

TASMANIA

POWERS OF ATTORNEY AMENDMENT BILL 2013

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POWERS OF ATTORNEY AMENDMENT BILL 2013

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
19 September 2013

*(Brought in by the Minister for Justice, the Honourable Brian
Neal Wightman)*

A BILL FOR

An Act to amend the *Powers of Attorney Act 2000*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Powers of Attorney Amendment Act 2013*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

THIS BILL IS COGNATE WITH THE *GUARDIANSHIP AND ADMINISTRATION
AMENDMENT BILL 2013*

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3. Principal Act

In this Act, the *Powers of Attorney Act 2000** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *certified copy*:

close relative, in relation to a person,
means –

- (a) a spouse of the person;
and
- (b) a parent of the person;
and
- (c) a person who has one or both parents in common with the person; and
- (d) a child of the person; and
- (e) a child of, or a parent of, the spouse of the person;
and
- (f) a grandparent of the person; and

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- (g) an aunt or uncle of the person;
- (b) by inserting the following definition after the definition of *repealed Act*:

spouse, in relation to a person, means a person –

- (a) who is married to the person; or
- (b) who is a party to a significant relationship, within the meaning of the *Relationships Act 2003*, with the person, which relationship is registered under that Act; or
- (c) who is a party to a significant relationship, within the meaning of the *Relationships Act 2003*, with the person, which relationship has been in existence for a continuous period of at least 2 years;

5. Section 9 amended (Formal requirements)

Section 9 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(b)(i) “nor a close relative of a party to it” after “to it”;

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- (b) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (ba) in the case of an enduring power of attorney, include a declaration by each witness that he or she is neither a party to the enduring power of attorney nor a close relative of a party to it; and
- (c) by inserting in subsection (5)(a) “nor a close relative of a party to it” after “to it”;
- (d) by inserting the following subsection after subsection (6):
 - (7) A person who is to be the attorney in respect of an enduring power of attorney, or who knows he or she is a close relative of a party to an enduring power of attorney, must not act as a witness to –
 - (a) the signature of the enduring power of attorney by the donor; or
 - (b) the initialling by the donor of an alteration to the enduring power of attorney or to an annexure to the enduring power of attorney.

Penalty: Fine not exceeding 2 penalty units.

6. Section 11 amended (Powers of attorney not to be registered except in accordance with this Act)

Section 11 of the Principal Act is amended as follows:

(a) by inserting in subsection (4A)(a) “nor a close relative of a party to it” after “to it”;

(b) by inserting the following subsection after subsection (6):

(7) The Recorder is not personally liable for any damage or loss caused to a person by, or as a consequence of, the registration under this Act of –

(a) a purported enduring power of attorney signed by a witness who is a party to, or a close relative to a party to, the enduring power of attorney; or

(b) an annexure to an enduring power of attorney, or purported enduring power of attorney, which annexure is signed by a witness who is a party to, or a close relative to a party to, the enduring power of attorney; or

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(c) an alteration or correction made to –

(i) an enduring power of attorney or a purported enduring power of attorney; or

(ii) an annexure to an enduring power of attorney or purported enduring power of attorney –

which alteration or correction is signed by a witness who is a party to, or a close relative to a party to, the enduring power of attorney.

7. Section 17 amended (Death, &c., of donor of power may be registered)

Section 17 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “by the donor”;

(b) by inserting in subsection (2)(a) “, or of an attorney under an enduring power of attorney,” after “attorney”;

(c) by inserting the following paragraph after paragraph (c) in subsection (2):

(ca) notice of the revocation of an enduring power of attorney by virtue of section 32AE(3), under the hand of the donor, or the attorney, of the enduring power of attorney; or

8. Section 20 amended (Authority conferred by power of attorney)

Section 20 of the Principal Act is amended by omitting “A power” and substituting “Subject to, in the case of an enduring power of attorney, section 31(2B), a power”.

9. Section 21 amended (Nature of authority conferred)

Section 21 of the Principal Act is amended by inserting “and, in the case of an enduring power of attorney, subject to section 31(2B)” after “is conferred”.

10. Section 22 amended (Duration of power of attorney)

Section 22 of the Principal Act is amended by omitting paragraph (b).

11. Part 3, Division 4: Heading amended

Division 4 of Part 3 of the Principal Act is amended by omitting “*Revocation of powers of*”

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*attorney” from the heading to that Division and substituting “**Revocation of powers of attorney other than enduring powers of attorney**”.*

12. Section 27AA inserted

Before section 27 of the Principal Act, the following section is inserted in Division 4:

27AA. Application of Division

- (1) This Division does not apply in relation to an enduring power of attorney.
- (2) Nothing in this Division is to be taken to limit the application of sections 24 and 25.

13. Section 31 amended (Scope of authority, &c., of attorney under enduring power of attorney)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “deed or”;
- (b) by inserting the following subsections after subsection (2):
 - (2A) In addition to any acts or powers expressly authorised in, or expressed to be included in, an enduring power of attorney, but subject to any conditions or restrictions of a power specified

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in the enduring power of attorney, the acts which the attorney may do on behalf of a donor under an enduring power of attorney include, but are not limited to including –

- (a) collect, receive and recover any income or property to which the donor is entitled; and
- (b) invest money in any manner in which trustees may by law invest; and
- (c) take a lease of real estate at the rent, and on the conditions, that the attorney thinks fit; and
- (d) exercise any power of leasing vested in the donor; and
- (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
- (f) sell, exchange, partition or convert into money any property other than real estate; and
- (g) sell, exchange, partition or convert into money any

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- interest in any real estate;
and
- (h) mortgage, purchase, acquire, lease or charge any property or sever any joint tenancy; and
 - (i) exercise any power of the donor in respect of any superannuation of the donor; and
 - (j) pay any debts and settle, adjust or compromise any demand made by or against the estate of the donor, discharge any encumbrance on the estate and reimburse (whether legally obliged to make such reimbursement or not) any person who has expended money for the benefit of the donor; and
 - (k) renounce, on behalf of the donor, the donor's right to apply for a grant of probate in respect of an estate in respect of which the donor has been appointed as an executor; and

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- (l) renounce, on behalf of the donor, the donor's right to a grant of letters of administration; and
- (m) carry on, so far as appears desirable, any trade, profession or business which the donor carried on; and
- (n) agree to any alteration of the conditions of any partnership into which any donor has entered or to a dissolution and distribution of the assets of the partnership; and
- (o) bring and defend actions and other legal proceedings in the name of the donor; and
- (p) execute and sign deeds, instruments and other documents; and
- (q) complete any contract for the performance of which the donor was liable or enter into any agreement terminating liability; and
- (r) pay sums, or use the donor's property, for the maintenance and

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education of the donor's spouse or any child, parent or other person dependent on the donor; and

(s) expend money in the insurance, repair, maintenance, renovation, reconstruction or preservation of any property; and

(t) do all matters necessary or incidental to the performance of any of the matters specified in this subsection and apply any money, or any property, which it is necessary to apply for the purposes of this Act; and

(u) exercise any power, including a power to consent, vested in the donor, whether beneficially, or as a trustee, or otherwise.

(2B) Despite subsection (2A), the acts which the attorney may do on behalf of a donor under an enduring power of attorney do not include a power to make on behalf of the donor a decision in

relation to a personal matter in respect of the donor.

- (2C) For the purposes of subsection (2B), a ***personal matter*** in respect of a donor is a decision in relation to a matter that relates to the private life, lifestyle or health of the donor, including, but not limited to including, any of the following:
- (a) the place or person where or with whom the donor lives;
 - (b) whether the donor works and if so, the kind and place of work and the donor's employer;
 - (c) whether the donor undertakes education or training or what kind of education or training the donor undertakes;
 - (d) whether the donor applies for a licence, or permit, other than a licence or permit for the conduct of a business or for other commercial reasons;
 - (e) day-to-day matters relating to diet, recreation, hobbies, companions, pet

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ownership, sexual expression, dress, hairstyle, persons with whom the donor associates or clubs, associations or political parties that the donor may join;

- (f) consenting to the adoption of a child of the donor;
- (g) consenting to the donor marrying, separating or divorcing, or entering into or terminating, a personal relationship within the meaning of the *Relationships Act 2003*;
- (h) entering into, or agreeing to enter into, a surrogacy arrangement under the *Surrogacy Act 2012* or consenting to the making or discharge of a parentage order under that Act;
- (i) the health care of, or the withdrawal of health care from, the donor, including any decisions relating to organ donation, pregnancy termination or conception, treatment to

render the donor temporarily or permanently infertile or participation in health research or psychological treatment.

(c) by inserting the following subsection after subsection (5):

(6) An enduring power of attorney created by a donor is of no effect in relation to a part of the estate of the donor if an administration order under the *Guardianship and Administration Act 1995* is in force in relation to the part of the estate.

14. Section 32 amended (Duties of attorney under enduring power of attorney)

Section 32 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (1):

(1A) An attorney, in so far as doing so will not conflict with the attorney's duty under subsection (1) to protect the interests of the donor, must at all times exercise his or her powers under an enduring power of

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attorney as far as is possible and reasonable in the circumstances –

- (a) in the best interests of the donor; and
 - (b) in consultation with the donor; and
 - (c) taking into account –
 - (i) the wishes of the donor, in so far as those wishes have been, or can be, ascertained; and
 - (ii) what would be reasonably likely to be the wishes of the donor, if he or she were not subject to a mental incapacity.
- (1B) For the purposes of this section, an exercise of a power under an enduring power of attorney is not to be taken to constitute a failure to protect the interests of the donor, and is to be taken to be in the best interests of the donor, if –
- (a) it is an exercise of a power that the donor would have been likely to make if he or she were not

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subject to a mental incapacity; or

(b) the exercise of the power consists of providing for those persons who the donor would expect to provide for, if he or she were not subject to a mental incapacity.

(b) by inserting the following subsection after subsection (2):

(3) An attorney under an enduring power of attorney must keep any property of the donor (apart from property held by the attorney and the donor as tenants in common or joint tenants) separate from property of the attorney.

Penalty: Fine not exceeding 50 penalty units.

15. Sections 32AA, 32AB, 32AC, 32AD, 32AE, 32AF, 32AG and 32AH inserted

After section 32 of the Principal Act, the following sections are inserted in Part 4:

32AA. Right of attorney to information

(1) The attorney under an enduring power of attorney has, if the donor has become

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subject to a mental incapacity, a right to –

- (a) all the information to which the donor is entitled; and
- (b) all the information to which the donor would have been entitled but for the mental incapacity –

if the information is reasonably required for the purpose of exercising a power under, or determining whether to exercise a power under, the enduring power of attorney.

- (2) An attorney under an enduring power of attorney has, if the donor has become subject to a mental incapacity, a right to obtain, from a person who has possession of a will of the donor, a copy, of the will, that is certified by the person.
- (3) A person who has custody or control of information, or a will, to which an attorney under an enduring power of attorney has a right under subsection (1) or (2), must, at the request of the attorney, disclose to the attorney the information, or provide to the attorney a copy, of the will, that is certified by the person.

Penalty: Fine not exceeding 2 penalty units.

- (4) Subsections (1), (2) and (3) are subject to any contrary intention, or express limitation, in the enduring power of attorney.

32AB. Power to take action to the benefit of attorney

- (1) An enduring power of attorney does not authorise the attorney to execute an assurance or other document, or do anything else, that would result in a benefit being received by the attorney, unless the power of attorney expressly authorises the attorney to take an action that would result in a benefit being received by the attorney.
- (2) Nothing in subsection (1) is to be taken to limit the application of section 11 of the *Public Trustee Act 1930*.

32AC. Transactions that may involve conflict of duty

- (1) An attorney under an enduring power of attorney may only enter into a transaction that results, or may result, in a conflict of interest, if –
- (a) the enduring power of attorney specifies that the transaction may, even though it will or may result in a conflict of interest, be entered into by the attorney; or

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- (b) the transaction is a member of a class of transactions that the enduring power of attorney specifies may, even though the transactions will or may result in a conflict of interest, be entered into by the attorney; or
 - (c) the power of attorney specifies that, even though such a transaction will or may result in a conflict of interest, any transaction may be entered into by the attorney.
- (2) For the purposes of subsection (1), a conflict of interest is a conflict between –
 - (a) the duties of an attorney in respect of the donor; and
 - (b) either –
 - (i) the interests of the attorney, or a relative, business associate or close friend of the attorney; or
 - (ii) another duty of the attorney.
- (3) Despite subsection (2), a transaction does not result, or is not to be taken to be a transaction that may result, in a conflict of interest only because, by the

transaction, the attorney in the attorney's own right and on behalf of the donor –

- (a) deals with an interest, in property, held by the attorney and the donor as tenants in common or joint tenants; or
- (b) acquires an interest, in property, jointly with the donor as tenants in common or joint tenants; or
- (c) obtains a loan or gives a guarantee or indemnity in relation to –
 - (i) the acquisition of an interest, in property, held by the attorney and the donor as tenants in common or joint tenants; or
 - (ii) a dealing with an interest, in property, jointly with the donor as tenants in common or joint tenants.

32AD. Keeping of records, &c.

- (1) An attorney under an enduring power of attorney must keep an accurate record of all dealings and transactions made as the attorney.

Penalty: Fine not exceeding 20 penalty units.

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- (2) A person who has ceased to be an attorney under an enduring power of attorney must –
- (a) retain, for at least 7 years after so ceasing, an accurate record of all dealings and transactions made as the attorney; or
 - (b) provide to the Board an accurate record of all dealings and transactions made as the attorney.

Penalty: Fine not exceeding 20 penalty units.

- (3) A person with a proper interest in the matter may, in writing, request the Board to exercise its power under subsection (4) in relation to a person who is or was an attorney under an enduring power of attorney.
- (4) The Board, after receiving under subsection (3) a request in relation to –
- (a) a person who is an attorney under an enduring power of attorney; or
 - (b) a person who was, within the previous 7 years, an attorney under an enduring power of attorney and who has not provided an accurate record to the Board in accordance with subsection (2)(b) –

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may, by notice in writing to the person, require the person to provide to the Board, within the period of not less than 14 days specified in the notice, a document setting out an accurate record of all dealings and transactions made as the attorney.

- (5) A person who receives a notice under subsection (4) must provide to the Board, before the end of the period specified in the notice, a document setting out an accurate record of all dealings and transactions made by the person as the attorney under an enduring power of attorney.

Penalty: Fine not exceeding 20 penalty units.

- (6) A document provided to the Board by a person in accordance with a notice under subsection (4) –
- (a) is to be in a form approved by the Board; and
 - (b) is to be verified by a statutory declaration that is signed by the person; and
 - (c) is to be accompanied by other evidence, if any, that the Board specifies in the notice is required to accompany the document.

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32AE. Revocation of enduring powers of attorney

- (1) An enduring power of attorney, whether registered or unregistered, is revoked if notice of revocation by the donor is given to the attorney.
- (2) An enduring power of attorney, whether registered or unregistered, is revoked if the donor dies or becomes bankrupt or insolvent.
- (3) An enduring power of attorney, created by a donor, that gives a power to another person who is –
 - (a) a spouse of the donor; or
 - (b) a party to a personal relationship, within the meaning of the *Relationships Act 2003*, with the donor, which relationship is registered under that Act –is revoked if paragraph (a) or (b) ceases to apply to the other person.
- (4) If an enduring power of attorney is revoked by virtue of subsection (3), the donor is, as soon as practicable, to notify the attorney in respect of the power.
- (5) An enduring power of attorney is revoked if the attorney –
 - (a) is the only attorney specified in the power of attorney or is

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appointed under the power of attorney to act jointly (but not jointly or severally) with another attorney; and

- (b) dies, becomes subject to mental incapacity or becomes bankrupt or insolvent.
- (6) If –
- (a) an enduring power of attorney is not registered under this Act; and
 - (b) either –
 - (i) the attorney cannot be found, despite reasonable steps being taken by the donor to do so; or
 - (ii) it is impracticable to give to the attorney notice of the revocation, by the donor, of the power –

the power of attorney may be revoked by lodging with the Recorder notice of the revocation by the donor together with a copy of the power of attorney.

- (7) Nothing in this section is to be taken to limit the application of sections 24 and 25.

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32AF. Effect of power of attorney when inconsistent with subsequent enduring power of attorney

- (1) Subject to sections 24 and 25, an enduring power of attorney that is made by a donor and is registered is of no effect to the extent that it is inconsistent with a power of attorney, or an enduring power of attorney, subsequently made by the donor and registered.
- (2) Subject to sections 24 and 25, if an enduring power of attorney (the *first power*) that is unregistered is made by a donor and subsequently another enduring power of attorney (the *second power*) that is inconsistent with the first power is made by the same donor and has not been revoked, the first power may not be registered.
- (3) If a donor makes a power of attorney, or an enduring power of attorney, (the *first-made power*) and subsequently makes another power of attorney or enduring power of attorney, (the *subsequent power*) the donor is to notify of the making of the subsequent power the attorney in respect of the first-made power.

32AG. Effect on dealings with attorney in good faith in respect of enduring powers

- (1) If an enduring power of attorney has been revoked, a person dealing with the attorney in good faith, without notice of the revocation, is not affected by the revocation.
- (2) In the application of subsection (1) to an enduring power of attorney that is registered under this Act, the rights of a person dealing in good faith with the attorney are not preserved if notice of the revocation has been given to the Recorder.
- (3) If an attorney under an enduring power of attorney has been suspended under section 33, a person dealing with the attorney in good faith, without notice of the suspension, is not affected by the suspension.

32AH. Effect of adoptions of testamentary gifts by attorney under enduring power of attorney

- (1) In this section, a reference to a dealing with property includes a sale, mortgage, charge or disposition of property and any other dealing with property.
- (2) A person who is a beneficiary (a *relevant beneficiary*) under the will of a deceased donor of an enduring power of attorney has the same interest in any surplus money or other property arising from a

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dealing with property by the attorney under the enduring power of attorney as the relevant beneficiary would have had, in the property that is the subject of the dealing, if the dealing had not been made.

- (3) The surplus money or other property arising from the dealing with property as referred to in subsection (1) is taken to be of the same nature as the property dealt with.
- (4) The Supreme Court, on the application of a relevant beneficiary, under the will of a deceased donor of an enduring power of attorney, to whom subsection (2) relates or another person who the Supreme Court considers has a proper interest in the matter, may –
 - (a) make the orders, and direct the conveyances, deeds and things to be executed and done as it thinks fit in order to give effect to subsections (2) and (3); or
 - (b) if it considers that the operation of subsections (2) and (3) would result in one or more relevant beneficiaries –
 - (i) gaining an unjust and disproportionate advantage; or

- (ii) suffering an unjust and disproportionate disadvantage –

of a kind not contemplated by the will, make such other orders as the Supreme Court thinks fit to ensure that no relevant beneficiary gains such an advantage or suffers such a disadvantage.

- (5) An order made by the Supreme Court under subsection (4)(b) –

- (a) may provide that it has effect as if it had been made by a codicil to the will of the donor of the enduring power of attorney executed immediately before the donor's death; and
- (b) has effect despite anything to the contrary in subsection (1) or (2).

16. Section 32A amended (Substitution of The Public Trustee as attorney)

Section 32A(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “a power” and substituting “an enduring power”;

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- (b) by omitting from paragraph (b) “a power” and substituting “an enduring power”.

17. Section 33 amended (Power of Board to make orders in respect of enduring power of attorney)

Section 33 of the Principal Act is amended as follows:

- (a) by inserting the following subsection before subsection (1):

(1AA) In this section, a reference to an enduring power of attorney includes a reference to a purported enduring power of attorney.

- (b) by inserting the following subsections after subsection (1):

(1A) The Board may dismiss an application for review if it is of the opinion that the application is frivolous, vexatious or lacking in substance.

(1B) Without limiting the matters to which the Board may have regard in relation to a review in respect of a donor, the Board may open and read any paper or writing which purports to be, or is alleged to be, the will of the donor.

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- (c) by inserting in subsection (2)(d) “or to revoke an enduring power of attorney” after “attorney”;
- (d) by inserting in subsection (2)(e) “or the revocation of it by the donor” after “attorney”;
- (e) by omitting from subsection (2)(e)(i) “it” and substituting “the power or the revocation, respectively”;
- (f) by omitting from subsection (2)(e)(ii) “it” and substituting “the power or the revocation, respectively,”;
- (g) by omitting from subsection (2)(e)(iii) “it” first occurring and substituting “the power or the revocation, respectively,”;
- (h) by omitting from subsection (4) “the operation of” and substituting “the attorney under”;
- (i) by inserting in subsection (4) “attorney ceases, for the period of the suspension, to be authorised to take any action under the power of attorney and the” after “so, the”;
- (j) by inserting in subsection (4)(a) “to act in the place of the suspended attorney for the period for which the suspension remains in force” after “attorney”;
- (k) by inserting the following subsections after subsection (4):

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(4A) The Board may –

- (a) suspend, for the period specified in the order, the attorney under an enduring power of attorney if the attorney (in this section referred to as the *suspended attorney*) fails to comply, with a direction of the Board, within a reasonable period after the direction is given; and
- (b) appoint the Public Trustee or any other person to act as the attorney, in the place of the suspended attorney, for the period for which the suspension remains in force; and
- (c) if an attorney in relation to an enduring power of attorney is suspended under paragraph (a), make such other orders, and give such other directions, as to the exercise of the power as it thinks fit; and
- (d) if an attorney is suspended under paragraph (a), revoke the suspension, if the Board is

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satisfied that the suspended attorney has complied with the direction to which the suspension relates; and

- (e) if, after conducting a hearing in relation to the matter, in accordance with Division 1 of Part 10 of the *Guardianship and Administration Act 1995*, to review an enduring power of attorney, it is satisfied that a suspended attorney in relation to a power of attorney has, after the expiration of a reasonable period after the suspension of the attorney under paragraph (a), continued to fail to comply with the direction to which the suspension related, revoke the power of attorney.

(4B) If an attorney is suspended under subsection (4A) –

- (a) the suspension does not prevent the suspended attorney taking the actions necessary to comply with the direction to which the suspension relates, but the

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suspended attorney may not otherwise exercise during the suspension the power of attorney; and

- (b) a person appointed under subsection (4A)(b) may, during the period of the suspension, act as the attorney, in the place of the suspended attorney, for the purposes of a power of attorney.
- (l) by inserting in subsection (5) “or subsection (4A)” after “subsection (4)”;
- (m) by inserting in subsection (5)(a) “, subject to subsection (4A)(e),” after “person or”;
- (n) by omitting from subsection (6B) “the operation of” and substituting “an attorney under”;
- (o) by omitting from subsection (6B) “subsection (4) or (6)” and substituting “subsection (4) or (4A) or subsection (6)(b)”.

18. Section 51 amended (Validity of payment by attorney under power without notice of death, &c.)

Section 51 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “(other than an enduring power of attorney)” after “attorney”;
- (b) by omitting from subsection (1) “revocation was not at the time of the payment or act known to the person making the payment or doing the act.” and substituting “revocation –”;
- (c) by inserting the following paragraphs after subsection (1):
 - (d) was not at the time of the payment or act known to the person making the payment or doing the act; or
 - (e) ought not reasonably be expected to have been known, by the person making the payment or doing the act, at the time of the payment or act; or
 - (f) could not, by reasonable inquiry by the person making the payment or doing the act, have been known by the person at the time of the payment or act.
- (d) by inserting the following subsection after subsection (1):
 - (1A) A person making a payment or doing any act, in good faith, under an enduring power of attorney is not liable in respect of

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the payment or act by reason that before the payment or act the power of attorney had been revoked by virtue of section 32AE, if the circumstances by virtue of which the power of attorney was so revoked under that section –

- (a) was not at the time of the payment or act known to the person making the payment or doing the act; or
- (b) ought not reasonably be expected to have been known, by the person making the payment or doing the act, at the time of the payment or act; or
- (c) could not, by reasonable inquiry by the person making the payment or doing the act, have been known by the person at the time of the payment or act.

19. Section 58B inserted

After section 58A of the Principal Act, the following section is inserted in Part 7:

**58B. Application of certain amendments made by
*Powers of Attorney Amendment Act 2013***

(1) In this section –

amending Act means the *Powers of Attorney Amendment Act 2013*.

- (2) Subject to this section, the amendments made by a provision of the amending Act to this Act apply to, and in relation to, a power of attorney created before the provision commences.
- (3) Nothing in this section is to be taken to limit the application, of the amendments made by a provision of the amending Act to this Act, to a power of attorney created after the provision commences.
- (4) The amendments made by a provision of the amending Act to Division 1 of Part 3 do not apply in relation to a power of attorney created before the provision commences.
- (5) The amendments made by a provision of the amending Act to section 11(4A), section 20 or 21 apply to, and in relation to, an existing power of attorney created before the provision commences, but only to, or in relation to, the taking of an action, or an action taken, after the provision commences.
- (6) The amendments made by a provision of the amending Act to sections 31 and 32

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apply to, and in relation to, an existing power of attorney created before the provision commences, but only to, or in relation to, the taking of an action, or an action taken, after the provision commences.

- (7) Sections 32AB and 32AC apply to, and in relation to, an enduring power of attorney created before the provision commences, but only to, or in relation to, the taking of an action, or an action taken, after the provision commences.
- (8) Section 32AD applies to, and in relation to, an enduring power of attorney created before the provision commences, but only in relation to a dealing or transaction made after the section commences.
- (9) Section 32AE(3) only applies to, and in relation to, a power of attorney created before the provision commences if a circumstance set out in section 32AE(3) arises in relation to the power of attorney after section 32AE(3) commences.
- (10) If, before section 32AE(5) commences, an attorney in respect of a power of attorney dies, becomes subject to mental incapacity, or becomes bankrupt or insolvent, section 32AE(5) applies in relation to the power of attorney on the day on which section 32AE(5) commences.

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- (11) Section 32AF only applies in relation to a power of attorney created before that section commences if a subsequent power of attorney referred to in that section and to which that section relates is made after that section commences.
- (12) Section 32AH applies to, and in relation to, an enduring power of attorney created before the provision commences, but only if the donor of the power is not mentally incapacitated before the section commences.

20. Schedule 1 amended (Forms)

Schedule 1 to the Principal Act is amended by omitting Forms 3 and 4 and substituting:

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FORM 3

Section 30(1)(b) and (2)(c)

Powers of Attorney Act 2000

PARTICULAR ENDURING POWER OF ATTORNEY

THIS PARTICULAR ENDURING POWER OF ATTORNEY is made under the *Powers of Attorney Act 2000*.

Name of donor:

Address of donor:

1. I APPOINT

Name of attorney:

Address of attorney:

*Name of attorney:

*Address of attorney:

to be my attorney(s) *jointly/jointly and severally.

2. I AUTHORISE my attorney(s) to do on my behalf any of the following things:

3. I DECLARE that this particular enduring power of attorney will continue to operate and have full force and effect despite any subsequent mental incapacity I may suffer.

Signature of donor: Date:

We certify that the donor has signed this particular enduring power of attorney in our presence.

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I certify that I am not a party to this particular enduring power of attorney nor a close relative to a party to it.

Signature of first witness: Date:

Name of first witness:

Address of first witness:

Signature of second witness: Date:

Name of second witness:

Address of second witness:

**STATEMENT OF ACCEPTANCE OF PARTICULAR
ENDURING POWER OF ATTORNEY**

*I/we, the abovenamed attorney(s) under the power created by this particular enduring power of attorney on which this acceptance is endorsed (or to which this acceptance is annexed) accept the appointment and acknowledge –

- (a) that this particular enduring power of attorney is an enduring power of attorney and may be exercised by *me/us despite any subsequent mental incapacity of the donor; and
- (b) that *I/we will, by accepting this particular enduring power of attorney, be subject to the requirements of the *Powers of Attorney Act 2000*.

Signature of attorney: Date:

*Signature of attorney: Date:

*Omit if not applicable.

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FORM 4

Section 30(1)(c) and (2)(c)

Powers of Attorney Act 2000

GENERAL ENDURING POWER OF ATTORNEY

THIS GENERAL ENDURING POWER OF ATTORNEY is made under the *Powers of Attorney Act 2000*.

Name of donor:

Address of donor:

1. I APPOINT

Name of attorney:

Address of attorney:

*Name of attorney:

*Address of attorney:

to be my attorney(s) *jointly/jointly and severally.

2. I AUTHORISE my attorney(s) to do on my behalf anything that I may lawfully do.

3. I DECLARE that this general enduring power of attorney will continue to operate and have full force and effect despite any subsequent mental incapacity I may suffer.

Signature of donor: Date:

We certify that the donor has signed this general enduring power of attorney in our presence.

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I certify that I am not a party to this general enduring power of attorney nor a close relative to a party to it.

Signature of first witness: Date:

Name of first witness:

Address of first witness:

Signature of second witness: Date:

Name of second witness:

Address of second witness:

**STATEMENT OF ACCEPTANCE OF GENERAL ENDURING
POWER OF ATTORNEY**

*I/we, the abovenamed attorney(s) under the power created by this general enduring power of attorney on which this acceptance is endorsed (*or* to which this acceptance is annexed) accept the appointment and acknowledge –

- (a) that this general enduring power of attorney is an enduring power of attorney and may be exercised by *me/us despite any subsequent mental incapacity of the donor; and
- (b) that *I/we will, by accepting this general enduring power of attorney, be subject to the requirements of the *Powers of Attorney Act 2000*.

Signature of attorney: Date:

*Signature of attorney: Date:

*Omit if not applicable.

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21. Repeal of Act

This Act is repealed on the three hundredth and sixty fifth day from the day on which all of the provisions on this Act commence.