

NORTHERN TERRITORY OF AUSTRALIA
POWERS OF ATTORNEY REGULATIONS

As in force at 17 March 2014

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POWERS OF ATTORNEY REGULATIONS

Regulations under the *Powers of Attorney Act*

Part I Preliminary

1 Citation

These Regulations may be cited as the *Powers of Attorney Regulations*.

2 Definitions

In these Regulations, unless the contrary intention appears:

register means the Register of Powers of Attorney established under regulation 3.

registered power means a power created in an instrument that has been registered under section 7 of the Act and in accordance with these Regulations.

the Act means the *Powers of Attorney Act 1980*.

3 Establishment of Register

(1) The Registrar-General shall keep and maintain a Register of Powers of Attorney.

(2) The register shall include particulars of:

(a) the name of the donor; and

(b) the lodgement number and date of the instrument creating the power,

and where applicable:

(c) the date of the revocation of a power by the operation of section 16 of the Act;

- (d) the date of the revocation of a power by the operation of section 17 of the Act;
- (e) a protection order under the *Aged and Infirm Persons' Property Act*;
- (f) a court order revoking or varying the terms of an instrument creating a power under section 19(3) of the Act.

Part II Procedure, &c.

Division 1 Procedure

5 Procedure for registration of local instrument

- (1) Where a party to an instrument creating a power of attorney desires to register it, he shall deposit with the Registrar-General a duplicate or attested copy of the instrument accompanied by the relevant prescribed fee.
- (1A) A power of attorney:
 - (a) may be in accordance with the approved form; and
 - (b) shall only be registered if:
 - (i) the original was printed, typed or completed in ink; and
 - (ii) both the original and duplicate or attested copy bear the signature of each party (excluding the signature of the donor of the power if the instrument is signed by direction of the donor) and each witness; and
 - (iii) a specimen signature of the donee of the power is contained in the original, except where he or she is specified by reference to a named position; and
 - (v) it contains the donor of the power's full name and an address (which may be a postal address) for the service of notices; and
 - (vi) the name and either the contact address or telephone number of each witness is written, typed or stamped below the witness's signature; and
 - (vii) where the original purports to have been signed by a body corporate, it is authenticated by or on behalf of the corporation in a manner permitted by law.

- (2) The Registrar-General shall, on receiving a duplicate or attested copy referred to in subregulation (1):
- (a) compare it with the original instrument;
 - (b) on being satisfied that it is a true duplicate or attested copy, file it in his office; and
 - (c) note thereon the date and hour of its deposit,
- and shall, whenever registering a dealing under the power of attorney in relation to a dealing with land under the *Land Title Act*, record in the Register a note as to the deposit of the power of attorney.
- (3) An instrument revoking a power of attorney shall be in accordance with the approved form and a duplicate or attested copy may be registered, and shall be dealt with by the Registrar-General, in the same manner as a duplicate or attested copy of an instrument creating a power.

5AA Procedure for registration of interstate instrument

- (1) A party to an interstate instrument may apply to register the instrument by depositing with the Registrar-General:
- (a) a duplicate or attested copy of the instrument; and
 - (b) the prescribed fee.
- (2) The Registrar-General must not register the instrument unless the instrument has been certified:
- (a) by an Australian legal practitioner as having been executed or registered in compliance with the laws of the State or Territory in which the instrument was created; or
 - (b) by an interstate registering authority as having been registered by the authority.
- (3) In this regulation:

interstate instrument means an instrument mentioned in section 7(1A) of the Act.

interstate registering authority means an authority with the power under the laws of a State or another Territory to register an instrument creating a power of attorney.

5A Recording and use of common form provisions

- (1) A person may lodge with the Registrar-General, and the Registrar-General may retain, a memorandum in accordance with the approved form containing one or more provisions which are intended for incorporation by reference in instruments subsequently lodged for registration under the Act.
- (2) The Registrar-General may himself prepare such a memorandum and retain it.
- (3) A memorandum retained by the Registrar-General under subsection (1) or (2) shall be deemed to be registered.
- (4) An instrument under the Act may provide that a provision in a memorandum retained under subsection (1) or (2) is incorporated in the instrument, or is incorporated in it subject to specified modifications.
- (5) Where a provision is incorporated in an instrument by virtue of subsection (4), the party by or on behalf of whom the incorporation is effected shall, before the instrument is executed, provide the other party or parties with a copy of the provision or, as the case may be, of the provision and the modifications thereof.

Maximum penalty: 8 penalty units.

- (6) A failure to comply with subsection (5) in respect of an instrument does not affect the validity or effect of the instrument.

Division 2 Revocation, &c., of general and enduring powers

6 Application of Division 2

This Division applies to and in relation to revocation and protection in respect of registered general powers and registered enduring powers.

7 Court orders to be served on Registrar-General

Where:

- (a) the Court makes an order on an application under section 15 of the Act; or
- (b) a protection order is made under the *Aged and Infirm Persons' Property Act*,

the applicant for the order shall, within 14 days of its making, serve a copy of the order on the Registrar-General.

8 Notice of death

- (1) Where a registered power is revoked by:
- (a) the death of the donor of the power – the donee; or
 - (b) the death of the donee of the power – the donor,
- shall, within 14 days of his becoming aware of it, serve notice of the death on the Registrar-General, by:
- (c) lodging for registration a notice of revocation of power by death in the approved form; and
 - (d) lodging the relevant prescribed fee, if any; and
 - (e) providing an original or attested certificate of death for sighting by the Registrar-General or lodgment.
- (2) Where the donor or donee of a registered power dies, and the executor, administrator or trustee, as the case may be, of his estate becomes aware of the power, the executor, administrator or trustee shall make due inquiry of the other party to the power, and if that party has not complied with subregulation (1), the executor, administrator or trustee shall, within 14 days of becoming aware of it, serve notice of the death on the Registrar-General, by:
- (a) lodging for registration a notice of revocation of power by death in the approved form; and
 - (b) lodging the relevant prescribed fee, if any; and
 - (c) providing an original or attested certificate of death for sighting by the Registrar-General or lodgment.

9 Notice of retirement

The donee of a registered power shall, within 14 days after his retirement, serve notice of his retirement on the Registrar-General.

10 Notice of bankruptcy

Where the donor or donee of a registered power becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, he shall, within 14 days, serve notice of his bankruptcy or insolvency on the Registrar-General.

11 Notice of revocation by donor to be lodged

The donor of a registered power shall, within 14 days of his revocation of the power, serve notice of the revocation on the Registrar-General.

Division 3 Revocation of power to secure proprietary interest

12 Application of Division 3

This Division applies to and in relation to the revocation of registered powers given to secure a proprietary interest of the donee.

13 Notice of revocation

For the purposes of a revocation under section 19(2)(a) of the Act, of a registered power granted to secure a proprietary interest of the donee of the power, the donor and donee shall, within 14 days of the revocation of the power, serve notice of the revocation on the Registrar-General.

14 Notice of court order to be served on Registrar-General

For the purposes of a revocation or variation under section 19(2)(c) or (3) of the Act of a registered power granted to secure a proprietary interest of the donee, the applicant shall, within 14 days of the making of an order pursuant to his application by the Court, serve a copy of the order on the Registrar-General.

 ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Powers of Attorney Regulations (SL No. 66, 1982)

Notified	23 December 1982
Commenced	28 January 1983 (s 2 <i>Powers of Attorney Act 1980</i> (Act No. 25, 1980) and <i>Gaz</i> S5, 28 January 1983, p 1)

Amendment of the Powers of Attorney Regulations (SL No. 18, 1990)

Notified	11 July 1990
Commenced	11 July 1990

Amendments of Powers of Attorney Regulations (SL No. 22, 1991)

Notified	31 May 1991
Commenced	31 May 1991 (r 1 and <i>Statute Law Revision (Registration of Instruments) Act 1991</i> (Act No. 12, 1991))

Amendments of Powers of Attorney Regulations (SL No. 65, 1991)

Notified	11 December 1991
Commenced	1 January 1992 (r 1, s 2 <i>Registration Amendment Act 1991</i> (Act No. 54, 1991) and <i>Gaz</i> G49, 11 December 1991, p 4)

Amendments of Powers of Attorney Regulations (SL No. 31, 1995)

Notified	13 September 1995
Commenced	13 September 1995

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and <i>Gaz</i> G38, 27 September 2000, p 2)

Powers of Attorney Amendment Regulations 2008 (SL No. 7, 2008)

Notified	23 April 2008
Commenced	1 May 2008 (r 3, s 2 <i>Justice Legislation Amendment Act 2008</i> (Act No. 2, 2008) and <i>Gaz</i> G17, 30 April 2008, p 5)

Revenue Law Reform (Budget Initiatives) Act 2008 (Act No. 23, 2008)

Assent date 30 June 2008
 Commenced pt 1, ss 3, 12(1), 18 and 19: 1 January 2008;
 ss 7, 10 and 11(1): 6 May 2008; rem: 1 July 2008 (s 2)

Justice Legislation Amendment Act (No. 2) 2008 (Act No. 27, 2008)

Assent date 17 October 2008
 Commenced pt 2, div 3: 1 January 2006; rem: 17 October 2008 (s 2)

Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)

Assent date 20 May 2010
 Commenced 1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

Advance Personal Planning (Consequential Amendments) Act 2013 (Act No. 36, 2013)

Assent date 19 December 2013
 Commenced pt 3: 5 February 2014 (*Gaz* G5, 5 February 2014, p 2);
 rem: 17 March 2014 (*Gaz* S14, 17 March 2014)

3 LIST OF AMENDMENTS

- r 3 amd No. 22, 1991, r 3; No. 31, 1995, r 2; No. 36, 2013, s 139
- r 4 rep No. 65, 1991, r 2
- r 5 sub No. 22, 1991, r 4
- amd No. 31, 1995, r 3; Act No. 45, 2000, s 12; No. 7, 2008, r 4; Act No. 23, 2008, s 21; Act No. 27, 2008, s 28
- r 5AA ins No. 7, 2008, r 5
- r 5A ins No. 22, 1991, r 4
- amd Act No. 27, 2008, s 29; Act No. 12, 2010, s 3
- r 7 amd No. 31, 1995, r 4; No. 36, 2013, s 139
- r 8 amd No. 31, 1995, r 5; Act No. 27, 2008, s 30
- r 14 amd No. 31, 1995, r 6; No. 36, 2013, s 139
- sch 1 amd No. 18, 1990
- sub No. 22, 1991, r 5
- rep No. 65, 1991, r 3
- sch 2 ins No. 22, 1991, r 5
- amd No. 31, 1995, r 7; Act No. 23, 2008, s 21
- rep Act No. 27, 2008, s 31