

2007

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

POWERS OF ATTORNEY AMENDMENT REGULATION 2007 (No 1)

Subordinate Law No SL2007-12

EXPLANATORY STATEMENT

Circulated by authority of
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Attorney General

Outline

The *Powers of Attorney Act 2006* (the Act) is to commence operation on 30 May 2007 (the commencement day). Under the Act, an attorney cannot be authorised to consent to the removal of non-regenerative tissue from the principal (i.e. the person who made the enduring power of attorney) for donation to someone else.

However, the *Powers of Attorney Act 1956* (previous Act) provides for enduring powers of attorney to be made to authorise attorneys to consent to the donation of a body part, blood or tissue of the principal to another person in accordance with the *Transplantation and Anatomy Act 1978*. The Transplantation and Anatomy Act enables a person to donate the person's regenerative and non-regenerative tissues for transplantation to another person.

The Act also provides for the Act's application to enduring powers of attorney made before the commencement day. Therefore, the power given to an attorney under such an enduring power of attorney, to consent to the removal of non-regenerative tissue, will become inoperative after the commencement day.

The Powers of Attorney Amendment Regulation 2007 (No 1) amends the Powers of Attorney Regulation 2007 (No 2) to provide that an attorney's power to consent to the donation of non-regenerative tissue of the principal, granted under an enduring power of attorney in force immediately before the commencement day, will continue.

The regulation also inserts section 152C in the Act to substitute an example under section 12, which clarifies that donations (other than donations of non-regenerative tissue) under the Transplantation and Anatomy Act is a health care matter.

NOTES ON CLAUSES

Clause 1 Name of regulation

This clause explains that the name of the regulation is the *Powers of Attorney Amendment Regulation 2007 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation commences on 30 May 2007.

Clause 3 Legislation Amendment

Clause 3 provides that the regulation amends the *Powers of Attorney Regulation 2007 (No 2)*.

Clause 4 Modification of Act, ch 20, new section 152B – Act, s 156

Clause 4 provides for the modification of chapter 20 (Transitional provisions) of the Act by inserting sections 152B and 152C in the Act pursuant to section 156 of the Act. Section 156(2) provides that a regulation may modify chapter 20 to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in that chapter.

New section 152B Transitional - powers of attorney to consent to body part donations etc under previous Act

New section 152B provides for the continuing validity after the commencement day of a power given to an attorney under an enduring attorney made before that day to consent to a donation of a body part, blood or tissue of the principal to another person in accordance with the *Transplantation and Anatomy Act 1978*. Section 13(1)(b)(ii) of the previous Act enables the principal to authorise an attorney to consent to such a donation.

Section 35(b) of the Act provides that the principal cannot authorise an attorney to exercise power in relation to special health care matters. Section 37 of the Act lists the special health care matters. Section 37(1)(a) is a special health care matter of “removal of non-regenerative tissue from the principal while alive for donation for donation to someone else”. The Act applies also to enduring powers of attorney made before the commencement day. There is a concern, therefore, that a power given to an attorney under an enduring power of attorney, made under the previous Act, to consent to a donation of non-regenerative tissue of the principal, would become invalid from the commencement day. New section 152B provides for the continuing validity of such a power.

Previous Act means the *Powers of Attorney Act 1956*, which is replaced by the *Powers of Attorney Act 2006*.

New section 152C Meaning of *health care matter*

Section 12 explains that ‘health care matter’ means a matter, other than a special health care matter, relating to a principal’s health care, and provides examples.

New section 152C substitutes an example under section 12 to clarify the intention to include donations (other than donations of non-regenerative tissue) under the Transplantation and Anatomy Act by the principal to someone else. This example supplements section 37(1)(a) referred to in the statement relating to new section 152B.

**Clause 5 Powers of Attorney Regulation 2007, schedule 1, modification 1.1,
new section 156A**

This clause omits new section 156A inserted in the Act by the Powers of Attorney Regulation 2007. New section 156A omitted example 2 from section 12 of the Act. The earlier omission is omitted.