved short or long form when witnessing an EPA. All pages of the document must be present at the time of witnessing.

There are two types of EPA forms—a short form and a long form:

- The short form is used when the principal wishes to appoint the same attorney or attorneys for both financial and personal matters (including health care). This form can also be used to appoint an attorney or attorneys for financial matters only or for personal matters only (including only health care).
- The long form is used when the principal wishes to appoint more than one attorney for financial and/or personal matters or appoint separate attorneys for personal and financial matters, or even for specific matters.

Can I refuse to witness a GPA, an EPA or an AHD?

Yes. If you believe the principal does not have the capacity to make a GPA, EPA or AHD, you must refuse to witness the document. If you believe the principal is under some form of pressure to sign the document, you should also refuse to witness it.

If you suspect the adult is being abused, neglected or exploited, you can make a referral to the Office of the Public Guardian. See Appendix A in the capacity guidelines for information about support services, including elder abuse support services.

If you think the adult is in immediate danger, call the police.

Where can I find more information?

The *Queensland Capacity Assessment Guidelines 2020* are a guide to understanding capacity, capacity assessment and the legal tests of capacity under Queensland's guardianship legislation.
www.publications.qld.gov.au/dataset/capacity-assessment-guidelines

Queensland Government Power of Attorney and making decision for others website
www.qld.gov.au/guardianship-planahead

EPA and AHD forms and explanatory guides
www.publications.qld.gov.au/dataset/power-of-attorney-and-advance-health-directive-forms

Office of the Public Guardian
www.publicguardian.qld.gov.au/

Queensland legislation
www.legislation.qld.gov.au

Sample form

Enduring power of attorney—declaration and signatures (page 11)

SECTION 4: DECLARATIONS AND SIGNATURES																						
PRINCIPAL'S SIGNATURE																						
<p>As the principal, you must sign this part in front of an eligible witness.</p> <p>Refer to section 4, pages 15–16 of Form 9 — Enduring power of attorney explanatory guide and the Queensland Capacity Assessment Guidelines 2020.</p> <p>An eligible witness must be a:</p> <ul style="list-style-type: none"> » justice of the peace (JP) » commissioner for declarations » lawyer » notary public. <p>The witness must not be:</p> <ul style="list-style-type: none"> » the person signing for you » your attorney (e.g. under an enduring power of attorney or advance health directive) » related to you or your attorney » a paid carer or health provider for you (i.e. your health provider). 	<p>By signing this document, I confirm that:</p> <ul style="list-style-type: none"> » I am making this enduring power of attorney freely and voluntarily. <p>AND</p> <ul style="list-style-type: none"> » I understand the nature and effect of this enduring power of attorney, including: <ul style="list-style-type: none"> » that I may specify or limit my attorney(s)' power and instruct my attorney(s) about the exercise of the power » when the power given to my attorney(s) begins » that once the power for a matter begins, my attorney(s) will have full control and power to make decisions about the matter, subject to any terms or information included in this enduring power of attorney » that I may revoke this enduring power of attorney at any time if I am capable of making another enduring power of attorney giving the same power » that the power I am giving to my attorney(s) continues even if I do not have capacity to make decisions about the matter » that if I am not capable of revoking the enduring power of attorney, I am unable to effectively oversee the use of the power given to my attorney(s) by this document. 																					
ONLY SIGN THIS PART IN FRONT OF AN ELIGIBLE WITNESS																						
Principal's signature: _____		Date: _____																				
Witness's signature: _____ (Witness must also sign page 12)		Date: _____																				
Person signing for the principal		<p>If you are physically unable to sign this form, another person who is eligible must sign the form for you.</p> <p>Refer to section 4, page 16 of Form 9 — Enduring power of attorney explanatory guide.</p>																				
<p>By signing this document, I confirm that:</p> <ul style="list-style-type: none"> » the principal instructed me to sign this document » I am 18 years or older » I am not a witness for this enduring power of attorney » I am not an attorney of the principal. 		<p>OR</p> <p><i>Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date</i></p>																				
<table border="1"> <tr> <td>Name of person signing for the principal</td> <td colspan="3"></td> </tr> <tr> <td rowspan="2">Address</td> <td colspan="3"></td> </tr> <tr> <td>Suburb</td> <td>State</td> <td>Postcode</td> </tr> <tr> <td>Phone number</td> <td colspan="3"></td> </tr> <tr> <td>Email</td> <td colspan="3"></td> </tr> </table>				Name of person signing for the principal				Address				Suburb	State	Postcode	Phone number				Email			
Name of person signing for the principal																						
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Phone number																						
Email																						
ONLY SIGN THIS PART IN FRONT OF THE PRINCIPAL AND AN ELIGIBLE WITNESS																						
Person signing for the principal signs here: _____		Date: _____																				
Witness's signature: _____ (Witness must also sign page 12)		Date: _____																				

Sample form

Enduring power of attorney—witness certificate (page 12)

WITNESS CERTIFICATE

This part must be filled in and signed by an eligible witness at the same time that you sign the enduring power of attorney.

INFORMATION FOR THE WITNESS

As a witness you are not simply witnessing the principal's signature.

You must also be satisfied that the principal appears to have capacity to make the enduring power of attorney.

Refer to section 4, page 16 and page 20 of [Form 9 – Enduring power of attorney explanatory guide](#) and the [Queensland Capacity Assessment Guidelines 2020](#).

By signing this document, I certify that:

(Tick one box only)

☐ the principal signed this enduring power of attorney in my presence

OR

☐ in my presence, the principal instructed another person to sign this enduring power of attorney for the principal, and that person signed it in my presence and in the presence of the principal.

AND

» I am a:

(Tick one box only)

- ☐ justice of the peace (JP)
- ☐ commissioner for declarations
- ☐ lawyer
- ☐ notary public.

» I am not:

- » the person signing the document for the principal
- » an attorney of the principal
- » a relation of the principal or relation of an attorney of the principal
- » if this enduring power of attorney appoints an attorney for personal (including health) matters, a paid carer or health provider of the principal.

» At the time of making this enduring power of attorney the principal appears to me to have the capacity to make the enduring power of attorney. The principal appears to:

- » understand the nature and effect of this enduring power of attorney
- » be capable of making the enduring power of attorney freely and voluntarily.

This document (including any additional pages) has _____ pages.

Note the total page count here

Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date

Witness's signature: _____
(Witness must also sign page 11)

Date: _____

Witness's name: _____

If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete [Form 7 – Interpreter's/translator's statement](#) at www.publications.qld.gov.au

Sample form

Advance health directive—declarations and signatures (page 11)

SECTION 7: DECLARATIONS AND SIGNATURES

PRINCIPAL'S SIGNATURE

As the principal you must sign this part in front of an eligible witness.

Refer to section 7, pages 14–15 of [Form 10 — Advance health directive explanatory guide](#) and the [Queensland Capacity Assessment Guidelines 2020](#).

An eligible witness **must** be a:

- » justice of the peace (JP)
- » commissioner for declarations
- » lawyer
- » notary public.

The witness **must not** be:

- » the person signing for you
- » your attorney (e.g. under an advance health directive or enduring power of attorney)
- » someone related to you or related to your attorney
- » a paid carer or health provider for you (i.e. your health provider)
- » a beneficiary under your will.

By signing this document, I confirm that:

- » I am making this advance health directive freely and voluntarily.

AND

- » I understand the nature and effect of this advance health directive including:
 - » the nature and likely effects of each direction in this advance health directive
 - » that a direction operates only while I do not have capacity for the health matter covered by the direction
 - » that I may revoke a direction at any time I have the capacity to make a decision about the health matter covered by the direction
 - » that at any time I do not have capacity to revoke a direction, I will be unable to effectively oversee the implementation of the direction.

AND

- » I understand that if I am appointing an attorney(s) for health matters that:
 - » I may specify or limit my attorney(s)' power and instruct my attorney(s) about the exercise of the power
 - » the power given to my attorney(s) begins when I lose capacity to make decisions for health matters
 - » once my attorney(s)' power begins, my attorney(s) will have full control over, and power to make decisions about, health matters subject to any terms or information included in this advance health directive
 - » I may revoke the power given to my attorney(s) in this advance health directive at any time I am capable of making an advance health directive giving the same power
 - » the power I am giving to my attorney(s) continues even if I do not have capacity to make decisions about health matters
 - » if I am not capable of revoking this advance health directive, I will not be able to oversee the use of the power given to my attorney(s) for health matters.

ONLY SIGN THIS PART IN FRONT OF AN ELIGIBLE WITNESS

Principal's signature: _____ Date: _____

Witness's signature: _____ Date: _____
(Witness must also sign page 12)

OR

Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date

Person signing for the principal

If you are physically unable to sign this form another person who is eligible must sign the form for you.

Refer to section 7, page 15 of [Form 10 — Advance health directive explanatory guide](#).

By signing this document, I confirm that:

- » the principal instructed me to sign this document
- » I am 18 years or older
- » I am not a witness for this advance health directive
- » I am not an attorney of the principal.

Name			
Address			
Suburb	State	Postcode	

ONLY SIGN THIS PART IN FRONT OF THE PRINCIPAL AND AN ELIGIBLE WITNESS

Person signing for the principal signs here: _____ Date: _____

Witness's signature: _____ Date: _____

Sample form

Advance health directive—witness certificate (page 12)

WITNESS CERTIFICATE

This part must be filled in and signed by the eligible witness at the same time that you sign the advance health directive.

INFORMATION FOR THE WITNESS

As a witness you are not simply witnessing the principal's signature.

You must also be satisfied that the principal appears to have capacity to make the advance health directive.

Refer to section 7, page 16 and pages 20–21 of [Form 10 — Advance health directive explanatory guide](#) and the [Queensland Capacity Assessment Guidelines 2020](#).

If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete [Form 7 — Interpreter's/ translator's statement](#) at www.publications.qld.gov.au

Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date

By signing this document, I certify that: *(Tick one box only)*

☐ the principal signed this advance health directive in my presence

OR

☐ in my presence, the principal instructed another person to sign this advance health directive for the principal, and that person signed it in my presence and in the presence of the principal.

AND

» I am a: *(Tick one box only)*

☐ justice of the peace (JP)

☐ commissioner for declarations

☐ lawyer

☐ notary public.

» I am not:

» the person signing the document for the principal

» an attorney of the principal

» a relation of the principal or relation of an attorney of the principal

» a paid carer or health provider of the principal

» a beneficiary under the principal's will.

» I have verified that section 5 of this advance health directive has been signed and dated by a doctor.

» At the time of making this advance health directive the principal appears to me to have the capacity to make this advance health directive. The principal appears to:

» understand the nature and effect of this advance health directive

» be capable of making the advance health directive freely and voluntarily.

This document (including any additional pages) has _____ pages.

Note the total page count here

Witness's signature: _____ **Date:** _____

(Witness must also sign page 11)

Witness's name: _____

Form 8—additional page

4.9/16 Duties of Justices of the Peace (Qualified) handbook

Quick guide

Follow these steps to witness a general power of attorney—they are similar to witnessing a general document

- ① Check the document is in the approved form.
- ② Note this in your logbook.
- ③ Make sure you meet the criteria of an eligible witness.
- ④ Check the signatory is the person named in the document.
- ⑤ Ask for proof of identity.
- ⑥ Confirm for yourself the person has capacity to make the document and can physically sign the form.
 - a. If they are not physically capable of signing, do they have an eligible signer?
- ⑦ Confirm the date throughout the document is the same as the date on which you're witnessing.
- ⑧ Explain you need to read through the form.
 - a. Read through the document for alterations, spaces or omissions.
 - b. Both you and the signatory should initial any changes, including correction fluid or tape.
- ⑨ Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.
- ⑩ Ask the signatory to sign the document in front of you.
- ⑪ Complete the witness's certificate, and sign and date the document.
- ⑫ Insert your registration number wherever a signature is required.
- ⑬ Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).
- ⑭ Enter all relevant details in your logbook.

Quick guide

Follow these steps for witnessing an enduring power of attorney

It is a good idea to keep a copy of the capacity guidelines with you when conducting a capacity assessment and to use the summary checklists from the guidelines.

-
- Ask the principal if they have made an enduring power of attorney (EPA) in Queensland or in another state or territory.
- ① a. If yes, advise the principal that making a new EPA could affect the validity of the interstate EPA. recommend the principal seek independent legal advice on this issue. If the principal wishes to proceed with making the new EPA then continue with the steps below.

If no, continue with the steps below.

-
- Check everyone who needs to be involved is present:
- ② a. Principal
b. You, as the witness
- The attorney may also be present but does not need to be (ideally you should meet with the principal alone).

-
- Confirm for yourself the person is over 18 and has capacity to make the document and can physically sign the form.
- ③ a. If they are not physically capable of signing, do they have an eligible signer?
b. If they do not understand or read English, is there an interpreter present? (You should use a *Form 7 Interpreter's/ Translator's Statement*.)

-
- ④ Check the document is in the approved form.

-
- ⑤ Note this in your logbook.

-
- ⑥ Make sure you meet the criteria of an eligible witness.

-
- ⑦ Check the principal is the person named in the document.

-
- ⑧ Confirm the date throughout the document is the same as the date on which you're witnessing.

-
- ⑨ Explain you will read through the form with them.

-
- Read through the form with the principal for alterations, spaces or omissions.
- ⑩ a. Both you and the signatory should initial any changes.
b. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.

-
- ⑪ Question the principal on their understanding of the document, including the power being given to the attorney and when the power begins.

-
- ⑫ Ask the principal or eligible signer to sign the document in front of you. Sign and date on the same page to indicate that you witnessed the signature.

An eligible signer must confirm that the principal instructed them to sign the document.

-
- ⑬ Complete the witness's certificate, including inserting the total number of pages of the document, and sign and date the document (note that you need to sign twice, once under the principal's signature and once on the witness certificate page).

 - ⑭ Witness the principal's signature on any additional pages and ensure the pages are numbered.

 - ⑮ Insert your registration number wherever a signature is required.

 - ⑯ Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).

 - ⑰ If the attorney is not present, remind the principal that the attorney should read the notice and complete the acceptance as soon as possible after it has been witnessed.

 - ⑱ Enter all relevant details in your logbook.

Quick guide

Follow these steps for witnessing an advance health directive

It is a good idea to keep a copy of the capacity guidelines with you when conducting a capacity assessment and to use the summary checklists from the guidelines.

-
- Ask the principal if they have made an advance health directive (AHD) in Queensland or in another state or territory

 - ①
 - a. If yes, advise the principal that making an AHD could affect the validity of the interstate enduring document. Recommend the principal seek independent legal advice on this issue. If the principal wishes to proceed with making the new AHD then continue with the steps below.
 - b. If no, proceed with the next steps.

 - ② Check a medical practitioner has signed and dated a certificate that the person has capacity to make the AHD. This is essential.

 - Check everyone who needs to be involved is present:
 - a. principal
 - b. you, as the witness
 - c. the attorney may also be present but does not need to be (ideally you should meet with the principal alone).

 - ③

 - Confirm for yourself the principal is over 18 and has capacity to make the document and can physically sign the form.
 - a. If they are not physically capable of signing, do they have an eligible signer?
 - b. If they do not understand or read English, is there an interpreter present? (*A Form 7 - Interpreter's/ Translator's Statement* is needed.)

 - ④

 - ⑤ Check the document is in the approved form.

 - ⑥ Note this in your logbook.

7	Make sure you meet the criteria of an eligible witness.
8	Check the principal is the person named in the document.
9	Confirm the date throughout the document is the same as the date on which you're witnessing.
10	Explain you will read through the form with them.
	Read through the form with the principal for alterations, spaces or omissions.
11	<ul style="list-style-type: none"> a. Both you and the signatory should initial any changes, including correction fluid or tape. b. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.
12	Question the principal on their understanding of the document.
13	<p>Ask the principal or eligible signer to sign the document in front of you. Sign and date on the same page to indicate that you witnessed the signature.</p> <ul style="list-style-type: none"> a. An eligible signer must confirm that the principal instructed them to sign the document.
14	Complete the witness's certificate, including inserting the total number of pages of the document and sign and date the document (note that you need to sign twice, once under the principal's signature and once on the witness certificate page).
15	Witness the principal's signature on any additional pages ensure the pages are numbered.
16	Insert your registration number wherever a signature is required.
17	Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).
18	If the attorney is not present, remind the principal that the attorney should read the notice and complete the acceptance as soon as possible after the document has been witnessed.
19	Enter all relevant details in your logbook.