

Authorised Version
Powers of Attorney Act 2014
No. 57 of 2014

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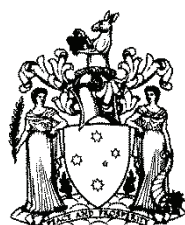
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Authorised Version



Victoria

Powers of Attorney Act 2014[†]

No. 57 of 2014

[Assented to 26 August 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are to—

- (a) consolidate and provide for certain aspects of the law relating to powers of attorney, including the following—
 - (i) the principles to be applied by persons acting under enduring powers of attorney or under the provisions of this Act relating to enduring powers of attorney; and

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- (ii) the powers and duties of attorneys under enduring powers of attorney; and
 - (iii) the protection of persons whose affairs are being dealt with under enduring powers of attorney; and
- (b) to provide for the meaning of the capacity of persons to make decisions for matters to which enduring powers of attorney and supportive attorney appointments relate; and
 - (c) to provide for the appointment of a supportive attorney as one who supports the person making the appointment to make and give effect to the person's own decisions; and
 - (d) to repeal Parts XI and XIA of the **Instruments Act 1958** and Division 5A of Part 4 of the **Guardianship and Administration Act 1986**; and
 - (e) to make related amendments to the **Instruments Act 1958**, the **Guardianship and Administration Act 1986** and other Acts; and
 - (f) to provide for related matters.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 September 2015, it comes into operation on that day.

3 Definitions

(1) In this Act—

accommodation provider, for an individual, means a person who is, in a professional or administrative capacity, directly or indirectly responsible for or involved in the provision of accommodation to the individual;

administration order has the same meaning as in the **Guardianship and Administration Act 1986**;

attorney for financial matters, for an enduring power of attorney, means an attorney who has power for financial matters under that enduring power of attorney;

attorney for personal matters, for an enduring power of attorney, means an attorney who has power for personal matters under that enduring power of attorney;

care worker, for an individual, means a person who performs services for the care of the individual and receives remuneration for those services from any source, but does not include—

- (a) a person who receives a carer payment or other benefit from the Commonwealth or a State or a Territory of the Commonwealth for providing home care for the individual; or
- (b) a person who is a health provider;

close friend, for a person, means another person who has a close personal relationship with the first person and a personal interest in the first person's welfare;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government, a government agency, a body corporate or a charitable or benevolent organisation);

enduring power of attorney means a power of attorney to which section 22 applies;

financial matter, in relation to a principal under an enduring power of attorney, or a supportive attorney appointment, means any matter relating to the principal's financial or property affairs, and includes any legal matter that relates to the financial or property affairs of the principal;

Examples

The following are examples of financial matters—

- (a) making money available to the principal for the principal's personal expenditure;
- (b) paying expenses for the principal and any dependants of the principal relating to the maintenance and accommodation of the principal and any dependants, including purchasing an interest in, or making a contribution to an establishment to accommodate the principal or any dependants of the principal or otherwise making payments in relation to such property;
- (c) paying any debts of the principal, including any fees and expenses to which an attorney is legally entitled;
- (d) receiving and recovering money payable to the principal;
- (e) carrying on any trade or business of the principal;
- (f) performing any contracts entered into by the principal;
- (g) discharging any mortgage over the principal's property;
- (h) paying rates, taxes and insurance premiums or other outgoings for the principal's property;
- (i) insuring the principal or the principal's property;
- (j) otherwise preserving or improving the principal's property;
- (k) making investments for the principal;
- (l) continuing investments of the principal, including taking up rights to issues of new shares, or options for new shares to which the principal becomes entitled by the principal's existing shareholding;
- (m) undertaking any real estate transaction for the principal;
- (n) dealing with land for the principal;

- (o) undertaking a beneficial transaction for the principal involving the use of the principal's property as security for an obligation, including taking out a loan on behalf of the principal or giving a guarantee on behalf of the principal;
- (p) withdrawing money from or depositing money into an account of the principal with a financial institution;

financial services licensee has the same meaning as in section 761A of the Corporations Act;

general non-enduring power of attorney means a non-enduring power of attorney that is made under section 7;

guardianship order has the same meaning as in the **Guardianship and Administration Act 1986**;

health provider means a person who provides health care in the practice of a profession or in the ordinary course of business;

legal matter, in relation to a principal under an enduring power of attorney, or a supportive attorney appointment, means—

- (a) use of legal services for the principal's benefit; or
- (b) bringing or defending a legal proceeding or hearing in a court, tribunal or other body on behalf of the principal, including settling a claim before or after a legal proceeding or hearing starts;

Examples

The following are examples of legal matters—

- (a) the use of legal services to obtain information about the principal's legal rights;
- (b) the use of legal services to make a transaction;

nearest relative means the relative first listed in the definition of relative who has attained the age of 18 years, the elder or eldest of two or more relatives described in any paragraph being preferred to any other so described, regardless of sex;

non-enduring power of attorney means a power of attorney that is not an enduring power of attorney;

offence involving dishonesty means an offence that involves dishonesty and that is punishable by at least 3 months' imprisonment, whether it is an offence in this State, the Commonwealth, another State or a Territory of the Commonwealth or a foreign state or country;

personal matter, in relation to a principal under an enduring power of attorney, or a supportive attorney appointment, means any matter relating to the principal's personal or lifestyle affairs, and includes any legal matter that relates to the principal's personal or lifestyle affairs;

Examples

The following are examples of personal matters—

- (a) where and with whom the principal lives;
- (b) persons with whom the principal associates;
- (c) whether the principal works and, if so, the kind and place of work and employer;
- (d) whether the principal undertakes education or training, the kind of education or training and the place where it takes place;
- (e) daily living issues such as diet and dress;
- (f) health care matters, including matters provided for in Part 4A of the **Guardianship and Administration Act 1986**;

principal means—

- (a) for a power of attorney, the person who makes the power of attorney;
- (b) for a supportive attorney appointment, the person who makes the supportive attorney appointment;

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

purchaser means a purchaser for valuable consideration and includes a lessee, mortgagee or other person who acquires an estate or interest in property for valuable consideration;

relative means any of the following—

- (a) spouse or domestic partner;
- (b) child;
- (c) parent or step-parent;
- (d) sibling or step-sibling;
- (e) grandparent;
- (f) grandchild;
- (g) uncle or aunt;
- (h) nephew or niece;

spouse of a person means a person to whom the person is married;

supportive attorney means a person appointed under a supportive attorney appointment;

supportive attorney appointment means an appointment under section 85;

supportive attorney for financial matters, for a supportive attorney appointment, means a supportive attorney who has power for financial matters under the supportive attorney appointment;

trustee company has the same meaning as in section 4 of the **Trustee Companies Act 1984**;

valuable consideration does not include a nominal consideration in money.

- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of the relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person merely because they are co-tenants.
- (3) A reference in the definition of *relative* in subsection (1) to a person's sibling includes a reference to an individual who was adopted by one or both of the person's parents.

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- (4) In this Act, a reference to signing at the direction of the principal, in relation to the signing of—
- (a) an enduring power of attorney, is a reference to signing the instrument in the presence of and at the direction of the principal under section 33(a)(ii); or
 - (b) a revocation of an enduring power of attorney, is a reference to signing the instrument in the presence of and at the direction of the principal under section 46(a)(ii); or
 - (c) a supportive attorney appointment, is a reference to signing the form in the presence of and at the direction of the principal under section 95(a)(ii); or
 - (d) a revocation of a supportive attorney appointment, is a reference to signing the form in the presence of and at the direction of the principal under section 105(a)(ii).

4 Meaning of decision making capacity

- (1) For the purpose of this Act, other than Part 2, a person has capacity to make a decision as to a matter (*decision making capacity*) if the person is able to—
- (a) understand the information relevant to the decision and the effect of the decision; and
 - (b) retain that information to the extent necessary to make the decision; and
 - (c) use or weigh that information as part of the process of making the decision; and
 - (d) communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

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- (2) For the purpose of subsection (1), a person is presumed to have decision making capacity unless there is evidence to the contrary.
 - (3) For the purpose of subsection (1)(a), a person is taken to understand information relevant to a decision if the person understands an explanation of the information given to the person in a way that is appropriate to the person's circumstances, whether by using modified language, visual aids or any other means.
 - (4) In determining whether or not a person has decision making capacity regard should be had to the following—
 - (a) a person may have decision making capacity for some matters and not others;
 - (b) if a person does not have decision making capacity for a matter, it may be temporary and not permanent;
 - (c) it should not be assumed that a person does not have decision making capacity for a matter on the basis of the person's appearance;
 - (d) it should not be assumed that a person does not have decision making capacity for a matter merely because the person makes a decision that is, in the opinion of others, unwise;
 - (e) a person has decision making capacity for a matter if it is possible for the person to make a decision in the matter with practicable and appropriate support.

Example

The following are examples of practicable and appropriate support—

- (a) using information or formats tailored to the particular needs of a person; or
 - (b) communicating or assisting a person to communicate his or her decision; or
 - (c) giving a person additional time and discussing the matter with the person; or
 - (d) using technology that alleviates the effects of a person's disability.
- (5) Despite subsection (4)(d), the fact that a person has made or proposes to make a decision that has a high risk of being seriously injurious to the person's health or wellbeing may, in conjunction with other factors, be evidence that the person is unable to understand, use or weigh information relevant to the decision or the effect of the decision.

5 Assessing decision making capacity

A person who is assessing whether a person has decision making capacity, must take reasonable steps to conduct the assessment at a time and in an environment in which the person's decision making capacity can be assessed most accurately.

PART 2—NON-ENDURING POWERS OF ATTORNEY

Division 1—Definitions

6 Definitions

In this Part—

statutory owner has the same meaning as in the
Settled Land Act 1958;

tenant for life has the same meaning as in the
Settled Land Act 1958;

trustee includes a tenant for life and a statutory
owner.

**Division 2—Scope and making of general non-enduring
powers of attorney**

7 General non-enduring power of attorney

- (1) A general non-enduring power of attorney that is in or to the effect of the form in the Schedule has the effect of giving the attorney under the power authority to do anything on behalf of the principal that a principal can lawfully do by an attorney.
- (2) A general non-enduring power of attorney that is in or to the effect of the form in the Schedule does not have the effect—
 - (a) of empowering the attorney to delegate a power under the power of attorney, unless so specified in the power of attorney; and
 - (b) of delegating to the attorney the execution or exercise of any trust, power or discretion vested in the principal as trustee (whether alone or jointly with any other person or persons).

8 Appointment of more than one attorney

- (1) A principal under a general non-enduring power of attorney may appoint more than one person as attorneys under the power.
- (2) If more than one attorney is appointed under the power—
 - (a) the principal may appoint the attorneys to act jointly or jointly and severally; or
 - (b) if the principal does not specify how the attorneys are appointed, the attorneys are taken to be appointed to act jointly.

9 Appointment of alternative attorneys

- (1) A principal under a general non-enduring power of attorney may appoint one or more persons as alternative attorneys under the power.
- (2) The principal may specify in the power of attorney the circumstances in which any alternative attorney may act under the power.

10 When attorney's power is exercisable

- (1) A principal may specify in a general non-enduring power of attorney a time from which, a circumstance in which or an occasion on which the power under the power of attorney is exercisable.
- (2) If a specification is not made in a general non-enduring power of attorney under subsection (1), the powers under the general non-enduring power of attorney are exercisable once the power of attorney is made.

**Division 3—Execution of non-enduring power of attorney
and execution of other documents under non-enduring
power of attorney**

**11 How should a non-enduring power of attorney be
executed?**

- (1) A non-enduring power of attorney may be executed—
 - (a) by the principal signing the non-enduring power of attorney; or
 - (b) by another person signing the non-enduring power of attorney, in the presence of and at the direction of the principal.
- (2) If a non-enduring power of attorney is executed by another person signing the non-enduring power of attorney in the presence of and at the direction of the principal—
 - (a) 2 other persons must be present and witness the person signing the non-enduring power of attorney; and
 - (b) the other persons must sign the non-enduring power of attorney.

12 Power of an attorney to execute instruments

- (1) An attorney acting under a non-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 (whether or not the power of attorney was given by hand); and
 - (b) do any other thing in the attorney's own name.

-
- (2) An instrument that is executed by an attorney must be executed in a way that shows that the attorney executes it as an attorney for the principal.
 - (3) An instrument that is executed or a thing that is done, by the attorney under a power of attorney, in the way specified in this section, is as effective as if it had been done by the principal—
 - (a) with the principal's signature; or
 - (b) with the principal's signature and seal; or
 - (c) in the principal's name.
 - (4) An instrument to which section 74(3) or (4) of the **Property Law Act 1958** applies may be executed either as provided for in that section or in this section.

Division 4—Protection from liability

13 Interpretation

For the purpose of this Division, knowledge that a non-enduring power of attorney is invalid or has been revoked includes the following—

- (a) knowledge of the happening of an event that invalidates or revokes the non-enduring power of attorney or a power under the non-enduring power of attorney;
- (b) having reason to believe that the non-enduring power of attorney, or a power under the non-enduring power of attorney, is invalid or has been revoked.

14 Protection for an attorney who does not know of revocation or invalidity

An attorney under a non-enduring power of attorney, who acts in good faith, does not incur any liability, as against the principal or anyone

else, merely because the attorney, purports to exercise power under the power of attorney and does not know that the power being exercised, or the power of attorney, is invalid or has been revoked.

15 Protection for a third person who does not know of revocation or invalidity when dealing with attorney

If a person—

- (a) acts in reliance on a non-enduring power of attorney; and
- (b) acts in good faith and without knowing the power of attorney is invalid or has been revoked—

that person (and any person claiming under that person) is entitled to rely on the power, despite the invalidity or revocation, as against the principal and any other person.

Division 5—Proof of non-enduring power of attorney

16 Proof of non-enduring power of attorney

- (1) A non-enduring power of attorney may be proved by a copy of the instrument creating the power that is certified as provided for in this section.
- (2) Each page, other than the last page, of the copy must be certified to the effect that the copy of that page is a true and complete copy of the corresponding page of the original instrument.
- (3) The last page of the copy must be certified to the effect that the copy of the instrument is a true and complete copy of the original instrument.
- (4) Certification must be by one of the following persons—
 - (a) an Australian legal practitioner;
 - (b) a financial services licensee;

- (c) a justice of the peace;
 - (d) a public notary;
 - (e) any other person authorised by law to administer an oath;
 - (f) a person of a prescribed class.
- (5) If a copy of an instrument creating a non-enduring power of attorney has been certified as provided for in this section, the non-enduring power of attorney may also be proved by a copy of the certified copy of the instrument, if the later copy is also certified as provided for in this section.
- (6) In this section—

justice of the peace means a person appointed as a justice of the peace under Part 6 of the **Magistrates' Court Act 1989**;

public notary has the same meaning as in the **Public Notaries Act 2001**.

Division 6—Powers of attorney for security

17 Definition

In this Division—

power of attorney for security means a non-enduring power of attorney—

- (a) that states that it is irrevocable; and
- (b) that is given by the principal to secure—
 - (i) a proprietary interest of the attorney; or
 - (ii) the performance of an obligation owed to the attorney.

18 Operation of powers of attorney for security

- (1) A power of attorney for security that is given to secure a proprietary interest may be given to the person entitled to the proprietary interest and to any person deriving title to that proprietary interest under that person.
- (2) A person who is given a power of attorney for security as a person deriving title to a proprietary interest under another person is an attorney under the power for all purposes of the power.
- (3) Subsections (1) and (2) do not affect any right to appoint a substitute attorney given by the power of attorney.

19 Revocation of powers of attorney for security

As long as—

- (a) the attorney under a power of attorney for security has the proprietary interest that is secured by the power; or
- (b) the obligation owed to an attorney under a power of attorney for security is undischarged—

the following paragraphs apply to the power of attorney for security—

- (c) it is not capable of being revoked by the principal, without the consent of the attorney;
- (d) it is not revoked—
 - (i) by the death of the principal; or
 - (ii) by the principal not having capacity; or
 - (iii) by the principal becoming insolvent under administration; or

-
- (iv) if the principal is a body corporate, by the winding up or dissolution of the principal.

20 Protection for a person who does not know of revocation of a power of attorney for security

- (1) A person who acts in reliance on the purported exercise of a power by an attorney under a power of attorney for security—
- (a) is entitled to assume that the power of attorney for security cannot be revoked unless the principal does so with the consent of the attorney; and
 - (b) must not be treated as knowing that the power of attorney for security has been revoked unless the person knows that the power has been revoked by the principal doing so with the consent of the attorney.
- (2) Subsection (1) does not apply if the person knows that the power of attorney was not in fact given to secure a proprietary interest or the performance of an obligation.

**PART 3—ENDURING POWERS OF ATTORNEY—SCOPE,
MAKING AND RELATED ISSUES**

Division 1—Principles

21 Principles to be applied by persons acting under this Act or an enduring power of attorney

- (1) If a person is exercising a power, carrying out a function or performing a duty under this Act for a principal under an enduring power of attorney who does not have decision making capacity in relation to one or more matters, the person—
 - (a) must do so in a way that is as least restrictive of the principal's ability to decide and act as is possible in the circumstances; and
 - (b) in doing so must ensure that, the principal is given practicable and appropriate support to enable the principal to participate in decisions affecting the principal as much as possible in the circumstances.
- (2) If an attorney under an enduring power of attorney is making a decision about a matter on behalf of a principal who does not have decision making capacity in relation to that matter, the attorney must—
 - (a) give all practicable and appropriate effect to the principal's wishes; and
 - (b) take any steps that are reasonably available to encourage the principal to participate in decision making, even though the principal does not have decision making capacity; and
 - (c) act in a way that promotes the personal and social wellbeing of the principal, including by—
 - (i) recognising the inherent dignity of the principal; and

- (ii) having regard to the principal's existing supportive relationships, religion, values and cultural and linguistic environment; and
- (iii) respecting the confidentiality of confidential information relating to the principal.

Division 2—Scope of power

22 Enduring power of attorney

- (1) By an enduring power of attorney a person may authorise an eligible attorney to do anything on behalf of the person that a person can lawfully do by an attorney.
- (2) Without limiting subsection (1), a person may make an enduring power of attorney for personal or financial matters or both.
- (3) Despite any rule of law to the contrary an enduring power of attorney is not revoked by the principal, after making the power, becoming a person who does not have decision making capacity for any matters to which the power of attorney applies.
- (4) In this section—
eligible attorney means a person who is eligible under Division 3 to be appointed as an attorney under the power of attorney.

Note

See section 26 for matters for which power cannot be given under an enduring power of attorney.

23 Who may make an enduring power of attorney?

- (1) A person may not make an enduring power of attorney unless—
 - (a) the person is of or over 18 years of age; and
 - (b) the person has decision making capacity in relation to making the enduring power of attorney.
- (2) For the purpose of section 4(1)(a), understanding the effect of the decision to make an enduring power of attorney includes understanding the following matters—
 - (a) that the principal may, in the power of attorney, place conditions on the power given to the attorney and give instructions to the attorney about the exercise of the power given to the attorney;
 - (b) when the power of attorney commences;
 - (c) that once the power of attorney is exercisable in relation to a matter, the attorney has the same powers the principal has, when the principal has decision making capacity for that matter, to do anything for which the power for that matter is given;
 - (d) that the principal may revoke the power of attorney at any time when the principal has decision making capacity in relation to making the power of attorney;
 - (e) that the power of attorney continues even if the principal subsequently becomes a person who does not have decision making capacity for a matter in the power of attorney;
 - (f) that at any time when the principal does not have decision making capacity in relation to revoking the power of attorney, the principal

is unable to effectively oversee the use of the power.

24 Conditions and instructions in an enduring power of attorney

A person making an enduring power of attorney may place conditions on the exercise of the power or give instructions about the exercise of the power.

25 Attorney not able to delegate power

An enduring power of attorney does not have the effect of empowering the attorney to delegate a power under the enduring power of attorney.

26 Matters for which power cannot be given under an enduring power of attorney

To avoid doubt, despite section 22, a principal under an enduring power of attorney is not able to authorise an attorney under that power to—

- (a) make or revoke a will for the principal; or
- (b) make or revoke an enduring power of attorney for the principal; or
- (c) vote on the principal's behalf in an election for the State or the Commonwealth or another State or a Territory of the Commonwealth or a local election or a referendum; or
- (d) consent to the entering into or dissolution of a marriage of the principal or of a sexual relationship of the principal; or
- (e) make or give effect to a decision—
 - (i) about the care and wellbeing of any child of the principal; or
 - (ii) about the adoption of a child under 18 years of age of the principal; or

- (f) to enter into, or agree to enter into, a surrogacy arrangement, within the meaning of the **Assisted Reproductive Treatment Act 2008**, on the principal's behalf; or
- (g) consent to the making or discharge of a substitute parentage order, within the meaning of the **Status of Children Act 1974**, on the principal's behalf; or
- (h) manage the estate of the principal on the death of the principal; or
- (i) consent to an unlawful act.

27 Power of an attorney to execute instruments

Section 12 applies to an attorney who acts under an enduring power of attorney in the same way that it applies to an attorney who acts under a non-enduring power of attorney.

Division 3—Appointment of attorney

28 Who is eligible to be appointed as an attorney?

- (1) An individual is eligible to be appointed as an attorney under an enduring power of attorney if the individual is a person—
 - (a) who is of or over 18 years of age; and
 - (b) who is not an insolvent under administration; and
 - (c) who, if the individual is to be an attorney for financial matters—
 - (i) has not been convicted or found guilty of an offence involving dishonesty; or
 - (ii) if the person has been convicted or found guilty of an offence involving dishonesty, has disclosed the conviction or finding of guilt to the principal and the disclosure of the conviction or

finding of guilt has been recorded in the enduring power of attorney; and

- (d) who is not a care worker, a health provider or an accommodation provider for the principal.
- (2) A trustee company is eligible to be appointed as an attorney for financial matters under an enduring power of attorney if the company is not a company against which a proceeding for winding up has commenced.
- (3) The Public Advocate is eligible to be appointed as an attorney under an enduring power of attorney for personal matters.

29 Attorney may be occupant of position

An attorney under an enduring power of attorney may be appointed as being the occupant of a position, however described, at the time the power of attorney is made or from time to time.

30 Appointment of more than one attorney

- (1) A principal under an enduring power of attorney may appoint more than one person as attorneys under the power.
- (2) If more than one attorney is appointed under the power, the principal may specify the matters for which each attorney is to act.
- (3) If more than one attorney is appointed under the power, as to all or any of the matters under the power—
 - (a) the principal may appoint any of the attorneys to act—
 - (i) as joint attorneys; or
 - (ii) as several attorneys; or

- (iii) as joint and several attorneys; or
 - (iv) as majority attorneys; or
 - (b) if the principal does not specify how the attorneys are appointed, the attorneys are taken to be appointed to act as joint attorneys.
- (4) Unless an enduring power of attorney otherwise provides, if attorneys under the enduring power of attorney are appointed—
- (a) to act jointly, the attorneys are authorised to act under the power unanimously, and, if a document is required to be signed, by all signing the document; or
 - (b) to act severally, the attorneys are authorised to act under the power as one alone and, if a document is required to be signed, by signing the document as one alone; or
 - (c) to act jointly and severally, the attorneys are authorised to act under the power—
 - (i) by all agreeing and, if a document is required to be signed, by all signing the document; or
 - (ii) as one alone or by more than one agreeing and, if a document is required to be signed, by the one alone signing the document or if more than one agree, by those who agree signing the document; or
 - (d) to act by a majority, the attorneys are authorised to act under the power if a majority of the attorneys agree and, if a document is required to be signed, by the majority who agree signing the document.

31 Appointment of alternative attorneys

- (1) A principal under an enduring power of attorney may appoint a person as an alternative attorney for any attorney appointed under the power of attorney, if the person is eligible to be appointed as an attorney under section 28.
- (2) An alternative attorney is authorised to act under the enduring power of attorney—
 - (a) in the circumstances specified in the power of attorney; or
 - (b) if no circumstances are specified in the power of attorney—
 - (i) if the attorney for whom the alternative attorney is appointed—
 - (A) dies; or
 - (B) does not have the decision making capacity for the matters to which the appointment applies; or
 - (C) is otherwise not willing or able to act; or
 - (ii) if the appointment of the attorney for whom the alternative attorney is appointed is revoked by the operation of section 54.
- (3) An alternative attorney must act under the enduring power of attorney in the same manner as the attorney for whom the alternative attorney is appointed to act, unless the enduring power of attorney otherwise provides.

Note

See section 30(4) for the manner in which the attorney acts.

- (4) The provisions of this Act that relate to enduring powers of attorney apply to an alternative attorney appointed under an enduring power of attorney, when the alternative attorney is acting under the power of attorney, in the same way that they apply to any attorney appointed under the power of attorney.

Division 4—Making the power

32 Form of enduring power of attorney

An enduring power of attorney must be in the prescribed form.

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

33 How should an enduring power of attorney be executed?

An instrument creating an enduring power of attorney must be executed—

- (a) by—
- (i) the principal signing the instrument; or
 - (ii) a person, who is eligible to do so under section 34, signing the instrument in the presence of and at the direction of the principal; and
- (b) by 2 persons—
- (i) who are present and who witness the signing of the instrument; and
 - (ii) who sign and date the instrument in the presence of the principal and in the presence of each other; and
 - (iii) who certify in writing in the instrument in the manner required by section 36.

34 Who is eligible to sign an enduring power of attorney at the direction of the principal?

- (1) A person is eligible to sign an instrument creating an enduring power of attorney at the direction of the principal if the person—
 - (a) is of or over the age of 18 years; and
 - (b) is not a witness to the signing of the instrument; and
 - (c) is not an attorney under the enduring power of attorney.
- (2) To avoid doubt a person is not excluded from being eligible to sign an instrument creating an enduring power of attorney at the direction of the principal merely because the person is an employee of an attorney for the principal who signs the instrument while the person is acting in the ordinary course of that employment.

35 Who can witness the signing of an instrument creating an enduring power of attorney?

- (1) As to the 2 persons who, under section 33(b), witness the signing of an instrument creating an enduring power of attorney—
 - (a) both persons must be eligible to do so under subsection (2); and
 - (b) one person must be either authorised to witness affidavits or a medical practitioner.
- (2) A person is eligible to witness the signing of an instrument creating an enduring power of attorney if the person—
 - (a) is of or over the age of 18 years; and
 - (b) is not signing the instrument at the direction of the principal; and

- (c) is not an attorney under the power of attorney; and
- (d) is not—
 - (i) a relative of the principal; or
 - (ii) a relative of an attorney under the power of attorney; or
 - (iii) a care worker or an accommodation provider for the principal.
- (3) To avoid doubt a person is not excluded from being eligible to witness the signing of an instrument creating an enduring power of attorney merely because the person is an employee of an attorney for the principal who signs the instrument while the person is acting in the ordinary course of that employment.

36 Certification of witness to signing

- (1) A witness who witnesses a principal signing an instrument creating an enduring power of attorney must—
 - (a) certify in writing in the instrument—
 - (i) that the principal appeared to freely and voluntarily sign the instrument in the presence of the witness; and
 - (ii) that, at the time the principal signed the instrument, the principal appeared to the witness to have decision making capacity in relation to the making of the enduring power of attorney; and
 - (b) state that the witness is not—
 - (i) an attorney under the power of attorney; or
 - (ii) a relative of the principal or of an attorney under the power of attorney; or

- (iii) a care worker or an accommodation provider for the principal; and
 - (c) if the witness is acting as a person who is authorised to witness affidavits or a medical practitioner, state the qualification on which the witness is acting.
- (2) A witness who witnesses another person signing an instrument creating an enduring power of attorney at the direction of the principal must—
- (a) certify in writing on the instrument—
 - (i) that, in the presence of the witness, the principal appeared to freely and voluntarily direct the person to sign for the principal; and
 - (ii) that the person signed the instrument in the presence of the principal and the witness; and
 - (iii) that, at the time the person signed the instrument, the principal appeared to the witness to have decision making capacity in relation to making the enduring power of attorney; and
 - (b) state that the witness is not—
 - (i) the person signing at the direction of the principal; or
 - (ii) an attorney under the power of attorney; or
 - (iii) a relative of the principal or of an attorney under the power of attorney; or
 - (iv) a care worker or an accommodation provider for the principal; and

- (c) if the witness is acting as a person who is authorised to witness affidavits or as a medical practitioner, state the qualification on which the witness is acting.
- (3) A certification and statement under subsection (1) or (2) must be signed by the witness making it.

37 Acceptance by attorney

An enduring power of attorney is effective as to an attorney appointed under the power of attorney if—

- (a) in the instrument creating the power of attorney the attorney signs a statement of acceptance of appointment that is in the prescribed form; and

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

- (b) in the case of an attorney who is not a trustee company, a person of or over 18 years of age witnesses the signing of the statement of acceptance under paragraph (a), and signs that he or she has witnessed the signing; and
- (c) in the statement of acceptance, the attorney states that the attorney—
 - (i) is eligible under this Part of this Act to act as an attorney under an enduring power of attorney; and
 - (ii) understands the obligations of an attorney under an enduring power of attorney under this Act and the consequences of failing to comply with those obligations; and

- (iii) undertakes to act in accordance with the provisions of this Act that relate to enduring powers of attorney.

38 Acceptance by alternative attorney

An enduring power of attorney is effective as to an alternative attorney appointed under the power of attorney if—

- (a) in the instrument creating the power of attorney, the alternative attorney signs a statement of acceptance of appointment that is in the prescribed form; and

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

- (b) in the case of an alternative attorney who is not a trustee company, a person of or over 18 years of age witnesses the signing of the statement of acceptance under paragraph (a), and signs that he or she has witnessed the signing; and
- (c) in the statement of acceptance, the alternative attorney states that the alternative attorney—
 - (i) is eligible under this Part of this Act to act as an attorney under an enduring power of attorney; and
 - (ii) understands the obligations of an attorney under an enduring power of attorney under this Act and the consequences of failing to comply with those obligations; and
 - (iii) undertakes to act in accordance with the provisions of this Act that relate to enduring powers of attorney; and

-
- (iv) understands the circumstances in which the alternative attorney is authorised to act under this Act; and
 - (v) is prepared to act in the place of the attorney for whom the alternative attorney is appointed, if still eligible to act as attorney, when authorised to do so under this Act.

Note

See section 31 for the circumstances in which an alternative attorney is authorised to act in the place of the attorney for whom the alternative attorney is appointed.

**PART 4—ENDURING POWERS OF ATTORNEY—
COMMENCEMENT**

39 When attorney's power is exercisable

- (1) A principal may specify, in an enduring power of attorney, a time from which, a circumstance in which or an occasion on which the power for all matters or the power for a specified matter under the power of attorney is exercisable, which may be—
 - (a) immediately on the making of the power; or
 - (b) when the principal ceases to have decision making capacity for the matters or matter; or
 - (c) any other time, circumstance or occasion.
- (2) If a specification is not made in an enduring power of attorney under subsection (1), the power for all matters under the enduring power of attorney is exercisable on and from the making of the power of attorney.
- (3) Despite a specification being made under subsection (1) in an enduring power of attorney, if before the specified time, circumstance or occasion for a matter, the principal does not have decision making capacity for the matter, an attorney who has power for the matter may exercise that power during any period when the principal does not have that capacity.
- (4) If an attorney is acting under an enduring power of attorney as to a matter because the principal does not have decision making capacity for the matter, a person dealing with the attorney may ask for evidence to establish that the principal does not have the decision making capacity.

Note

An example of evidence that may be given under subsection (4) is a medical certificate as to the principal's decision making capacity.

40 Attorney to notify if acting because the principal does not have decision making capacity

- (1) Before an attorney under an enduring power of attorney for the first time commences to exercise power for a matter because the principal does not have decision making capacity for that matter, the attorney must take reasonable steps to give notice that the attorney is commencing to exercise the power to any person who, the enduring power of attorney states, should be so notified.
- (2) A failure by the attorney to give a notification under this section does not affect any exercise by the attorney of power under the enduring power of attorney.
- (3) For the purpose of subsection (1), reasonable steps may include sending the notification by post to—
 - (a) for an individual, the last known residential address of the individual; or
 - (b) for a body corporate, the last known business address of the body corporate.

41 Regaining decision making capacity does not prevent exercise of power by attorney

- (1) If an attorney under an enduring power of attorney has commenced exercising power for any matter under that enduring power of attorney because the principal does not have decision making capacity for the matter, the attorney may continue to exercise that power even if the principal regains decision making capacity for the matter.

- (2) Nothing in subsection (1) is to be taken to enable a person to exercise power under an enduring power of attorney that is invalid or has been revoked.

42 Principal may continue to exercise power

To avoid doubt, the giving of an enduring power of attorney does not affect the principal's power to do anything that the principal is otherwise legally capable of doing.

PART 5—ENDURING POWERS OF ATTORNEY—ENDING

Division 1—Provision in enduring power of attorney as to revocation

43 Terms of enduring power of attorney as to revocation

- (1) An enduring power of attorney is revoked according to its terms.
- (2) The provisions in Divisions 2 and 3 as to revocation of an enduring power of attorney are subject to subsection (1).

Division 2—Revocation by principal

44 Revocation by principal

The principal under an enduring power of attorney may revoke the enduring power of attorney or the appointment of an attorney or alternative attorney under the enduring power of attorney if the principal has decision making capacity in relation to making an enduring power of attorney giving the same power.

45 Form of revocation

A revocation under section 44 must be by instrument (*instrument of revocation*) in the prescribed form.

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

46 How should an instrument of revocation be executed?

An instrument of revocation must be executed—

- (a) by—
 - (i) the principal signing the instrument; or
 - (ii) a person, who is eligible to do so under section 47, signing the instrument in the presence of and at the direction of the principal; and
- (b) by 2 persons who—
 - (i) are present and who witness the principal or person signing the instrument; and
 - (ii) sign and date the instrument in the presence of the principal and in the presence of each other; and
 - (iii) certify in writing in the instrument in the manner required by section 49.

47 Who is eligible to sign the instrument of revocation at the direction of the principal?

- (1) A person is eligible to sign the instrument of revocation at the direction of the principal if the person—
 - (a) is of or over the age of 18 years; and
 - (b) is not a witness to the signing of the instrument of revocation; and
 - (c) is not an attorney under the enduring power of attorney.
- (2) To avoid doubt a person is not excluded from being eligible to sign an instrument of revocation at the direction of the principal merely because the person is an employee of an attorney for the principal who signs the instrument while the

person is acting in the ordinary course of that employment.

48 Who can witness the signing of the instrument of revocation?

- (1) As to the 2 persons who, under section 46(b), witness the signing of the instrument of revocation—
 - (a) both persons must be eligible to do so under subsection (2); and
 - (b) one person must be either authorised to witness affidavits or a medical practitioner.
- (2) A person is eligible to witness the signing of the instrument if the person—
 - (a) is of or over the age of 18 years; and
 - (b) is not signing the instrument at the direction of the principal; and
 - (c) is not an attorney under the power of attorney; and
 - (d) is not—
 - (i) a relative of the principal; or
 - (ii) a relative of an attorney under the power of attorney; or
 - (iii) a care worker or an accommodation provider for the principal.
- (3) To avoid doubt a person is not excluded from being eligible to witness the signing of the instrument of revocation merely because the person is an employee of an attorney for the principal who signs the instrument while the person is acting in the ordinary course of that employment.

49 Certification of witness to signing of instrument of revocation

- (1) A witness who, under section 46(b)(i) witnesses a principal signing an instrument of revocation must—
- (a) certify in writing in the instrument—
 - (i) that the principal appeared to freely and voluntarily sign the instrument in the presence of the witness; and
 - (ii) that, at the time the principal signed the instrument, the principal appeared to the witness to have decision making capacity to revoke the enduring power of attorney; and
 - (b) state that the witness is not—
 - (i) an attorney under the power of attorney; or
 - (ii) a relative of the principal or an attorney under the power of attorney; or
 - (iii) a care worker or an accommodation provider for the principal; and
 - (c) if the witness is acting as a person who is authorised to witness affidavits or a medical practitioner, state the qualification on which the witness is acting.
- (2) A witness who, under section 46(b)(i) witnesses another person signing an instrument of revocation at the direction of the principal must—
- (a) certify in writing in the instrument—
 - (i) that, in the presence of the witness, the principal appeared to freely and voluntarily direct the person to sign for the principal; and

-
- (ii) that the person signed the instrument in the presence of the principal and the witness; and
 - (iii) that, at the time the person signed the instrument, the principal appeared to the witness to have decision making capacity to revoke the enduring power of attorney; and
- (b) state that the witness is not—
- (i) the person signing at the direction of the principal; or
 - (ii) an attorney under the power of attorney; or
 - (iii) a relative of the principal or of an attorney under the power of attorney; or
 - (iv) a care worker or an accommodation provider for the principal; and
- (c) if the witness is acting as a person who is authorised to witness affidavits or as a medical practitioner, state the qualification on which the witness is acting.
- (3) A certification and statement under subsection (1) or (2) must be signed by the witness making it.

50 Notification of revocation

- (1) On revoking an enduring power of attorney under this Division, the principal must take reasonable steps to inform any attorneys under the power that it has been revoked.
- (2) On revoking the appointment of an attorney or alternative attorney under this Division, the principal must take reasonable steps to inform that attorney or alternative attorney and all other attorneys and alternative attorneys under the power that the appointment has been revoked.

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- (3) A failure by the principal to give a notification under this section does not affect the validity of the revocation.
- (4) For the purpose of subsections (1) and (2), reasonable steps may include sending the notification by post to—
- (a) for an individual, the last known residential address of the individual; or
 - (b) for a body corporate, the last known business address of the body corporate.

Division 3—Other revocation

51 Death of principal

An enduring power of attorney is revoked on the death of the principal.

52 Death of attorney

When an attorney under an enduring power of attorney dies, the enduring power of attorney is revoked so far as it gives power to that attorney.

53 Attorney does not have decision making capacity

If an attorney under an enduring power of attorney becomes a person who does not have decision making capacity for the matters to which the enduring power of attorney applies, the power of attorney is revoked so far as it gives power to that attorney.

54 Revocation of appointment and notification of revocation, winding up etc.

- (1) An enduring power of attorney is revoked so far as it gives power to an attorney who is an individual, if, after appointment—
- (a) the attorney becomes an insolvent under administration; or

-
- (b) the attorney becomes a care worker, a health provider or an accommodation provider for the principal; or
 - (c) for an attorney for financial matters, the attorney is convicted or found guilty of an offence involving dishonesty.
 - (2) An enduring power of attorney is revoked so far as it gives power to an attorney that is a trustee company, if, after appointment of the trustee company the company is wound up or ceases to be registered.
 - (3) An attorney must take reasonable steps to give notice in accordance with subsection (4)—
 - (a) if the appointment of the attorney is revoked by the operation of subsection (1) or (2); or
 - (b) in the case of an attorney that is a trustee company, if—
 - (i) a proceeding against the company for winding up commences; or
 - (ii) the company is convicted or found guilty of an offence involving dishonesty.
 - (4) Notice of an event referred to in subsection (3)(a) or (b) must be given to—
 - (a) the principal, if the principal has decision making capacity for the matter for which the attorney has power; and
 - (b) any other attorney; and
 - (c) any alternative attorney; and
 - (d) if the principal does not have decision making capacity for the matter for which the attorney has power and there is no person to notify under paragraph (b) or (c)—

- (i) the nearest relative of the principal; or
 - (ii) if the attorney is not able to notify the nearest relative, the Public Advocate.
- (5) A notification under subsection (3) must be in the prescribed form.

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

- (6) A failure by the attorney to give a notification under this section does not affect the validity of the revocation of the power.

Note

VCAT also has power to revoke a power of attorney, see Part 8.

55 Later inconsistent enduring power of attorney

- (1) An enduring power of attorney is revoked by a later enduring power of attorney of the principal, so far as the later enduring power of attorney is inconsistent.
- (2) Subsection (1) does not apply if the principal specifies otherwise in the later enduring power of attorney.

Division 4—Resignation of attorney or alternative attorney when principal has decision making capacity

56 Resignation when principal has decision making capacity

- (1) An attorney or alternative attorney under an enduring power of attorney, who has power for a matter, may resign as attorney or alternative attorney for that matter at any time when the principal has decision making capacity for the matter.

- (2) On the resignation of the attorney or alternative attorney, the enduring power of attorney is revoked so far as it gives power to the attorney or alternative attorney.

57 Form of resignation

The resignation of an attorney or alternative attorney under this Division must be in the prescribed form.

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

58 Notification of resignation

- (1) A person who resigns as attorney for a matter under this Division must take reasonable steps to inform the following persons of the resignation—
- (a) the principal;
 - (b) any other attorney and any alternative attorney under the enduring power of attorney.
- (2) A person who resigns as alternative attorney for a matter under this Division must take reasonable steps to inform the following persons of the resignation—
- (a) the principal;
 - (b) any attorney under the enduring power of attorney.
- (3) A failure by the attorney or alternative attorney to give a notification under this section does not affect the validity of the resignation of the attorney.

**Division 5—Resignation of attorney or alternative attorney
when principal does not have decision making capacity**

**59 Resignation when principal does not have decision
making capacity**

- (1) An attorney under an enduring power of attorney, who has power for a matter, may resign as attorney for that matter at any time when the principal does not have decision making capacity for the matter—
 - (a) if there is another attorney who has power for the matter; or
 - (b) if there is no other attorney who has power for the matter but there is an alternative attorney who has power for the matter who is able and willing to act; or
 - (c) if paragraph (a) or (b) does not apply, with leave from VCAT or the Supreme Court.
- (2) An alternative attorney under an enduring power of attorney, who has power for a matter and who is acting under that power, may resign as alternative attorney for that matter at any time when the principal does not have decision making capacity for the matter with leave from VCAT or the Supreme Court.
- (3) An alternative attorney under an enduring power of attorney, who has power for a matter and who is not acting as attorney under the enduring power of attorney may resign as alternative attorney for that matter when the principal does not have decision making capacity for the matter.

60 Form of resignation

If section 59(1)(a) or (b) or (3) applies to the resignation of an attorney under an enduring power of attorney, the resignation must be in the prescribed form.

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

61 Notification of resignation

- (1) If section 59(1)(a) applies to the resignation of an attorney, the attorney must take reasonable steps to notify the following persons of the resignation—
 - (a) the other attorney who has power for the matter and any other attorney under the enduring power of attorney;
 - (b) any alternative attorney.
- (2) If section 59(1)(b) applies to the resignation of an attorney, the attorney must take reasonable steps to notify the alternative attorney and any other alternative attorney under the enduring power of attorney.
- (3) If section 59(3) applies to the resignation of an alternative attorney, the alternative attorney must take reasonable steps to notify the following persons of the resignation—
 - (a) any attorney under the enduring power of attorney;
 - (b) any other alternative attorney.
- (4) A failure by an attorney or alternative attorney to give a notification under this section does not affect the validity of the resignation of the attorney or alternative attorney.

Division 6—Effect of attorney's power ending where more than one attorney

62 Ending of attorney's power where more than one attorney

- (1) The ending of any power of a joint attorney under an enduring power of attorney does not affect the ability to exercise that power of any remaining joint attorney or attorneys who have that power.
 - (2) The ending of any power of a joint and several attorney under an enduring power of attorney does not affect the ability to exercise that power of any remaining joint and several attorney or attorneys who have that power.
 - (3) The ending of any power of a several or majority attorney under an enduring power of attorney does not affect the ability to exercise that power of any remaining several or majority attorney or attorneys who have that power.
 - (4) Subsection (1), (2) or (3) does not apply if the principal specifies otherwise in the enduring power of attorney.
-

**PART 6—ENDURING POWERS OF ATTORNEY—
OPERATION**

Division 1—Duties of attorney

63 Duties of attorney

- (1) An attorney under an enduring power of attorney—
 - (a) must act honestly, diligently and in good faith; and
 - (b) must exercise reasonable skill and care; and
 - (c) must not use the position for profit, unless permitted under section 70; and
 - (d) must avoid acting where there is or may be a conflict of interest unless the power so authorises; and
 - (e) must not disclose confidential information gained as the attorney under the power unless authorised by the power or by law; and
 - (f) must keep accurate records and accounts as required by section 66.
- (2) Nothing in this section is to be taken to affect any duty an attorney has at common law.

64 Conflict transactions

- (1) An attorney for financial matters under an enduring power of attorney has a duty not to enter into a transaction in that capacity if the transaction is one in which there is or may be a conflict between—
 - (a) the duty of the attorney to the principal; and
 - (b) the interests of the attorney, or a relative, business associate or close friend of the attorney.

- (2) Subsection (1) does not apply—
- (a) to a gift made in accordance with section 67;
or
 - (b) to a transaction providing for the maintenance of a dependant of the principal made in accordance with section 68; or
 - (c) to a transaction merely because in the transaction the attorney in the attorney's own right and on behalf of the principal—
 - (i) deals with an interest in property held jointly by the attorney and the principal (whether as joint tenants or tenants in common); or
 - (ii) obtains a loan or gives a guarantee or indemnity in respect of a transaction referred to in subparagraph (i); or
 - (iii) acquires an interest in property to be held jointly by the attorney and the principal (whether as joint tenants or tenants in common), when the principal has decision making capacity for the matter; or
 - (iv) obtains a loan or gives a guarantee or indemnity in respect of a transaction referred to in subparagraph (iii), when the principal has decision making capacity for the matter.

65 Permitted conflict transactions

- (1) Despite section 64, an attorney for financial matters under an enduring power of attorney may enter into a conflict transaction if the principal, before the time of the transaction, authorises the attorney to enter into—
- (a) the transaction; or

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- (b) the kind of transaction; or
 - (c) conflict transactions generally.
- (2) Despite section 64, an attorney for financial matters under an enduring power of attorney may continue a conflict transaction that the attorney has entered into and that is not completed, if—
- (a) the principal validates the entering into of the transaction; and
 - (b) at the time of validation the principal has decision making capacity for the transaction.
- (3) Despite section 64, the principal under an enduring power of attorney may validate a conflict transaction an attorney for financial matters under an enduring power of attorney has entered into that has been completed if, at the time the principal gives the validation, the principal has decision making capacity for the transaction.
- (4) Despite section 64, an attorney for financial matters under an enduring power of attorney may enter into a conflict transaction if VCAT, before the time of the transaction, authorises the attorney to enter into—
- (a) the transaction; or
 - (b) the kind of transaction; or
 - (c) conflict transactions generally.
- (5) Despite section 64, VCAT may validate a conflict transaction that an attorney for financial matters under an enduring power of attorney has entered into that has been completed.
- (6) A transaction that is validated by the principal under subsection (2) or (3) or VCAT under subsection (5) is taken to be valid from its commencement.

(7) In this section—

conflict transaction means a transaction that an attorney must not enter into under section 64.

66 Keeping records

An attorney under an enduring power of attorney must keep accurate records and accounts of—

- (a) all dealings and transactions made for financial matters; and
- (b) all material dealings and transactions made for personal matters.

67 Gifts

(1) Subject to any condition or restriction stated in an enduring power of attorney, an attorney for financial matters under the power of attorney may make a gift of the principal's property only if—

- (a) the gift is reasonable having regard to all the circumstances and, in particular, the principal's financial circumstances; and
- (b) the gift is—

- (i) to a relative or a close friend of the principal and is of a seasonal nature or for a special event; or

Example

An example of a special event is a birth or a marriage.

- (ii) a type of donation that the principal made when the principal had decision making capacity for the matter or that the principal might reasonably be expected to make.

-
- (2) A gift may be made under subsection (1) even though the gift is made to—
- (a) the attorney; or
 - (b) a relative or close friend of the attorney; or
 - (c) an organisation with whom the attorney has a connection.
- (3) An attorney must keep a written record of any gift by the attorney—
- (a) that is made to—
 - (i) the attorney; or
 - (ii) a relative or close friend of the attorney; or
 - (iii) an organisation with which the attorney has a connection; and
 - (b) the total value of which is of or over—
 - (i) the prescribed amount; or
 - (ii) if an amount has not been prescribed, \$100.
- (4) A record kept under subsection (3) must set out the amount of the gift and the person or organisation to whom it has been made.

68 Maintenance of principal's dependants

- (1) Subject to subsection (2), an attorney for financial matters under an enduring power of attorney may provide from the principal's property for the needs of a dependant of the principal, if the enduring power of attorney so provides.
- (2) Unless the enduring power of attorney otherwise provides, a provision under subsection (1) must not be more than what is reasonable having regard to all the circumstances and, in particular, the principal's financial circumstances.

69 Separation of attorney's and principal's property

- (1) An attorney for financial matters under an enduring power of attorney must keep the attorney's property separate from the principal's property.
- (2) Subsection (1) does not apply to—
 - (a) property owned jointly by the principal and attorney; or
 - (b) property acquired jointly by the principal and attorney in place of property owned jointly by the principal and attorney.
- (3) Subsection (1) does not affect any other obligation imposed by law.

70 Remuneration of attorney

An attorney under an enduring power of attorney is not entitled to any remuneration unless it is specifically authorised by the enduring power of attorney or by law.

Division 2—Decision making between more than one attorney

71 Disagreement between attorneys

Where attorneys are authorised to act severally under an enduring power of attorney and there is a disagreement between an attorney for personal matters and an attorney for financial matters regarding a matter where each has authority to act—

- (a) either attorney may apply to VCAT for an order as to how the matter should be resolved; and
- (b) unless the enduring power of attorney otherwise provides or unless otherwise ordered by VCAT, the decision of the

attorney for personal matters prevails to the extent of any inconsistency.

72 Attorney for financial matters to implement decision

- (1) An attorney for financial matters under an enduring power attorney must implement a decision of an attorney for personal matters under that power of attorney.
- (2) Despite subsection (1), if the implementation of the decision of the attorney for personal matters would result in a serious depletion of the principal's financial resources, the attorney for financial matters must apply to VCAT under Part 8 for an order on the matter.

Division 3—Protection and relief from liability

73 Interpretation

For the purpose of this Division, knowledge that an enduring power of attorney or a power under an enduring power of attorney is invalid or has been revoked includes the following—

- (a) knowledge of the happening of an event that invalidates or revokes the power of attorney or the power under the enduring power of attorney;
- (b) having reason to believe that the power of attorney, or the power under the enduring power of attorney, is invalid or has been revoked.

74 Relief from personal liability

If the Supreme Court or VCAT considers that—

- (a) an attorney under an enduring power of attorney is or may be personally liable for a contravention of the provisions of this Act relating to enduring powers of attorney; and

- (b) the attorney has acted honestly and reasonably and ought fairly to be excused for the contravention—

the Supreme Court or VCAT may relieve the attorney from all or part of the attorney's personal liability for the contravention.

75 Protection for attorney, third person who does not know of invalidity or revocation or breach of condition

- (1) An attorney—

- (a) who purports to exercise a power under an enduring power of attorney; and
(b) who does so in good faith and without knowing that the power being exercised or the enduring power of attorney is invalid or has been revoked—

is entitled to rely on the power of attorney as against the principal and any other person, despite the invalidity or revocation.

- (2) If a person—

- (a) acts in reliance on the purported exercise of a power by an attorney under an enduring power of attorney; and
(b) acts in good faith without knowing that the power is invalid or has been revoked—

that person (and any person claiming under that person) is entitled to rely on the purported exercise of the power as against the principal and any other person, despite the invalidity or revocation.

76 Protection if acting on advice, direction or order of Court or VCAT

An attorney under an enduring power of attorney who acts in compliance with any advice, direction or order of the Supreme Court or VCAT is taken to have complied with this Act unless the attorney knowingly gave the Court or VCAT false or misleading information relevant to the advice, direction or order.

Division 4—Compensation

77 Compensation for acts of attorney

- (1) The Supreme Court or VCAT may order an attorney under an enduring power of attorney to compensate the principal for a loss caused by the attorney contravening any provision of this Act relating to enduring powers of attorney when acting as attorney under the power of attorney.
- (2) Subsection (1) applies—
 - (a) even if the attorney is convicted of an offence in relation to the attorney's contravention; and
 - (b) even if the principal has died, in which case compensation is payable to the estate of the principal; and
 - (c) even if the enduring power of attorney is invalid or has been revoked or, at the time of the contravention, was invalid or had been revoked.
- (3) This section does not apply if Division 3 applies.

78 Who can apply for an order for compensation?

A person may apply for an order under section 77 if the person is—

- (a) the principal; or
- (b) any attorney under the enduring power of attorney; or
- (c) an executor or administrator of the principal's estate; or
- (d) the Public Advocate; or
- (e) the nearest relative of the principal; or
- (f) any other person whom VCAT is satisfied has a special interest in the affairs of the principal.

79 Time limit for application for order for compensation

- (1) An application for an order for compensation under this Division must be made—
 - (a) if the principal has died, within 6 months after that death; or
 - (b) if the attorney has died, within 6 months after that death; or
 - (c) if both the principal and the attorney have died, within 6 months after the first death.
- (2) The Supreme Court or VCAT may extend the time specified under subsection (1).

80 VCAT may refer matter to Supreme Court

VCAT may refer to the Supreme Court an application made to it for an order for compensation under this Division.

Division 5—General matters

81 Enduring power of attorney is a deed

An enduring power of attorney that is made in compliance with Part 3 has effect as a deed, even if it is not expressed to be a deed or to be executed under seal.

82 Proof of enduring power of attorney

An enduring power of attorney may be proved in the same manner as a non-enduring power of attorney is proved under section 16.

83 Effect of administration order or guardianship order on enduring power of attorney

- (1) If VCAT makes an administration order for a principal, an attorney under an enduring power of attorney for that principal must not exercise a power for financial matters for that principal unless the attorney is authorised by VCAT to do so and then only so far as is authorised.
 - (2) If VCAT makes a guardianship order for a principal, an attorney under an enduring power of attorney for that principal must not exercise powers in relation to personal matters for that principal unless the attorney is authorised by VCAT to do so and then only so far as is authorised.
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PART 7—SUPPORTIVE ATTORNEY APPOINTMENTS

Division 1—Definitions

84 Definitions

In this Part—

appointment form, in relation to a supportive attorney appointment, means the document creating the supportive attorney appointment;

supported decision means a decision about a matter that, under a supportive attorney appointment, the supportive attorney is authorised to support the principal in making.

Division 2—Power to make appointment and nature of appointment

85 Power to make and scope of appointment

- (1) A person may appoint an eligible person to support the person in making and giving effect to decisions by exercising any of the powers set out in sections 87, 88 and 89 that are specified in the appointment in relation to any personal or financial or other matters specified in the appointment.
- (2) To avoid doubt, nothing in this Act or in an appointment under subsection (1) should be taken as providing for the making of a supported decision that is not a decision of the principal.
- (3) To avoid doubt, under an appointment under subsection (1) a person is not able to authorise another person—
 - (a) to support the person making the appointment in conducting any illegal activity; or

(b) to coerce, intimidate or in any way unduly influence the person making the appointment into a particular course of action.

(4) In this section—

eligible person means a person who is eligible to be appointed as a supportive attorney under section 91.

86 Who may make a supportive attorney appointment?

(1) A person may not make a supportive attorney appointment unless—

(a) the person is of or over 18 years of age; and

(b) the person has decision making capacity in relation to making the supportive attorney appointment.

(2) For the purpose of section 4(1)(a), understanding the effect of the decision to make a supportive attorney appointment includes understanding the following matters—

(a) that the appointment enables the principal to make and give effect to his or her own decisions with support; and

(b) that the appointment allows the principal to choose a person to support the principal to make and give effect to his or her own decisions; and

(c) that supported decisions are decisions of the principal and not the supportive attorney; and

(d) when the appointment commences; and

(e) that the principal may revoke the appointment at any time when the principal has decision making capacity in relation to making the supportive attorney appointment.

87 Information power

- (1) By a supportive attorney appointment, the principal may authorise the supportive attorney to access, collect or obtain from or assist the principal in accessing, collecting or obtaining from any person any personal information about the principal—
 - (a) that is relevant to a supported decision; and
 - (b) that may lawfully be collected or obtained by the principal.
- (2) For the purposes of subsection (1), a person referred to in subsection (1) is authorised to disclose personal information about the principal to a supportive attorney who is acting under the supportive attorney appointment.

Note

See also the **Disability Act 2006**, the **Health Records Act 2001**, the **Information Privacy Act 2000** for provisions as to disclosure of personal information to supportive attorneys and access to personal information by supportive attorneys.

- (3) A supportive attorney may disclose any information given to the supportive attorney under subsection (1) for the purpose of—
 - (a) anything that is relevant and necessary to the supportive attorney carrying out the role of supportive attorney; or
 - (b) any legal proceeding under this Act, or any report of a legal proceeding under this Act; or
 - (c) any other lawful reason.

88 Communication power

By a supportive attorney appointment, the principal may authorise the supportive attorney—

- (a) to communicate any information about the principal that is relevant or necessary to the making of or giving effect to a supported decision; or
- (b) to communicate or to assist the principal to communicate a supported decision of the principal.

89 Powers as to giving effect to decisions

(1) By a supportive attorney appointment, the principal may authorise the supportive attorney to take any reasonable action or to do anything that is reasonably necessary to give effect to a supported decision, other than a decision about a significant financial transaction.

(2) In this section—

significant financial transaction includes—

- (a) making an investment for the principal or continuing an investment of the principal, including taking up rights to issues of new shares or options for new shares to which the principal becomes entitled by the principal's existing shareholding; or
- (b) undertaking any real estate transaction for the principal, excluding entering into a residential tenancy for a premises in which the principal lives or intends to live; or
- (c) dealing with land on behalf of the principal including taking out a loan on behalf of the principal or giving a guarantee on behalf of the principal; or

- (d) undertaking a transaction for the principal involving the use of the principal's property as security for an obligation; or
 - (e) buying and selling substantial personal property on behalf of the principal.
- (3) For the purpose of the definition of *significant financial transaction* in subsection (2), paragraph (a) does not include investing or continuing an investment of an amount of \$10 000 or less in total in one or more interest bearing accounts of an authorised deposit-taking institution, within the meaning of the Banking Act 1959 of the Commonwealth.

90 Duties and obligations of supportive attorney

- (1) A supportive attorney under a supportive attorney appointment—
- (a) must act honestly, diligently, and in good faith; and
 - (b) must exercise reasonable skill and care; and
 - (c) must not use the position for profit; and
 - (d) must avoid acting where there is or may be a conflict of interest and, if acting where there is a conflict of interest, must ensure that the interests of the principal are the primary consideration; and
 - (e) must discuss anything about a supported decision with the principal in a way the principal can understand and that will assist the principal to make the decision.
- (2) A supportive attorney under a supportive attorney appointment is not entitled to receive any remuneration for acting as supportive attorney.

Division 3—Appointment of supportive attorneys

91 Who is eligible to be appointed as a supportive attorney?

A person is eligible to be appointed as a supportive attorney if the person is an individual—

- (a) who is of or over 18 years of age; and
- (b) who is not an insolvent under administration; and
- (c) who, if the individual is to be a supportive attorney for financial matters—
 - (i) has not been convicted or found guilty of an offence involving dishonesty; or
 - (ii) if the person has been convicted or found guilty of an offence involving dishonesty, has disclosed the conviction or finding of guilt to the principal and the disclosure of the conviction or finding of guilt has been recorded in the supportive attorney appointment; and
- (d) who is not a care worker, a health provider or an accommodation provider for the principal.

92 Appointment of more than one supportive attorney

- (1) A principal under a supportive attorney appointment may appoint more than one person as supportive attorneys under the appointment to act separately.
- (2) If more than one supportive attorney is appointed under the appointment, the principal may specify the matters for which each supportive attorney is to act.

93 Appointment of alternative supportive attorneys

- (1) A principal under a supportive attorney appointment may appoint a person as an alternative supportive attorney for a supportive attorney appointed under the appointment, if the person is eligible to be appointed as a supportive attorney under section 91.
- (2) An alternative supportive attorney is authorised to act under the supportive attorney appointment—
 - (a) in the circumstances specified in the appointment; or
 - (b) if no circumstances are specified in the appointment—
 - (i) if the supportive attorney for whom the alternative supportive attorney is appointed—
 - (A) dies; or
 - (B) does not have the decision making capacity for the matters to which the appointment applies; or
 - (C) is otherwise not willing or able to act; or
 - (ii) if the appointment of the supportive attorney for whom the alternative supportive attorney is appointed is revoked by the operation of section 109(4).
- (3) The provisions of this Act that relate to supportive attorneys apply to an alternative supportive attorney appointed under a supportive attorney appointment, when the alternative supportive attorney is acting under the appointment, in the same way that they apply to any supportive attorney appointed under the appointment.

Division 4—Making an appointment

94 Form of appointment

A supportive attorney appointment must be in the prescribed form.

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

95 How should an appointment be executed?

A supportive attorney appointment must be executed—

- (a) by—
 - (i) the principal signing the appointment form; or
 - (ii) a person, who is eligible to do so under section 96, signing the appointment form in the presence of and at the direction of the principal; and
- (b) by 2 persons—
 - (i) who are present and who witness the signing of the appointment form; and
 - (ii) who sign and date the appointment form in the presence of the principal and in the presence of each other; and
- (c) who certify in writing in the appointment form in the manner required by section 98.

96 Who is eligible to sign an appointment form at the direction of the principal?

- (1) A person is eligible to sign an appointment form for a supportive attorney appointment at the direction of the principal if the person—
 - (a) is of or over 18 years of age; and

- (b) is not a witness to the signing of the appointment form; and
 - (c) is not a supportive attorney under the supportive attorney appointment.
- (2) To avoid doubt, a person is not excluded from being eligible to sign an appointment form at the direction of the principal merely because the person is an employee of a supportive attorney for the principal who signs the form while the person is acting in the ordinary course of that employment.

97 Who can witness the signing of an appointment form?

- (1) As to the 2 persons who, under section 95(b), witness the signing of an appointment form for a supportive attorney appointment—
- (a) both persons must be eligible to do so under subsection (2); and
 - (b) one person must be a person who is authorised by law to witness the signing of a statutory declaration; and
 - (c) one person must not be—
 - (i) a relative of the principal; or
 - (ii) a relative of the supportive attorney under the appointment; or
 - (iii) a care worker or an accommodation provider for the principal.
- (2) A person is eligible to witness the signing of an appointment form for a supportive attorney appointment if the person is—
- (a) of or over the age of 18 years; and
 - (b) is not signing the appointment form at the direction of the principal; and

(c) is not a supportive attorney under the appointment.

(3) To avoid doubt, a person is not excluded from being eligible to witness the signing of an appointment form merely because the person is an employee of a supportive attorney for the principal who signs the form while the person is acting in the ordinary course of that employment.

98 Certification of witness to signing of appointment form

(1) A witness who witnesses a principal signing an appointment form for a supportive attorney appointment must—

(a) certify in writing on the form—

(i) that the principal appeared to freely and voluntarily sign the appointment form in the presence of the witness; and

(ii) that, at the time the principal signed the appointment form, the principal appeared to the witness to have decision making capacity in relation to making the supportive attorney appointment; and

(b) state that the witness is not a supportive attorney under the supportive attorney appointment; and

(c) if the witness is acting as a person who is authorised by law to witness the signing of a statutory declaration, state the qualification on which the witness is acting.

(2) A witness who witnesses another person signing an appointment form for a supportive attorney appointment at the direction of the principal must—

-
- (a) certify in writing on the form—
- (i) that, in the presence of the witness, the principal appeared to freely and voluntarily direct the person to sign for the principal; and
 - (ii) that the person signed the form in the presence of the principal and the witness; and
 - (iii) that, at the time the person signed the form, the principal appeared to the witness to have decision making capacity in relation to making the supportive attorney appointment; and
- (b) state that the witness is not—
- (i) a person signing the appointment form at the direction of the principal; or
 - (ii) a supportive attorney under the supportive attorney appointment; and
- (c) if the witness is acting as a person who is authorised by law to witness the signing of a statutory declaration, state the qualification on which the witness is acting.
- (3) A certification and statement under subsection (1) or (2) must be signed by the witness making it.

99 Acceptance by supportive attorney

A supportive attorney appointment is effective as to a supportive attorney appointed under the appointment if—

- (a) in the appointment form the supportive attorney signs a statement of acceptance of appointment that is in the prescribed form; and

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

- (b) a person of or over 18 years of age witnesses the signing of the statement of acceptance under paragraph (a), and signs in the appointment form that he or she has witnessed the signing; and
- (c) the supportive attorney states in the appointment form that the supportive attorney—
 - (i) is eligible under this Act to act as a supportive attorney under a supportive attorney appointment; and
 - (ii) understands the obligations of a supportive attorney under this Act and the consequences of failing to comply with this Act; and
 - (iii) undertakes to act in accordance with this Act.

100 Acceptance by alternative supportive attorney

A supportive attorney appointment is effective as to an alternative supportive attorney appointed under the appointment if—

- (a) in the appointment form the alternative supportive attorney signs a statement of acceptance of appointment that is in the prescribed form; and

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

- (b) a person of or over 18 years of age witnesses the signing of the statement of acceptance under paragraph (a), and signs in the appointment form that he or she has witnessed the signing; and
- (c) the alternative supportive attorney states in the appointment form that the alternative supportive attorney—
 - (i) is eligible under this Act to act as a supportive attorney under a supportive attorney appointment; and
 - (ii) understands the obligations of a supportive attorney under this Act and the consequences of failing to comply with this Act; and
 - (iii) undertakes to act in accordance with this Act; and
 - (iv) understands the circumstances in which the alternative supportive attorney is authorised to act under this Act; and
 - (v) is prepared to act in the place of the supportive attorney for whom the alternative supportive attorney is appointed, when authorised to do so under this Act.

Note

See section 93 for the circumstances in which an alternative supportive attorney is authorised to act in the place of the supportive attorney for whom the alternative supportive attorney is appointed.

Division 5—Commencement and ending of supportive attorney appointment

101 When does appointment commence?

- (1) A principal may specify, in an appointment form for a supportive attorney appointment, a time from which, a circumstance in which or an occasion on which the appointment of a supportive attorney commences.
- (2) If a specification is not made under subsection (1), the appointment of a supportive attorney commences on its making.

102 Effect on appointment if principal does not have decision making capacity

A supportive attorney appointment does not have effect for any period, after the making of the appointment, during which the principal does not have decision making capacity for the matters to which the supportive attorney appointment applies.

103 Revocation of appointment by principal

The principal under a supportive attorney appointment may revoke the supportive attorney appointment or the appointment of a supportive attorney or alternative supportive attorney under the supportive attorney appointment, if the principal has decision making capacity in relation to making the supportive attorney appointment.

104 Form of revocation

A revocation under section 103 must be in the prescribed form (*form of revocation*).

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

105 How should a form of revocation be executed?

A form of revocation must be executed—

- (a) by—
 - (i) the principal signing the form; or
 - (ii) a person, who is eligible to do so under section 106, signing the form in the presence of and at the direction of the principal; and
- (b) by one person who—
 - (i) is present and who witnesses the principal or person signing the form; and
 - (ii) who signs and dates the form in the presence of the principal.

106 Who is eligible to sign the form of revocation at the direction of the principal?

- (1) A person is eligible to sign the form of revocation at the direction of the principal if the person—
 - (a) is of or over the age of 18 years; and
 - (b) is not a witness to the signing of the form; and
 - (c) is not a supportive attorney under the supportive attorney appointment.
- (2) To avoid doubt a person is not excluded from being eligible to sign the form of revocation at the direction of the principal merely because the person is an employee of a supportive attorney for the principal who signs the form while the person is acting in the ordinary course of that employment.

107 Who can witness the signing of the form of revocation?

- (1) As to the person who, under section 105(b), witnesses the signing of the form of revocation—
 - (a) the person must be of or over 18 years of age; and
 - (b) the person must be authorised to witness the signing of a statutory declaration; and
 - (c) the person must not be—
 - (i) a relative of the principal; or
 - (ii) a relative of a supportive attorney under the appointment; or
 - (iii) a care worker or an accommodation provider of the principal; or
 - (iv) a person signing the form at the direction of the principal; or
 - (v) a supportive attorney under the appointment.
- (2) To avoid doubt a person is not excluded from being eligible to witness the signing of the form of revocation merely because the person is an employee of a supportive attorney for the principal who signs the form while the person is acting in the ordinary course of that employment.

108 Notification of revocation by principal

- (1) On revoking a supportive attorney appointment under section 103, the principal must take reasonable steps to inform any supportive attorneys under the appointment that it has been revoked.

- (2) On revoking the appointment of a supportive attorney or alternative supportive attorney under section 103, the principal must take reasonable steps to inform that supportive attorney or alternative supportive attorney and all other supportive attorneys and alternative supportive attorneys under the appointment that it has been revoked.
- (3) A failure by the principal to give a notification under this section does not affect the validity of the revocation.

109 Other revocation of supportive attorney appointment

- (1) A supportive attorney appointment is revoked on the death of the principal.
- (2) When a supportive attorney under a supportive attorney appointment dies, the supportive attorney appointment is revoked so far as it gives power to that supportive attorney.
- (3) A supportive attorney appointment is revoked, so far as it gives power to a supportive attorney, if, after appointment the supportive attorney becomes a person who does not have decision making capacity for the matters to which the supportive attorney appointment applies.
- (4) A supportive attorney appointment is revoked, so far as it gives power to a supportive attorney, if, after appointment—
 - (a) the supportive attorney becomes an insolvent under administration; or
 - (b) the supportive attorney becomes a care worker, a health provider or an accommodation provider for the principal; or

- (c) for a supportive attorney for financial matters, the supportive attorney is convicted or found guilty of an offence involving dishonesty.

Note

VCAT also has power to revoke a supportive attorney appointment, see Part 8.

110 Notification of revocation by operation of section 109(4)

- (1) If a supportive attorney appointment is revoked by the operation of section 109(4), the supportive attorney must take all reasonable steps to notify the following people—
- (a) the principal;
 - (b) any other supportive attorney;
 - (c) any alternative supportive attorney.
- (2) A failure by the supportive attorney to give a notification under this section does not affect the validity of the revocation.

111 Resignation

A supportive attorney or an alternative supportive attorney may resign from the appointment as a supportive attorney or alternative supportive attorney.

112 Form of resignation

The resignation of a supportive attorney or an alternative supportive attorney under section 111 must be in the prescribed form.

Note

See section 53 of the **Interpretation of Legislation Act 1984** for the effect of a form in or to the like effect of the prescribed form.

113 Notification of resignation

- (1) A person who resigns as supportive attorney or alternative supportive attorney under section 111 must take all reasonable steps to inform the following persons of the resignation—
 - (a) the principal;
 - (b) any other supportive attorney and alternative supportive attorney.
- (2) A failure by the supportive attorney or alternative supportive attorney to give a notification under this section does not affect the validity of the resignation.

Division 6—Protection and relief from liability

114 Protection for supportive attorney or other person who does not know appointment does not have effect

- (1) A supportive attorney—
 - (a) who purports to exercise a power under the supportive attorney appointment; and
 - (b) who does so in good faith and without knowing the appointment does not have effect—is entitled to rely on the appointment as against the principal and any other person, despite the fact that the appointment does not have effect.
- (2) A person—
 - (a) who acts in reliance on the purported exercise by a supportive attorney of a power under a supportive attorney appointment; and

-
- (b) who acts in good faith and without knowing the appointment does not have effect—
is entitled to rely on the purported exercise of the power as against the principal and any other person, despite the fact that the appointment does not have effect.
- (3) For the purpose of this section, a supportive attorney appointment does not have effect if—
- (a) the appointment is invalid; or
 - (b) the appointment is revoked; or
 - (c) the appointment does not have effect under section 102.
- (4) For the purpose of this section knowing that a supportive attorney appointment does not have effect includes the following—
- (a) knowing of the happening of an event that causes the appointment not to have effect;
 - (b) having reason to believe that the appointment does not have effect.
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PART 8—VCAT JURISDICTION

Division 1—Interpretation

115 Interpretation

In this Part—

VCAT Act means the **Victorian Civil and Administrative Tribunal Act 1998**.

Division 2—VCAT hearing at first instance

116 Matters about which VCAT may make an order

- (1) On application under Division 3, or on its own initiative in any hearing before it, VCAT may make an order about any one or more of the following matters in relation to an enduring power of attorney—
 - (a) any matter for or with respect to an attorney's power under the enduring power of attorney including the following—
 - (i) the scope of the power of attorney;
 - (ii) the exercise of the power of attorney;
 - (b) the effect of any failure to comply with the method of execution of enduring powers of attorney or of instruments of revocation of enduring powers of attorney required by this Act;
 - (c) the validity of the enduring power of attorney;
 - (d) the validity of a transaction by an attorney under the enduring power of attorney if VCAT is satisfied there has been a failure to comply with Part 6 or for any other reason;
 - (e) the lodgement with VCAT of accounts or other documents relating to the exercise of the enduring power of attorney over a

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- specified period by the attorney responsible under this Act for keeping them;
- (f) the examination and auditing of accounts or other documents relating to the exercise of the enduring power of attorney over a specified period, including—
 - (i) determining the person to be responsible for examining or auditing the accounts or other documents; and
 - (ii) whether the person responsible under subparagraph (i) for carrying out the examination or audit should be paid and the amount of any such payment;
 - (g) giving a report on any examination and audit conducted under an order under paragraph (f) to—
 - (i) VCAT; and
 - (ii) the applicant or any other person ordered by VCAT;
 - (h) any other matter VCAT considers necessary in relation to the enduring power of attorney.
- (2) On application under Division 3, or on its own initiative in any hearing before it, VCAT may make an order about any one or more of the following matters in relation to a supportive attorney appointment—
- (a) the principal's decision making capacity for the matters to which the supportive attorney appointment applies, whether at the time the appointment was made or any time after that, and the effect of the principal not having decision making capacity on the supportive attorney appointment;

- (b) the effect on the supportive attorney appointment of any failure to comply with a requirement of this Act;
- (c) whether the supportive attorney has failed to comply with the terms of the appointment or is exercising undue influence over the principal;
- (d) any other matter VCAT considers necessary in relation to the supportive attorney appointment.

Note

Under the VCAT Act VCAT has powers to give directions and make declarations.

117 Considerations for failure to comply with execution requirements

- (1) Under section 116(1)(b) VCAT must not decide that an enduring power of attorney is valid, even though the requirements for execution of the power of attorney under this Act were not complied with, unless VCAT is satisfied that—
 - (a) the principal and attorney intended the document to be an enduring power of attorney; and
 - (b) at the time the document was signed, the principal had decision making capacity in relation to the making of the enduring power of attorney; and
 - (c) the principal—
 - (i) signed the document freely and voluntarily; or
 - (ii) freely and voluntarily directed the person who signed the document for the principal to do so, and was present when the person signed the document.

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- (2) Under section 116(1)(b) VCAT must not decide that the revocation of an enduring power of attorney is valid, even though the requirements for execution of the revocation under this Act were not complied with, unless VCAT is satisfied that—
- (a) the principal intended to revoke the enduring power of attorney; and
 - (b) at the time the instrument of revocation appeared to be signed, the principal had decision making capacity in relation to making the enduring power of attorney giving the same power; and
 - (c) the principal—
 - (i) signed the instrument of revocation freely and voluntarily; or
 - (ii) freely and voluntarily directed the person who signed the instrument of revocation for the principal to do so, and was present when the person signed the instrument of revocation.

118 Considerations for invalidity of enduring power of attorney

Under section 116(1)(c) VCAT must not make an order declaring that an enduring power of attorney is invalid unless VCAT is satisfied that—

- (a) the principal did not have decision making capacity in relation to making the enduring power of attorney at the time the enduring power of attorney was made; or
- (b) at the time the enduring power of attorney was made it did not comply with the requirements of the Act; or

- (c) dishonesty or undue influence was used on the principal to make the enduring power of attorney; or
- (d) the enduring power of attorney was legally invalid when entered into.

119 Effect of finding of invalidity on enduring power of attorney

If VCAT makes an order declaring that an enduring power of attorney is invalid under section 116(1)(c), the enduring power of attorney is void from its commencement.

120 Nature of VCAT orders

- (1) In an order under section 116 in relation to an enduring power of attorney, VCAT may do any one or more of the following—
 - (a) revoke all or part of the enduring power of attorney;
 - (b) revoke the appointment of an attorney under the enduring power of attorney;
 - (c) vary the effect of the enduring power of attorney;
 - (d) suspend the enduring power of attorney for a specified period, either generally or as to a specified matter;
 - (e) authorise or validate a transaction for the purpose of section 65;
 - (f) make any other order it considers necessary in relation to the enduring power of attorney;
 - (g) do any other thing that VCAT is required or permitted to do by this Act.

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- (2) Before making an order under subsection (1)(b) to revoke the appointment of an attorney under an enduring power of attorney VCAT must be satisfied that—
- (a) the attorney is not complying with provisions of this Act that relate to enduring powers of attorney; and
 - (b) the principal does not have decision making capacity in relation to making an enduring power of attorney giving the same power.
- (3) In an order under section 116 in relation to a supportive attorney appointment, VCAT may do any one or more of the following—
- (a) revoke the supportive attorney appointment or the appointment of a supportive attorney under the supportive attorney appointment;
 - (b) vary the effect of the supportive attorney appointment;
 - (c) suspend the supportive attorney appointment for a specified period, either generally or as to a specified matter;
 - (d) make any other order it considers necessary in relation to the supportive attorney appointment.

121 Advisory opinions

The Tribunal may give an advisory opinion on any matter relating to an enduring power of attorney or a supportive attorney appointment that is referred to it by a person referred to in section 122(1)(a), (b), (c) or (e).

Division 3—Application and procedure, VCAT hearing at first instance

122 Who can apply for an order?

- (1) A person may apply to VCAT for an order under Division 2 as to an enduring power of attorney or a supportive attorney appointment if the person is—
- (a) the principal; or
 - (b) for—
 - (i) an enduring power of attorney, any attorney under the enduring power of attorney; or
 - (ii) a supportive attorney appointment, any supportive attorney under the supportive attorney appointment; or
 - (c) the Public Advocate; or
 - (d) the nearest relative of the principal; or
 - (e) any other person whom VCAT is satisfied has a special interest in the affairs of the principal.
- (2) To avoid doubt, nothing in this Act is to be taken to prevent a person to whom subsection (1) applies from applying to VCAT for an order under Division 2 as to an enduring power of attorney, in circumstances where more than one attorney has been appointed under the enduring power of attorney and it is impractical or impossible for the attorneys under the enduring power of attorney to exercise power in the manner required by the enduring power of attorney or by this Act.

123 Who is entitled to notice?

- (1) For an application for an order under Division 2, each entitled person is a person who is entitled to notice under section 72(1)(b) of the VCAT Act.

Note

An applicant for a VCAT order must serve a copy of the application on any person who is entitled to notice of the application under the Act that gives the jurisdiction to VCAT (in this case, this Act), see section 72(1) of the VCAT Act.

- (2) For the hearing of an application for an order under Division 2, each entitled person is a person who is entitled to notice under section 99(1)(b) of the VCAT Act.

Note

The principal registrar of VCAT must give notice of the time and place for the hearing of a proceeding dealing with an application for a VCAT order to each person who is entitled to that notice under the Act that gives the jurisdiction to VCAT (in this case, this Act), see section 99(1) of the VCAT Act.

- (3) For an order in a proceeding under the VCAT Act hearing an application under Division 2, each entitled person is a person who is entitled to notice under section 116(2)(a) or (b) of that Act.

Note

The persons who must be given a copy of a VCAT order in a proceeding dealing with an application for a VCAT order include any person who is entitled to the copy under the Act that gives the jurisdiction to VCAT (in this case, this Act), see section 116(2) of the VCAT Act.

- (4) In this section *entitled person* means each of the the following—
- (a) the principal;
 - (b) for—
 - (i) an enduring power of attorney, any attorney under the enduring power of attorney; or
 - (ii) a supportive attorney appointment, any supportive attorney under the supportive attorney appointment;

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- (c) the applicant for the order, if the applicant is not a person otherwise specified in this definition;
 - (d) any other person whom VCAT determines must be notified;
 - (e) those of the following whom VCAT so determines—
 - (i) any guardian of the principal, within the meaning of the **Guardianship and Administration Act 1986**;
 - (ii) any alternative guardian of the principal, appointed under section 35 of the **Guardianship and Administration Act 1986**;
 - (iii) any administrator of the principal, within the meaning of the **Guardianship and Administration Act 1986**;
 - (iv) the primary carer of the principal, within the meaning of the **Guardianship and Administration Act 1986**;
 - (v) any domestic partner of the principal;
 - (vi) the nearest relative of the principal;
 - (vii) the Public Advocate;
 - (viii) any other person.

124 Who are parties to the proceeding?

For a proceeding for the hearing of an application under Division 2, the following persons are specified for the purpose of section 59(1)(a)(iv) of the VCAT Act—

- (a) the principal;

(b) for—

- (i) an enduring power of attorney, any attorney under the enduring power of attorney; or
- (ii) for a supportive attorney appointment, any supportive attorney under the supportive attorney appointment.

Note

The parties to a VCAT proceeding include the applicant and any person who is specified by the Act that gives the jurisdiction to VCAT (in this case, this Act), see section 59(1) of the VCAT Act.

Division 4—VCAT rehearing

125 Requirement to rehear

- (1) On application under Division 5, VCAT must rehear an application for an order under Division 2 on which VCAT has made an order.
- (2) In conducting a rehearing under this section VCAT has all the functions and powers that VCAT had for the matter at first instance.

126 Matter that cannot be subject of a rehearing

A person is not entitled to apply for a rehearing of an application if—

- (a) the order at first instance was to suspend an enduring power of attorney or a supportive attorney appointment; or
- (b) the order at first instance was made by VCAT constituted by the President, whether with or without others; or
- (c) the application was for a rehearing or leave to apply for a rehearing.

127 Powers of VCAT on rehearing

In determining a rehearing, VCAT may decide to—

- (a) affirm the order of VCAT at first instance; or
- (b) vary the order of VCAT at first instance; or
- (c) set aside the order of VCAT at first instance and make another order in substitution for it.

128 Effect of, stay of first instance order pending rehearing

- (1) Subject to subsection (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) VCAT may make an order staying the operation of an order to which an application for rehearing relates pending the determination of the rehearing of the application.

129 Nature of rehearing

Subject to any contrary provision in this Division or Division 5, the VCAT Act applies to a rehearing under this Division as if it were a hearing under that Act.

Division 5—Application and procedure, VCAT rehearing

130 Who can apply for a rehearing?

- (1) A person may apply to VCAT for a rehearing under Division 4—
 - (a) if the person was a party to the hearing of the application at first instance; or

(b) with the leave of VCAT, if the person was given notice of the application but was not a party to the hearing of the application at first instance.

(2) Subsection (1)(b) does not apply to the Public Advocate.

131 Who is entitled to notice of rehearing?

- (1) For an application for a rehearing, each person who was entitled to notice of the application for the hearing at first instance is a person who is entitled to notice under section 72(1)(b) of the VCAT Act.
- (2) For the hearing of an application for a rehearing, each person who was entitled to notice of the hearing at first instance is a person who is entitled to notice under section 99(1)(b) of the VCAT Act.
- (3) For an order in a proceeding under the VCAT Act rehearing an application for an order under Division 2, each person who was entitled to notice of an order in the hearing at first instance is a person who is entitled to notice under section 116(2)(b) of that Act.

132 Who are parties to the proceeding for the rehearing?

For a proceeding for the rehearing of an application under Division 2, each person who was a party to the proceeding at first instance is specified for the purpose of section 59(1)(a)(iv) of the VCAT Act.

133 Time limit for making application

- (1) 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.

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- (2) For the purpose of subsection (1), if VCAT gives oral reasons for making an order and a party then requests written reasons under section 117 of the VCAT Act, the day on which the written reasons are given to the party is taken to be the day of the order.

Division 6—Effect on VCAT Act

134 Effect on VCAT Act

Except as provided for in this Part, nothing in this Part is to be taken to affect the operation of the VCAT Act.

PART 9—GENERAL

135 Offences as to enduring powers of attorney

(1) A person must not dishonestly obtain an enduring power of attorney—

(a) to obtain financial advantage for the person or another person; or

(b) to cause loss to the principal or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;

In the case of a body corporate, 2400 penalty units.

(2) A person must not dishonestly obtain the revocation of an enduring power of attorney—

(a) to obtain financial advantage for the person or another person; or

(b) to cause loss to the principal or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;

In the case of a body corporate, 2400 penalty units.

(3) An attorney under an enduring power of attorney must not dishonestly use the enduring power of attorney—

(a) to obtain financial advantage for the attorney or another person; or

(b) to cause loss to the principal or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;

In the case of a body corporate, 2400 penalty units.

- (4) In this section a reference to an enduring power of attorney includes a reference to an enduring power of attorney that is invalid or has been revoked.

Notes

- 1 The offences under this section are indictable offences that may be heard summarily.
- 2 Section 137 applies to an offence against subsection (1), (2) or (3).

136 Offences of dishonestly obtaining or using supportive attorney appointment

- (1) A person must not dishonestly obtain the supportive attorney appointment—
- (a) to obtain financial advantage for the person or another person; or
 - (b) to cause loss to the principal or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both.

- (2) A supportive attorney under a supportive attorney appointment must not dishonestly use the supportive attorney appointment—
- (a) to obtain financial advantage for the supportive attorney or another person; or
 - (b) to cause loss to the principal or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both.

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- (3) In this section a reference to supportive attorney appointment includes a reference to a supportive attorney appointment that is invalid or has been revoked.

Note

The offences under this section are indictable offences that may be heard summarily.

**137 Criminal liability of officers of bodies corporate—
failure to exercise due diligence**

- (1) If a body corporate commits an offence against a provision of section 135(1), (2) or (3) an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so,

the officer bears the same burden of proof that the body corporate would bear.

- (4) An officer of a body corporate may commit an offence against section 135(1), (2) or (3) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer, in relation to a body corporate, means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

138 Recognition of enduring powers of attorney made in other States and Territories

- (1) If an enduring power of attorney is made in another State or a Territory of the Commonwealth 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 Act, the enduring power of attorney is taken to be an enduring power of attorney made under, and in compliance with, this Act.
- (2) This section applies to an enduring power of attorney made in another State or a Territory of the Commonwealth, whether made before or after the commencement of this Act.

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- (3) In this section, a reference to an enduring power of attorney made in another State or a Territory of the Commonwealth includes a reference to an instrument in the nature of an enduring power of attorney, whether or not described as an enduring power of attorney.

139 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) prescribing forms for the purposes of this Act; and
 - (b) any other matter or thing that is authorised or required to be prescribed or necessary to be prescribed for the purposes of this Act.
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PART 10—TRANSITIONAL AND CONSEQUENTIAL PROVISIONS, AMENDMENT OF OTHER ACTS

Division 1—Transitional provisions

140 Definitions

In this Part—

old enduring power of attorney means an enduring power of attorney, within the meaning of Part XIA of the **Instruments Act 1958** (as in force before the commencement of section 144(2)), being an enduring power of attorney in force immediately before that commencement;

old enduring power of guardianship means an appointment of a person as an enduring guardian, made under Division 5A of Part 4 of the **Guardianship and Administration Act 1986** (as in force before the commencement of section 145), being an appointment in force immediately before that commencement;

old non-enduring power of attorney means a power of attorney, to which Part XI of the **Instruments Act 1958** (as in force before the commencement of section 144(1)) applied, being a power of attorney in force immediately before that commencement.

141 Transitional provision—non-enduring powers of attorney

The amendments made to the **Instruments Act 1958** by section 144(1) of this Act are not to be taken to affect the validity of an old non-enduring power of attorney and the law as in force under the **Instruments Act 1958** immediately before the commencement of section 144(1) is taken to

continue to have effect in relation to the old non-enduring power of attorney.

142 Transitional provision—old enduring powers of attorney

- (1) The amendments made to the **Instruments Act 1958** by section 144(2) of this Act are not to be taken to affect the validity of an old enduring power of attorney and, subject to subsection (2), the law as in force under the **Instruments Act 1958** immediately before the commencement of section 144(2) is taken to continue to have effect in relation to the old enduring power of attorney.
- (2) The following provisions of this Act are taken to apply to an old enduring power of attorney, as if it were an enduring power of attorney made under this Act—
 - (a) section 4;
 - (b) section 42;
 - (c) Divisions 2, 3 and 4 of Part 6;
 - (d) section 82;
 - (e) section 83;
 - (f) section 116(1)(a), (e), (f) and (g);
 - (g) Divisions 2, 3, 4 and 5 of Part 8, to the extent that they relate to section 116(1)(a), (e), (f) and (g).
- (3) For the purpose of this section, a reference in any Act to an enduring power of attorney made under the **Powers of Attorney Act 2014** includes a reference to an old enduring power of attorney.

143 Transitional provision—old enduring powers of guardianship

- (1) The amendments made to the **Guardianship and Administration Act 1986** by Division 2 are not to be taken to affect the validity of an old enduring power of guardianship and, subject to subsection (2), the law as in force under the **Guardianship and Administration Act 1986**, immediately before the commencement of Division 2, is taken to continue to have effect in relation to the old enduring power of guardianship.
- (2) The following provisions of this Act are taken to apply to an old enduring power of guardianship, as if it were an enduring power of attorney made under this Act—
 - (a) section 4;
 - (b) section 42;
 - (c) Divisions 2, 3 and 4 of Part 6;
 - (d) section 82;
 - (e) section 83;
 - (f) section 116(1)(a), (e), (f) and (g);
 - (g) Divisions 2, 3, 4 and 5 of Part 8, to the extent that they relate to section 116(1)(a), (e), (f) and (g).

**Division 2—Amendment of the Instruments Act 1958 and
the Guardianship and Administration Act 1986**

144 Amendment of the Instruments Act 1958

- (1) Part XI of the **Instruments Act 1958** is repealed.
- (2) Part XIA of the **Instruments Act 1958** is repealed.

See:
Act No.
6279.
Reprint No. 12
as at
21 August
2013 and
amending
Act No.
17/2014.
LawToday:
www.
legislation.
vic.gov.au

**145 Repeal of Division 5A of Part 4 of the Guardianship
and Administration Act 1986**

Division 5A of Part 4 of the **Guardianship and
Administration Act 1986** is repealed.

See:
Act No.
58/1986.
Reprint No. 8
as at
17 January
2013 and
amending
Act Nos
26/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

**146 Repeal of sections 86 and 86A of the Guardianship
and Administration Act 1986**

Sections 86 and 86A of the **Guardianship and
Administration Act 1986** are repealed.

**147 Repeal of Schedule 4 to the Guardianship and
Administration Act 1986**

Schedule 4 to the **Guardianship and
Administration Act 1986** is repealed.

148 Amendment of the Guardianship and Administration Act 1986

- (1) In section 3(1) of the **Guardianship and Administration Act 1986**, the definitions of *appointor* and *enduring guardian* are **repealed**.
- (2) In the definition of *guardian* in section 3(1) of the **Guardianship and Administration Act 1986**—
 - (a) in paragraph (b), for "35; or" substitute "35;"
 - (b) paragraph (c) is **repealed**.
- (3) Section 4(1)(e) of the **Guardianship and Administration Act 1986** is **repealed**.
- (4) For section 37(1)(d) of the **Guardianship and Administration Act 1986** substitute—

"(d) a person appointed by the patient as an attorney under an enduring power of attorney under the **Powers of Attorney Act 2014** with power to make decisions in relation to the proposed procedure or treatment;"
- (5) In section 42N(6)(d) of the **Guardianship and Administration Act 1986**, for "the enduring guardian" substitute "the attorney under the enduring power of attorney under the **Powers of Attorney Act 2014**,".
- (6) In section 42V(6)(d) of the **Guardianship and Administration Act 1986**, for "the enduring guardian" substitute "the attorney under the enduring power of attorney under the **Powers of Attorney Act 2014**,".

Division 3—Amendment of other Acts

149 Amendment of the Crimes Act 1958

In the definition of *trustee* in section 175(1) of the **Crimes Act 1958**, after "guardian under the **Guardianship and Administration Act 1986**" insert "or attorney under an enduring power of attorney under the **Powers of Attorney Act 2014**".

150 Amendment of the Criminal Procedure Act 2009

Before item 22 of Schedule 2 to the **Criminal Procedure Act 2009** insert—

"21A Powers of Attorney Act 2014

21A.1 Offences under section 135(1), (2) or (3) of the **Powers of Attorney Act 2014**."

151 Amendment of the Disability Act 2006

(1) In the definition of *resident's administrator* in section 3(1) of the **Disability Act 2006**, after "enduring power of attorney" insert "under the **Powers of Attorney Act 2014**".

(2) For the definition of *resident's guardian* in section 3(1) of the **Disability Act 2006** substitute—

"resident's guardian means—

- (a) the resident's guardian—
 - (i) appointed under the **Guardianship and Administration Act 1986**; or
 - (ii) appointed by the court; or
 - (iii) if the resident is a child, the child's guardian, whether or not the natural parent of the child; or

(b) the attorney of the resident appointed to be responsible for personal matters under an enduring power of attorney under the **Powers of Attorney Act 2014**;"

(3) After section 39(4)(c) of the **Disability Act 2006** insert—

"(ca) to a supportive attorney under a supportive attorney appointment, within the meaning of the **Powers of Attorney Act 2014**;"

152 Amendment of the Family Violence Protection Act 2008

In the definition of *guardian* in section 4 of the **Family Violence Protection Act 2008**—

(a) after "**Guardianship and Administration Act 1986**" insert "or an attorney who has power for personal matters under an enduring power of attorney under the **Powers of Attorney Act 2014**"; and

(b) in paragraph (a), after "under this Act" insert "or under the enduring power of attorney".

153 Amendment of the Health Records Act 2001

(1) At the end of section 30 of the **Health Records Act 2001** insert—

"(2) In this section—

written authority includes a supportive attorney appointment within the meaning of the **Powers of Attorney Act 2014**."

(2) For section 85(2)(a) of the **Health Records Act 2001** substitute—

"(a) by—

- (i) the individual personally, except if the individual is a child who is incapable of making the request; or
- (ii) a supportive attorney acting under a supportive attorney appointment, within the meaning of the **Powers of Attorney Act 2014**; and".

154 Amendment of the Human Services (Complex Needs) Act 2009

For section 21(b) of the **Human Services (Complex Needs) Act 2009** substitute—

"(b) in the case of a person who is of or over 18 years of age and in respect of whom—

- (i) a guardian has been appointed under the **Guardianship and Administration Act 1986**, to the guardian; or
- (ii) an attorney has been appointed to be responsible for personal matters under an enduring power of attorney under the **Powers of Attorney Act 2014**, to the attorney."

155 Amendment of the Information Privacy Act 2000

For section 64(2)(a) of the **Information Privacy Act 2000** substitute—

"(a) by—

- (i) the individual personally, except if the individual is a child who is incapable of making the request; or

- (ii) a supportive attorney acting under a supportive attorney appointment, within the meaning of the **Powers of Attorney Act 2014**; and".

156 Amendment of the Medical Treatment Act 1988

In section 5A(4) of the **Medical Treatment Act 1988**, for "general power of attorney" substitute "general non-enduring power of attorney (within the meaning of the **Powers of Attorney Act 2014**)".

157 Amendment of the Melbourne Market Authority Act 1977

Clause 6(2) of Part II of Schedule 1 to the **Melbourne Market Authority Act 1977** is repealed.

158 Amendment of the Mental Health Act 2014

In section 75(1)(d) of the **Mental Health Act 2014**, for "as an enduring guardian within the meaning of the **Guardianship and Administration Act 1986**" substitute "as an attorney under an enduring power of attorney under the **Powers of Attorney Act 2014**".

159 Amendment of the Personal Safety Intervention Orders Act 2010

In the definition of *guardian* in section 4 of the **Personal Safety Intervention Orders Act 2010**—

- (a) after "**Guardianship and Administration Act 1986**" insert "or an attorney who has power for personal matters under an enduring power of attorney under the **Powers of Attorney Act 2014**";
- (b) in paragraph (a), after "under this Act" insert "or under the enduring power of attorney".

160 Amendment of the State Electricity Commission Act 1958

Clause 6(2) of Part II of the Fifth Schedule to the **State Electricity Commission Act 1958** is repealed.

161 Amendment of the Supported Residential Services (Private Proprietors) Act 2010

(1) In paragraph (a) of the definition of *resident's administrator* in section 3(1) of the **Supported Residential Services (Private Proprietors) Act 2010**, after "an enduring power of attorney" insert "under the **Powers of Attorney Act 2014**".

(2) For the definition of *resident's guardian* in section 3(1) of the **Supported Residential Services (Private Proprietors) Act 2010** substitute—

resident's guardian means—

(a) the resident's guardian appointed—

(i) under the **Guardianship and Administration Act 1986**; or

(ii) by a court; or

(b) the resident's attorney appointed for personal matters under an enduring power of attorney under the **Powers of Attorney Act 2014**;

162 Amendment of the Transport Accident Act 1986

In the example at the foot of section 61D(1) of the **Transport Accident Act 1986**, for "a general or" substitute "a general non-enduring power of attorney or an".

163 Amendment of the Trustee Act 1958

(1) In paragraph (c) of the proviso to section 35(2) of the **Trustee Act 1958**, for "is filed under the **Instruments Act 1958**" substitute "was filed under the **Instruments Act 1958** (as in force before the commencement of the **Instruments (Powers of Attorney) Act 1980**)".

(2) After section 35(2) of the **Trustee Act 1958** insert—

"(3) For the purpose of subsection (2)—

"power of attorney means a power of attorney that was made and registered under the **Instruments Act 1958** as in force before the commencement of the **Instruments (Powers of Attorney) Act 1980**."

164 Repeal of Part 12 of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998

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

165 New Part 15AD inserted in Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998

After Part 15AC of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—

**"PART 15AD—POWERS OF ATTORNEY
ACT 2014**

51AF Constitution of Tribunal for proceedings

The Tribunal is to be constituted for the purposes of a rehearing under Division 4 of Part 8 of the **Powers of Attorney Act 2014** 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).

51AG Public Advocate may intervene or be joined

The Public Advocate—

- (a) may intervene at any time; and
- (b) is entitled to be joined as a party—

in a proceeding under Part 8 of the **Powers of Attorney Act 2014**.

51AH Referral to administrators for report

- (1) The Tribunal may refer any matter relating to a proceeding under Part 8 of the **Powers of Attorney Act 2014** to a government department, public authority, service provider, the Public Advocate or a guardian or administrator appointed under that Act for investigation and report.

- (2) A person or body to whom a matter is referred under this clause must investigate and report to the Tribunal on that matter.
- (3) The Tribunal must not determine a question referred to a person or body under this clause unless the Tribunal has received and considered the report of the person or body.

51AI Proceeding not invalidated by failure to give notice

A hearing or order of the Tribunal in a proceeding under Part 8 of the **Powers of Attorney Act 2014** is not invalidated or affected only because of a failure to give notice—

- (a) to a person in respect of whom an application has been made, if the Tribunal—
 - (i) has dispensed with the requirement for notice to be given to that person; and
 - (ii) has notified the Public Advocate that it has done so; or
- (b) to any other person.

51AJ Confidentiality of proceedings

- (1) Unless the Tribunal orders otherwise, a person must not publish or broadcast or cause to be published or broadcast any report of a proceeding under Part 8 of the **Powers of Attorney Act 2014** that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Penalty: 20 penalty units.

Powers of Attorney Act 2014
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Part 10—Transitional and Consequential Provisions, Amendment of Other
Acts

s. 165

- (2) The Tribunal may make an order under subclause (1) only if it considers that it would be in the public interest to do so.
 - (3) An order of the Tribunal under subclause (1) must specify that pictures are not to be taken of any party to the proceeding."
-

Sch.

SCHEDULE

SCHEDULE

Section 7

**FORM OF GENERAL NON-ENDURING POWER OF
ATTORNEY**

This general non-enduring power of attorney is made under Part 2 of the **Powers of Attorney Act 2014** and has effect as a deed.

This general non-enduring power of attorney is made on:
(*insert date of making*)

I, (*insert name of person making power of attorney*)
of (*insert address of person making power of attorney*)
appoint (*insert name of attorney, or attorneys if appointing more than one*)
of (*insert address(es) of attorney(s)*)
(*include one of the following options*)
to be my attorney
(*or*)
jointly to be my attorneys
(*or*)
jointly and severally to be my attorneys

(*If appointing alternative attorney(s) include the following*)
and I appoint (*insert name of alternative attorney or alternative attorneys if
appointing more than one*)
of (*insert address(es) of alternative attorney(s)*)
as alternative attorney for:
(*insert name of attorney in respect of whom alternative attorney is appointed*)

(*If more than one alternative attorney is being appointed insert their names
and addresses and the name of the attorney(s) for whom they are being
appointed*)

I authorise my attorney(s) to do on my behalf anything that I may lawfully
authorise an attorney to do.

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I specify that this power of attorney begins:

(Choose one option only, if no option is chosen the power begins immediately)

- immediately
- on this date: *(insert date)*
- on this occasion: *(insert occasion)*

Signed as a deed by:

=====

ENDNOTES

- † *Minister's second reading speech—*
Legislative Assembly: 26 June 2014
Legislative Council: 7 August 2014

The long title for the Bill for this Act was "A Bill for an Act to consolidate certain aspects of the law as to powers of attorney and to otherwise provide for powers of attorney, to provide for matters to do with supportive attorneys, to repeal Parts XI and XIA of the **Instruments Act 1958** and Division 5A of Part 4 of the **Guardianship and Administration Act 1986**, to make related amendments to those and other Acts and for other purposes."