

NORTHERN TERRITORY OF AUSTRALIA

POWERS OF ATTORNEY ACT

As in force at 1 May 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 2016

POWERS OF ATTORNEY ACT

An Act relating to powers of attorney

Part I Preliminary

1 Short title

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

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Repeal

The *Powers of Attorney Act 1979* is repealed.

4 Application

- (1) Unless the contrary intention appears, this Act applies only to and in relation to powers created after the commencement of this Act.
- (2) This Act extends to powers authorizing dealings with land.

5 Definitions

In this Act:

agent, for a person, means any of the following:

- (a) a decision maker appointed by the person under the *Advance Personal Planning Act*;
- (b) a guardian appointed for the person under the *Adult Guardianship Act*;
- (c) a manager appointed for the person under the *Aged and Infirm Persons' Property Act*;
- (d) any other person who has lawful authority to manage the person's affairs.

approved form means a form approved by the Registrar-General under section 23.

Court, means the Local Court.

enduring power means a power created by an instrument referred to in section 13.

legal incapacity, in relation to a person, means such a state of mental or physical incapacity that he is not capable of managing his affairs.

power means power of attorney.

prescribed, in relation to fees, means prescribed under the *Registration Act*.

Public Trustee means the Public Trustee within the meaning of the *Public Trustee Act*.

registered means registered as prescribed.

Part II Powers of attorney generally

6 Execution of instruments creating or revoking powers

- (1) This section does not apply in respect of an instrument creating a power executed by a body corporate as a donor.
- (2) Subject to this Act and any other law in force in the Territory, an instrument creating or revoking a power shall be signed by or by direction and in the presence of the donor of the power.
- (3) An instrument creating or revoking a power shall be valid and effectual although not under seal.
- (4) An instrument creating a power must be executed in the presence of and attested by:
 - (a) if the instrument is signed by the donor – a person mentioned in Schedule 2; or
 - (b) if the instrument is signed by direction of, and in the presence of, the donor – a person mentioned in Schedule 2 and another person.

6A Recognition of powers under interstate laws

- (1) This section applies to a power regardless of when it is executed.

- (2) Subsection (3) applies if:
- (a) the power is executed under the law of a State or another Territory (the ***interstate general power***); and
 - (b) under the law, the interstate general power is revoked if the donor of the power subsequently becomes legally incapable.
- (3) The interstate general power is taken to be a general power created under this Act to the extent that the powers it gives could validly have been given by a general power created under this Act.
- (4) Subsection (5) applies if:
- (a) the power is executed under the law of a State or another Territory (the ***interstate enduring power***); and
 - (b) under the law, the interstate enduring power is not revoked if the donor of the power subsequently becomes legally incapable; and (c) the instrument creating the power is not a recognised interstate document under section 88 of the *Advance Personal Planning Act*.
- (5) The interstate enduring power is taken to be an enduring power created under this Act to the extent that the powers it gives could validly have been given by an enduring power created under this Act.
- (6) In this section:
- general power*** means a power to which section 16 applies.

7 Registration

- (1) An instrument creating or revoking a power may be registered.
- (1A) An instrument creating or revoking a power, including an enduring power, executed in a State or another Territory under the law of the State or Territory may be registered regardless of when it is executed.
- (2) The fee for registration under subsection (1) is the prescribed fee.

8 Dealings in land

- (1) Subject to this section, a dealing in relation to land (a lease of land for a period of not more than one year excepted) purporting to take effect in pursuance of the exercise of a power shall be of no force or effect unless the instrument creating the power is registered.

- (2) Subject to any other law in force in the Territory, upon the registration, at any time subsequent to a dealing in relation to land referred to in subsection (1), of the instrument creating the power, the dealing shall take effect as if the instrument creating the power had been registered before the instrument purporting to give effect to the dealing.
- (4) The fee for registration of a dealing in relation to land is the prescribed fee.

9 Powers given to secure proprietary interests, &c.

- (1) A power given to secure a proprietary interest of the donee of the power may be given to the person entitled to the interest and the persons deriving title to the interest through him, and those latter persons shall, while they hold the interest, be duly constituted donees of the power for all purposes of the power.
- (2) Subsection (1) does not affect any right given by the power to appoint substitutes.

10 Execution of instruments in pursuance of power

- (1) This section applies to and in relation to a power created either before or after the commencement of this Act.
- (2) Unless the contrary intention appears in the instrument creating the power, the donee of a power may:
 - (a) execute any instrument with his own signature and, where sealing is required, with his own seal; and
 - (b) do any other thing in his own name,by the authority of the donor of the power and any such instrument or thing shall be as effective as if executed or done, as the case may be, by the donor of the power.
- (3) A donee of a power shall not execute any instrument in accordance with the power unless he executes that instrument in such a way as to show that:
 - (a) he does so for and on behalf of the donor of the power; and
 - (b) if the instrument creating the power is registered at the time of the execution of the instrument first mentioned, the instrument creating the power is registered.

11 Accounts

The donee of a power shall keep, and furnish to the donor at the donor's request and expense, a true and accurate record of any transaction entered into by him as donee of the power charging or otherwise disposing of, whether for valuable consideration or otherwise, any of the assets of the donor of the power.

12 Proof of instruments creating powers

- (1) This section does not affect the application of any other law in force in the Territory in relation to the proof of documents.
- (2) The contents of an instrument creating or revoking a power may be proved by means of a copy of the instrument which:
 - (a) is a reproduction of the original instrument made with a photographic or other device for reproducing documents in facsimile; and
 - (b) contains the following certificate or certificates signed by the donor of the power or by a legal practitioner:
 - (i) a certificate at the end of the copy to the effect that the copy of the instrument is a true and complete copy of the original instrument; and
 - (ii) if the original instrument consists of 2 or more pages, a certificate at the end of each page of the copy of the instrument to the effect that it is a true and complete copy of the corresponding page of the original instrument.
- (3) Where a copy of an instrument creating or revoking a power has been made which complies with subsection (2), the contents of the original instrument may also be proved by means of a copy of that copy if the further copy itself complies with that subsection, taking references in it to the original instrument as references to the copy from which the further copy is made.
- (4) A person shall not sign a certificate under subsection (2)(b) or (3) knowing it to be false.

Maximum penalty: 8 penalty units.

Part III Enduring powers of attorney

Note for Part III

Although a new enduring power of attorney cannot be created in the Territory after the commencement of section 8 of the Advance Personal Planning Act, this Part continues to have effect in relation to enduring powers of attorney created in the Territory before that date and to interstate enduring powers recognised under section 6A(4) regardless of when they were created.

13 Enduring powers

Subject to this Act, a power created by an instrument which:

- (aa) was executed before the commencement of section 8 of the *Advance Personal Planning Act*; and
- (a) expressly evidences an intention on the part of the donor of the power that the power shall continue in effect notwithstanding any subsequent legal incapacity of the donor of the power; and
- (b) has endorsed thereon or annexed thereto a statement of acceptance in or to the effect of Schedule 1 by the donee of the power; and
- (c) is registered,

may be exercised by the donee of the power notwithstanding any legal incapacity of the donor of the power occurring after the execution of the instrument creating the power.

14 Execution of instrument creating enduring power

A person who witnesses an instrument creating an enduring power under section 6(4) must not be a party to the instrument or near relative of the donee of the power.

15 Enduring powers – powers of Court

- (1) The donee of an enduring power shall not retire without the leave of the Court.
- (2) The Public Trustee, an agent for the donor of an enduring power or any other person who has an interest in any property which may be dealt with by the donee of an enduring power may, at any time after the donor of the enduring power is legally incapacitated, apply to the Court for an order:
 - (a) requiring the donee of the enduring power to file in the Court and serve on the applicant for the order, a copy of the records referred to in section 11; or

- (b) requiring records referred to in section 11 to be audited by an auditor appointed by the Court, and requiring a copy of the report of that auditor to be furnished to the Court and the applicant for the order; or
 - (c) revoking or varying the terms of the instrument creating the enduring power in such manner as the Court thinks fit (including by the appointment of a substitute donee of the power); or
 - (d) giving such orders to the donee of the power as the Court thinks fit for the purpose of facilitating a reasonable and workable division of decision making authority between the donee and any agents for the donor of the power.
- (3) The Court has jurisdiction to make an order sought in an application under this section.
 - (4) The power of the Court under subsection (3) includes the power to appoint the Public Trustee as a substitute donee.
 - (5) An order or grant of leave under this section may be subject to such terms and conditions as the Court thinks fit.
 - (6) In deciding whether to make an order under subsection (2)(c) or (d), the Court must take into account whether the donor of the enduring power has an advance personal plan (as defined in section 3 of the *Advance Personal Planning Act*) and, if so, the terms of the plan (including as to any appointment of a decision maker).

15A Exercise of power

- (1) If the donor of an enduring power has made an advance care statement (as defined in section 3 of the *Advance Personal Planning Act*), the donee of the power must exercise that power so as to give effect to the statement even if doing so is not in the donor's best interests, unless:
 - (a) the donor, having capacity to do so, states that he or she does not want effect to be given to that statement; or
 - (b) a circumstance mentioned in section 23(2)(a) to (e) of the *Advance Personal Planning Act* exists.
- (2) If the donor of an enduring power has one or more agents, the donee of the power must cooperate with all such persons to enable all of them to properly exercise their powers and perform their duties for the donor.

Part IV Revocation of powers of attorney and protections

16 Revocation of general powers

Subject to this Part, a power is revoked by:

- (a) the death of the donor or donee of the power;
- (b) the legal incapacity of the donor or donee of the power at any time after the execution of the instrument creating the power;
- (c) the retirement of the donee of the power;
- (d) the donor or donee of the power's becoming bankrupt, applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his creditors or making an assignment of his remuneration for their benefit; or
- (e) the revocation of the power by the donor of the power.

17 Revocation of enduring powers

- (1) This section applies to and in relation to enduring powers.
- (2) Subject to this Part (section 16 excepted), an enduring power is revoked:
 - (a) by the occurrence of any of the events referred to in section 16(a), (c), (d) or (e) in relation to the power;
 - (b) by the legal incapacity of the donee of the power at any time after the execution of the instrument creating the power; or
 - (c) upon the order of the Court under section 15(2)(c) revoking the power coming into operation,

whichever is the sooner.

18 Effect of protection order

Subject to section 19, upon the making of a protection order under the *Aged and Infirm Persons' Property Act*, a power is revoked to the extent to which it authorizes the donee of the power to deal with property the subject of the protection order.

19 Revocation of powers given to secure proprietary interests, &c.

- (1) This section applies to and in relation to powers which are granted to secure a proprietary interest of the donee of the power or the performance of an obligation owed to the donee of the power and are expressed in the instrument creating the power to be irrevocable.
- (2) While the donee of a power to which this section applies has the proprietary interest referred to in subsection (1) or while the obligation referred to in that subsection remains undischarged, the power:
 - (a) shall not be revoked by the donor without the consent of the donee;
 - (b) is not revoked by the death, legal incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding up or dissolution; and
 - (c) is not revoked upon the making of a protection order under the *Aged and Infirm Persons' Property Act* unless the Court expressly revokes it.
- (3) Where the donor of a power is a protected person within the meaning of the *Aged and Infirm Persons' Property Act*, the Court may revoke or vary the terms of the instrument creating the power in such manner as the Court thinks fit.

20 Protection of donee

The donee of a power which has been revoked who acts in pursuance of the power shall not incur any liability by reason of the revocation either to the donor of the power or to any other person:

- (a) unless the donee of the power has actual notice of the revocation of the power; or
- (b) if the power has been created by an instrument which has been registered:
 - (i) and the act is an act with respect to a dealing in relation to land (a lease for a period of not more than one year excepted) – unless an instrument revoking the power has been registered; or
 - (ii) in any other case – unless a period of 30 days from the registration of an instrument revoking the power has elapsed.

21 Protection of third parties

Where a power has been revoked, a transaction between the donee of the power and another person shall be as valid and effectual, in favour of that latter person, as if the power had not been revoked:

- (a) unless the latter person has actual notice of the revocation of the power; or
- (b) if the power has been created by an instrument which has been registered:
 - (i) and the transaction is a dealing in relation to land (a lease for a period of not more than one year excepted) – unless an instrument revoking the power has been registered; or
 - (ii) in any other case – unless a period of 30 days from the registration of an instrument revoking the power has elapsed.

21A Effect of *Adult Guardianship Act*

- (1) The appointment of a guardian under the *Adult Guardianship Act* for a person who is the donor of an enduring power of attorney does not revoke that power.
- (2) Until the guardian appointed under the *Adult Guardianship Act* for a person who is the donor of an enduring power of attorney has notice of that power, any action taken by the guardian under that Act is valid and effectual.

Part V Miscellaneous**22 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may make provision for or with respect to:
 - (a) the establishment of a register;
 - (c) the practice and procedure to be followed,

in relation to the registration of instruments under this Act.

23 Approved forms

The Registrar-General may approve forms for use under this Act.

24 Registrar-General's directions

- (1) The Registrar-General may, by *Gazette* notice, issue directions relating to the requirements for lodging, registering, witnessing or giving documents under this Act.
- (2) The notice must specify a place where the directions are available for inspection by the public, without charge, during normal business hours.
- (3) A person must comply with the directions unless the Registrar-General dispenses with compliance.
- (4) The Registrar-General must comply with a direction from the Minister concerning the directions.

Schedule 1 Form of acceptance of enduring power of attorney

section 13(b)

I, _____, the donee of the power of attorney created by the instrument on which this acceptance is endorsed/to which this acceptance is annexed*, acknowledge that:

- (a) the power of attorney is an enduring power; that is, it may, if registered, be exercised by me notwithstanding any legal incapacity, within the meaning of the *Powers of Attorney Act*, of _____, the donor of the power of attorney, occurring after the execution of that instrument; and
- (b) I will, by accepting this power of attorney, be subject to the requirements of Part III of the *Powers of Attorney Act*.

.....
(Donee of the power of attorney)

* Delete if inapplicable

Schedule 2 Witnesses to instruments

section 6(4)

Place of execution of instrument	Persons who can witness execution
The Territory	<p>a commissioner for oaths</p> <p>a member of the Legislative Assembly</p> <p>a legal practitioner</p> <p>a person holding office under the <i>Supreme Court Act, Justices of the Peace Act, Local Court Act or Registration Act</i></p> <p>a police officer</p> <p>a person licensed as a conveyancing agent or real estate agent under the <i>Agents Licensing Act</i></p> <p>a Notary Public</p> <p>any other person approved by the Registrar-General</p>
A State or another Territory	any person approved by Registrar-General's directions
A place outside Australia	any person approved by Registrar-General's directions

ENDNOTES

1

KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2

LIST OF LEGISLATION***Powers of Attorney Act 1980 (Act No. 25, 1980)***

Assent date 14 March 1980
 Commenced 28 January 1983 (*Gaz S5*, 28 January 1983)

Powers of Attorney Amendment Act 1980 (Act No. 11, 1981)

Assent date 9 January 1981
 Commenced 9 January 1981

Powers of Attorney Amendment Act 1988 (Act No. 42, 1988)

Assent date 14 September 1988
 Commenced 30 June 1989 (s 2, s 2 *Adult Guardianship Act 1988* (Act No. 45, 1988) and *Gaz G25*, 28 June 1989, p 5)

Statute Law Revision (Registration of Instruments) Act 1991 (Act No. 12, 1991)

Assent date 31 May 1991
 Commenced 31 May 1991

Registration (Consequential Amendments) Act 1991 (Act No. 55, 1991)

Assent date 26 September 1991
 Commenced 1 January 1992 (s 2, s 2 *Registration Amendment Act 1991* (Act No. 54, 1991) and *Gaz G49*, 11 December 1991, p 4)

Statute Law Revision Act 1992 (Act No. 46, 1992)

Assent date 7 September 1992
 Commenced 7 September 1992

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

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

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

Assent date 11 March 2008
 Commenced 1 May 2008 (*Gaz G17*, 30 April 2008, p 5)

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)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)

Assent date 18 November 2010
 Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz G7*, 16 February 2011, p 4)

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)

Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)

Assent date 6 April 2016
 Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz S34*, 29 April 2016)

3 LIST OF AMENDMENTS

- s 5 amd No. 12, 1991, s 5; No. 55, 1991, s 4; No. 27, 2008, s 12; No. 36, 2013, s 121
- s 6 amd No. 27, 2008, s 13
- s 6A ins No. 2, 2008, s 15
 amd No. 36, 2013, s 122
- s 7 amd No. 55, 1991, s 4; No. 45, 2000, s 7; No. 2, 2008, s 16
- s 8 amd No. 11, 1981, s 3; No. 12, 1991, s 5; No. 55, 1991, s 4
- s 12 amd No. 12, 2010, s 3
- pt III note ins No. 36, 2013, s 123
- s 13 amd No. 36, 2013, s 124
- s 14 sub No. 27, 2008, s 14
- s 15 amd No. 36, 2013, s 125
- s 15A ins No. 36, 2013, s 126
- s 17 amd No. 8, 2016, s 45
- s 19 amd No. 36, 2013, s 127
- s 21A ins No. 42, 1988, s 3
- s 22 amd No. 46, 1992, s 13
- ss 23 – 24 ins No. 27, 2008, s 15
- sch 2 ins No. 27, 2008, s 16
 amd No. 40, 2010, s 118; No. 8, 2016, s 45