

TASMANIA

**POWERS OF ATTORNEY AMENDMENT BILL
2008**

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**POWERS OF ATTORNEY AMENDMENT BILL
2008**

*(Brought in by the Minister for Primary Industries and Water,
the Honourable David Edward Llewellyn)*

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 2008*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

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

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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 “enduring power of attorney”:

“instrument” includes registration application;

- (b) by omitting the definition of “person acting judicially”;

- (c) by inserting the following definition after the definition of “register”:

“registration application” means a registration application in accordance with form 5;

5. Section 4 amended (Register of powers of attorney)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “copies of” after “consists of”;

- (b) by omitting from subsection (2) “or any other”;

- (c) by inserting in subsection (4) “a copy of” after “register”;

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(d) by inserting the following subsection after subsection (4):

(5) For the purposes of this section, a copy of a power of attorney, instrument varying or revoking a power of attorney or any other instrument relating to powers of attorney is to be made by a process approved by the Recorder.

6. Sections 9 and 10 substituted

Sections 9 and 10 of the Principal Act are repealed and the following sections are substituted:

9. Formal requirements

(1) A power of attorney made or created under section 18 or 30 must –

(a) not have more than one donor;
and

(b) be signed by the donor with that signature attested by the signature of –

(i) in the case of an enduring power of attorney, two witnesses neither of whom is a party to it and each of whom has witnessed it in the

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presence of the donor and
each other; or

(ii) in the case of any other
power of attorney, a
witness who is not a party
to it and who witnesses it
in the presence of the
donor; and

(c) comply with this Act; and

(d) be legible; and

(e) be capable of producing a legible
copy by a process approved by
the Recorder; and

(f) contain any matter that is
intended to be in addition to, or to
be inserted in and form part of, a
power of attorney in a page of
that power of attorney or in the
form of an annexure; and

(g) be on A4-size paper; and

(h) if it consists of more than one
page, have each page
consecutively numbered and be
stapled or pinned in the top left
hand corner; and

(i) be accompanied by a registration
application; and

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- (j) include or be accompanied by any information or document required by the Recorder.
- (2) An annexure to a power of attorney must –
- (a) be in the same size and form as the power of attorney; and
 - (b) be referred to in the power of attorney; and
 - (c) contain identification that it is the annexure to the power of attorney; and
 - (d) subject to subsection (3), be signed by the parties to the power of attorney or, where the party is a body corporate, by the persons who have attested the affixing of the seal of that body corporate to the power of attorney; and
 - (e) comply with this Act.
- (3) If one of the parties to a power of attorney is a body corporate that is not required by law to affix its seal to the power of attorney, an annexure to the power of attorney is to be signed by any person who is authorised by law to execute the power of attorney.
- (4) An alteration to a power of attorney or annexure –

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- (a) is to be made by striking through the word or words intended to be altered so as not to render illegible the original word or words; and
 - (b) is to be initialled by the donor and the attorney.
- (5) The initialling by the donor of an alteration to a power of attorney or annexure is to be witnessed –
 - (a) in the case of an enduring power of attorney or annexure to such a power of attorney, by two witnesses neither of whom is a party to it and each of whom has witnessed it in the presence of the donor and each other; or
 - (b) in the case of any other power of attorney or annexure to such a power of attorney, by a witness who is not a party to it and who witnesses it in the presence of the donor.
- (6) A witness to the initialling of an alteration to a power of attorney or annexure may be the same person as, or a different person to, the person who witnessed the power of attorney or annexure.

10. Requirements for other instruments

- (1) Subject to this section, section 9 applies as far as relevant –
 - (a) to an instrument that refers to a power of attorney, other than an instrument referred to in section 32A; and
 - (b) to an annexure to such an instrument.
- (2) An instrument that refers to a power of attorney, including an instrument referred to in section 32A, must clearly identify the power of attorney by reference to –
 - (a) the name of the donor; and
 - (b) the name of the attorney; and
 - (c) the date on which it was executed; and
 - (d) the distinctive number or other means of identification given under section 12(2).
- (3) Where an instrument that refers to a power of attorney is required to be signed by the donor, it is sufficient if it is signed by the donor's personal representative with a statement as to how and in what capacity he or she has been appointed to act.

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7. 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 omitting subsection (1) and substituting the following subsection:

(1) The Recorder must not register any power of attorney or other instrument under this Act unless it –

(a) complies with this Act;
and

(b) is accompanied by a registration application.

(b) by omitting subsections (3) and (4) and substituting the following subsections:

(3) If a power of attorney or other instrument is lodged with the Recorder under this Act for registration and does not comply with this Act, the Recorder must –

(a) refuse to register the power of attorney or other instrument and return it to the person who lodged it;
or

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- (b) return the power of attorney or other instrument to the person who lodged it with a notice notifying him or her that the Recorder will refuse to register the power of attorney or other instrument unless the specified corrections are made.
- (4) Where corrections are to be made as mentioned in subsection (3) –
- (a) the Recorder may refuse registration of the corrected power of attorney or other instrument if the corrections are not made within 60 days after notice under subsection (3)(b) was given, or within such further time as the Recorder may allow; and
 - (b) the corrections are to be initialled by the donor and attorney.
- (4A) The initialling of corrections to a power of attorney or other instrument by the donor under

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subsection (4)(b) is to be witnessed –

(a) in the case of an enduring power of attorney, by two witnesses neither of whom is a party to it and each of whom has witnessed it in the presence of the donor and each other; or

(b) in the case of any other power of attorney, a witness who is not a party to it and who witnesses it in the presence of the donor.

(4B) A witness to the initialling of corrections to a power of attorney or other instrument may be the same person as, or a different person to, the person who witnessed the power of attorney or other instrument.

(c) by omitting from subsection (5) “on” and substituting “in relation to”;

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

(5A) Despite any provision of this Act to the contrary, the Recorder may accept for registration a power of attorney, annexure or alteration to

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a power of attorney that does not comply with this Act if the Recorder considers it appropriate to do so in the particular circumstances.

8. Section 12 amended (Lodgment of powers of attorney, &c.)

Section 12 of the Principal Act is amended as follows:

(a) by omitting subsection (2) and substituting the following subsection:

(2) On lodgment of a power of attorney or other instrument, the Recorder must –

(a) identify the power of attorney or other instrument by endorsing on it a distinctive number, a distinctive letter and number or any other identifying procedure; and

(b) take a copy of the endorsed power of attorney or other instrument; and

(c) return the endorsed power of attorney or other

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instrument to the person
who lodged it.

- (b) by inserting in subsection (3)(a) “copy of the” after “on the”.

9. Section 18 amended (Form of power of attorney)

Section 18(1) of the Principal Act is amended by omitting “attorney” first occurring and substituting “attorney, other than an enduring power of attorney,”.

10. Section 26 amended (Appointment of attorney by class)

Section 26 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2) If a person does any act, or executes or signs a document, and purports to do so as a member of a class of persons appointed as attorneys under a power of attorney –
- (a) any other person dealing with the purported attorney may assume the purported attorney has sufficient authority to do the act, or sign or execute the document, as such an attorney; and

- (b) the doing of the act, or the signature on or execution of the document, is taken to be evidence that the purported attorney has sufficient authority to do the act, or sign or execute the document, as such an attorney.
- (3) This section does not apply to an enduring power of attorney.

11. Section 30 amended (Creation and effect of enduring powers of attorney)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (2);
- (b) by inserting the following subsection after subsection (4):
 - (5) If before the commencement of this subsection an attesting witness was not present, as required by Form 3 or Form 4 as in force before that commencement, when an attorney signed the form of acceptance on or relating to an enduring power of attorney (whether or not the witness attested that he or she witnessed the attorney's signature) –

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- (a) the enduring power of attorney is not and has never been, by that reason only, invalid; and
- (b) any act done, or document signed or executed, by the attorney is not and has never been, by that reason only, invalid.

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

Section 32 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “Subject to subsection (3), an” and substituting “An”;
- (b) by omitting subsection (3).

13. Section 32A inserted

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

32A. Substitution of The Public Trustee as attorney

- (1) If –
 - (a) a power of attorney appoints only one attorney, that attorney may

appoint The Public Trustee to act as attorney in his or her place; or

(b) a power of attorney appoints more than one attorney, those attorneys jointly may appoint The Public Trustee to act as sole attorney in their places.

(2) An appointment under subsection (1) is to be –

(a) in accordance with form 6; and

(b) signed by the attorney or all attorneys; and

(c) accepted by The Public Trustee in accordance with that form.

(3) An appointment is of no effect until registered by the Recorder.

(4) If The Public Trustee is appointed to act as attorney under this section, a reference in this Act to an attorney is taken to be a reference to The Public Trustee.

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

Section 33 of the Principal Act is amended by inserting after subsection (6) the following subsections:

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- (6A) If the Board adjourns a hearing held under this section, the Board may make any interim order or give any directions it considers appropriate, including making an order appointing The Public Trustee as administrator of the estate of the donor.
- (6B) Subsection (6A) does not authorise the Board to suspend the operation of an enduring power of attorney, or extend such a suspension, which may only be done by the Board under subsection (4) or (6).
- (6C) An interim order has effect for the period of the adjournment and any subsequent adjournment or as specified in the interim order.
- (6D) The Board may vary or revoke an interim order or make a further or subsequent interim order.

15. Section 55A substituted

Section 55A of the Principal Act is repealed and the following section is substituted:

55A. Prescribed fees

- (1) The fees prescribed in Schedule 2 are payable under this Act for the matters to which they respectively relate.
- (2) A prescribed fee –

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- (a) is to be paid to the Recorder or an agent appointed by the Recorder under section 169E of the *Land Titles Act 1980*; and
 - (b) may be paid in any manner approved by the Recorder.
- (3) A person, if so authorised by the Recorder or an agent appointed by the Recorder under section 169E of the *Land Titles Act 1980*, may pay a prescribed fee after the transaction to which it relates.

16. Schedule 1 substituted

Schedule 1 to the Principal Act is repealed and the following Schedule is substituted:

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SCHEDULE 1 – FORMS

Section 3(2)

FORM 1

Section 18(1)(b)

Powers of Attorney Act 2000

PARTICULAR POWER OF ATTORNEY

THIS PARTICULAR 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.

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

Signature of donor: Date:

I certify that the donor signed this particular power of attorney in my presence.

Signature of witness: Date:

Name of witness:

Address of witness:
.....

*Omit if not applicable.

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FORM 2

Section 18(1)(c)

Powers of Attorney Act 2000

GENERAL POWER OF ATTORNEY

THIS GENERAL 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.

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

Signature of donor: Date:

I certify that the donor signed this general power of attorney in my presence.

Signature of witness: Date:

Name of witness:

Address of witness:
.....

*Omit if not applicable.

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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:

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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.

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:
.....

*Omit if not applicable.

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**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.

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(s):

Address of attorney(s):

*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.

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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.

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:
.....

*Omit if not applicable.

**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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FORM 5

Section 3(1)

Powers of Attorney Act 2000

REGISTRATION APPLICATION

To: The Recorder

I apply to register the following instrument:

Type of instrument:

Number of pages (excluding this form):

Name of donor:

Name of attorney(s):

Identification number (*if applicable*):

I certify that the information contained in this registration application is correct to the best of my knowledge.

Signed: Date:

Name:

Capacity: (*donor, attorney, legal practitioner, other*):

.....

Address:

.....

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FORM 6

Section 32A

Powers of Attorney Act 2000

**APPOINTMENT OF THE PUBLIC TRUSTEE AS
ATTORNEY UNDER ENDURING POWER OF
ATTORNEY**

1. ***I/WE APPOINT** The Public Trustee to act as attorney in
*my/our place(s) under the following enduring power of
attorney:

Name of donor:

Address of donor:

Name of attorney:

Address of attorney:

*Name of attorney:

*Address of attorney:

Date of execution:

Identification number:

Signature of attorney: Date:

*Signature of attorney: * Date:

*Omit if not applicable.

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ACCEPTANCE BY THE PUBLIC TRUSTEE

The Public Trustee accepts this appointment to act as attorney under the enduring power of attorney identified in this appointment.

Signed *by/for and on behalf of The Public Trustee:

.....

Date:

Name of signatory:

Position of signatory:

*Omit if not applicable.