



Australian Capital Territory

# **Powers of Attorney Act 1956      No 17**

## **Republication No 4**

Republication date: 14 September 2001

Last amendment made by Act 2001 No 70

Amendments incorporated to 14 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Powers of Attorney Act 1956* as in force on 14 September 2001. It includes any amendment, repeal or expiry affecting the republished law to 14 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
14 September 2001



Australian Capital Territory

# Powers of Attorney Act 1956

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Amendments incorporated to  
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Australian Capital Territory

# **Powers of Attorney Act 1956**

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An Act relating to powers of attorney

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## 1 Short title

This Act may be cited as the *Powers of Attorney Act 1956*.

## 2 Interpretation for Act

(1) In this Act:

*attorney* includes subattorney.

*bankruptcy* includes an act or proceeding in law having, under a law in force in the Territory, effects or results similar to the effect or result of bankruptcy and, in relation to a body corporate, includes the winding up of the body under a law in force in the Territory.

*court* means the Magistrates Court or the Supreme Court.

*donee* in relation to a power of attorney, means the person who is appointed to be the attorney of another person by virtue of the power of attorney.

*donor*, in relation to a power of attorney, means the person, who, by the power of attorney, appoints another person to be his or her attorney.

*enduring power of attorney* means an instrument created in accordance with section 12 (1).

*general power of attorney* includes an instrument created in accordance with section 3AA.

*power of attorney* means a general power of attorney or an enduring power of attorney, and includes an authorised substitution of attorney and an authorised delegation to, or appointment of, subattorney.

*relative*, in relation to a person, means—

- (a) a person related by blood, adoption or marriage to the firstmentioned person; or

- (b) a person of the opposite sex to the firstmentioned person who lives with that person as his or her spouse on a bona fide domestic basis, although not legally married to him or her.

**tribunal** means the Guardianship and Management of Property Tribunal.

**trustee company** means a trustee company within the meaning of the *Trustee Companies Act 1947*.

- (2) In this Act, a reference to the **donee** under a power of attorney shall, in relation to a power of attorney by which 2 or more donees are appointed, be read as a reference to each of those donees.
- (3) A reference in a power of attorney, whether created before or after the commencement of this subsection, to property shall, unless the contrary intention appears in the instrument creating the power, be read as a reference to real and personal property.

### **3 Application of Act**

This Act extends to all powers of attorney, including powers of attorney authorising, whether expressly or in general terms, the execution of instruments under the *Land Titles Act 1925*, or under the *Real Property Act 1900*.

#### **3AA General powers of attorney**

A general power of attorney may be created by instrument in or to the effect of schedule 1, form 1.

#### **3AB Several donees**

A donor under a power of attorney may appoint 2 or more donees in any 1 or more of the following ways:

- (a) by appointing the donees jointly or severally, or both jointly and severally;

- (b) by appointing 2 or more of the donees (being a number less than the total number of donees) to act jointly or severally, or both jointly and severally;
- (c) by appointing different donees to act in different circumstances, upon the occurrence of different events or in respect of different property.

### **3AC Scope of authority of attorney**

- (1) Subject to this section, a power of attorney confers on—
  - (a) the donee; or
  - (b) if there are 2 or more donees—on the donees acting jointly or severally, as the case requires;authority to do on behalf of the donor anything the donor may lawfully do by an attorney.
- (2) A power of attorney does not operate to confer—
  - (a) authority to exercise any power or to perform any duty or function conferred or imposed on the donor as a trustee or personal representative; or
  - (b) unless the instrument creating it expressly so provides, power to execute a conveyance or other instrument, or to do any other act, by which a benefit would be conferred on the donee.
- (3) The donee under a power of attorney may appoint a substitute, delegate or subattorney unless the instrument creating the power expressly prohibits the donee from doing so, but a donee may not make such an appointment irrevocably unless expressly authorised by the instrument to do so.
- (4) A power of attorney may specify conditions or limitations to which the authority conferred by it is to be subject, and such a power of attorney has effect accordingly.

### **3AD Operation as deed**

An instrument in or to the effect of schedule 1, form 1 or 2, notwithstanding that it is not expressed to be executed under seal, shall for all purposes be taken to be, and have effect as, a deed.

### **3A Capacity to execute power of attorney**

A power of attorney is not invalid on the ground of the donor's incapacity when the power was created if, when the power was created, the donor was able to understand the nature and effect of the power.

## **4 Execution under power of attorney**

- (1) Where the donee under a power of attorney is entitled to execute an assurance or instrument or do any other thing by authority of the donor of the power of attorney, the donee may execute such an assurance or instrument or do such a thing in his or her own name, with his or her own signature, and, if sealing is required, under his or her own seal.
- (2) An assurance or instrument so executed and any thing so done is as effectual in law—
  - (a) where it has been executed or done under seal—as if it had been executed or done in the name, with the signature and under the seal of the donor of the power of attorney; and
  - (b) where it has not been executed or done under seal—as if it had been executed or done in the name and with the signature of the donor of the power of attorney.
- (3) This section applies to a power of attorney created by instruments executed either before or after the commencement of this Act.

**5 Power of attorney to continue in force until death or revocation**

- (1) Subject to any provision to the contrary in the instrument creating a power of attorney, the power of attorney operates and continues in force, so far as an act or thing done or suffered under it in good faith is concerned, until notice of the death of the donor of the power of attorney, or notice of some other revocation of the power of attorney, is received by the donee under the power of attorney.
- (2) An act or thing within the scope of a power of attorney done or suffered by the donee under the power of attorney in good faith after the death of the donor of the power of attorney or after the power of attorney has been otherwise revoked, but before notice of the death of the donor or of the other revocation of the power of attorney is received by the donee, is in every respect as effectual in law as if the donor had not died or the power of attorney had not been otherwise revoked.
- (3) Where at the time at which, or at any time after, the donee under a power of attorney does or suffers any act or thing under the power of attorney, the donee makes a statutory declaration stating—
  - (a) that he or she is the attorney named in the power of attorney by virtue of which he or she has done or suffered the act or thing; and
  - (b) that, at the time when he or she did or suffered the act or thing, he or she had not received notice of the revocation of the power of attorney by the death, mental incapacity, bankruptcy, act of donor of the power of attorney or otherwise,

the statutory declaration is, in favour of a person dealing with the donee in good faith, for valuable consideration and without notice of the death of the donor or of any other revocation of the power of attorney, conclusive that the power of attorney had not been revoked at the time when the act or thing was so done or suffered.

- (4) Where a donee under a power of attorney is a body corporate—
- (a) the statutory declaration may be made by an officer of the body corporate appointed for the purpose by the board of directors, council or other governing body of the body corporate either generally or in a particular instance; and
  - (b) if the statutory declaration contains, in addition to the matters specified in subsection (3), a statement that the declarant is an officer of the body corporate appointed for the purpose of making the declaration—the statutory declaration is, in favour of a person dealing with the donee in good faith for valuable consideration and without notice that the declarant is not an officer of the body corporate duly appointed for the purpose of making the declaration, conclusive that the declarant is such an officer.
- (5) Where an instrument that is made, or purports to be made, after the commencement of this Act in exercise of a power of attorney contains a statement by the donee that, at the time the instrument is made, the donee has not received notice of the revocation of the power of attorney, that statement is, in favour of all persons dealing with the donee in good faith, for valuable consideration and without notice of the death of the donor of the power of attorney or of any other revocation of the power of attorney, conclusive that the power of attorney had not been revoked at that time.
- (6) An instrument may contain the statement referred to in subsection (5) in the body of the instrument or in a memorandum endorsed on the instrument, being a memorandum that, at the time the instrument is made—
- (a) is signed by the donee under the power of attorney in the presence of a witness; and
  - (b) is attested by that witness; and
  - (c) states the date on which, and the place at which, the memorandum is so signed and attested.

- (7) A person shall not execute, in pursuance of a power of attorney, an instrument that contains a statement that that person has not received notice of the revocation of the power of attorney when, in fact, the person knows that the power of attorney has been revoked.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (8) A person shall not, in a memorandum endorsed on an instrument executed by him or her in pursuance of a power of attorney, make a statement which he or she knows to be untrue.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (9) This section applies in relation to powers of attorney—

- (a) executed in or out of the Territory; or
- (b) executed before or after the commencement of this Act.

- (10) In this section:

*revocation*, in relation to a power of attorney, means the determination of the power of attorney otherwise than by the expiration of a fixed period of time.

## **6 Irrevocable power of attorney for value**

- (1) Where a power of attorney is given for valuable consideration and is, in the instrument creating the power of attorney, expressed to be irrevocable, then, in favour of a person dealing with the donee under the power of attorney for valuable consideration—

- (a) the power of attorney shall not at any time be revoked by anything done by the donor of the power of attorney without the concurrence of the donee and shall be deemed not to be revoked by the death, mental incapacity or bankruptcy of the donor; and
- (b) an act done by the donee at any time in pursuance of the power of attorney is as effectual in law as if anything done by the

donor without the concurrence of the donee had not been done and as if the death, mental incapacity or bankruptcy of the donor had not happened; and

- (c) the donee or the person shall not at any time be prejudicially affected by notice of the death, mental incapacity or bankruptcy of the donor or of anything done by the donor without the concurrence of the donee.
- (2) This section applies—
- (a) to a power of attorney (whether executed in or out of the Territory) created by an instrument which is executed after the commencement of this Act; and
  - (b) to a power of attorney, the donee of which is the Australian National University or the Council of the Canberra University College, created by an instrument executed, whether in or out of the Territory, after 29 February 1956, and before the date of commencement of this Act.

## **7 Power of attorney irrevocable for fixed period**

- (1) Where a power of attorney is, in the instrument creating the power of attorney, expressed to be irrevocable for a fixed period specified in the instrument, being a period not exceeding 2 years from the date of the instrument, then, in favour of a person dealing with the donee under the power of attorney for valuable consideration—
- (a) the power of attorney shall be deemed not to be revoked by the death, mental incapacity or bankruptcy of the donor of the power of attorney, or by anything done by the donor without the concurrence of the donee, before the expiration of the fixed period; and
  - (b) an act done before the expiration of the fixed period in pursuance of the power of attorney is as effectual in law as if the death, mental incapacity or bankruptcy of the donor had not happened and as if anything done by the donor without the concurrence of the donee had not been done; and

- (c) the donee or the person shall not at any time be prejudicially affected by notice, either before or after the expiration of the fixed period, of the death, mental incapacity or bankruptcy of the donor during the fixed period or of anything done by the donor during the fixed period without the concurrence of the donee.
- (2) This section applies to a power of attorney created by an instrument, whether executed in or out of the Territory, whether given for valuable consideration or not and whether executed before or after the commencement of this Act.

## **8 Protection of purchaser under irrevocable power of attorney**

Where an act or thing within the scope of a power of attorney to which section 6 or 7 applies is done or suffered by the donee under the power of attorney after the power of attorney is revoked by the donor with the concurrence of the donee but within the period (if any) fixed by the power of attorney, that act or thing is, in favour of a person dealing with the donee in good faith, for valuable consideration and without notice of that revocation, as effectual in law as if the power of attorney had not been so revoked.

## **11 Effect of registration of powers of attorney**

- (1) Where an instrument creating a power of attorney is executed after the commencement of this Act, a conveyance or deed, not being a lease or agreement for a lease for a term not exceeding 3 years, executed by the donee in pursuance of the power of attorney shall be deemed not to have been or to be of any force or validity—
  - (a) in the case of such a conveyance or deed executed in pursuance of a power of attorney that was registered under the *Powers of Attorney Act 1956*—until the instrument creating the power of attorney was so registered; or

- (b) in any other case—until the instrument creating the power of attorney is registered in the general register of deeds established by the *Registration of Deeds Act 1957*.
- (2) Upon the registration of an instrument creating a power of attorney, a conveyance or deed to which subsection (1) applies take effect as if the instrument had been registered before the conveyance or deed was executed.

## **12 Enduring powers of attorney**

- (1) Where—
  - (a) part A of an instrument in or to the effect of the form of enduring power of attorney in schedule 1, form 2 is completed and is signed by the donor or by another person in the presence of and by the direction of the donor, as indicated in the form; and
  - (b) that signature is witnessed by 2 persons, neither of whom is the donee of the power or a relative of the donee or the donor; and
  - (c) the donee signs part D of the instrument to indicate acceptance; and
  - (d) the donee has attained the age of 18 years;

the instrument creates a power of attorney which is an enduring power of attorney.

- (1A) An instrument does not fail to create an enduring power of attorney by reason only that parts B and C of the form in schedule 1 are not reproduced in that instrument, so long as the instrument bears a notation that those parts have been omitted with the consent of both donor and donee.
- (2) An enduring power of attorney does not lapse by reason only of the incapacity of the donor.

**13 Guardianship and consent to medical treatment under enduring power of attorney**

- (1) The powers conferred on the donee by an enduring power of attorney may, if the instrument creating the power of attorney expressly provides, include the power—
  - (a) to make decisions and arrangements, subject to the instrument, on behalf of the donor in relation to the donor's day-to-day affairs other than those relating to the management of the donor's property and money; or
  - (b) to give consent, subject to the instrument, on behalf of the donor, to—
    - (i) lawful medical treatment which is necessary for the wellbeing of the donor; or
    - (ii) the donation of a body part, blood or tissue of the donor to another person in accordance with the *Transplantation and Anatomy Act 1978*; or
    - (iii) the withholding or withdrawal of medical treatment.
- (2) Subsection (1) only applies—
  - (a) while the donor is incapacitated; and
  - (b) in the case of the power referred to in subsection (1) (a)—if the donor has signed part B of the instrument; and
  - (c) in the case of the power referred to in subsection (1) (b)—if the donor has signed part C of the instrument; and
  - (d) if the relevant signature is witnessed by 2 persons, neither of whom is the donee of the power or a relative of the donee or the donor.
- (3) This section does not allow an enduring power of attorney to confer on a donee power to consent to treatment for psychiatric illness, convulsive therapy or psychiatric surgery.

(4) A donee under an enduring power of attorney does not have power to consent to treatment for psychiatric illness, convulsive therapy or psychiatric surgery, even if the enduring power of attorney purports to confer the power on the donee.

(5) In this section:

*convulsive surgery*—see the *Guardianship and Management of Property Act 1991*, section 4.

*psychiatric illness*—see the *Guardianship and Management of Property Act 1991*, section 4.

*psychiatric surgery*—see the *Guardianship and Management of Property Act 1991*, section 4.

### **13A Medical certificate as to incapacity**

In any proceedings in which the question of whether, on a particular day or during a particular period, the donor under an enduring power of attorney was incapacitated is in issue, a certificate under the hand of a medical practitioner to the effect that the donor was, on that day or during that period, incapacitated is evidence of that fact.

## **14 Exercise of powers under enduring powers of attorney**

(1) In exercising powers under an enduring power of attorney while the donor is incapacitated, the donee shall act, so far as possible, as the donor would have acted if the donor were not incapacitated.

(2) In doing so, the donee shall take into account—

(a) the need to prevent the donor from becoming destitute; and

(b) the desirability of maintaining, so far as possible, the donor's style of life as it was before the incapacity.

(3) Without affecting any other obligation imposed by law, in exercising powers under an enduring power of attorney—

- (a) the donee shall not, unless the power of attorney expressly authorises it, enter into a transaction if the donee's interests and duty in relation to the transaction could conflict with the donor's interests and duty in relation to the transaction; and
  - (b) the donee shall keep the donee's property and money separate from the donor's; and
  - (c) the donee shall keep proper accounts.
- (4) The obligation of a donee under an enduring power of attorney to keep the donee's property and money separate from the donor's property and money does not apply in relation to property and money owned jointly by the donor and donee.

## **15 Relief for breach of duty—enduring powers of attorney**

- (1) The public trustee, a trustee company or, with the leave of the court, some other person, may commence and maintain a proceeding in that court in the name and for the benefit of the donor of an enduring power of attorney for relief against the donee (including the payment of compensation) because of a breach of the donee's duty as attorney occurring while the donor was incapacitated.
- (2) Subsection (1) does not affect a right of a person to commence and maintain a proceeding.
- (3) If the court gives judgment for the donor, it shall make such order as is just with respect to the payment of any money ordered to be paid.
- (4) The court shall excuse a donee's breach of obligation if—
  - (a) the breach was due to an honest mistake; and
  - (b) the donee ought fairly to be excused.

## **16 Production of accounts—enduring powers of attorney**

The public trustee may, by writing given to the donee under an enduring power of attorney, require the donee to produce to the public trustee specified books, accounts or other records of

transactions carried out by the donee for the donor pursuant to the power.

### **17 Other powers of court—enduring powers of attorney**

- (1) On application by the public trustee or, with leave of the court, some other person, the court may, by order—
  - (a) give a direction, not inconsistent with this Act or the power of attorney, that the donee under an enduring power of attorney do or refrain from doing a specified act; or
  - (b) direct the donee under an enduring power of attorney to produce specified books, accounts or other records of transactions carried out by the donee for the donor; or
  - (c) terminate an enduring power of attorney; or
  - (d) make a declaration as to the interpretation or effect of an enduring power of attorney.
- (2) If the court terminates an enduring power of attorney or if there is no longer a donee or donees capable of exercising powers under it, on application by the public trustee the court may, by order, appoint—
  - (a) the public trustee to be the guardian of the donor; or
  - (b) the public trustee or a trustee company nominated by the public trustee, but not both, to be the manager of the donor's property;for a specified time and with specified powers.

### **18 Relationship between enduring powers of attorney and guardianship and management orders**

- (1) This section has effect notwithstanding any other provision of this Act.
- (2) If the tribunal appoints a guardian for a person or a manager for a person's property, it may make such order as it thinks fit affecting

the continued operation of an enduring power of attorney executed by the person and such an order has effect according to its tenor.

- (3) A person for whom a guardian is appointed, or for whose property a manager is appointed, is not capable of executing an enduring power of attorney unless the tribunal approves the provisions of the power.

## **19 Instruments not invalid on account of form**

This Act does not affect the validity and effectiveness of an instrument purporting to create a power of attorney merely because the instrument is not in or to the effect of a form in schedule 1.

## **20 Status of certain instruments in effect before 28 May 1992**

- (1) In this section:

*instrument* means an instrument purporting to create a power of attorney having effect immediately before 28 May 1992.

- (2) An instrument is taken to be as valid and effective as if—
- (a) the amendments of sections 2, 12, 13, 15, 17 and the schedule made by the *Powers of Attorney (Amendment) Act 1992*; and
  - (b) sections 3AA, 3AB, 3AC, 3AD and 13A of this Act;
- had been in operation when the instrument was executed.
- (3) Without limiting subsection (2), an instrument in or to the effect of the form in the schedule as in force immediately before 28 May 1992, has effect on and after that date as if the instrument was in or to the effect of schedule 1, form 2.

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## Schedule 1

### Form 1

### General power of attorney

(see s 3AA)

This General Power of Attorney is made under the *Powers of Attorney Act 1956*, section 3AA on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by (name) of (address).

1. I appoint (name) of (address) [or (name) of (address) and (name) of (address) jointly [or jointly and severally]] to be my attorney[s].
2. I authorise my attorney or attorneys, subject to paragraph 4, to do on my behalf anything that I may lawfully do by an attorney.
3. My attorney or attorneys may draw from my money or income payment for services as attorney on the following terms:
4. The authority of my attorney or attorneys is subject to the following conditions and limitations:

Dated:

.....

Signature of person giving the power  
(or of another person signing in the  
presence of and by the direction of the  
person giving the power)

**Schedule 1**

**Form 1**            General power of attorney

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Dated: .....  
*Signature of witness [not related to  
the person giving the power, or his or  
her attorney or attorneys]*

Dated: .....  
*Signature of witness [not related to  
the person giving the power, or his or  
her attorney or attorneys]*

**Form 2****Enduring power of attorney**

(see s 12)

Under the

*Powers of Attorney Act 1956*, section 12

this instrument has effect as a deed

**Important notices****To the person giving this power of attorney:**

*This document will allow your chosen attorney or attorneys (who must be over 18) to make decisions and do things for you.*

*If you become unable to manage your affairs, your attorney or attorneys will be able to make decisions which you cannot supervise or control. For example, the attorney or attorneys could, in that event, sell your home if he, she or they thought it was what you would have done yourself, or if he, she or they thought it was necessary to stop you going bankrupt.*

*You can however, specify limits to your attorney's or attorneys' power by setting them out in the document.*

*You may appoint alternate or successive attorneys.*

*To create an enduring power of attorney, you **must** sign and date where indicated at the end of part A, and that signature **must** be witnessed and dated.*

*You may wish to give your attorney or attorneys some additional powers to take care of your personal affairs while you are unable to manage them. If so, you should sign part B. That signature **must** be witnessed and dated.*

*You may also wish to give your attorney or attorneys the power to consent to medical treatment, or to medical donations, on your behalf while you are*

## Schedule 1

### Form 2                      Enduring power of attorney

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*incapacitated. If so, you should sign part C. That signature, too, **must** be witnessed and dated.*

*In addition, the document **must** be signed and dated by your attorney or attorneys where indicated at the end of part D.*

*Finally, before signing any part of this document, you should carefully read each paragraph and any explanatory notes which follow.*

#### **Registration:**

*If your attorney exercises, or your attorneys exercise, a power to execute a deed or to transfer an interest in land, (other than a lease or an agreement for a lease for not more than 3 years), this document must be registered in the office of the Registrar-General.*

#### **Where to seek advice:**

*The Public Trustee, or a solicitor, can advise you about this enduring power of attorney or about the attorney's or attorneys' responsibilities under such powers.*

#### **Please note:**

*All signatures must be witnessed and dated by 2 persons who are present at the time the donor signs the power of attorney and who are not related to the donor or attorney or attorneys.*

**Part A—Power of attorney****Appointment of attorney**

This Enduring Power of Attorney is made under the *Powers of Attorney Act 1956*, section 20 on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
by \_\_\_\_\_ (name) of \_\_\_\_\_ (address) \_\_\_\_\_.

1. I appoint (name) of (address) [*or (name) of (address) and (name) of (address) jointly [or jointly and severally]] to be my attorney[s].*

**Power of attorney**

2. I authorise my attorney or attorneys to do on my behalf anything that I can lawfully do by an attorney.

*[By this paragraph, your attorney or attorneys is or are given the power to take care of all of your property and financial affairs (subject to paragraph 4)]*

**Specific powers**

3. Without limiting paragraph 2, my attorney or attorneys may do the following things in relation to my property or financial affairs:

*[Set out here anything that you particularly wish your attorney or attorneys to be able to do with your property or money, for example “My attorney or attorneys may use the following assets of mine for his/her/their own personal use:*

.....(list the assets)”.

***If you do not wish to specify anything here, cross out paragraph 3.]***

**Limits on powers**

4. My attorney[s] shall only exercise powers under paragraphs 2 and 3 subject to the following limits:

**Schedule 1**

**Form 2**                      Enduring power of attorney

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*[Set out here any limits to be placed on the attorney's or attorneys' powers, for example "The attorney or attorneys shall not sell my shares in xyz Company Pty Ltd."]*

***If you do not wish to specify any limits here, cross out paragraph 4.***

**Nature of power of attorney**

5. This is an enduring power of attorney.

**Commencement**

6. My attorney's or attorneys' power to manage my property and money comes into effect—

\* immediately

\* from ..... [specify date]

\* only while I am incapacitated

***[\*Cross out what does not apply.*** Set out here when you want your attorney or attorneys to start managing your property and money.]

**Payment of attorney**

7. My attorney or attorneys may draw from my money or income payment for services as attorney on the following terms:

***[You do not need to pay your attorney or attorneys for the power to be effective. If you do not wish to pay him, her or them, you should cross out paragraph 7.***

*If you do wish to pay your attorney or attorneys, set out the exact terms of payment here, including the method of payment (that is, from which bank account or other financial source).]*

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**Statement of understanding**

8. I fully understand that by signing this document, I authorise my attorney or attorneys to act on my behalf in accordance with the terms set out in this document.

Dated: .....

Signature of person giving the power  
(or of another person signing in the presence of and by the direction of the person giving the power)

Dated: .....

Signature of witness [not related to the person giving the power, or his or her attorney or attorneys]

Dated: .....

Signature of witness [not related to the person giving the power, or his or her attorney or attorneys]

**Part B—Power to make personal decisions**

**Important notice:**

*By signing this part, you can authorise your attorney or attorneys to make personal decisions for you while you are unable to manage your affairs.*

*These could be decisions about where you will live, what food you will eat, or whether you will go on a holiday. In fact, you must understand that if you sign this part, your attorney or attorneys will (subject to any limits you set) have almost complete control over your life while you are unable to manage your affairs.*

***You need not do this if you do not want to. If you do not want your attorney or attorneys to have such power, you should cross out part B entirely.***

**Authority to make personal decisions**

9. I authorise my attorney or attorneys to make personal decisions and arrangements for me (other than those dealing with my money and property) while I am incapacitated.

**Limits on authority**

10. My attorney or attorneys shall only exercise authority under paragraph 9 subject to the following limits:

*[Set out here any limits to be placed on the attorney's or attorneys' power, for example: "The attorney or attorneys shall not require me to move away from my home."]*

***If you do not wish to specify any limits here, cross out paragraph 10.]***

Dated: .....

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Signature of person giving the power  
(or of another person signing in the  
presence of and by the direction of the  
person giving the power)

Dated: .....

Signature of witness *[not related to  
the person giving the power, or his or  
her attorney or attorneys]*

Dated: .....

Signature of witness *[not related to  
the person giving the power, or his or  
her attorney or attorneys]*

## **Part C—Power to consent to medical treatment and medical donation**

### **Important notice:**

*By signing this part, you can authorise your attorney or attorneys to consent to medical treatment, or to the withholding or withdrawal of medical treatment, on your behalf while you are unable to manage your affairs. You can also authorise your attorney or attorneys to consent on your behalf to the donation of a part of your body, blood or tissue to another person while you are unable to manage your affairs.*

*You can only authorise your attorney or attorneys to give consent to lawful medical treatment that is essential for your wellbeing.*

*You need not give your attorney or attorneys any power to consent to medical treatment, or medical donation, on your behalf. If you do not want your attorney or attorneys to have either of these powers, you should cross out this part entirely.*

*If you sign this part, any power of attorney under the Medical Treatment Act 1994 that you have previously signed will no longer have any effect.*

### **Authority to consent to medical treatment**

11. I authorise my attorney or attorneys to give consent to lawful medical treatment on my behalf while I am incapacitated. I understand that my attorney or attorneys may only consent to lawful treatment which is essential for my wellbeing.

*[If you do not wish to authorise your attorney or attorneys to consent to any medical treatment on your behalf, cross out paragraph 11.]*

### **Specific treatment authorised**

12. The treatment to which my attorney or attorneys may consent on my behalf includes:

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*[Set out here any particular treatment to which your attorney or attorneys may consent on your behalf, for example, an organ transplant.*

***If you do not wish to specify any treatment here, cross out paragraph 12.]***

### **Limits on power**

13. My attorney or attorneys shall not consent on my behalf to the following treatment:

*[Set out here any medical treatment to which you do not want your attorney or attorneys to consent, for example, a blood transfusion, or 'any treatment not specified under paragraph 12'.*

***If you do not wish to specify any treatment here, cross out paragraph 13.]***

### **Authority to consent to medical donation**

14. I authorise my attorney or attorneys to consent on my behalf to the lawful donation of parts of my body, blood or tissue to another person while I am incapacitated.

***[If you do not wish to authorise your attorney or attorneys to consent to any medical donation on your behalf, cross out paragraph 14.]***

### **Limits on power—medical donation**

15. My attorney or attorneys shall not consent on my behalf to the following medical donations:

***[Set out any medical donation to which you do not want your attorney or attorneys to consent. If you do not wish to specify any medical donation here, cross out paragraph 15.]***

Schedule 1

Form 2                      Enduring power of attorney

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**Authority to consent to withholding or withdrawing medical treatment**

15A. My attorney or attorneys may consent on my behalf to—

- (a)     medical treatment generally being withheld or withdrawn; or
- (b)     the following medical treatment being withheld or withdrawn:

*[Set out here any medical treatment the withholding or withdrawal of which you want your attorney or attorneys to consent to.*

*If you wish to authorise your attorney or attorneys to consent to the withholding or withdrawal of medical treatment generally on your behalf, cross out (b).*

*If you wish to authorise your attorney or attorneys to consent to the withholding or withdrawal of specified medical treatment on your behalf, cross out (a).*

*If you do not wish your attorney or attorneys to consent to the withholding or withdrawal of any medical treatment on your behalf, cross out paragraph 15A.*

*If you sign a direction or a power of attorney under the Medical Treatment Act 1994 after you have signed this form, paragraph 15A may no longer have effect.]*

Dated: .....

Signature of person giving the power  
(or of another person signing in the  
presence of and by the direction of the  
person giving the power)

Dated: .....

Signature of witness *[not related to  
the person giving the power, or his or  
her attorney or attorneys]*

Dated: .....

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**Schedule 1**

Enduring power of attorney

**Form 2**

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*Signature of witness [not related to  
the person giving the power, or his or  
her attorney or attorneys]*

**Part D—Attorney’s or attorneys’ acceptance**  
**Important notice to attorney or attorneys:**

*If you accept this power of attorney, you will be taking on serious responsibilities. You should take particular note of the Powers of Attorney Act 1956, sections 12-17.*

*Here is a summary of those provisions:*

- 1. What you do on behalf of the person giving you the power of attorney (the **donor**) while he or she is incapacitated must be, as near as possible, what he or she would have done. You may, however, do whatever is necessary on behalf of the donor (while he or she is incapacitated) to prevent him or her becoming destitute.*
- 2. You should not enter into transactions for the donor which may involve a conflict between your interests and those of the donor, unless the transaction is explicitly authorised by the donor in this document. For example, if it is necessary to sell some of the donor’s property, it may be a breach of your obligation to sell it to your own relative.*
- 3. You must keep your money and property separate from the donor’s money and property, unless you are joint owners, or operate joint bank (or similar) accounts.*
- 4. You must keep proper accounts and records of how you handle the donor’s money and property. The Public Trustee, or anyone interested in the donor’s welfare, can require you to produce these accounts and records.*
- 5. If you do not carry out your duties properly, you may have to compensate the donor. It is also possible that a transaction will be cancelled if you did not carry it out properly. In an extreme case, your power of attorney may be terminated.*
- 6. If, after the donor becomes incapacitated, you want to stop being the donor’s attorney, you should see the Public Trustee or a solicitor.*

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*You may wish to seek the advice of the Public Trustee or a solicitor about your rights and obligations under this power of attorney.*

**Statement of understanding**

16. I have read this enduring power of attorney. I understand that by signing this document, I take on the responsibility of exercising the powers which I have been given by the document. I also understand that I must exercise these powers in accordance with the *Powers of Attorney Act 1956*.

Dated: .....

Signature[s] of attorney[s]

*[The attorney or 1 of the attorneys should hold the original of this document.*

*The person who is giving the power and any other attorney should retain a copy of the document.]*

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

The *Powers of Attorney Act 1956* was originally the *Powers of Attorney Ordinance 1956*. It became an ACT Act on self-government (11 May 1989).

#### **Powers of Attorney Act 1956 No 17**

notified 24 December 1956  
commenced 24 December 1956

as amended by

#### **Powers of Attorney Act 1957 No 15**

notified 21 November 1957  
commenced 21 November 1957

#### **Powers of Attorney (Amendment) Act 1989 No 15**

notified 30 October 1989 (Gaz 1989 No S31)  
commenced 30 October 1989

#### **Guardianship and Management of Property (Consequential Provisions) Act 1991 No 63 pt 3**

notified 31 October 1991 (Gaz 1991 No S119)  
s 1, s 2 commenced 31 October 1991 (s 2 (1))  
pt 3 commenced 7 January 1992 (s 2 (2) and Gaz No S147)

#### **Powers of Attorney (Amendment) Act 1992 No 5**

notified 28 May 1992 (Gaz 1992 No S59)  
commenced 28 May 1992

#### **Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and Gaz 1993 No S207)

#### **Mental Health (Consequential Provisions) Act 1994 No 45 sch**

notified 7 September 1994 (Gaz 1995 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
sch commenced 6 February 1995 (s 2 (2) and Gaz 1995 No S33)

#### **Medical Treatment Act 1994 No 72 pt 4**

notified 1 November 1994 (Gaz 1994 No S229)  
commenced 1 November 1994 (s 2)

## Endnotes

4 Amendment history

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**Land Titles (Consequential Amendments) Act 1995 No 54 sch pt 1**

notified 20 December 1995 (Gaz 1995 No S313)  
commenced 20 June 1996 (s 2)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998  
sch commenced 9 December 1998 (s 2 and Gaz 1998 No 49)

**Statute Law Amendment Act 2000 No 80 sch 3**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2)

**Justice and Community Safety Legislation Amendment Act 2001  
No 70 sch 1**

notified LR 14 September 2001  
amdt commenced 14 September 2001 (s 2 (5))

## 4 Amendment history

**Interpretation for Act**

s 2 am 1957 No 15; 1989 No 15; 1991 No 63; 1992 No 5

**Application of Act**

s 3 am 1995 No 54

**General powers of attorney**

s 3AA ins 1992 No 5

**Several donees**

s 3AB ins 1992 No 5

**Scope of authority of attorney**

s 3AC ins 1992 No 5

**Operation as deed**

s 3AD ins 1992 No 5

**Capacity to execute power of attorney**

s 3A ins 1989 No 15

**Power of attorney to continue in force until death or revocation**

s 5 am 1994 No 45; 1998 No 54

**Irrevocable power of attorney for value**

s 6 am 1994 No 45

**Power of attorney irrevocable for fixed period**

s 7 am 1994 No 45

**Registration of powers of attorney**

s 9 om 1957 No 15

**Certain powers of attorney deemed to be registered**

s 10 om 1957 No 15

**Effect of registration of powers of attorney**

s 11 am 1957 No 15

**Enduring powers of attorney**s 12 om 1957 No 15  
ins 1989 No 15  
am 1992 No 5**Guardianship and consent to medical treatment under enduring power of attorney**s 13 ins 1989 No 15  
am 1992 No 5; 1994 No 72; 2001 No 70 amdt 1.68**Medical certificate as to incapacity**

s 13A ins 1992 No 5

**Exercise of powers under enduring powers of attorney**

s 14 ins 1989 No 15

**Relief for breach of duty—enduring powers of attorney**s 15 ins 1989 No 15  
am 1992 No 5**Production of accounts—enduring powers of attorney**

s 16 ins 1989 No 15

**Other powers of court—enduring powers of attorney**s 17 ins 1989 No 15  
am 1992 No 5**Relationship between enduring powers of attorney and guardianship and management orders**

s 18 ins 1991 No 63

**Instruments not invalid on account of form**

s 19 ins 2000 No 80 amdt 3.18

**Status of certain instruments in effect before 28 May 1992**

s 20 ins 2000 No 80 amdt 3.18

**Schedule 1**ins 1989 No 15  
sub 1992 No 5  
am 1993 No 64; 1994 No 72

## Endnotes

5 Earlier republications

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### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Act 1992 No 5	31 May 1992
2	Act 1994 No 74	28 February 1995
3	Act 1995 No 54	30 November 1996

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