

## Instruments (Enduring Powers of Attorney) Act 2003

Act No. 75/2003

### TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1. Purpose	1
2. Commencement	1
3. Amendment of Part XI of the <b>Instruments Act 1958</b>	2
4. New Part XIA inserted in the <b>Instruments Act 1958</b>	2
<b>PART XIA—ENDURING POWERS OF ATTORNEY</b>	<b>2</b>
<b>Division 1—Introductory</b>	<b>2</b>
114. Interpretation	2
<b>Division 2—Making an Enduring Power of Attorney</b>	<b>4</b>
115. What is an enduring power of attorney?	4
116. Recognition of enduring powers made in other States and Territories	4
117. When is the attorney's power exercisable?	4
118. When does a donor have capacity to make an enduring power of attorney?	5
119. Appointment of one or more attorneys	6
120. Appointment of alternative attorney	7
121. Can a person who is insolvent be an attorney?	7
122. Attorney can be head of religious order	7
123. What are the formal requirements for making an enduring power of attorney?	8
124. Who can sign for the donor?	8
125. Who can be a witness?	9
125A. What must the witnesses certify?	9
125B. Signature and undertaking of attorney required	10
125C. Enduring power of attorney to be a deed	11
<b>Division 3—Role of Attorney</b>	<b>11</b>
125D. Requirement to keep records	11
125E. Powers of attorney to execute instruments etc.	11
125F. Role of attorney where guardian appointed	12
125G. Role of attorney where administrator appointed	12

<i>Section</i>	<i>Page</i>
<b>Division 4—How is an Enduring Power of Attorney Revoked?</b>	<b>12</b>
<b><i>Subdivision 1—Introductory</i></b>	<b>12</b>
125H. Division not to affect revocation under other laws	12
<b><i>Subdivision 2—Revocation by Donor</i></b>	<b>13</b>
125I. Revocation in writing	13
125J. Revocation by later enduring power of attorney	13
125K. Death	13
<b><i>Subdivision 3—Revocation According to Terms</i></b>	<b>14</b>
125L. According to terms	14
<b><i>Subdivision 4—Revocation by Attorney</i></b>	<b>14</b>
125M. Resignation	14
125N. Legal incapacity	14
125O. Revocation if attorney becomes insolvent	14
125P. Death	15
<b><i>Subdivision 5—Revocation by Tribunal</i></b>	<b>15</b>
125Q. Revocation by Tribunal	15
<b><i>Subdivision 6—Effect of Revocation if More than One Attorney</i></b>	<b>15</b>
125R. Effect of revocation if more than one attorney	15
<b>Division 5—Protection from Liability</b>	<b>15</b>
125S. Definitions	15
125T. Protection if Court or Tribunal has given advice or direction or recommendation	16
125U. Protection for attorney and third persons who are unaware of invalidity	17
<b>Division 6—Jurisdiction of Tribunal</b>	<b>17</b>
<b><i>Subdivision 1—General Powers of Tribunal</i></b>	<b>17</b>
125V. Application to Tribunal	17
125W. Who is entitled to notice?	18
125X. General power of revocation of Tribunal	19
125Y. Declaration of invalidity	20
125Z. Further powers of Tribunal	20
125ZA. Advisory opinions	21
125ZB. Records and audit	21

<i>Section</i>	<i>Page</i>
<b><i>Subdivision 2—Rehearings</i></b>	<b>21</b>
125ZC. Application for rehearing	21
125ZD. Parties and notice	22
125ZE. Rehearing	23
125ZF. Effect of first instance order pending rehearing	23
<b>Division 7—General</b>	<b>24</b>
<b><i>Subdivision 1—Proof of Enduring Power of Attorney</i></b>	<b>24</b>
125ZG. Proof of enduring power of attorney	24
125ZH. Who may certify the copy?	24
125ZI. Proof by certified copy of certified copy	25
125ZJ. Other forms of proof not affected	25
125ZK. References to enduring powers of attorney	25
<b><i>Subdivision 2—Approval of Forms</i></b>	<b>26</b>
125ZL. Approved forms	26
<b><i>Subdivision 3—Regulations</i></b>	<b>26</b>
125ZM. Regulations	26
<b>Division 8—Transitional</b>	<b>26</b>
125ZN. Saving for existing enduring powers of attorney	26
125ZO. Existing powers of attorney from other jurisdictions	27
125ZP. Continuation of provisions relating to protected persons	27
5. Schedule 13 repealed	28
6. New clause 40F in Part 12 of Schedule 1 to the <b>Victorian Civil and Administrative Tribunal Act 1998</b>	28
40F. Constitution of Tribunal for proceedings	28
7. Amendment of Part 12 of Schedule 1 to the <b>Victorian Civil and Administrative Tribunal Act 1998</b>	29
8. Amendment of <b>Guardianship and Administration Act 1986</b>	29
<b>ENDNOTES</b>	<b>30</b>



Victoria

No. 75 of 2003

## **Instruments (Enduring Powers of Attorney) Act 2003<sup>†</sup>**

[Assented to 21 October 2003]

**The Parliament of Victoria enacts as follows:**

### **1. Purpose**

The main purpose of this Act is to amend the **Instruments Act 1958** to revise the laws relating to enduring powers of attorney.

### **2. Commencement**

- (1) Subject to sub-section (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 July 2004, it comes into operation on that day.

s. 3

*Instruments (Enduring Powers of Attorney) Act 2003*  
*Act No. 75/2003*

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See:  
Act No.  
6279/1958.  
Reprint No. 10  
as at  
1 January  
2003.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

**3. Amendment of Part XI of the Instruments Act 1958**

- (1) In section 104 of the **Instruments Act 1958** the definitions of "enduring power of attorney" and "Public Trustee" are **repealed**.
- (2) After section 105(2) of the **Instruments Act 1958** **insert—**  
  - "(3) Except as expressly provided in Part XIA, this Part does not apply to enduring powers of attorney."
- (3) Sections 114 to 118 of the **Instruments Act 1958** are **repealed**.

**4. New Part XIA inserted in the Instruments Act 1958**

After Part XI of the **Instruments Act 1958**  
**insert—**

**'PART XIA—ENDURING POWERS OF  
ATTORNEY**

**Division 1—Introductory**

**114. Interpretation**

- (1) In this Part—  
  - "approved form"** means a form approved by the Secretary under section 125ZL;
  - "donor"** means a person who makes an enduring power of attorney;
  - "enduring power of attorney"** means a power of attorney referred to in section 115;

**"insolvent"** means insolvent under administration as that expression is defined in the Corporations Act;

**"Public Advocate"** means the person appointed as the Public Advocate under the **Guardianship and Administration Act 1986**;

**"relative"** means—

- (a) spouse or domestic partner (within the meaning of the **Guardianship and Administration Act 1986**);  
or
- (b) son or daughter; or
- (c) mother or father; or
- (d) brother, sister, half-brother, half-sister, adoptive brother, adoptive sister, step-brother or step-sister;  
or
- (e) grandfather or grandmother; or
- (f) grandson or granddaughter; or
- (g) uncle or aunt; or
- (h) nephew or niece;

**"Secretary"** means Secretary to the Department of Justice;

**"Tribunal"** means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

**Division 2—Making an Enduring Power of Attorney**

**115. What is an enduring power of attorney?**

- (1) By an enduring power of attorney, an adult person ("**donor**") may—
  - (a) authorise one or more persons ("**attorneys**") to do anything on behalf of the donor that the donor can lawfully authorise an attorney to do; and
  - (b) provide conditions and limitations on, and instructions about, the exercise of the power.
- (2) Despite any rule of law to the contrary, an enduring power of attorney is not revoked by the subsequent legal incapacity of the donor of the power.

**116. Recognition of enduring powers made in other States and Territories**

If an enduring power of attorney is made in another State or Territory and complies with the requirements of that other State or Territory, then, to the extent the powers it gives could validly have been given by an enduring power of attorney made under this Part, the enduring power of attorney is to be taken to be an enduring power of attorney made under, and in compliance with, this Part.

**117. When is the attorney's power exercisable?**

- (1) A donor may specify in an enduring power of attorney a time from which, circumstance in which, or occasion on which, a power is exercisable.

- (2) If the enduring power of attorney does not specify a time from which, circumstance in which, or occasion on which, a power becomes exercisable, the power becomes exercisable once the enduring power of attorney is made.

**118. When does a donor have capacity to make an enduring power of attorney?**

- (1) A donor may make an enduring power of attorney only if the donor understands the nature and effect of the enduring power of attorney.
- (2) Understanding the nature and effect of the enduring power of attorney includes understanding the following matters—
- (a) that the donor may, in the power of attorney, specify conditions or limitations on, or instructions about, the exercise of the power to be given to the attorney;
  - (b) when the power is exercisable;
  - (c) that once the power is exercisable, the attorney has the same powers as the donor had (when not under a legal incapacity) to do anything for which the power is given subject to any limitations or restrictions on exercising the power included in the enduring power of attorney;
  - (d) that the donor may revoke the enduring power of attorney at any time the donor is capable of making an enduring power of attorney;



- (e) that the power the attorney is given continues even if the donor subsequently ceases to have legal capacity;
- (f) that at any time that the donor is not capable of revoking the enduring power of attorney, the donor is unable to effectively oversee the use of the power.

Note: It is advisable for the witness to make a written record of the evidence as a result of which the witness considers that the donor understands these matters.

### **119. Appointment of one or more attorneys**

- (1) A donor may in an enduring power of attorney appoint—
  - (a) a single attorney; or
  - (b) 2 or more joint attorneys, or
  - (c) 2 or more joint and several attorneys.
- (2) If 2 or more joint attorneys are appointed, all the attorneys can act only if they all agree and any documents must be signed by all of them.
- (3) If 2 or more joint and several attorneys are appointed—
  - (a) all the attorneys can act together if they all agree and any documents can be signed by all of them; or
  - (b) any of the attorneys can act and sign documents together or alone.
- (4) An attorney must be at least 18 years old.

**120. Appointment of alternative attorney**

- (1) A donor may in an enduring power of attorney appoint an adult person as an alternative attorney for a person appointed as attorney.
- (2) An alternative attorney may act as attorney under the enduring power of attorney only in the event of the death or during the period of the absence or legal incapacity of the attorney for whom the alternative attorney is appointed.

**121. Can a person who is insolvent be an attorney?**

A person is not eligible to be appointed as an attorney under an enduring power of attorney if the person is insolvent.

**122. Attorney can be head of religious order**

- (1) A person who is a member of a religious order may appoint the person who is the holder of the position of Victorian head of that order or the head of a local chapter of that order in Victoria as the attorney under an enduring power of attorney.
- (2) If an attorney is appointed under an enduring power of attorney in accordance with subsection (1), the person who is from time to time the holder of the position of Victorian head of the religious order or head of the relevant chapter of the order is deemed to be the attorney appointed under that enduring power of attorney.

**123. What are the formal requirements for making an enduring power of attorney?**

- (1) An enduring power of attorney must be in the approved form.

Note: An approved form is a form approved by the Secretary to the Department of Justice under section 125ZL.

- (2) An enduring power of attorney must be signed—
- (a) by the donor of the power; or
  - (b) by direction, and in the presence, of the donor of the power, by an eligible person.
- (3) The power of attorney must be signed and dated by 2 adult witnesses in the presence of the donor and each other.
- (4) The witnesses must be in accordance with section 125.
- (5) The enduring power of attorney must contain a certificate signed by each witness in accordance with section 125A.

**124. Who can sign for the donor?**

A person is eligible to sign an enduring power of attorney for the donor if the person—

- (a) is at least 18 years old; and
- (b) is not a witness for the enduring power of attorney; and
- (c) is not an attorney for the donor or a person nominated as an attorney in the enduring power of attorney.

**125. Who can be a witness?**

- (1) A person cannot be a witness to an enduring power of attorney if the person is—
  - (a) the donor of the power; or
  - (b) the person appointed as attorney.
- (2) Only one of the witnesses can be a relative of the donor of the power or of the person appointed as attorney.
- (3) One of the witnesses must be a person authorised by law to witness the signing of a statutory declaration.

**125A. What must the witnesses certify?**

- (1) If an enduring power of attorney is signed by the donor, it must include a certificate signed by each witness stating that—
  - (a) the donor signed the enduring power of attorney freely and voluntarily in the presence of the witness; and
  - (b) at the time, the donor appeared to the witness to have the capacity necessary to make the enduring power of attorney.
- (2) If an enduring power of attorney is signed by a person for the donor, it must include a certificate signed by each witness stating that—
  - (a) the donor of the power directed the person to sign the enduring power of attorney for the donor; and
  - (b) the donor of the power gave that direction freely and voluntarily in the presence of the witness; and

- (c) the person signed it in the presence of the donor and the witness; and
- (d) at the time, the donor appeared to the witness to have the capacity necessary to make the enduring power of attorney.

**125B. Signature and undertaking of attorney required**

- (1) An enduring power of attorney is effective in relation to an attorney only if the attorney has accepted the appointment in accordance with this section.
- (2) The attorney must sign and date a statement of acceptance.
- (3) The statement of acceptance must be in the approved form.

Note: An approved form is a form approved by the Secretary to the Department of Justice under section 125ZL.

- (4) The statement of acceptance must be endorsed on or attached to the enduring power of attorney.
- (5) The statement of acceptance must include an undertaking by the person accepting appointment as attorney—
  - (a) to exercise the powers conferred by the enduring power of attorney with reasonable diligence to protect the interests of the donor; and
  - (b) to avoid acting where there is any conflict of interest between the interests of the donor and the attorney's interests; and

- (c) to exercise the powers conferred by the enduring power of attorney in accordance with this Part.

**125C. Enduring power of attorney to be a deed**

An enduring power of attorney that complies with this Division is to be taken to be and have effect as a deed, even if it is not expressed to be executed under seal.

**Division 3—Role of Attorney**

**125D. Requirement to keep records**

An attorney under an enduring power of attorney must keep and preserve accurate records and accounts of all dealings and transactions made under the power.

**125E. Powers of attorney to execute instruments etc.**

- (1) The attorney under an enduring power of attorney may, if the attorney thinks fit—
  - (a) execute any instrument with the attorney's own signature, and, where sealing is required or employed, with the attorney's own seal; and
  - (b) do any other thing in the attorney's own name.
- (2) An instrument executed by the attorney under an enduring power of attorney must be executed in such a way as to show that the attorney does so as attorney for the donor of the power.
- (3) An instrument executed or thing done in the way specified in this section is as effective as if executed or done by the donor—
  - (a) with the donor's signature; or

- (b) with the donor's signature and seal; or
- (c) in the donor's name.

**125F. Role of attorney where guardian appointed**

- (1) An enduring power of attorney does not authorise the attorney to make a decision about the medical treatment of the donor of the power.
- (2) If a decision made by a guardian or enduring guardian within the meaning of the **Guardianship and Administration Act 1986** in the exercise of a power as guardian or enduring guardian conflicts with a decision made by an attorney under an enduring power of attorney, the decision of the guardian or enduring guardian prevails.

**125G. Role of attorney where administrator appointed**

If the Tribunal makes an administration order under the **Guardianship and Administration Act 1986** in respect of the person who is the donor of an enduring power of attorney, the attorney may exercise power under the enduring power of attorney only to the extent authorised by the Tribunal.

**Division 4—How is an Enduring Power of Attorney Revoked?**

*Subdivision 1—Introductory*

**125H. Division not to affect revocation under other laws**

- (1) This Division does not limit the events by which or the circumstances in which an enduring power of attorney—

- (a) is revoked whether orally or in writing or in another way; or
  - (b) is terminated by implication or operation of law.
- (2) Without limiting sub-section (1), an enduring power of attorney may be revoked in any way that a power of attorney may be revoked.

***Subdivision 2—Revocation by Donor***

**125I. Revocation in writing**

The donor of an enduring power of attorney may revoke the enduring power of attorney in writing in the approved form.

Note 1: An approved form is a form approved by the Secretary to the Department of Justice under section 125ZL.

Note 2: This is not the only way a power of attorney can be revoked in writing. See section 125H.

**125J. Revocation by later enduring power of attorney**

A donor's enduring power of attorney is revoked, to the extent of any inconsistency, by a later enduring power of attorney of the donor.

**125K. Death**

An enduring power of attorney is revoked when the donor dies.



***Subdivision 3—Revocation According to Terms***

**125L. According to terms**

An enduring power of attorney is revoked according to its terms.

**Example**

If an enduring power of attorney is expressed to operate for or during a specified period, it is revoked at the end of that period.

***Subdivision 4—Revocation by Attorney***

**125M. Resignation**

- (1) An attorney may resign as attorney by signed notice given to the donor.
- (2) Despite sub-section (1), if a donor ceases to have legal capacity, an attorney under an enduring power of attorney may only resign as attorney with the leave of a court or the Tribunal.
- (3) If an attorney under an enduring power of attorney resigns, the power of attorney is revoked to the extent that it confers power on the attorney.

**125N. Legal incapacity**

If an attorney under an enduring power of attorney ceases to have legal capacity, the power of attorney is revoked to the extent that it confers power on the attorney.

**125O. Revocation if attorney becomes insolvent**

If an attorney under an enduring power of attorney becomes insolvent, the power of attorney is revoked to the extent that it confers power on the attorney.

### **125P. Death**

If an attorney under an enduring power of attorney dies, the power of attorney is revoked to the extent that it confers power on the attorney.

#### ***Subdivision 5—Revocation by Tribunal***

### **125Q. Revocation by Tribunal**

An enduring power of attorney may be revoked by the Tribunal under Division 6.

#### ***Subdivision 6—Effect of Revocation if More than One Attorney***

### **125R. Effect of revocation if more than one attorney**

- (1) If 2 or more persons are appointed jointly and severally as attorneys under an enduring power of attorney, the revocation of the power in relation to one attorney does not affect the appointment or powers of the remaining attorneys.
- (2) If 2 or more persons are appointed jointly (but not jointly and severally) as attorneys under an enduring power of attorney, the revocation of the power in relation to one joint attorney also revokes the power in relation to each of the other joint attorneys.

#### **Division 5—Protection from Liability**

### **125S. Definitions**

In this Division—

**"invalidity"**, in relation to a power under an enduring power of attorney, includes invalidity because—

- (a) the power is not exercisable at the time when, circumstance in which, or occasion on which it is purportedly exercised; or
- (b) the enduring power of attorney has been declared to be invalid by a court or the Tribunal; or
- (c) the enduring power of attorney has been revoked; or
- (d) the enduring power of attorney was made in another State or Territory and does not comply with the requirements of that other State or Territory;

**"know"** in relation to the invalidity of a power, includes—

- (a) know of the happening of an event (such as the death of the donor) that invalidates the power; or
- (b) have reason to believe the power is invalid.

**125T. Protection if Court or Tribunal has given advice or direction or recommendation**

An attorney under an enduring power of attorney who acts in compliance with the advice, directions or recommendations of—

- (a) the Supreme Court in relation to the enduring power of attorney; or
- (b) the Tribunal under this Part—

is deemed to have complied with this Part unless the attorney knowingly gave the Court or the Tribunal false or misleading information relevant to the advice, directions

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or recommendations of the Court or the Tribunal.

**125U. Protection for attorney and third persons who are unaware of invalidity**

- (1) An attorney who, in good faith and without knowing a power under the enduring power of attorney is invalid, purports to exercise the power, is entitled as against the donor and any other person, to rely on the power despite the invalidity.
- (2) A person (and any person claiming under that person) who, in good faith and without knowing a power under an enduring power of attorney is invalid, acts in reliance on the purported exercise of the power by an attorney, is entitled as against the donor and any other person to rely on the power despite the invalidity.

**Division 6—Jurisdiction of Tribunal**

***Subdivision 1—General Powers of Tribunal***

**125V. Application to Tribunal**

- (1) An application may be made to the Tribunal for a declaration, order, direction or recommendation about—
  - (a) any matter or question relating to—
    - (i) the scope of an attorney's powers under an enduring power of attorney; or
    - (ii) the exercise of any power by an attorney under an enduring power of attorney; or
  - (b) any other thing in or related to this Part.

- (2) An application may be made by—
- (a) the Public Advocate; or
  - (b) the donor of the enduring power of attorney; or
  - (c) an attorney under the enduring power of attorney; or
  - (d) another person whom the Tribunal is satisfied has a special interest in the affairs of the donor.

**125W. Who is entitled to notice?**

- (1) Notice must be given under this section of—
- (a) an application to the Tribunal under this Subdivision;
  - (b) the hearing of the application;
  - (c) any hearing of the Tribunal under this Subdivision in relation to an enduring power of attorney;
  - (d) any order made by the Tribunal in respect of the application or an enduring power of attorney.
- (2) The persons entitled to notice are—
- (a) the Public Advocate;
  - (b) the donor of the enduring power of attorney;
  - (c) any attorney under the enduring power of attorney;
  - (d) any person specified in sub-section (3) to whom the Tribunal directs that notice is to be given.

- (3) The Tribunal may direct that notice is to be given to—
- (a) the nearest relative of the donor;
  - (b) the primary carer (if any) of the donor;
  - (c) any guardian of the donor;
  - (d) any person appointed as alternative guardian of the donor under the **Guardianship and Administration Act 1986**;
  - (e) any administrator of the estate of the donor;
  - (f) any person who has a special interest in the affairs of the donor.
- (4) In this section "**administrator**", "**guardian**", "**nearest relative**" and "**primary carer**" have the same meanings as they have in the **Guardianship and Administration Act 1986**.

#### **125X. General power of revocation of Tribunal**

- (1) The Tribunal, on its own initiative or on an application under section 125V, may revoke the appointment of an attorney under an enduring power of attorney if the Tribunal is satisfied that it is in the best interests of the donor to do so.
- (2) Before making a decision under sub-section (1), the Tribunal must be satisfied that the donor lacks the capacity to make an enduring power of attorney.

**125Y. Declaration of invalidity**

- (1) The Tribunal, on its own initiative or on an application under section 125V, may declare an enduring power of attorney to be invalid if it is satisfied that—
  - (a) the donor lacked capacity at the time the enduring power of attorney was made; or
  - (b) the enduring power of attorney does not comply with the requirements of this Part; or
  - (c) the enduring power of attorney is invalid for another reason, for example, the donor was induced to make it by dishonesty or undue influence.
- (2) If the Tribunal declares an enduring power of attorney invalid, the power is void from the start.

**125Z. Further powers of Tribunal**

- (1) The Tribunal, on its own initiative or on an application under section 125V, may—
    - (a) make a declaration or make recommendations or give any directions it considers necessary in relation to an enduring power of attorney;
    - (b) vary the effect of an enduring power of attorney;
    - (c) suspend for a specified period an enduring power of attorney, either generally or in respect of a specific matter;
    - (d) make any order it considers necessary in relation to an enduring power of attorney.
-

- (2) Without limiting sub-section (1), the Tribunal, on its own initiative, may give directions to an attorney under an enduring power of attorney in respect of any matter.

**125ZA. Advisory opinions**

The Tribunal may give an advisory opinion on any matter relating to an enduring power of attorney that is referred to it by a person referred to in section 125V(2).

**125ZB. Records and audit**

- (1) In the case of an enduring power of attorney, the Tribunal may make an order that—
- (a) the attorney lodges with the Tribunal, accounts or other documents relating to the exercise of the power for a specified period; or
  - (b) the accounts be examined or audited by a person appointed by the Tribunal and that a copy of the person's report be given to the Tribunal and the applicant.
- (2) The Tribunal may make the order on its own initiative or on the application of the donor or the Public Advocate or another interested person.
- (3) The Tribunal may make an order about payment to a person appointed under sub-section (1) of the costs of the examination or audit of accounts.

***Subdivision 2—Rehearings***

**125ZC. Application for rehearing**

- (1) If the Tribunal makes an order in respect of an application under Subdivision 1 (other than an order suspending an enduring power



- of attorney), a party or a person entitled to notice of the application may apply to the Tribunal for a rehearing of the application.
- (2) A person entitled to notice of the application who was not, or did not become, a party may apply for a rehearing only if the Tribunal gives leave.
  - (3) Sub-section (2) does not apply to the Public Advocate.
  - (4) An application for a rehearing, or for leave to apply for a rehearing, must be made within 28 days after the day of the order.
  - (5) If the Tribunal gives oral reasons for making an order and a party then requests written reasons under section 117 of the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which the written reasons are given to the party is deemed to be the day of the order for the purposes of sub-section (4).
  - (6) A person cannot apply for a rehearing of an application if—
    - (a) the order was made by the Tribunal constituted by the President, whether with or without others; or
    - (b) the application was for a rehearing or for leave to apply for a rehearing.

**125ZD. Parties and notice**

- (1) A party to the proceeding on an application under Subdivision 1 is a party to a rehearing of the application under this Subdivision, in addition to any other parties.

- (2) A person who was entitled to notice of the making of an application under Subdivision 1 is entitled to notice of an application for a rehearing of the application under this Subdivision.

**125ZE. Rehearing**

- (1) On an application under section 125ZC, the Tribunal must rehear the matter and, for that purpose, the Tribunal has all the functions and powers that the Tribunal had with respect to the matter at first instance.
- (2) In determining a rehearing, the Tribunal may—
- (a) affirm the order of the Tribunal at first instance; or
  - (b) vary the order of the Tribunal at first instance; or
  - (c) set aside the order of the Tribunal at first instance and make another order in substitution for it.

**125ZF. Effect of first instance order pending rehearing**

- (1) Subject to sub-section (2), the making of an application for a rehearing does not affect the operation of any order to which the application relates or prevent the taking of action to enforce the order.
- (2) The Tribunal may make an order staying the operation of an order pending the determination of the rehearing of the application to which the order relates.

**Division 7—General**

***Subdivision 1—Proof of Enduring Power of Attorney***

**125ZG. Proof of enduring power of attorney**

- (1) An enduring power of attorney may be proved by a copy of the enduring power of attorney certified in accordance with this section and section 125ZH.
- (2) Each page, other than the last page, of the copy must be certified to the effect that the copy is a true and complete copy of the corresponding page of the original.
- (3) The last page of the copy must be certified to the effect that the copy is a true and complete copy of the original.

**125ZH. Who may certify the copy?**

- (1) Certification of a copy of an enduring power of attorney must be by one of the following persons—
  - (a) a justice of the peace;
  - (b) a legal practitioner;
  - (c) a public notary;
  - (d) any officer authorised by law to administer an oath;
  - (e) a financial services licensee;
  - (f) a regulated principal;
  - (g) a person of a prescribed class.

(2) In this section—

**"financial services licensee"** means a financial services licensee (as defined in section 761A of the Corporations Act) whose licence covers dealing in securities;

**"regulated principal"** means a regulated principal (as defined in section 1430 of the Corporations Act) who is authorised by Subdivision D of Division 1 of Part 10.2 of that Act to deal in securities.

**125ZI. Proof by certified copy of certified copy**

- (1) If a copy of an enduring power of attorney has been certified in accordance with sections 125ZG and 125ZH, the enduring power of attorney may also be proved by a copy, certified in accordance with those sections, of the certified copy.
- (2) For the purposes of sub-section (1), references in section 125ZG to the original power of attorney are to be taken to be references to the certified copy from which the further copy is made.

**125ZJ. Other forms of proof not affected**

This Division does not prevent an enduring power of attorney being proved in any other way.

**125ZK. References to enduring powers of attorney**

In this Part a reference to an enduring power of attorney includes a reference to a copy of the enduring power of attorney that complies with the requirements of this Division.

***Subdivision 2—Approval of Forms***

**125ZL. Approved forms**

- (1) The Secretary may approve forms for use under this Part.
- (2) The Secretary must publish in the Government Gazette any form approved under this Part.
- (3) If a document is required under this Part to be in the approved form, it is sufficient if the document is to the like effect of the approved form.

***Subdivision 3—Regulations***

**125ZM. Regulations**

The Governor in Council may make regulations for or with respect to any matter or thing that is authorised or required to be prescribed or necessary to be prescribed for the purposes of this Part.

**Division 8—Transitional**

**125ZN. Saving for existing enduring powers of attorney**

An enduring power of attorney under Part XI existing immediately before the commencement of the **Instruments (Enduring Powers of Attorney) Act 2003** has effect on and after that commencement as if the enduring power of attorney had been made under Division 2 of this Part.

**125ZO. Existing powers of attorney from other jurisdictions**

Section 116 applies to an enduring power of attorney whether made before or after the commencement of the **Instruments (Enduring Powers of Attorney) Act 2003**.

**125ZP. Continuation of provisions relating to protected persons**

- (1) If—
- (a) the donor of an enduring power of attorney was a protected person immediately before the commencement of the **Instruments (Enduring Powers of Attorney) Act 2003**; and
  - (b) the enduring power of attorney was in force immediately before that commencement—

the enduring power of attorney continues in force until it is revoked and the powers and duties of State Trustees under the **State Trustees (State Owned Company) Act 1994** in relation to the estates of protected persons do not apply in relation to the estate of the donor so long as the enduring power of attorney is effective.

- (2) Despite sub-section (1), until State Trustees has notice of an enduring power of attorney, any action taken by State Trustees under the **State Trustees (State Owned Company) Act 1994** in respect of the protected person is valid and effectual.
- (3) In this section "**protected person**" and "**State Trustees**" have the same meanings as they have in the **State Trustees (State Owned Company) Act 1994**.'

See:  
Act No.  
53/1998.  
Reprint No. 3  
as at  
1 July 2003  
and  
amending  
Act Nos  
18/2003 and  
30/2003.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

**5. Schedule 13 repealed**

Schedule 13 to the **Instruments Act 1958** is  
**repealed.**

**6. New clause 40F in Part 12 of Schedule 1 to the  
Victorian Civil and Administrative Tribunal Act  
1998**

In Part 12 of Schedule 1 to the **Victorian Civil  
and Administrative Tribunal Act 1998**, before  
clause 41 **insert—**

**"40F. Constitution of Tribunal for proceedings**

The Tribunal is to be constituted for the  
purposes of a rehearing under Subdivision 2  
of Division 6 of Part XIA of the  
**Instruments Act 1958** by—

- (a) a senior member or presidential member, if the order at first instance was made by the Tribunal constituted by an ordinary member;
- (b) a presidential member, if the order at first instance was made by the Tribunal constituted by a senior member;
- (c) a judicial member, if the order at first instance was made by the Tribunal constituted by a Deputy President;
- (d) a Vice President, if the order at first instance was made by the Tribunal constituted by more than one member (except where one or more of the members was a Vice President);
- (e) the President, if the order at first instance was made by the Tribunal constituted by a Vice President (whether with or without others)."

**7. Amendment of Part 12 of Schedule 1 to the  
Victorian Civil and Administrative Tribunal Act  
1998**

In clauses 41, 42(1), 43 and 44(1) of Schedule 1 to  
the **Victorian Civil and Administrative  
Tribunal Act 1998** for "section 118" (wherever  
occurring) substitute "Division 6 of Part XIA".

**8. Amendment of Guardianship and Administration  
Act 1986**

Section 86(2) of the **Guardianship and  
Administration Act 1986** is repealed.

See:  
Act No.  
58/1986.  
Reprint No. 6  
as at  
1 January  
2003  
LawToday:  
[www.dms.  
dpc.vic.  
gov.au](http://www.dms.dpc.vic.gov.au)



**ENDNOTES**

- † *Minister's second reading speech—*  
*Legislative Assembly: 28 August 2003*  
*Legislative Council: 14 October 2003*

The long title for the Bill for this Act was "to amend the **Instruments Act 1958** to revise the laws relating to enduring powers of attorney and for other purposes."