

New enduring power of attorney and advance health directive forms – which version to use?

New versions of the enduring power of attorney forms and advance health directive forms were **approved for use from 30 November 2020** to coincide with changes to the law that commenced on 30 November 2020 (for more information go to www.qld.gov.au/guardianship-reform).

The [new forms](#) should be used from 30 November 2020.

Frequently Asked Questions (FAQs)

To help answer your questions, and ensure you use the right form at the right time, below are some answers to frequently asked questions.

Disclaimer – the following information is provided for general information only and does not constitute legal advice. If you have a query about the making or operation of a specific enduring power of attorney or advance health directive you should seek independent legal advice based on your circumstances.

If I have made an enduring power of attorney before 30 November 2020 is it still valid after 30 November 2020? Will I need to make a new enduring power of attorney using the new form?

If you have made an **enduring power of attorney** correctly prior to 30 November 2020 using the form that was approved at the time you made it, and it is valid at 30 November 2020, it will continue to be valid after 30 November 2020. You do not need to make a new enduring power of attorney using the new form, unless you want to change your enduring power of attorney.

If I have made an advance health directive before 30 November 2020 will it still be valid after 30 November 2020? Will I need to make a new advance health directive using the new form?

If you have made an **advance health directive** correctly prior to 30 November 2020 using the form that was approved at the time you made it, and it is valid at 30 November 2020, subject to the exception set out below, it will continue to be valid after 30 November 2020. If any appointment you have made in an advance health directive complies with the amended s 29(2) of the *Powers of Attorney Act 1998* then you do not need to make a new advance health directive using the new form, unless you want to change your advance health directive.

Which version of the forms should I use if I want to make an enduring power of attorney or advance health directive after 30 November 2020?

From 30 November 2020 you should use the following approved forms:

- Enduring power of attorney – short form (Form 2), version 4
- Enduring power of attorney – long form (Form 3), version 4
- Advance health directive form (Form 4), version 5.

For more information about which form is right for you, refer to the *Form 9 - Enduring power of attorney explanatory guide* or *Form 10 - Advance health directive explanatory guide*.



Is an enduring power of attorney made after 30 November 2020 using a previous approved form for an enduring power of attorney valid?

The Enduring power of attorney – short form (Form 2), version 4 and Enduring power of attorney – long form (Form 3), version 4 are currently approved for use under the *Powers of Attorney Act 1998*. The Act provides that an enduring power of attorney must be in an approved form.

If you accidentally use the previous form after 30 November 2020, it is recommended that you seek legal advice about the validity of your document.

Is an advance health directive made after 30 November 2020 using the previous approved form for an advance health directive valid?

The Advance health directive form (Form 4), version 5 are currently approved for use under the *Powers of Attorney Act 1998*. The Act provides that an advance health directive must be written and may be in the approved form.

It is strongly recommended that you use the current approved form after 30 November 2020.

However, if you accidentally use the previous form after 30 November 2020, it is recommended that you seek legal advice about the validity of your document.

If I have made an enduring power of attorney before 30 November 2020, will it still be valid if my attorney signs the document after 30 November to accept the appointment?

Yes. If you have made an enduring power of attorney correctly prior to 30 November 2020 using the form that was approved at the time you made it, and it is valid at 30 November 2020, it will continue to be valid after 30 November 2020 even if your attorney has yet to sign the document to accept their appointment.

Your attorney(s) must sign the document to accept the appointment before they can exercise the powers conferred by the document. However, they can do that at any time after the document is validly made before they start to exercise their powers.

From the time that the attorney accepts their appointment, the ongoing validity of their appointment will depend on whether the appointment is revoked (by you or automatically in certain circumstances). Refer to page 19 of the [Enduring power of attorney explanatory guide](#) for further information.

If I have made an advance health directive appointing an attorney for health matters before 30 November 2020, will it still be valid if my attorney signs the document after 30 November to accept the appointment?

If you have made an advance health directive correctly prior to 30 November 2020 that gives power to an attorney to make decisions about health matters using the form that was approved at the time you made it, and it is valid at 30 November 2020, subject to the exception set out below, **it will continue to be valid after 30 November 2020 even if your attorney has yet to sign the document to accept their appointment.**

If any appointment you have made in an advance health directive complies with the amended section 29(2) of the *Powers of Attorney Act 1998* then you do not need to make a new advance health directive using the new form, unless you want to change your advance health directive. However, amendments to the *Powers of Attorney Act 1998* taking effect on 30 November 2020 prohibit the appointment of a person as an attorney under an advance health directive if the person is under the age of 18, or is a 'service provider' for a residential service where you are a resident, or is a 'paid carer' or a 'health provider' for you. These terms are defined in schedule 3 of the *Powers of Attorney Act 1998*.

If an existing advance health directive contains such an appointment, when the amendments commence on 30 November 2020, the advance health directive will be revoked to the extent it gives power to the service



provider (see section 169 of the *Powers of Attorney Act 1998*). If these changes affect your circumstances, you should consider making a new advance health directive.

Your attorney(s) must sign the document to accept the appointment before they can exercise the powers conferred by the document. However, they can do that at any time after the document is validly made before they start to exercise their powers.

From the time that the attorney accepts their appointment, the ongoing validity of their appointment will depend on whether the appointment is revoked (by you or automatically in certain circumstances). Refer to page 19 of the [Advance Health Directive Explanatory Guide](#) for further information.

