



Australian Capital Territory

# **Powers of Attorney Act 2006**

**A2006-50**

**Republication No 19**

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(republishing for expiry of provisions (s 45 (1A), (5), (6)))

## About this republication

### The republished law

This is a republication of the *Powers of Attorney Act 2006* (including any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes)) as in force on 30 September 2023. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 30 September 2023.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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### Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

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### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the [Legislation Act 2001](#), section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see [Legislation Act 2001](#), s 133).



Australian Capital Territory

# Powers of Attorney Act 2006

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Australian Capital Territory

# **Powers of Attorney Act 2006**

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An Act about powers of attorney, and for other purposes

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## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Powers of Attorney Act 2006*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*decision-making capacity*—see section 9 (1).’ means that the term ‘decision-making capacity’ is defined in that subsection.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Chapter 2                      General overview and important concepts

### 6                      ***Principal and attorney***

An ***attorney*** is a person who is authorised under a power of attorney to make decisions and do particular other things for the person (the ***principal***) who made the power of attorney.

### 7                      **What is a *general power of attorney*?**

A ***general power of attorney*** is a power of attorney under this Act that operates only while the principal has decision-making capacity.

### 8                      **What is an *enduring power of attorney*?**

An ***enduring power of attorney*** is a power of attorney under this Act that is not revoked by the principal becoming a person with impaired decision-making capacity.

*Note*                      An enduring power of attorney operates as a general power of attorney in relation to property matters while the principal has decision-making capacity (see s 31).

### 9                      **What are *decision-making capacity* and *impaired decision-making capacity*?**

- (1) For this Act, a person has ***decision-making capacity*** if the person can make decisions in relation to the person's affairs and understands the nature and effect of the decisions.

- (2) For this Act, a person has ***impaired decision-making capacity*** if the person cannot make decisions in relation to the person's affairs or does not understand the nature or effect of the decisions the person makes in relation to the person's affairs.

*Note 1* A person is not taken to have impaired decision-making capacity only because of certain attributes or behaviours (see s 91).

*Note 2* For the criteria to work out if a person understands the nature and effect of making an enduring power of attorney, see s 17.

## 10 **Meaning of *property matter***

In this Act:

***property matter***, for a principal, means a matter relating to the principal's property.

### **Examples of property matters a power of attorney may deal with**

- 1 paying maintenance and accommodation expenses for the principal and the principal's dependants
- 2 paying the principal's debts and expenses
- 3 receiving and recovering amounts payable to the principal
- 4 carrying on the principal's trade or business
- 5 performing contracts entered into by the principal
- 6 discharging a mortgage over the principal's property
- 7 paying rates, taxes and other outgoings for the principal's property
- 8 insuring the principal or the principal's property
- 9 preserving or improving the principal's estate
- 10 investing in authorised investments for the principal
- 11 continuing investments of the principal, including taking up rights to share issues, or options for new shares, to which the principal becomes entitled because of the principal's shareholding
- 12 undertaking transactions for the principal involving the use of the principal's property as security for the benefit of the principal
- 13 undertaking a real estate transaction for the principal
- 14 dealing with land under the [Land Titles Act 1925](#) for the principal

- 15 withdrawing amounts from, or depositing amounts into, an account of the principal held with an authorised deposit-taking institution
- 16 legal matters in relation to the principal's finances and property

## 11 **Meaning of *personal care matter***

In this Act:

***personal care matter***, for a principal, means a matter, other than a health care matter, special personal matter, special health care matter or medical research matter relating to the principal's personal care, including the principal's welfare.

### **Examples of personal care matters a power of attorney may deal with**

- 1 where the principal lives
- 2 who the principal lives with
- 3 whether the principal works and, if the principal works, where and how the principal works
- 4 what education or training the principal gets
- 5 whether the principal applies for a licence or permit
- 6 the principal's daily dress and diet
- 7 whether to consent to a forensic examination of the principal
- 8 whether the principal will go on holiday and where
- 9 legal matters relating to the principal's personal care

*Note* ***Special personal matter***—see s 36. ***Special health care matter***—see s 37.

## 12 **Meaning of *health care matter***

In this Act:

***health care matter***, for a principal, means a matter, other than a special health care matter or medical research matter, relating to the principal's health care.

### **Examples of health care matters a power of attorney may deal with**

- 1 consenting to lawful medical treatment necessary for the principal's wellbeing
- 2 donations (other than donations of non-regenerative tissue) under the [\*Transplantation and Anatomy Act 1978\*](#) by the principal to someone else

- 3 withholding or withdrawal of medical treatment for the principal
- 4 legal matters relating to the principal's health care
- 5 consenting to treatment for a mental illness (other than electroconvulsive therapy or psychiatric surgery) necessary for the principal's wellbeing

*Note*     ***Special health care matter***—see s 37.

## **12A     Meaning of *medical research matter***

- (1) In this Act:

***medical research matter***, for a principal, means a matter relating to the principal's participation in—

- (a) medical research; or
- (b) low-risk research.

*Note*     The power given to an attorney under an enduring power of attorney in relation to medical research matters must be exercised in accordance with pt 4.3A (Medical research matters).

- (2) In this section:

***low-risk research***, in relation to a person—see section 41A.

***medical research***, in relation to a person—see section 41A.

## Chapter 3                      How to appoint an attorney

### Part 3.1                      What the principal needs to do

#### 13                      Appointment of attorneys

- (1) An adult (the *principal*) may, by a power of attorney, appoint 1 or more people to do anything for the principal that the principal can lawfully do by an attorney.

*Note 1*    If a form is approved under s 96 for this provision, the form must be used.

*Note 2*    The principal must understand the nature and effect of making the power of attorney (see s 17 and s 18).

*Note 3*    Section 14 contains limits on this general power of appointment in relation to enduring powers of attorney.

*Note 4*    A power to appoint a person to do something includes a power to appoint a corporation to do the thing (see [Legislation Act](#), s 160 (1)).

- (2) By an enduring power of attorney, an adult (the *principal*) may also appoint 1 or more people to do anything in relation to 1 or more property matters, personal care matters, health care matters or medical research matters for the principal that the principal could lawfully do by an attorney if the principal had decision-making capacity for the matter when the power to do the thing is exercised.
- (3) However, an adult must not, by a power of attorney, appoint a person younger than 18 years old as an attorney.

#### 14                      Limit on s 13 power to appoint attorneys—enduring powers of attorney

- (1) Under section 13, a principal must not, in an enduring power of attorney, appoint as an attorney for a property matter—

(a) a corporation other than—

(i) the public trustee and guardian; or

- (ii) a trustee company under the *Trustee Companies Act 1947*;  
or
  - (b) a person who is bankrupt or personally insolvent.
- (2) Under section 13, a principal must not, in an enduring power of attorney, appoint a corporation, other than the public trustee and guardian, as an attorney for a personal care matter, health care matter or medical research matter.
- (3) A person for whom a guardian or manager is appointed under the *Guardianship and Management of Property Act 1991* cannot make an enduring power of attorney unless the ACAT approves the provisions of the power.

## 15 Appointment of attorneys by name or position

A principal may appoint a person to act under a power of attorney by—

- (a) naming the person; or
- (b) nominating the occupant of a position (however described), at a particular time or from time to time.

*Note* The principal may revoke a power of attorney if the principal has decision-making capacity.

## 16 When and how power under power of attorney exercisable

- (1) A principal may state in a power of attorney when, and how, power under the power of attorney is exercisable.

### Examples of when power may be exercisable

- 1 if I am outside Australia for more than 1 month
- 2 if the property at 13 Mae West Drive is sold
- 3 starting on 14 February 2007
- 4 if I do not have capacity to make a decision that needs to be made about my treatment, care or support for a mental illness

- (2) However, if the power of attorney does not state when the power is exercisable, the power can be exercised once the power of attorney is made.

## **17 Understanding nature and effect of making powers of attorney**

Understanding the nature and effect of making a power of attorney includes understanding each of the following:

- (a) that the principal may, in the power of attorney, state or limit the power to be given to an attorney;
- (b) that the principal may, in the power of attorney, instruct the attorney about the exercise of the power;
- (c) when the power under the power of attorney can be exercised;
- (d) that, if the power under a power of attorney can be exercised for a matter, the attorney has the power to make decisions in relation to, and will have full control over, the matter subject to terms or information about exercising the power that are included in the power of attorney;
- (e) that the principal may revoke the power of attorney at any time the principal is capable of making the power of attorney;
- (f) for enduring powers of attorney only—
  - (i) that the power given by the principal continues even if the principal becomes a person with impaired decision-making capacity; and
  - (ii) that, at any time the principal is not capable of revoking the power of attorney, the principal cannot effectively oversee the use of the power.

*Note* A person has decision-making capacity if the person can make decisions in relation to the person's affairs and understands the nature and effect of the decisions (see s 9 (1)).

**18      Presumption that principal understands nature and effect  
         of making power of attorney**

In the absence of evidence to the contrary, a principal who makes a power of attorney is taken, for this Act, to understand the nature and effect of making the power of attorney.

## **Part 3.2                      Technical requirements**

### **19                      Formal requirements for powers of attorney**

- (1) A power of attorney must be signed—
  - (a) by the principal; or
  - (b) by the direction, and in the presence, of the principal, by someone eligible to sign for the principal.

*Note*        See s 20 for who is eligible to sign for the principal.

- (2) The power of attorney must—
  - (a) be signed and dated by 2 adult witnesses in the presence of the principal and each other; and
  - (b) contain a certificate signed by each witness in accordance with section 22.

*Note*        Section 21 sets out who can be a witness to a power of attorney.

### **20                      Who can sign for the principal?**

A person is eligible to sign a power of attorney for the principal if the person—

- (a) is an adult; and
- (b) is not a witness for the power of attorney; and
- (c) is not an attorney for the principal.

### **21                      Who can be a witness?**

- (1) A person cannot be a witness to a power of attorney if the person is—
  - (a) a person signing the power of attorney for the principal; or
  - (b) a person appointed as attorney under the power of attorney; or
  - (c) a child.

- (2) Only 1 of the witnesses to the power of attorney can be a relative of—
  - (a) the principal; or
  - (b) a person appointed as attorney under the power of attorney.
- (3) For an enduring power of attorney, 1 witness must be a person authorised to witness the signing of a statutory declaration.

## **22 Certificates by witnesses to powers of attorney**

- (1) If a power of attorney is signed by the principal, the power of attorney must include a certificate signed by each witness stating that—
  - (a) the principal signed the power of attorney voluntarily in the presence of the witness; and
  - (b) at the time the principal signed the power of attorney, the principal appeared to the witness to understand the nature and effect of making the power of attorney.

*Note* A principal must understand the matters in s 17 to understand the nature and effect of making a power of attorney. However, in the absence of evidence to the contrary, the principal is taken to understand the nature and effect of making the power of attorney (see s 18).

- (2) If a power of attorney is signed by a person for the principal, the power of attorney must include a certificate signed by each witness stating that—
  - (a) the principal directed the person to sign the power of attorney for the principal; and
  - (b) the principal gave the direction voluntarily in the presence of the witness; and
  - (c) the person signed the power of attorney in the presence of the principal and the witness; and
  - (d) at the time the principal gave the direction to sign the power of attorney, the principal appeared to the witness to understand the nature and effect of making the power of attorney.

**23      Enduring power of attorney ineffective for attorney  
         unless accepted**

An enduring power of attorney is effective in relation to an attorney only if the attorney has accepted the appointment by signing the enduring power of attorney.

*Note*      For what happens if 1 of multiple attorneys does not accept appointment, see section 28.

**24      Powers of attorney may be made outside ACT**

For this Act, it does not matter whether a power of attorney made under this Act is made in or outside the ACT.

## **Part 3.3**

# **Authorisation of 2 or more attorneys**

*Note to pt 3.3*

For provisions about multiple attorneys and revocation, see s 65 to s 68.

### **25 Authorisation of 2 or more attorneys under power of attorney**

A principal may, under a power of attorney, authorise 2 or more attorneys in either or both of the following ways:

- (a) by authorising the attorneys to act together or separately, or in any combination;
- (b) by authorising different attorneys to act in different circumstances, on the happening of different events or in relation to different matters.

#### **Examples**

- 1 A power of attorney authorises Jo to act for the principal only if Wilhelm (another attorney) becomes a person with impaired decision-making capacity.
- 2 A power of attorney authorises Frank to act for the principal until Melissa turns 18 and becomes the attorney.
- 3 A power of attorney authorises Violet and Ian as attorneys act separately for the principal, except in relation to health care matters when they must make decisions together.

### **26 Multiple attorneys usually joint**

- (1) This section applies if—
  - (a) 2 or more attorneys are authorised under a power of attorney in relation to a matter; and
  - (b) the power of attorney does not state how they are to share a power given to them.
- (2) The attorneys are authorised to exercise the power together but not separately.

**27 If multiple attorneys cannot exercise power unanimously**

- (1) This section applies if—
  - (a) 2 or more attorneys are authorised under an enduring power of attorney by a principal in relation to a matter; and
  - (b) the power of attorney does not state how they are to share a power given to them; and
  - (c) the principal has impaired decision-making capacity; and
  - (d) it is impracticable or impossible for the attorneys to exercise the power unanimously.
- (2) One or more of the attorneys, or another interested person in relation to the power of attorney, may apply to the ACAT for directions or an order.
- (3) In this section:  
*interested person*—see section 74.

**28 Effect of joint attorney not accepting enduring power of attorney**

- (1) This section applies if—
  - (a) an enduring power of attorney authorises 3 or more attorneys to exercise a power together but not separately; and
  - (b) the power of attorney does not require a stated number of attorneys to accept the power of attorney before the attorneys may exercise the power; and
  - (c) not all, but at least 2, of the attorneys have accepted the power of attorney.

- (2) The attorneys who have accepted the power under the enduring power of attorney may exercise the power.

**Example**

Alex authorises Beryl, Claude and David to act together as attorneys under an enduring power of attorney. Beryl and David accept the power of attorney, Claude does not. Beryl and David may exercise a power under the power of attorney together. Claude accepts the enduring power of attorney later. After Claude accepts, Beryl and David cannot exercise the power without Claude.

- (3) However, if the enduring power of attorney requires a stated number of attorneys to exercise a power together, the power must not be exercised unless that number of attorneys accepts the power of attorney.

## Chapter 4                      Operation of powers of attorney

### Part 4.1                      Operation of powers of attorney generally

#### 29                      Powers of attorney are deeds

- (1) A power of attorney that complies with this Act is, for all purposes, taken to be a deed, even though it is not expressed to be a deed or to be sealed.

*Note*                      A deed may be registered (see [Registration of Deeds Act 1957](#)) and must be registered for a dealing with land by the attorney to be registered (see [Land Titles Act 1925](#), s 130).

- (2) In this section:

*power of attorney* includes—

- (a) an amendment of a power of attorney; and
- (b) a revocation of a power of attorney.

#### 30                      Principal may act despite giving power of attorney

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

#### 31                      How does enduring power of attorney operate while principal has capacity?

- (1) This section applies to an enduring power of attorney that operates while the principal has decision-making capacity.
- (2) While the principal has decision-making capacity, the power of attorney operates as a general power of attorney in relation to property matters.

## Part 4.2                      Operation of enduring powers of attorney

### 32                      Enduring power of attorney—principal's impaired decision-making capacity

- (1) An enduring power of attorney giving power in relation to a matter is not revoked by the principal becoming a person with impaired decision-making capacity, either generally or in relation to the matter.
- (2) Also, a power under an enduring power of attorney can be exercised—
  - (a) while the principal has impaired decision-making capacity; and
  - (b) whether or not a condition about when the power is to start to operate is satisfied.

#### **Example**

An enduring power of attorney appointing Jack is stated to take effect on 3 January 2007. However, the principal becomes a person with impaired decision-making capacity on 27 October 2006. Jack can exercise a power under the enduring power of attorney starting on 27 October 2006.

*Note*                      A medical certificate can be evidence that the principal had, or did not have, impaired decision-making capacity (see s 87).

## **Part 4.3                      Things attorneys can and cannot do**

### **Division 4.3.1              Things attorneys can and cannot do generally**

#### **33                      Others acting for attorney**

- (1) An attorney under a general power of attorney may authorise someone else to exercise 1 or more of the attorney's powers, whether or not there is express power for the authorisation.

**Examples of authorisations**

- 1    substitute decision-maker
- 2    delegate
- 3    sub-attorney

*Note*        If a form is approved under s 96 for this provision, the form must be used.

- (2) An enduring power of attorney does not authorise an attorney to authorise anyone else to exercise the powers of the attorney while the principal has impaired decision-making capacity.
- (3) However, if an enduring power of attorney expressly authorises an attorney to authorise someone else to exercise 1 or more of the attorney's powers, the attorney may, in accordance with the express authorisation, authorise someone else to exercise the attorney's powers if—
- (a) the person could be appointed as an attorney under an enduring power of attorney; and
  - (b) the person authorised is known to the principal, or was known to the principal when the principal had decision-making capacity.
- (4) To remove any doubt, a person authorised under this section to exercise an attorney's powers is taken to be the attorney for this Act.

**34 Powers of attorney do not generally give authority to benefit attorneys**

A power of attorney does not authorise an attorney to execute an assurance or other document, or do anything else, that would result in a benefit being given to the attorney unless the power of attorney expressly authorises the giving of a benefit of that kind to the attorney.

**35 Things that cannot be lawfully done by attorneys**

A principal cannot do the following by an attorney under a power of attorney:

- (a) authorise the attorney to exercise power in relation to special personal matters;
- (b) authorise the attorney to exercise power in relation to special health care matters.

*Note* **Special personal matter**—see s 36. **Special health care matter**—see s 37.

**36 Special personal matters**

- (1) For this Act, each of the following is a *special personal matter* for a principal:
  - (a) making or revoking the principal's will;
  - (b) making or revoking a power of attorney for the principal;
  - (c) exercising the principal's right to vote in a Commonwealth, Territory, State or local government election or referendum;
  - (d) consenting to the adoption of a child of the principal who is under 18 years;
  - (e) consenting to the marriage of the principal.

- (2) In this section:  
*will* includes a codicil.

### 37                      **Special health care matters**

- (1) For this Act, each of the following is a *special health care matter* for a principal:
- (a) removal of non-regenerative tissue from the principal while alive for donation to someone else;
  - (b) sterilisation of the principal if the principal is, or is reasonably likely to be, fertile;
  - (c) termination of the principal's pregnancy;
  - (d) electroconvulsive therapy or psychiatric surgery;
  - (e) health care prescribed by regulation.

*Note*            **Health care**—see the dictionary.

- (2) In this section:  
*electroconvulsive therapy*—see the [Mental Health Act 2015](#), section 145.

*health care primarily to treat organic malfunction or disease*, of a principal, means health care without which an organic malfunction or disease of the principal is likely to cause serious or irreversible damage to the principal's physical health.

#### **Examples of health care covered by par (a)**

- 1 Health care involving sterilisation may be primarily to treat organic malfunction or disease if the principal has cancer affecting the reproductive system or cryptorchidism.
- 2 A procedure involving termination of a principal's pregnancy may be primarily to treat organic malfunction if the principal requires abdominal surgery for injuries sustained in an accident.

*Note*            *Health care primarily to treat organic malfunction or disease* is used in the definitions of *sterilisation* and *termination*.

*non-regenerative tissue*—see the [Transplantation and Anatomy Act 1978](#), dictionary.

*psychiatric surgery*—see the [Mental Health Act 2015](#), section 145.

*sterilisation*, of a principal—

- (a) means health care of the principal that is intended, or reasonably likely, to make the principal, or ensure the principal is, permanently infertile; but
- (b) does not include health care primarily to treat organic malfunction or disease of the principal.

**Examples of sterilisation if not primarily to treat organic malfunction or disease**

- 1 endometrial ablation
- 2 hysterectomy
- 3 tubal ligation
- 4 vasectomy

*termination*, of a principal's pregnancy, does not include health care primarily to treat organic malfunction or disease of the principal.

## **Division 4.3.2      Things attorneys can and cannot do under enduring powers of attorney**

### **38      Enduring powers of attorney do not generally give authority to make gifts**

An enduring power of attorney does not authorise the attorney to make a gift of all or any of the principal's property to anyone else unless the power of attorney expressly authorises the making of the gift.

### **39 Express general authority to make gifts in enduring powers of attorney**

- (1) This section applies if an enduring power of attorney contains a general authorisation to make gifts.
- (2) A general authorisation to make gifts (however described) in an enduring power of attorney authorises the following gifts:
  - (a) a gift made to a relative or close friend of the principal for a celebration or special event;
  - (b) a gift that is a donation of a kind that—
    - (i) the principal made when the principal had decision-making capacity; or
    - (ii) the principal might reasonably be expected to make.

#### **Examples of celebrations for par (a)**

- 1 birthday
- 2 Easter
- 3 Hanukah

#### **Examples of special events for par (a)**

- 1 birth
- 2 marriage
- 3 graduation

- (3) However, the general authorisation to make gifts in an enduring power of attorney does not authorise making a gift mentioned in subsection (2) if the value of the gift is more than is reasonable to make.
- (4) In working out what is reasonable for subsection (3), and without limiting what must be considered, the principal's financial circumstances and the size of the principal's estate must be considered.

- (5) Subsection (2) does not prevent the attorney, or a charity with which the attorney has a connection, from receiving a gift under the general authorisation to make gifts.

**40 Express general authority to provide for reasonable living expenses in enduring powers of attorney**

- (1) This section applies if an enduring power of attorney expressly authorises the payment of reasonable living expenses (however described) for a named person.
- (2) Unless the power of attorney expressly provides otherwise, the power of attorney only authorises the payment of reasonable costs of the following in relation to the named person:
- (a) housing;
  - (b) food;
  - (c) education;
  - (d) transportation;
  - (e) medical care and medication.
- (3) In working out what are reasonable costs for subsection (2), and without limiting what must be considered, the principal's financial circumstances and the size of the principal's estate must be considered.

#### **41 Powers to maintain principal's dependants—enduring powers of attorney**

- (1) An attorney for a property matter under an enduring power of attorney may provide from the principal's estate for the needs of a dependant of the principal.
- (2) However, unless there is a contrary intention expressed in the enduring power of attorney, what is provided must not be more than what is reasonable considering all the circumstances and, in particular, the principal's financial circumstances.

## Part 4.3A Medical research matters

### 41A Definitions—pt 4.3A

- (1) In this part:

***approved***, for medical research or low-risk research, means medical research or low-risk research approved by a human research ethics committee constituted in accordance with, and acting in compliance with, the *National Statement on Ethical Conduct in Human Research* (2007), published by the NHMRC, as in force from time to time.

*Note* The *National Statement on Ethical Conduct in Human Research* (2007) is accessible at [www.nhmrc.gov.au](http://www.nhmrc.gov.au).

***low-risk research***, in relation to a person—

- (a) means research carried out for medical or health purposes that—
  - (i) poses no foreseeable risk of harm to the person, other than any harm usually associated with the person's condition; and
  - (ii) does not change the treatment appropriate for the person's condition; but
- (b) does not include research that is part of a clinical trial, unless the trial is evaluating only the following:
  - (i) a therapeutic good that is included in the Australian Register of Therapeutic Goods (other than the part of the Register for goods known as provisionally registered goods);

- (ii) a health care procedure, process or technique supported by a substantial number of practitioners in the relevant field of health care.

**Examples**

- 1 a comparative assessment of the effects of different methods of drug administration proven to be beneficial in the treatment of a condition (such as a continuous infusion as opposed to a once-a-day administration)
- 2 a comparative assessment of the angle at which to set a tilt bed to best assist a person's breathing
- 3 research comparing the effectiveness of paracetamol and ibuprofen during routine health care

***medical research***, in relation to a person—

- (a) means research in relation to the diagnosis, maintenance or treatment of a medical condition that the person has or has had or to which the person has a significant risk of being exposed; and
- (b) includes—
  - (i) experimental health care; and
  - (ii) the administration of medication or the use of equipment or a device as part of a clinical trial; and
  - (iii) research prescribed by regulation as medical research; but
- (c) does not include—
  - (i) low-risk research; or
  - (ii) research prescribed by regulation not to be medical research.

**Example—par (b) (ii)**

a clinical trial involving a drug usually used for a particular medical condition but trialled as a treatment for a different medical condition

***medical research power of attorney***, for a principal, means—

- (a) an enduring power of attorney under which the principal authorises an attorney to exercise power in relation to a medical research matter; or
- (b) an enduring power of attorney—
  - (i) under which the principal authorises an attorney to exercise power in relation to a health care matter; and
  - (ii) that was made before the commencement of the *Powers of Attorney Amendment Act 2016*.

(2) In this section:

***Australian Register of Therapeutic Goods*** means the register maintained under the *Therapeutic Goods Act 1989* (Cwlth), section 9A.

*Note* The Australian Register of Therapeutic Goods can be accessed at [www.tga.gov.au/resources/artg](http://www.tga.gov.au/resources/artg).

***experimental health care*** means research—

- (a) into health care that—
  - (i) has not yet gained the support of a substantial number of practitioners in that field of health care; and
  - (ii) may, but need not, be medical in nature; and
- (b) delivered as part of a test or trial.

**Examples**

- 1 trialling increased physical therapy for patients on ventilation apparatus
- 2 trialling a new absorbent material after bathing to treat dermatological conditions

*NHMRC* means the National Health and Medical Research Council established under the *National Health and Medical Research Council Act 1992* (Cwlth), section 5B.

*personal health information*—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

*personal information*—see the *Information Privacy Act 2014*, section 8.

*therapeutic goods*—see the *Therapeutic Goods Act 1989* (Cwlth), section 3.

#### **41B Attorney must follow decision-making principles**

- (1) This section applies in relation to a medical research power of attorney if the principal has impaired decision-making capacity.
- (2) An attorney authorised under a medical research power of attorney for a principal who is asked to consent to the principal participating in medical research or low-risk research must exercise the power in accordance with the following principles (the *decision-making principles*):
  - (a) the principal's wishes, as far as they can be worked out, must be given effect to, unless making the decision in accordance with the wishes is likely to significantly adversely affect the principal's interests;
  - (b) if giving effect to the principal's wishes is likely to significantly adversely affect the principal's interests—the attorney must give effect to the principal's wishes as far as possible without significantly adversely affecting the principal's interests;
  - (c) if the principal's wishes cannot be given effect to at all—the principal's interests must be promoted;

- (d) the principal's life (including the principal's lifestyle) must be interfered with to the smallest extent necessary;
  - (e) the principal must be encouraged to look after themselves as far as possible;
  - (f) the principal must be encouraged to live in the general community, and take part in community activities, as far as possible.
- (3) If the principal was participating in medical research or low-risk research before the principal became a person with impaired decision-making capacity, it is presumed the principal's wishes include to continue participating in the medical research or low-risk research.
  - (4) Before making a decision, the attorney must consult with each of the principal's carers.
  - (5) However, the attorney must not consult with a carer if the consultation would, in the attorney's opinion, adversely affect the principal's interests.
  - (6) Subsection (5) does not limit the consultation that the attorney may carry out.
  - (7) In this section:  
*carer*—see the [Guardianship and Management of Property Act 1991](#), section 6.

#### **41C Attorney may consent to principal's participation in low-risk research**

- (1) This section applies in relation to a medical research power of attorney if the principal has impaired decision-making capacity.

- (2) An attorney authorised under the medical research power of attorney may consent to the principal participating in low-risk research only if the research is approved.

*Note* If a principal has made a health direction under the *Medical Treatment (Health Directions) Act 2006*, when making a decision under this section, the attorney must comply with—

- (a) if the health direction is consistent with the power of attorney—the health direction; and
  - (b) if the health direction is inconsistent with the power of attorney—the document that was made most recently (see *Medical Treatment (Health Directions) Act 2006*, s 19).
- (3) If an attorney makes an application, the ACAT must give an opinion or advice to assist the attorney to decide whether to give consent under subsection (2).

#### **41D Attorney may consent to principal's participation in medical research**

- (1) This section applies in relation to a medical research power of attorney if the principal has impaired decision-making capacity.
- (2) An attorney authorised under a medical research power of attorney for a principal may consent to the principal participating in medical research only if—
- (a) the research is approved; and
  - (b) the principal is not likely to regain decision-making capacity before the latest time that the principal may meaningfully participate in the research; and

*Note* An independent doctor must assess the likelihood of a principal regaining decision-making capacity within the time mentioned (see s 41F).

- (c) the attorney is satisfied on reasonable grounds that—
  - (i) the research relates to the diagnosis, maintenance or treatment of a condition that the principal has or has had or to which the principal has a significant risk of being exposed; and
  - (ii) the research may result in benefit to the principal or others with the condition; and
  - (iii) the potential benefit to the principal, or others with the condition, of participating in the research outweighs any potential risk or inconvenience to the principal, or any potential adverse impact on the principal's quality of life; and
  - (iv) participating in the research will not unduly interfere with the principal's privacy.

*Note* If a principal has made a health direction under the [Medical Treatment \(Health Directions\) Act 2006](#), when making a decision under this section, the attorney must comply with—

- (a) if the health direction is consistent with the power of attorney—the health direction; and
  - (b) if the health direction is inconsistent with the power of attorney—the document that was made most recently (see [Medical Treatment \(Health Directions\) Act 2006](#), s 19).
- (3) If an attorney makes an application, the ACAT must give an opinion or advice to assist the attorney to decide whether to give consent under subsection (2).

#### **41E Attorney must not benefit etc from attorney's decision**

- (1) An attorney must not—
  - (a) accept a fee or other benefit for consenting, or refusing to consent, to a principal participating in low-risk research under section 41C or medical research under section 41D; and
  - (b) be involved in, or connected to, the research.

- (2) To remove any doubt, subsection (1) (a) does not apply to any personal benefit to the attorney because of an improvement in the principal's health as a result of participating in the research.

**41F      Assessment of likelihood of principal regaining decision-making capacity**

- (1) The likelihood of a principal regaining decision-making capacity within the period mentioned in section 41D (2) (b) must be assessed by an independent doctor, taking into account—
- (a) the principal's medical, mental and physical condition; and
  - (b) the severity of the principal's condition and the prognosis for the principal; and
  - (c) the current stage of treatment and care required for the principal; and
  - (d) any other circumstances relevant to the principal; and
  - (e) the nature of the medical research, including the type of treatment or care provided by the research and the timeframe for the research.
- (2) The independent doctor must state, in writing, the doctor's belief whether the principal is likely to regain decision-making capacity within the period mentioned in subsection (1), and the reasons for the belief.

*Note 1* An independent doctor must always give a statement under s (2), regardless of whether the ACAT has made a declaration about the decision-making capacity of a principal for an enduring power of attorney under the [Guardianship and Management of Property Act 1991](#), s 65.

*Note 2* In a proceeding, a certificate by an independent doctor under s (2) stating whether the principal is likely to regain decision-making capacity within the required period is evidence of that fact (see s 87).

- (3) In this section:

*independent doctor*, in relation to medical research, means a doctor who is not involved in, nor connected to, the research, other than a professional interest in the area of the research.

**41G Interested person may apply to ACAT for review of attorney's decision**

- (1) An interested person for a principal may apply to the ACAT for review of the decision of the attorney to consent, or refuse to consent, to the principal participating in low-risk research under section 41C or medical research under section 41D.
- (2) In this section:
- interested person*, for a principal—see section 74.

## Part 4.4                      Obligations of attorneys and others

### Division 4.4.1              Obligations of all attorneys

#### 42                      Conflict transactions

- (1) For this section, a ***conflict transaction*** is a transaction that results, or may result, in conflict between—
  - (a) the duty of an attorney towards the principal; and
  - (b) either—
    - (i) the interests of the attorney, or a relative, business associate or close friend of the attorney; or
    - (ii) another duty of the attorney.
- (2) However, a transaction is not a ***conflict transaction*** only because, by the transaction, the attorney in the attorney's own right and on behalf of the principal—
  - (a) deals with an interest in property jointly held; or
  - (b) acquires a joint interest in property; or
  - (c) obtains a loan or gives a guarantee or indemnity in relation to a transaction mentioned in paragraph (a) or (b).
- (3) An attorney may enter into a conflict transaction only if the principal authorises the transaction, conflict transactions of that kind or conflict transactions generally, in the power of attorney.
- (4) In this section:  
***joint interest*** includes an interest as a joint tenant or tenant in common.

## **43      Obligation of attorneys to keep interested people informed**

- (1) This section applies if any of the following events happen:
    - (a) a person (the ***relevant person***) resigns the person's appointment as attorney under a power of attorney;
    - (b) the appointment of a person (the ***relevant person***) as an attorney under a power of attorney is revoked;
    - (c) a court or the ACAT makes an order in relation to a power of attorney that affects the appointment of a person (the ***relevant person***) under the power of attorney.
  - (2) The relevant person must give notice of the event to—
    - (a) any other attorney or person authorised under the power of attorney to exercise the relevant person's powers as attorney; and
    - (b) if the event is the making of a court order or ACAT order in relation to the power of attorney that affects the relevant person's authorisation under the power of attorney—each person dealing with the relevant person as an attorney.
- Note 1*    An attorney under a general power of attorney may authorise someone to exercise the attorney's powers (see s 33).
- Note 2*    For how documents may be given, see the [Legislation Act](#), pt 19.5.
- (3) However, the relevant person need not give notice under subsection (2) to a person (the ***informed person***) about an event if the relevant person believes, on reasonable grounds, that the informed person already knows about the event.

## **Division 4.4.2      Obligations of attorneys under enduring power of attorney—principal with impaired decision-making capacity**

### **44      Principles for attorneys under enduring powers of attorney**

The principles (the *general principles*) set out in schedule 1 must be complied with to the maximum extent possible by a person who exercises the functions of an attorney under an enduring power of attorney in relation to a principal with impaired decision-making capacity.

### **45      Right of attorneys to information—enduring powers of attorney**

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) An attorney under the enduring power of attorney has a right to all the information (the *available information*) that the principal would have been entitled to if the principal had decision-making capacity.
- (3) A person who has custody or control of the available information must disclose the information to the attorney if asked.
- (4) However, subsections (2) and (3) are subject to any contrary intention, or express limitation, in the enduring power of attorney.

**46 Conditions on exercise of power in relation to medical treatment—enduring powers of attorney**

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) An attorney under the enduring power of attorney must not ask for medical treatment to be withheld or withdrawn from the principal unless—
  - (a) the attorney has consulted a doctor about—
    - (i) the nature of the principal’s illness; and
    - (ii) any alternative forms of treatment available to the principal; and
    - (iii) the consequences to the principal of remaining untreated; and
  - (b) the attorney believes, on reasonable grounds, that the principal would ask for the medical treatment to be withheld or withdrawn if the principal—
    - (i) could make a rational judgment; and
    - (ii) were to give serious consideration to the principal’s own health and wellbeing.

**46A Restrictions on consent by attorney to mental health treatment, care or support**

- (1) An attorney under an enduring power of attorney may consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) only if the principal—
  - (a) does not have decision-making capacity; and
  - (b) does not have an advance consent direction under the *Mental Health Act 2015* authorising the treatment; and
  - (c) expresses willingness to receive the treatment.

- (2) A consent must be in writing.

*Note* If a form is approved under s 96 for this provision, the form must be used.

- (3) A consent must be for a stated period, of not longer than 6 months, but can be renewed (and further renewed) for another stated period of not longer than 6 months.

- (4) In considering the stated period necessary for a consent to treatment, a health professional who is giving the treatment must take into account—

- (a) whether, and when, the principal is likely to regain decision-making capacity; and
- (b) the likely duration of the treatment required; and
- (c) the content of any advance consent direction in force for the principal.

- (5) The health professional must tell the ACAT and the public advocate in writing about a consent, including the stated period.

*Note 1* If a form is approved under s 96 for this provision, the form must be used.

*Note 2* For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (6) If a consent is not renewed at the end of its stated period, the health professional must tell the ACAT in writing.

- (7) The ACAT—

- (a) must, on application, review a consent; and
- (b) may, at any time on its own initiative, review a consent.

- (8) A consent ends before the end of its stated period if—

- (a) the ACAT directs that the consent be withdrawn; or
- (b) subsection (1) (a), (b) or (c) no longer apply to the principal.

*Note* The chief psychiatrist or another relevant person may apply for a mental health order in relation to the principal (see [Mental Health Act 2015](#), s 51).

- (9) In this section:

*decision-making capacity*—see the [Mental Health Act 2015](#), section 7.

*mental illness*—see the [Mental Health Act 2015](#), section 10.

#### **47 Keeping records—enduring powers of attorney**

An attorney for a property matter under an enduring power of attorney must keep accurate records and accounts of all dealings and transactions made under the power.

#### **48 Keeping property separate—enduring powers of attorney**

- (1) An attorney for a property matter under an enduring power of attorney must keep the attorney's property separate from the principal's property.

*Note* **Property** includes money and financial assets (see dict).

- (2) This section does not—
- (a) apply to property owned jointly by the principal and attorney; or
  - (b) affect any other obligation imposed under territory law.

## **Division 4.4.3                      Obligations in relation to health care**

### **49                      Obligations on health care facilities in relation to powers of attorney**

The person in charge of a health care facility must take all reasonable steps to ensure that—

- (a) each person receiving care at the facility is asked whether the person has an enduring power of attorney for personal care matters, health care matters or medical research matters; and
- (b) if a person has a power of attorney of that kind—a copy of the power of attorney is kept with the person's records; and
- (c) a process is in place to periodically check the currency of powers of attorney kept.

## **Part 4.5                      If attorneys do not comply with Act**

### **50                      Compensation for failure to comply with Act—Supreme Court order**

- (1) An attorney under a power of attorney may be ordered by the Supreme Court to compensate the principal (or, if the principal has died, the principal's estate) for a loss caused by the attorney's failure to comply with this Act in the exercise, or purported exercise, of a power.

*Note*            Under s 52, the attorney may be relieved from liability.

- (2) Subsection (1) applies whether or not the attorney is convicted of an offence in relation to the attorney's failure.
- (3) If the principal or attorney has died, the application for compensation must be made to a court within 6 months after the day of the death.
- (4) If the principal and the attorney have died, the application for compensation must be made to a court within 6 months after the day of the first death.
- (5) The Supreme Court may extend the application time under subsection (3) or (4).

*Note*            An application for an extension may be made before or after the end of the period to be extended (see [Legislation Act](#), s 151C).

### **50A                      ACAT may order compensation etc**

- (1) The ACAT may order an attorney for a principal to pay an amount to the principal or, if the principal has died, the principal's estate—
  - (a) to compensate for a loss caused by the attorney's failure to comply with this Act in the exercise, or purported exercise, of a power; or

- (b) to account for any profits the attorney has accrued as a result of the attorney's failure to comply with this Act in the exercise, or purported exercise, of a power.
- (2) However, the ACAT must not order the attorney to make a payment under both subsection (1) (a) and (b) in relation to the same exercise, or purported exercise, of power.
- (3) Subsection (1) applies whether or not the attorney is convicted of an offence in relation to the attorney's failure.
- (4) The ACAT may make an order under subsection (1)—
  - (a) on its own initiative; or
  - (b) on application by an interested person in relation to the power of attorney.
- (5) If the principal or the attorney has died, any application under subsection (4) (b) must be made—
  - (a) within 6 months after the day of the death; and
  - (b) if both principal and attorney have died—within 6 months after the day of the first death.
- (6) In this section:  
*interested person*—see section 74.

## **51 Compensation under s 50 and later civil proceeding**

- (1) This section applies if—
  - (a) compensation for an attorney's failure to comply with this Act is paid in accordance with an order under section 50; and
  - (b) a later civil proceeding is brought in relation to the same failure.
- (2) The payment of compensation must be taken into account in assessing damages in the civil proceeding.

## **52 Relief from personal liability**

- (1) This section applies if a court considers that—
  - (a) an attorney is, or may be, personally liable for a contravention of this Act; and
  - (b) the attorney has acted honestly and reasonably and ought fairly to be excused for the contravention.
- (2) The court may relieve the attorney from all or part of the attorney's personal liability for the contravention.
- (3) If the attorney is an attorney under an enduring power of attorney, in deciding whether the attorney should be relieved of liability, the court must consider the extent to which the attorney has acted consistently with the general principles.
- (4) In this section:  
***court*** includes the ACAT.

## Chapter 5                      Ending powers of attorney

*Note*            An enduring power of attorney, or part of the power, may also be revoked by the ACAT.

### **53                      Resignation of attorney's appointment under power of attorney**

- (1) An attorney may resign the attorney's appointment under a power of attorney by written notice of resignation given to the principal.
- (2) However, if a principal has impaired decision-making capacity for a matter, an attorney under an enduring power of attorney may only resign as attorney for the matter with the leave of the ACAT.

*Note*            The ACAT may appoint a guardian for the principal (see [Guardianship and Management of Property Act 1991](#), s 7).

- (3) To remove any doubt, a power of attorney is revoked in relation to an attorney if the attorney resigns the attorney's appointment in accordance with this section.

### **54                      No irrevocable powers of attorney**

A power of attorney may be revoked under this Act, whether or not the power states otherwise.

### **55                      Advice of revocation of power of attorney**

If a principal revokes a power of attorney, the principal must take reasonable steps to tell all attorneys affected by the revocation.

**56 Revocation of power of attorney according to its terms**

If a power of attorney ceases to have effect according to its terms, the power of attorney is revoked.

**Examples**

- 1 If a general power of attorney is expressed to operate from 1 January 2006 to 25 January 2006, it is revoked at the end of that period.
- 2 If a general power of attorney is expressed to operate for the sale of a house, it is revoked once the sale is complete.

**57 Principal's impaired decision-making capacity—general power of attorney**

If the principal for a general power of attorney becomes a person with impaired decision-making capacity, the power of attorney is revoked.

*Note* A person must not be taken to have impaired decision-making capacity only because of certain attributes or behaviours (see s 91).

**58 Enduring power of attorney sometimes revoked by marriage, civil union or civil partnership**

- (1) This section applies to an enduring power of attorney if—
  - (a) a person is appointed as attorney under the power of attorney; and
  - (b) after the appointment, the principal marries or enters into a civil union or civil partnership with a person other than the attorney.
- (2) The enduring power of attorney is revoked in relation to the attorney unless the power of attorney expressly states that it is not revoked in the circumstances.

**59      Enduring power of attorney sometimes revoked by end of marriage, civil union or civil partnership**

- (1) This section applies to an enduring power of attorney if—
- (a) a person is appointed as attorney under the power of attorney; and
  - (b) at that time or later, the principal is married to, or in a civil union or civil partnership with, the attorney; and
  - (c) the marriage, civil union or civil partnership ends.
- (2) The enduring power of attorney is revoked in relation to the attorney.

**60      Death of principal for power of attorney**

If the principal for a power of attorney dies, the power of attorney is revoked.

**61      Death of attorney under power of attorney**

If an attorney under a power of attorney dies, the power of attorney is revoked to the extent that it gives power to the attorney.

**62      Effect of bankruptcy of individual attorney**

- (1) This section applies if—
- (a) an attorney under an enduring power of attorney is an individual; and
  - (b) the attorney becomes bankrupt or personally insolvent.
- (2) The power of attorney is revoked to the extent that it gives power to the attorney in relation to property matters.

**63 Attorney's impaired decision-making capacity for power of attorney**

If an attorney under a power of attorney becomes a person with impaired decision-making capacity, the power of attorney is revoked in relation to the attorney.

*Note* A person must not be taken to have impaired decision-making capacity only because of certain attributes or behaviours (see s 91).

**64 Effect of winding up etc of corporate attorney**

- (1) This section applies if—
  - (a) an attorney under a power of attorney is a corporation; and
  - (b) either—
    - (i) the attorney has been, or is being, wound up; or
    - (ii) a liquidator is appointed for the attorney.
- (2) The power of attorney is revoked to the extent that it gives power to the attorney.
- (3) In this section:  
*liquidator*, of an attorney, includes—
  - (a) the official manager of the attorney; or
  - (b) the receiver of the attorney's property; or
  - (c) the receiver and manager of the attorney's property; or
  - (d) the managing controller of the attorney's property.

**65 Multiple attorneys with separate powers—effect of revocation of powers of some attorneys**

If a power of attorney authorises 2 or more people as attorneys to act separately (whether or not in relation to a matter), the revocation of the power of attorney in relation to 1 or more attorneys does not revoke the power of attorney in relation to the other attorneys.

**66 Joint general power of attorney—effect of revocation of powers of some attorneys**

If a general power of attorney authorises 2 or more people to exercise power as attorneys together but not separately (whether or not in relation to a matter), the power of attorney is revoked if the power is revoked in relation to 1 or more of the attorneys.

**67 Joint enduring power of attorney—effect of revocation of powers of attorneys**

- (1) This section applies if—
  - (a) an attorney's power under an enduring power of attorney for a matter is revoked; and
  - (b) the attorney was authorised to exercise power for the matter under the power of attorney together with 1 or more other attorneys, but not separately; and
  - (c) the principal has impaired decision-making capacity.
- (2) If there is only 1 remaining attorney in relation to the matter, the remaining attorney may exercise power for the matter.
- (3) If there are 2 or more remaining attorneys in relation to the matter, the remaining attorneys may exercise power in relation to the matter and, if exercising power, must exercise power together.

**68 Power of attorney revoked in relation to each attorney**

A power of attorney is revoked when—

- (a) if there is only 1 attorney appointed—the power of attorney is revoked in relation to the attorney; or
- (b) if there are 2 or more attorneys appointed—the power of attorney is revoked in relation to each or the last of them.

*Note* If an attorney resigns, the power of attorney is revoked in relation to the attorney (see s 53 (3)).

**69 Revocation by later power of attorney**

A principal's power of attorney is revoked, to the extent of an inconsistency, by a later power of attorney of the principal.

## Chapter 6                      Protection and relief from liability

### 70                      Definitions—ch 6

In this chapter:

*invalidity*, of a power of attorney—

- (a) means *invalidity* because—
  - (i) the power of attorney purports to have been made under the law of a State or Territory and does not comply with the requirements of that law; or
  - (ii) the person making the power of attorney could not make the power of attorney at the time the person purported to make it; or
  - (iii) the power of attorney has been revoked, either completely or in relation to the person purporting to exercise power under the power of attorney; and
- (b) includes *invalidity* of the power of attorney for any other reason.

**Example—par (a) (ii)**

A person purports to make a power of attorney but a guardian has been appointed for the person and the ACAT has not approved the provisions of the power (see s 14 (4)).

*invalidity*, of a power under a power of attorney—

- (a) means *invalidity* because the power is not exercisable at the time it is purportedly exercised; and
- (b) includes *invalidity* of the power for any other reason.

*know*, of the invalidity of a power of attorney or a power under a power of attorney, includes—

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

*power of attorney* includes a document purporting to be a power of attorney.

## **71 Protection if court or ACAT orders etc**

- (1) This section applies if a court or the ACAT gives an order or direction in relation to the exercise of power under a power of attorney.
- (2) An attorney who acts in accordance with the order or direction is taken to have complied with this Act.
- (3) However, subsection (2) does not apply in relation to the order or direction if the attorney knowingly gave the court or ACAT false or misleading information relevant to the order or direction.

## **72 Protection for attorney if unaware of invalidity**

- (1) This section applies if—
  - (a) a power of attorney is invalid; and
  - (b) the attorney purports to exercise a power under the power of attorney without knowing the power of attorney is invalid.
- (2) This section also applies if—
  - (a) a power exercised under a power of attorney is invalid; and
  - (b) the attorney purports to exercise the power without knowing the power is invalid.
- (3) The attorney does not incur any liability, either to the principal or anyone else, because of the invalidity.

- (4) Anything done by the attorney in the exercise of the power under the invalid power of attorney or of an invalid power is, for all purposes, taken to have been done as if the power of attorney or power were not invalid.

**73      Protection for transaction if dealing with attorney and unaware of invalidity**

- (1) This section applies to a person who—
- (a) deals with a person (the *attorney*) who is acting, or purporting to act, as an attorney under a power of attorney; and
  - (b) at the time of the dealing, did not know that the power of attorney, or power under the power of attorney, was invalid.
- (2) A transaction between the attorney and the person is, in favour of the person, as valid as if the power of attorney or power were not invalid.

## Chapter 7 Proceedings and rights

*Note* The [Guardianship and Management of Property Act 1991](#), pt 3 deals with proceedings in relation to enduring powers of attorney by the ACAT.

### Part 7.1 Interpretation—ch 7

#### 74 Meaning of *interested person*—ch 7

In this chapter:

***interested person***—each of the following is an ***interested person*** in relation to a power of attorney:

- (a) an attorney;
- (b) the principal;
- (c) a relative of the principal;
- (d) the public advocate;
- (e) the public trustee and guardian;
- (f) a guardian of the principal;
- (g) a manager of the principal;
- (h) a person prescribed by regulation.

## Part 7.2 ACAT referral

### 75 ACAT may refer matter to Supreme Court

The ACAT may refer an application under section 50A (4) (b) to the Supreme Court.

*Note* See the [ACT Civil and Administrative Tribunal Act 2008](#), s 83 and s 84 for when an application to the ACAT may be referred to the Supreme Court.

## **Part 7.3                      Supreme Court orders**

### **80                      Supreme Court—confirming powers understood by principal**

- (1) A principal with decision-making capacity may apply to the Supreme Court for an order confirming that an attorney had power under a power of attorney to do an act.
- (2) The Supreme Court may make an order confirming (whether completely or in part) that the attorney had the power to do the act if satisfied that the principal understood the nature and effect of making the power of attorney when the principal made the power of attorney.

*Note*            In the absence of evidence to the contrary, the principal is taken to have understood the nature and effect of making a power of attorney when the principal made the power of attorney (see s 18).

### **81                      Supreme Court—confirming powers subsequently affirmed by principal**

- (1) This section applies if—
  - (a) a principal had impaired decision-making capacity when the principal made a power of attorney; and
  - (b) an attorney acted, or purported to act, under the power of attorney.
- (2) The principal may apply to the Supreme Court for an order confirming that the attorney had power under the power of attorney to do the act.
- (3) The Supreme Court may make an order confirming (whether completely or in part) that the attorney had power to do the act if satisfied that—
  - (a) the principal affirmed the power of attorney before or during the proceeding on the application; and

- (b) the principal had decision-making capacity when affirming the power of attorney.

## **82      Effect of pt 7.3 orders on future acts**

- (1) This section applies if the Supreme Court makes an order under this part confirming (whether completely or in part) the power of an attorney to do an act under a power of attorney.
- (2) Any act done by the attorney after the order takes effect that is within the scope of the power confirmed is taken to be as valid for all purposes and between all people as if, when the order took effect, the principal did not have impaired decision-making capacity and had confirmed the power of attorney to the extent of the order of confirmation.

## Part 7.4 Other proceedings and rights

### 83 Assistance by public trustee and guardian

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) The public trustee and guardian must, if asked by the ACAT, assist the ACAT by examining and reporting on the books, accounts or other records of transactions carried out by an attorney for the principal under the enduring power of attorney

### 84 Access to principal

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) The public advocate is entitled to reasonable access to the principal.
- (3) An interested person may apply to the ACAT for access to the principal.
- (4) The ACAT may, by order, grant the interested person access to the principal, whether with or without conditions, if satisfied that—
  - (a) an attorney has denied the person access to the principal; and
  - (b) it is reasonable to allow the access.
- (5) In this section:  
*interested person*, for an application mentioned in subsection (3), includes—
  - (a) a relative of the principal; and
  - (b) a person who is a carer of the principal or has been a carer of the principal in the last 12 months; and

- (c) a lawyer, or doctor, acting on behalf of a member of the principal's family or relative of the principal.

*Note* **Interested person**—see s 74.

**85 Attorney's health care, medical research or low-risk research decision not in principal's interest**

- (1) In this section:

**low-risk research**, in relation to a person—see section 41A.

**medical research**, in relation to a person—see section 41A.

**relevant person**, in relation to a person who is a principal for a power of attorney, means—

- (a) a health professional who is treating, or has at any time treated, the principal; or
- (b) a person in charge of a health care facility where the principal is being, or has at any time been, treated.

- (2) This section applies if—

- (a) an attorney makes a decision in relation to—
  - (i) the health care of the principal; or
  - (ii) the principal participating in medical research or low-risk research; and
- (b) a relevant person believes, on reasonable grounds, that the decision is not in the best interests of the principal.

- (3) The relevant person may tell the public advocate about the decision and explain why the relevant person believes the decision is not in the best interests of the principal.

*Note* Giving information to the public advocate honestly and without recklessness is protected (see [Human Rights Commission Act 2005](#), s 100A).

**86 Adequate pain relief**

- (1) This section applies if—
  - (a) an attorney has made a decision that medical treatment be withheld or withdrawn from the principal; and
  - (b) the principal is under the care of a health professional.
- (2) The principal has a right to—
  - (a) receive relief from pain, suffering and discomfort to the maximum extent that is reasonable in the circumstances; and
  - (b) the reasonable provision of food and water.
- (3) In providing relief from pain, suffering and discomfort to the principal, the health professional must give adequate consideration to the principal's account of the principal's level of pain, suffering and discomfort.

**87 Medical certificate about impaired decision-making capacity**

- (1) This section applies if, in a proceeding, a question arises about whether, on a particular day or during a particular period, the principal for an enduring power of attorney had impaired decision-making capacity, whether generally or in relation to a particular matter.
- (2) A certificate by a doctor stating that the principal had, or did not have, impaired decision-making capacity either generally or in relation to a particular matter on the day or during the period is evidence of that fact.

## Chapter 8      Interstate documents equivalent to powers of attorney

### 88      Recognition of general powers of attorney made under other laws

- (1) This section applies if—
  - (a) a document (the *interstate general power of attorney*) is expressed to be a power of attorney made under the law of a State or another Territory; and
  - (b) the interstate general power of attorney is not expressed to operate when the principal has impaired decision-making capacity (however described).
- (2) The interstate general power of attorney is taken to be a general power of attorney made under, and in compliance with, this Act to the extent that the powers it gives could validly have been given by a general power of attorney made under this Act.

### 89      Recognition of enduring powers of attorney made under other laws

- (1) This section applies if—
  - (a) a document (the *interstate enduring power of attorney*) is expressed to be a power of attorney or guardianship document made under the law of a State or another Territory; and
  - (b) the interstate enduring power of attorney is not—
    - (i) revoked if the principal loses decision-making capacity; or
    - (ii) expressed to be irrevocable, whether completely or for a stated period.

- (2) An interstate enduring power of attorney to which this section applies is taken to be an enduring power of attorney made under, and in compliance with, this Act, to the extent that the powers it gives could validly have been given by an enduring power of attorney made under this Act.

## Chapter 9                      Miscellaneous

### **90                      Dishonestly inducing making etc of power of attorney**

A person must not dishonestly induce someone else to make or revoke a power of attorney.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

### **91                      Things that do not indicate impaired decision-making capacity**

- (1) For this Act, a person is not taken to have impaired decision-making capacity only because the person—
  - (a) is eccentric; or
  - (b) makes unwise decisions; or
  - (c) does or does not express a particular political or religious opinion; or
  - (d) has a particular sexual orientation or expresses a particular sexual preference; or
  - (e) engages or has engaged in illegal or immoral conduct; or
  - (f) takes or has taken drugs, including alcohol.
- (2) However, in deciding whether a person has impaired decision-making capacity, any effect of drug-taking on the person may be taken into account.

### **92                      Application of Act to powers of attorney**

- (1) This Act applies to a general power of attorney or enduring power of attorney whenever entered into (whether before or after the commencement of this Act).

- (2) However, if a general power of attorney or enduring power of attorney made before the commencement of this Act complied with the *Powers of Attorney Act 1956* when made, the power of attorney is not taken to be invalid only because it does not comply with a provision of this Act about the making of powers of attorney.

**93 Powers of attorney forms under Powers of Attorney Act 1956**

- (1) This section applies to a general power of attorney or enduring power of attorney made after the commencement of this Act and before 1 December 2007 using a form under the *Powers of Attorney Act 1956*, schedule 1.
- (2) This Act applies to the power of attorney.
- (3) However, if the power of attorney when made complied with the *Powers of Attorney Act 1956*, the power of attorney—
- (a) is not taken to be invalid only because it does not comply with a provision of this Act about the making of powers of attorney; and
  - (b) to remove any doubt, operates to the extent that it is not otherwise inconsistent with this Act.

**94 Powers of attorney to consent to body part donations etc under Powers of Attorney Act 1956**

- (1) This section applies to an enduring power of attorney in force immediately before the commencement of this Act if the power of attorney included a power to consent to a donation under the *Powers of Attorney Act 1956*, section 13 (1) (b) (ii).
- (2) Despite section 35 (b) (Things that cannot be lawfully done by attorneys), the power of attorney continues to authorise the attorney to consent to the donation.

**95 Powers of attorney made under Medical Treatment Act 1994**

- (1) This section applies to a power of attorney made under the [Medical Treatment Act 1994](#) that was in force immediately before the commencement of this Act.
- (2) The power of attorney is taken to be an enduring power of attorney made under this Act for a health care matter.
- (3) However, if the power of attorney complied with the [Medical Treatment Act 1994](#) when made, the power of attorney is not taken to be invalid only because it does not comply with a provision of this Act about the making of powers of attorney.

**96 Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* The [Legislation Act](#) contains provisions about forms (see s 255).

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**97 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## **Schedule 1      General principles for enduring powers of attorney**

(see s 44)

### **1.1      Access to family members and relatives**

- (1) An individual's wish and need to have access to family members and relatives, and for them to have access to the individual, must be recognised and taken into account.
- (2) An individual's wish to involve family members and relatives in decisions affecting the individual's life, property, health and finance must be recognised and taken into account.

### **1.2      Human worth and dignity**

An individual with impaired decision-making capacity has an inherent right to respect for the individual's human worth and dignity as an individual.

### **1.3      Role as a member of society**

- (1) An individual has a right to be a valued member of society.
- (2) Because of this right, it is important to encourage and support the individual to perform social roles valued in society.

### **1.4      Participation in community life**

It is important to encourage and support an individual to live a life in the general community, and to take part in activities enjoyed by the community.

### **1.5      Quality of life**

An individual's need and wish to have a reasonable quality of life must be recognised and taken into account.

## **1.6 Participation in decision making**

- (1) An individual has a right to take part in decisions affecting the individual's life to the greatest extent practicable.
- (2) Without limiting subsection (1), an individual also has a right to take part in decisions affecting the individual's property and finance to the greatest extent practicable.
- (3) The right of the individual to make the individual's own decisions must be preserved to the greatest extent practicable.

### **Examples of preserving individual's right to make own decisions**

- 1 The individual must be given any necessary support, and access to any necessary information, to allow the individual to take part in decisions affecting the individual's life to the greatest extent practicable.
  - 2 To the greatest extent practicable, the individual's views and wishes must be sought and taken into account before exercising power in relation to the individual.
  - 3 Power in relation to the individual must be exercised in the way that is least restrictive of the individual's rights.
- (4) If an individual's wishes or needs cannot be expressed by the individual, the person exercising power in relation to the individual must try to work out, as far as possible, from the individual's past actions, what the individual's wishes and needs would be if the individual could express them and take those wishes and needs into account.
  - (5) However, a person exercising a function in relation to an individual must do so in a way consistent with the individual's proper care and protection.
  - (6) An individual's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

## **1.7 Individual taken to be able to make decisions**

An individual must not be treated as unable to take part in making a decision only because the individual makes unwise decisions.

**1.8 Maintenance of existing supportive relationships**

The importance of maintaining an individual's existing supportive relationships must be taken into account.

**1.9 Maintenance of environment and values**

- (1) The importance of maintaining an individual's cultural and linguistic environment, and set of values (including any religious beliefs) must be taken into account.
- (2) For an individual who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the individual's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom) must be taken into account.

- (3) In this section:

***Aboriginal tradition***—

- (a) means the body of traditions, observances, customs and beliefs of Aboriginal people generally, or of a particular community or group of Aboriginal people; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

***Island custom***, known in the Torres Strait as Ailan Kastom—

- (a) means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally, or of a particular community or group of Torres Strait Islanders; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

**1.10 Confidentiality**

An individual's right to confidentiality of information about the individual must be respected.

**1.11 Health care and medical research**

- (1) An individual is entitled to have decisions about a health care matter or a medical research matter made by an attorney—
  - (a) in the way least restrictive of the individual's rights and freedom of action; and
  - (b) only if the exercise of power—
    - (i) is, in the attorney's opinion, necessary and appropriate to maintain or promote the individual's health and wellbeing; or
    - (ii) is, in all the circumstances, in the individual's best interests.
- (2) An individual's wishes in relation to a health care matter or a medical research matter, and any information provided by the individual's health care provider, must be taken into account when an attorney decides what is appropriate in the exercise of power for a health care matter or a medical research matter.

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- authorised deposit-taking institution
- bankrupt or personally insolvent
- child
- civil partnership
- civil union
- corporation
- domestic partner (see s 169 (1))
- exercise
- public trustee and guardian
- Supreme Court.

***affinity*** means affinity derived through marriage or any other domestic partnership.

***approved***, for medical research or low-risk research, for part 4.3A (Medical research matters)—see section 41A.

***attorney***—see section 6.

***close friend***, of a person, means someone who has a close personal relationship with the person and a personal interest in the person's welfare.

***day hospital*** means a facility where a person is admitted for surgical or medical treatment and discharged on the same day.

***decision-making capacity***—see section 9 (1).

***disability care*** means care that is provided to a person with a disability in a residential facility in which the person is also provided with accommodation that includes—

- (a) appropriate staffing to meet the nursing and personal care needs of the person; and
- (b) meals and cleaning services; and
- (c) furnishings, furniture and equipment for the provision of the care and accommodation.

***enduring power of attorney***—see section 8.

***general power of attorney***—see section 7.

***general principles***—see section 44 and schedule 1.

***health care***, for a person who is a principal for a power of attorney—

- (a) includes withholding or withdrawal of a life-sustaining measure for the principal if starting or continuing the measure for the principal would be inconsistent with good medical practice; but
- (b) does not include—
  - (i) first-aid treatment; or
  - (ii) a non-intrusive examination made for diagnostic purposes; or
  - (iii) the administration of a pharmaceutical drug if—
    - (A) a prescription is not needed for the drug; and
    - (B) the drug is normally self-administered; and
    - (C) the administration is for a recommended purpose and at a recommended dosage level.

**Example for par (b)**

a visual examination of a principal's mouth, throat, nasal cavity, eyes or ears

***health care facility*** means a hospital, mental health facility, residential aged care facility or residential disability care facility.

***health care matter***—see section 12.

***health care provider***, for a person who is a principal for a power of attorney, means a health professional who provides health care to the principal.

***health professional*** means a person who provides health care in the practice of a profession or the ordinary course of business.

***hospital*** means a public hospital, private hospital or day hospital.

***impaired decision-making capacity***—see section 9 (2).

***interested person***, for chapter 7 (Proceedings and rights)—see section 74.

***invalidity***, of a power of attorney or a power under a power of attorney, for chapter 6 (Protection and relief from liability)—see section 70.

***know***, of the invalidity of a power of attorney or a power under a power of attorney, for chapter 6 (Protection and relief from liability)—see section 70.

***legal matter***, for a person who is a principal for a power of attorney, means—

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

**Examples of use of legal services**

- 1 use of legal services to get information about the principal's legal rights
- 2 use of legal services to make a transaction
- 3 use of legal services to bring or defend a proceeding before a court, tribunal or other entity

***low-risk research***, in relation to a person, for part 4.3A (Medical research matters)—see section 41A.

***medical research***, in relation to a person, for part 4.3A (Medical research matters)—see section 41A.

***medical research matter***, for a principal—see section 12A.

***medical research power of attorney***, for a principal, for part 4.3A (Medical research matters)—see section 41A.

***mental health facility***—see the [Mental Health Act 2015](#), dictionary.

***personal care matter***—see section 11.

***power of attorney***—

- (a) means a general power of attorney or an enduring power of attorney; and
- (b) for chapter 6 (Protection and relief from liability)—see section 70.

***principal***, in relation to an attorney—see section 6.

***property*** includes money and financial assets.

***property matter***—see section 10.

***relative***, of a person (the ***related person***), means—

- (a) a person related by blood, affinity or adoption to the related person; or
- (b) a domestic partner.

*Note* For the meaning of ***domestic partner***, see the [Legislation Act](#), s 169.

***residential aged care facility*** means a residential facility that provides residential care to residents at the facility.

***residential care***—see the [Aged Care Act 1997](#) (Cwlth), section 41-3 (Meaning of *residential care*).

***residential disability care facility***—

- (a) means a residential facility that provides disability care to people with disabilities; but
- (b) does not include a residential aged care facility.

*special health care matter*, for a principal—see section 37.

*special personal matter*, for a principal—see section 36.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the [Legislation Act 2001](#), part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

|   |   |
|---|---|
| A = Act   | NI = Notifiable instrument  |
| AF = Approved form                                  | o = order   |
| am = amended  | om = omitted/repealed   |
| amdt = amendment                                    | ord = ordinance   |
| AR = Assembly resolution                            | orig = original   |
| ch = chapter  | par = paragraph/subparagraph                                      |
| CN = Commencement notice                            | pres = present  |
| def = definition                                    | prev = previous   |
| DI = Disallowable instrument                        | (prev...) = previously  |
| dict = dictionary                                   | pt = part   |
| disallowed = disallowed by the Legislative Assembly | r = rule/subrule  |
| div = division                                      | reloc = relocated   |
| exp = expires/expired                               | renum = renumbered  |
| Gaz = gazette                                       | R[X] = Republication No   |
| hdg = heading                                       | RI = reissue  |
| IA = Interpretation Act 1967                        | s = section/subsection  |
| ins = inserted/added                                | sch = schedule  |
| LA = Legislation Act 2001                           | sdiv = subdivision  |
| LR = legislation register                           | SL = Subordinate law  |
| LRA = Legislation (Republication) Act 1996          | sub = substituted   |
| mod = modified/modification                         | <u>underlining</u> = whole or part not commenced or to be expired |

### 3 Legislation history

#### **Powers of Attorney Act 2006 A2006-50**

notified LR 30 November 2006

s 1, s 2 commenced 30 November 2006 (LA s 75 (1))

remainder commenced 30 May 2007 (s 2 and LA s 79)

as amended by

#### **Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.77**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.77 commenced 30 May 2007 (s 2 (2) and see A2006-50 s 2)

as modified by

#### **Powers of Attorney Regulation 2007 SL2007-8 (as am by SL2007-12 s 5)**

notified LR 3 May 2007

s 1, s 2 commenced 3 May 2007 (LA s 75 (1))

remainder commenced 30 May 2007 (s 2)

#### **Powers of Attorney Regulation 2007 (No 2) SL2007-11 (as am by SL2007-12 s 4, A2007-22 pt 1.13)**

notified LR 24 May 2007

s 1, s 2 commenced 24 May 2007 (LA s 75 (1))

remainder commenced 30 May 2007 (s 2)

#### **Powers of Attorney Amendment Regulation 2007 (No 1) SL2007-12**

notified LR 29 May 2007

s 1, s 2 commenced 29 May 2007 (LA s 75 (1))

remainder commenced 30 May 2007 (s 2)

**Note** This regulation only amends the [Powers of Attorney Regulation 2007 SL2007-8](#) and the [Powers of Attorney Regulation 2007 \(No 2\) SL2007-11](#).

## Endnotes

as amended by

**Justice and Community Safety Legislation Amendment Act 2007**

**A2007-22 sch 1 pt 1.12, pt 1.13**

notified LR 5 September 2007

s 1, s 2 commenced 5 September 2007 (LA s 75 (1))

sch 1 pt 1.12, pt 1.13 commenced 6 September 2007 (s 2)

*Note* Sch 1 pt 1.13 only amends the [Powers of Attorney Regulation 2007 \(No 2\)](#) SL2007-11.

**Justice and Community Safety Legislation Amendment Act 2008**

**A2008-7 sch 1 pt 1.17**

notified LR 16 April 2008

s 1, s 2 commenced 16 April 2008 (LA s 75 (1))

sch 1 pt 1.17 commenced 7 May 2008 (s 2)

**Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.21**

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))

sch 1 pt 1.21 commenced 19 May 2008 (s 2 and [CN2008-8](#))

**ACT Civil and Administrative Tribunal Legislation Amendment**

**Act 2008 A2008-36 sch 1 pt 1.40**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.40 commenced 2 February 2009 (s 2 (1) and see [ACT Civil and Administrative Tribunal Act 2008](#) A2008-35, s 2 (1) and [CN2009-2](#))

**Justice and Community Safety Legislation Amendment Act 2010**

**(No 2) A2010-30 sch 1 pt 1.17**

notified LR 31 August 2010

s 1, s 2 commenced 31 August 2010 (LA s 75 (1))

s 3 commenced 1 September 2010 (s 2 (1))

sch 1 pt 1.17 commenced 28 September 2010 (s 2 (2))

**Civil Unions Act 2012 A2012-40 sch 3 pt 3.22**

notified LR 4 September 2012

s 1, s 2 commenced 4 September 2012 (LA s 75 (1))

sch 3 pt 3.22 commenced 11 September 2012 (s 2)

**Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.20**

notified LR 4 November 2013

s 1, s 2 commenced 4 November 2013 (LA s 75 (1))

sch 2 pt 2.20 commenced 7 November 2013 (s 2 and [CN2013-11](#))

*Note* The High Court held this Act to be of no effect (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)

**Justice and Community Safety Legislation Amendment Act 2014 (No 2) A2014-49 pt 6**

notified LR 10 November 2014

s 1, s 2 commenced 10 November 2014 (LA s 75 (1))

pt 6 commenced 17 November 2014 (s 2)

**Mental Health (Treatment and Care) Amendment Act 2014 A2014-51 sch 1 pt 1.9 (as am by A2015-38 amdt 2.54)**

notified LR 12 November 2014

s 1, s 2 commenced 12 November 2014 (LA s 75 (1))

sch 1 pt 1.9 commenced 1 March 2016 (s 2 (as am by [A2015-38](#) amdt 2.54))

**Mental Health Act 2015 A2015-38 sch 2 pt 2.2, sch 2 pt 2.4 div 2.4.14**

notified LR 7 October 2015

s 1, s 2 commenced 7 October 2015 (LA s 75 (1))

sch 2 pt 2.2 (amdt 2.54) commenced 8 October 2015 (s 2 (2))

sch 2 pt 2.4 div 2.4.14 commenced 1 March 2016 (s 2 (1) and see *Mental Health (Treatment and Care) Amendment Act 2014* [A2014-51](#), s 2 (as am by [A2015-38](#) amdt 2.54))

*Note* Sch 2 pt 2.2 (amdt 2.54) only amends the *Mental Health (Treatment and Care) Amendment Act 2014* [A2014-51](#)

**Powers of Attorney Amendment Act 2016 A2016-10**

notified LR 1 March 2016

s 1, s 2 commenced 1 March 2016 (LA s 75 (1))

remainder commenced 1 September 2016 (s 2 and LA s 79)

**Protection of Rights (Services) Legislation Amendment Act 2016 (No 2) A2016-13 sch 1 pt 1.32**

notified LR 16 March 2016

s 1, s 2 commenced 16 March 2016 (LA s 75 (1))

sch 1 pt 1.32 commenced 1 April 2016 (s 2 and see *Protection of Rights (Services) Legislation Amendment Act 2016* [A2016-1](#) s 2)

## Endnotes

3 Legislation history

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**Statute Law Amendment Act 2017 (No 2) A2017-28 sch 3 pt 3.12**

notified LR 27 September 2017

s 1, s 2 commenced 27 September 2017 (LA s 75 (1))

sch 3 pt 3.12 commenced 11 October 2017 (s 2)

**COVID-19 Emergency Response Legislation Amendment Act 2020**

**A2020-14 sch 1 pt 1.22**

notified LR 13 May 2020

s 1, s 2 taken to have commenced 30 March 2020 (LA s 75 (2))

sch 1 pt 1.22 commenced 14 May 2020 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2021**

**A2021-3 pt 14**

notified LR 19 February 2021

s 1, s 2 commenced 19 February 2021 (LA s 75 (1))

pt 14 commenced 26 February 2021 (s 2 (1))

**Courts and Other Justice Legislation Amendment Act 2021**

**A2021-13 pt 8**

notified LR 9 June 2021

s 1, s 2 commenced 9 June 2021 (LA s 75 (1))

pt 8 commenced 9 September 2021 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2023**

**A2023-13 pt 9**

notified LR 11 April 2023

s 1, s 2 commenced 11 April 2023 (LA s 75 (1))

pt 9 commenced 12 April 2023 (s 2)

## 4 Amendment history

### Commencement

s 2 om LA s 89 (4)

### What is an *enduring power of attorney*?

s 8 am [A2016-10](#) s 4

### Meaning of *personal care matter*

s 11 am [A2016-10](#) s 5

### Meaning of *health care matter*

s 12 am [A2007-22](#) amdt 1.35; [A2014-51](#) amdt 1.63; [A2016-10](#) s 6

### Meaning of *medical research matter*

s 12A ins [A2016-10](#) s 7

### Appointment of attorneys

s 13 hdg sub [A2007-22](#) amdt 1.36

s 13 am [A2007-22](#) amdt 1.37, amdt 1.38; [A2014-49](#) s 18; [A2016-10](#) s 8, s 9

### Limit on s 13 power to appoint attorneys—enduring powers of attorney

s 14 am [A2008-36](#) amdt 1.558; [A2010-30](#) amdt 1.45; [A2016-13](#) amdts 1.107-1.109; ss renum R12 LA; [A2016-10](#) s 10

### Appointment of attorneys by name or position

s 15 sub [A2007-22](#) amdt 1.39

### When and how power under power of attorney exercisable

s 16 am [A2014-51](#) amdt 1.64

### Who can be a witness?

s 21 am [A2007-22](#) amdt 1.40

### Certificates by witnesses to powers of attorney

s 22 am [A2007-22](#) amdt 1.41

### Authorisation of 2 or more attorneys

pt 3.3 hdg sub [A2007-22](#) amdt 1.42

### Authorisation of 2 or more attorneys under power of attorney

s 25 hdg sub [A2007-22](#) amdt 1.43

### If multiple attorneys cannot exercise power unanimously

s 27 am [A2008-36](#) amdt 1.559

### How does enduring power of attorney operate while principal has capacity?

s 31 am [A2007-22](#) amdt 1.44

### Others acting for attorney

s 33 am [A2016-10](#) s 11; [A2017-28](#) amdt 3.36

## Endnotes

4 Amendment history

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### Special personal matters

s 36 am [A2007-22](#) amdt 1.45; [A2013-39](#) amdt 2.51 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)); [A2017-28](#) amdt 3.37

### Special health care matters

s 37 am [A2007-3](#) amdt 3.408; [A2014-51](#) amdt 1.65, amdt 1.66; [A2015-38](#) amdt 2.84; [A2016-10](#) s 12; pars renum R13 LA

### Medical research matters

pt 4.3A hdg ins [A2016-10](#) s 13

### Definitions—pt 4.3A

s 41A ins [A2016-10](#) s 13

s 41A (1) def **approved** ins [A2016-10](#) s 13

def **low-risk research** ins [A2016-10](#) s 13

sub [A2023-13](#) s 23

def **medical research** ins [A2016-10](#) s 13

def **medical research power of attorney** ins [A2016-10](#) s 13

s 41A (2) def **Australian Register of Therapeutic Goods** ins [A2023-13](#) s 24

def **experimental health care** ins [A2016-10](#) s 13

def **NHMRC** ins [A2016-10](#) s 13

def **personal health information** ins [A2016-10](#) s 13

def **personal information** ins [A2016-10](#) s 13

def **therapeutic goods** ins [A2023-13](#) s 24

### Attorney must follow decision-making principles

s 41B ins [A2016-10](#) s 13

### Attorney may consent to principal's participation in low-risk research

s 41C ins [A2016-10](#) s 13

### Attorney may consent to principal's participation in medical research

s 41D ins [A2016-10](#) s 13

### Attorney must not benefit etc from attorney's decision

s 41E ins [A2016-10](#) s 13

### Assessment of likelihood of principal regaining decision-making capacity

s 41F ins [A2016-10](#) s 13

### Interested person may apply to ACAT for review of attorney's decision

s 41G ins [A2016-10](#) s 13

### Obligation of attorneys to keep interested people informed

s 43 am [A2007-22](#) amdt 1.46; [A2008-36](#) amdt 1.560; [A2017-28](#) amdt 3.38

**Right of attorneys to information—enduring powers of attorney**

s 45 am [A2020-14](#) amdt 1.110, amdt 1.111  
(1A), (5), (6) exp 29 September 2023 (s 45 (6))

**Restrictions on consent by attorney to mental health treatment, care and support**

s 46A ins [A2014-51](#) amdt 1.67  
am [A2015-38](#) amdt 2.85; [A2017-28](#) amdt 3.38

**Keeping records—enduring powers of attorney**

s 47 am [A2020-14](#) amdt 1.112; [A2021-3](#) s 31, s 32

**Keeping property separate—enduring powers of attorney**

s 48 am [A2020-14](#) amdt 1.113, amdt 1.114; [A2021-3](#) s 33, s 34

**Obligations on health care facilities in relation to powers of attorney**

s 49 am [A2016-10](#) s 14

**Compensation for failure to comply with Act—Supreme Court order**

s 50 hdg sub [A2021-13](#) s 33  
s 50 am [A2021-13](#) s 34

**ACAT may order compensation etc**

s 50A ins [A2021-13](#) s 35

**Relief from personal liability**

s 52 hdg sub [A2021-13](#) s 36  
s 52 am [A2021-13](#) s 37

**Ending powers of attorney**

ch 5 hdg note sub [A2008-36](#) amdt 1.561

**Resignation of attorney's appointment under power of attorney**

s 53 am [A2007-22](#) amdt 1.46; [A2008-36](#) amdt 1.562

**Enduring power of attorney sometimes revoked by marriage or civil partnership**

s 58 hdg sub [A2008-14](#) amdt 1.73; [A2012-40](#) amdt 3.91; [A2013-39](#)  
amdt 2.52 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))  
s 58 am [A2008-14](#) amdt 1.74; [A2012-40](#) amdt 3.92; [A2013-39](#)  
amdt 2.53 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))

**Enduring power of attorney sometimes revoked by end of marriage, civil union or civil partnership**

s 59 hdg sub [A2008-14](#) amdt 1.75; [A2012-40](#) amdt 3.93  
s 59 am [A2008-14](#) amdt 1.76; [A2012-40](#) amdt 3.94, amdt 3.95;  
[A2017-28](#) amdt 3.39

**Effect of bankruptcy of individual attorney**

s 62 am [A2010-30](#) amdt 1.46, amdt 1.47

## Endnotes

4 Amendment history

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### **Effect of winding up etc of corporate attorney**

s 64 am [A2017-28](#) amdt 3.40, amdt 3.41

### **Definitions—ch 6**

s 70 def *invalidity* sub [A2008-36](#) amdt 1.563

### **Protection if court or ACAT orders etc**

s 71 sub [A2008-36](#) amdt 1.564

### **Proceedings and rights**

ch 7 hdg sub [A2008-36](#) amdt 1.565

### **Meaning of *interested person***

s 74 am [A2016-13](#) amdt 1.110; [A2016-10](#) s 15

### **ACAT referral**

pt 7.2 hdg om [A2008-36](#) amdt 1.566  
ins [A2021-13](#) s 38

### **ACAT may refer matter to Supreme Court**

s 75 om [A2008-36](#) amdt 1.566  
ins [A2021-13](#) s 38

### **Reference of power of attorney matters to Supreme Court**

s 76 om [A2008-36](#) amdt 1.566

### **Giving accounts to public advocate—enduring powers of attorney**

s 77 om [A2008-36](#) amdt 1.566

### **Declaration about decision-making capacity**

s 78 om [A2008-36](#) amdt 1.566

### **Removing attorneys**

s 79 om [A2008-36](#) amdt 1.566

### **Assistance by public trustee and guardian**

s 83 hdg sub [A2007-22](#) amdt 1.47; [A2017-28](#) amdt 3.42  
s 83 am [A2007-22](#) amdt 1.48; [A2008-36](#) amdt 1.567; [A2016-13](#)  
amdt 1.111, amdt 1.112

### **Assistance by public trustee**

s 84 am [A2008-36](#) amdt 1.568

### **Attorney's health care, medical research or low-risk research decision not in principal's interest**

s 85 hdg sub [A2016-10](#) s 16  
s 85 am [A2016-13](#) amdt 1.113; [A2016-10](#) s 17, s 18

### **Application of Act to powers of attorney**

s 92 sub [A2008-7](#) amdt 1.67

### **Powers of attorney forms under Powers of Attorney Act 1956**

s 93 sub [A2008-7](#) amdt 1.67

**Powers of attorney to consent to body part donations etc under Powers of Attorney Act 1956**s 94 ins [A2008-7](#) amdt 1.67**Powers of attorney made under Medical Treatment Act 1994**s 95 ins [A2008-7](#) amdt 1.67**Approved forms**s 96 ins [A2008-7](#) amdt 1.67**Regulation-making power**s 97 ins [A2008-7](#) amdt 1.67**Transitional provisions**

ch 20 hdg exp 30 May 2009 (s 157)

**Definitions—ch 20**

s 150 exp 30 May 2009 (s 157)

**Repeal of Powers of Attorney Act 1956**

s 151 om LA s 89 (3)

**Transitional—application of Act**s 152 om [A2008-7](#) amdt 1.68**Transitional—powers of attorney forms under previous Act, sch 1**s 152A ins as mod [SL2007-11](#) s 3  
mod lapsed on rep of [SL2007-11](#) (7 May 2008)**Transitional—powers of attorney to consent to body part donations etc under previous Act**s 152B ins as mod [SL2007-11](#) s 4 (as ins by [SL2007-12](#) s 4)  
mod lapsed on rep of [SL2007-11](#) (7 May 2008)**Meaning of *health care matter***s 152C ins as mod [SL2007-11](#) s 4 (as ins by [SL2007-12](#) s 4)  
mod om [SL2007-11](#) s 4 (as am by [A2007-22](#) amdt 1.50)**Transitional—powers of attorney under previous Act, s 6 and s 7**

s 153 exp 30 May 2009 (s 157 (LA s 88 declaration applies))

**Transitional—powers of attorney made under Medical Treatment Act 1994**s 154 om [A2008-7](#) amdt 1.69**Legislation amended—sch 2**

s 155 om LA s 89 (3)

**Transitional regulations**

s 156 exp 30 May 2009 (s 157)

**Meaning of *health care matter***s 156A ins as mod [SL2007-8](#) amdt 1.1  
mod om [SL2007-8](#) amdt 1.1 (as am by [SL2007-12](#) s 5)

## Endnotes

4 Amendment history

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### **Authorisation of attorneys**

s 156B ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Authorisation of attorneys**

s 156C ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Authorisation of attorneys by name or position**

s 156D ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Who can be a witness?**

s 156E ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Certificates by witnesses to powers of attorney**

s 156F ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Appointment of 2 or more attorneys**

s 156G ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Appointment of 2 or more attorneys under power of attorney**

s 156H ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **How does enduring power of attorney operate while principal has capacity?**

s 156I ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Obligation of attorneys to keep interested people informed**

s 156J ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Resignation of attorney's authorisation under power of attorney**

s 156K ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Public trustee to assist if asked**

s 156L ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Public trustee to assist if asked**

s 156M ins as mod [SL2007-8](#) amdt 1.1  
mod lapsed on rep of [SL2007-8](#) (6 September 2007)

### **Expiry—ch 20**

s 157 exp 30 May 2009 (s 157)

### **General principles for enduring powers of attorney**

sch 1 am [A2016-10](#) s 19

**Consequential amendments**

sch 2 om LA s 89 (3)

**Dictionary**

dict

am [A2008-14](#) amdt 1.77; [A2008-36](#) amdt 1.569; [A2010-30](#) amdt 1.48; [A2012-40](#) amdt 3.96; [A2013-39](#) amdt 2.54 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)); [A2016-13](#) amdt 1.114; [A2021-13](#) s 39

def **approved** ins [A2016-10](#) s 20

def **bankrupt** om [A2010-30](#) amdt 1.49

def **decision-making principles** ins [A2016-10](#) s 20 om [A2017-28](#) amdt 3.42

def **health care facility** sub [A2014-51](#) amdt 1.68

def **interested person** sub [A2008-36](#) amdt 1.570

def **liquidator** om [A2017-28](#) amdt 3.43

def **low-risk research** ins [A2016-10](#) s 20

def **medical research** ins [A2016-10](#) s 20

def **medical research matter** ins [A2016-10](#) s 20

def **medical research power of attorney** ins [A2016-10](#) s 20

def **mental health facility** ins [A2014-51](#) amdt 1.69 am [A2015-38](#) amdt 2.86

def **personal insolvency agreement** om [A2010-30](#) amdt 1.49

def **will** om [A2017-28](#) amdt 3.43

## Endnotes

### 5 Earlier republishings

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#### 5 Earlier republishings

Some earlier republishings were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republishings have also been published in printed format. These republishings are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

| Republication<br>No and date | Effective                     | Last<br>amendment<br>made by                  | Republication<br>for  |
|------------------------------|-------------------------------|---|---|
| R1<br>30 May 2007            | 30 May 2007–<br>5 Sept 2007   | <a href="#">SL2007-12</a>                     | new Act,<br>amendments by<br><a href="#">A2007-3</a> and<br>modifications by<br><a href="#">SL2007-8</a> and<br><a href="#">SL2007-11</a> as<br>amended by<br><a href="#">SL2007-12</a> |
| R2<br>6 Sept 2007            | 6 Sept 2007–<br>6 May 2008    | <a href="#">A2007-22</a>                      | amendments by<br><a href="#">A2007-22</a>   |
| R3<br>7 May 2008             | 7 May 2008–<br>18 May 2008    | <a href="#">A2008-7</a>                       | amendments by<br><a href="#">A2008-7</a>  |
| R4<br>19 May 2008            | 19 May 2008–<br>1 Feb 2009    | <a href="#">A2008-14</a>                      | amendments by<br><a href="#">A2008-14</a>   |
| R5<br>2 Feb 2009             | 2 Feb 2009–<br>30 May 2009    | <a href="#">A2008-36</a>                      | amendments by<br><a href="#">A2008-36</a>   |
| R6<br>31 May 2009            | 31 May 2009–<br>27 Sept 2010  | <a href="#">A2008-36</a>                      | commenced expiry  |
| R7<br>28 Sept 2010           | 28 Sept 2010–<br>10 Sept 2012 | <a href="#">A2010-30</a>                      | amendments by<br><a href="#">A2010-30</a>   |
| R8<br>11 Sept 2012           | 11 Sept 2012–<br>6 Nov 2013   | <a href="#">A2012-40</a>                      | amendments by<br><a href="#">A2012-40</a>   |
| R9<br>7 Nov 2013             | never effective               | <a href="#">A2013-39</a> (never<br>effective) | amendments by<br><a href="#">A2013-39</a>   |

| Republication<br>No and date | Effective                    | Last<br>amendment<br>made by                  | Republication<br>for   |
|------------------------------|------------------------------|---|--|
| R9 (RI)<br>24 Feb 2014       | 7 Nov 2013–<br>16 Nov 2014   | <a href="#">A2013-39</a> (never<br>effective) | reissued because<br>of High Court<br>decision in relation<br>to <a href="#">A2013-39</a> |
| R10<br>17 Nov 2014           | 17 Nov 2014–<br>29 Feb 2016  | <a href="#">A2014-49</a>                      | amendments by<br><a href="#">A2014-49</a>  |
| R11<br>1 Mar 2016            | 1 Mar 2016–<br>31 Mar 2016   | <a href="#">A2015-38</a>                      | amendments by<br><a href="#">A2014-51</a> and<br><a href="#">A2015-38</a>                |
| R12<br>1 Apr 2016            | 1 Apr 2016–<br>31 Aug 2016   | <a href="#">A2016-13</a>                      | amendments by<br><a href="#">A2016-13</a>  |
| R13<br>1 Sept 2016           | 1 Sept 2016–<br>10 Oct 2017  | <a href="#">A2016-13</a>                      | amendments by<br><a href="#">A2016-10</a>  |
| R14<br>11 Oct 2017           | 11 Oct 2017–<br>13 May 2020  | <a href="#">A2017-28</a>                      | amendments by<br><a href="#">A2017-28</a>  |
| R15<br>14 May 2020           | 14 May 2020–<br>25 Feb 2021  | <a href="#">A2020-14</a>                      | amendments by<br><a href="#">A2020-14</a>  |
| R16<br>26 Feb 2021           | 26 Feb 2021–<br>8 Sept 2021  | <a href="#">A2021-3</a>                       | amendments by<br><a href="#">A2021-3</a>   |
| R17<br>9 Sept 2021           | 9 Sept 2021–<br>11 Apr 2023  | <a href="#">A2021-13</a>                      | amendments by<br><a href="#">A2021-13</a>  |
| R18<br>12 Apr 2023           | 12 Apr 2023–<br>29 Sept 2023 | <a href="#">A2023-13</a>                      | amendments by<br><a href="#">A2023-13</a>  |