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Robyn Webb
Chief Parliamentary Counsel
Dated 24 November 2021



TASMANIA

POWERS OF ATTORNEY ACT 2000

No. 68 of 2000

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POWERS OF ATTORNEY ACT 2000

No. 68 of 2000

An Act to provide for the registration of powers of attorney

[Royal Assent 14 November 2000]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Powers of Attorney Act 2000*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

(1) In this Act, unless the contrary intention appears –

attorney means a person to whom a power of attorney is given;

certified copy, in the case of a power of attorney or print-out, means a copy of that power of attorney as registered or print-out that –

- (a) is certified by the Recorder to be a copy of the power of attorney or print-out; or
- (b) in the case of a copy created by a facsimile or electronic transmission process, has recorded on it by that process an indication that the transmission creating the copy was initiated in an office of the Recorder and a record of the time and date of the transmission;

close relative, in relation to a person, means –

- (a) a spouse of the person; and
- (b) a parent of the person; and
- (c) a person who has one or both parents in common with the person; and
- (d) a child of the person; and

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- (e) a child of, or a parent of, the spouse of the person; and
- (f) a grandparent of the person; and
- (g) an aunt or uncle of the person;

computer means any device for storing or processing information;

Court means the Supreme Court;

donor means a person who grants a power of attorney;

enduring power of attorney means an enduring power of attorney created under section 30;

instrument includes registration application;

machine copy, in relation to a document that is a power of attorney, means a copy of the document made by –

- (a) a machine in which, or a process by which, a latent image of the contents of the document is produced from surface contact with the document or by the use of photosensitive material other than transparent photographic film; or
- (b) the electrostatic process known as Xerography or any similar process;

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photocopying process, in the case of a copy of a power of attorney, means the process of making a photographic copy or machine copy of the power of attorney;

photographic copy, in the case of a power of attorney, means a print made from a transparency of the power of attorney;

prescribed, in relation to a fee, means prescribed in Schedule 2;

print-out, in the case of a computer, means the output of that computer produced in a form that can be understood by sight;

Recorder means the Recorder of Titles;

register means the register of powers of attorney kept under section 4;

registration application means a registration application in accordance with form 5;

repealed Act means the *Powers of Attorney Act 1934*;

spouse, in relation to a person, means a person –

- (a) who is married to the person; or
- (b) who is a party to a significant relationship, within the meaning of the *Relationships Act 2003*, with the person, which relationship is registered under that Act; or

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- (c) who is a party to a significant relationship, within the meaning of the *Relationships Act 2003*, with the person, which relationship has been in existence for a continuous period of at least 2 years;

transparency, in relation to a document that is a power of attorney, means –

- (a) a developed negative or positive photograph of that document (in this definition referred to as an original photograph) made on a transparent base by means of light reflected from, or transmitted through, the document; or
- (b) a copy of an original photograph made by the use of photosensitive material on a transparent base placed in surface contact with the original photograph; or
- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photosensitive material on a transparent base placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made in the same manner

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from any preceding copy in the series;

Tribunal means the Tasmanian Civil and Administrative Tribunal.

- (2) In this Act, a reference to a form is a reference to a form specified in Schedule 1.

PART 2 – ADMINISTRATION

4. Register of powers of attorney

- (1) The Recorder must keep a register of all powers of attorney.
- (2) The register consists of copies of all powers of attorney, instruments varying or revoking a power of attorney and other instruments relating to powers of attorney that are lodged with the Recorder under this Act.
- (3) The register may be kept wholly or partly –
 - (a) on paper, microfilm, magnetic tape, magnetic disk, optical disk or any combination of those media or in or on such other medium as may be approved by the Recorder; or
 - (b) in such device for storing or processing information as may be approved by the Recorder –

and the Recorder may at any time rearrange the register or change any such medium or device accordingly.

- (4) The Recorder may include in the register a copy of any power of attorney that, immediately before the commencement of this Act, is registered under the *Registration of Deeds Act 1935*.

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- (5) For the purposes of this section, a copy of a power of attorney, instrument varying or revoking a power of attorney or any other instrument relating to powers of attorney is to be made by a process approved by the Recorder.

5. Searches of public records

- (1) The following records are public records:
- (a) the register;
 - (b) powers of attorney and other instruments lodged under this Act for registration;
 - (c) any index of unregistered dealings kept in the office of the Recorder;
 - (d) a copy of an order referred to in section 33(2).
- (2) Any information in a public record is available as may be approved by the Recorder and on payment of such fee, if any, as may be prescribed.

6. Copies of register

- (1) The Recorder must, on application and payment of the prescribed fee, furnish a person with a certified copy of any part of the register.
- (2) A copy for the purposes of this section may be –
- (a) in writing; or

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- (b) made by such photocopying, facsimile or electronic transmission process as the Recorder determines; or
 - (c) made partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(3)

7.

8. Power to sell, destroy or otherwise dispose of certain documents

- (1) The Recorder may, with the written permission of the State Archivist given in accordance with section 20(2)(b) of the *Archives Act 1983*, sell, destroy or otherwise dispose of any document or any class of document in the possession of the Recorder which the Recorder considers to be of no value for the purposes of the register.
- (2) Before selling or disposing of a document, the Recorder must mark it as no longer valid.
- (3) The Recorder is taken to be a Head of Agency for the purpose of the application of section 8 of the *Archives Act 1983* to the Recorder's powers under this section.

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**PART 3 – POWERS OF ATTORNEY AND OTHER
INSTRUMENTS**

Division 1 – Formal requirements

9. Formal requirements

- (1) A power of attorney made or created under section 18 or 30 must –
 - (a) not have more than one donor; and
 - (b) be signed by the donor with that signature attested by the signature of –
 - (i) in the case of an enduring power of attorney, two witnesses neither of whom is a party to it nor a close relative of a party to it and each of whom has witnessed it in the presence of the donor and each other; or
 - (ii) in the case of any other power of attorney, a witness who is not a party to it and who witnesses it in the presence of the donor; and
 - (ba) in the case of an enduring power of attorney, include a declaration by each witness that he or she is neither a party to the enduring power of attorney nor a close relative of a party to it; and
 - (c) comply with this Act; and
 - (d) be legible; and

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-
- (e) be capable of producing a legible copy by a process approved by the Recorder; and
 - (f) contain any matter that is intended to be in addition to, or to be inserted in and form part of, a power of attorney in a page of that power of attorney or in the form of an annexure; and
 - (g) be on A4-size paper; and
 - (h) if it consists of more than one page, have each page consecutively numbered and be stapled or pinned in the top left hand corner; and
 - (i) be accompanied by a registration application; and
 - (j) include or be accompanied by any information or document required by the Recorder.
- (2) An annexure to a power of attorney must –
- (a) be in the same size and form as the power of attorney; and
 - (b) be referred to in the power of attorney; and
 - (c) contain identification that it is the annexure to the power of attorney; and
 - (d) subject to subsection (3), be signed by the parties to the power of attorney or, where the party is a body corporate, by

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the persons who have attested the affixing of the seal of that body corporate to the power of attorney; and

- (e) comply with this Act.
- (3) If one of the parties to a power of attorney is a body corporate that is not required by law to affix its seal to the power of attorney, an annexure to the power of attorney is to be signed by any person who is authorised by law to execute the power of attorney.
- (4) An alteration to a power of attorney or annexure –
 - (a) is to be made by striking through the word or words intended to be altered so as not to render illegible the original word or words; and
 - (b) is to be initialled by the donor and the attorney.
- (5) The initialling by the donor of an alteration to a power of attorney or annexure is to be witnessed –
 - (a) in the case of an enduring power of attorney or annexure to such a power of attorney, by two witnesses neither of whom is a party to it nor a close relative of a party to it and each of whom has witnessed it in the presence of the donor and each other; or

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- (b) in the case of any other power of attorney or annexure to such a power of attorney, by a witness who is not a party to it and who witnesses it in the presence of the donor.
- (6) A witness to the initialling of an alteration to a power of attorney or annexure may be the same person as, or a different person to, the person who witnessed the power of attorney or annexure.
- (7) A person who is to be the attorney in respect of an enduring power of attorney, or who knows he or she is a close relative of a party to an enduring power of attorney, must not act as a witness to –
 - (a) the signature of the enduring power of attorney by the donor; or
 - (b) the initialling by the donor of an alteration to the enduring power of attorney or to an annexure to the enduring power of attorney.

Penalty: Fine not exceeding 2 penalty units.

10. Requirements for other instruments

- (1) Subject to this section, section 9 applies as far as relevant –
 - (a) to an instrument that refers to a power of attorney, other than an instrument referred to in section 32A; and
 - (b) to an annexure to such an instrument.

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- (2) An instrument that refers to a power of attorney, including an instrument referred to in section 32A, must clearly identify the power of attorney by reference to –
 - (a) the name of the donor; and
 - (b) the name of the attorney; and
 - (c) the date on which it was executed; and
 - (d) the distinctive number or other means of identification given under section 12(2).
- (3) Where an instrument that refers to a power of attorney is required to be signed by the donor, it is sufficient if it is signed by the donor's personal representative with a statement as to how and in what capacity he or she has been appointed to act.

Division 2 – Registration of powers of attorney, &c.

11. Powers of attorney not to be registered except in accordance with this Act

- (1) The Recorder must not register any power of attorney or other instrument under this Act unless it –
 - (a) complies with this Act; and
 - (b) is accompanied by a registration application.
- (2) For the purposes of this section, the Recorder is not required to examine a power of attorney or

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other instrument unless to ensure that it is in accordance with the forms and procedures provided by this Act.

- (3) If a power of attorney or other instrument is lodged with the Recorder under this Act for registration and does not comply with this Act, the Recorder must –
- (a) refuse to register the power of attorney or other instrument and return it to the person who lodged it; or
 - (b) return the power of attorney or other instrument to the person who lodged it with a notice notifying him or her that the Recorder will refuse to register the power of attorney or other instrument unless the specified corrections are made.
- (4) Where corrections are to be made as mentioned in subsection (3) –
- (a) the Recorder may refuse registration of the corrected power of attorney or other instrument if the corrections are not made within 60 days after notice under subsection (3)(b) was given, or within such further time as the Recorder may allow; and
 - (b) the corrections are to be initialled by the donor and attorney.
- (4A) The initialling of corrections to a power of attorney or other instrument by the donor under subsection (4)(b) is to be witnessed –

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- (a) in the case of an enduring power of attorney, by two witnesses neither of whom is a party to it nor a close relative of a party to it and each of whom has witnessed it in the presence of the donor and each other; or
 - (b) in the case of any other power of attorney, a witness who is not a party to it and who witnesses it in the presence of the donor.
- (4B) A witness to the initialling of corrections to a power of attorney or other instrument may be the same person as, or a different person to, the person who witnessed the power of attorney or other instrument.
- (5) Where the Recorder refuses to register a power of attorney or other instrument, he or she shall notify the person by whom the power of attorney or other instrument was lodged or that person's agent of his or her refusal, and may retain one-half of the fees paid in relation to the lodging of the power of attorney or other instrument.
- (5A) Despite any provision of this Act to the contrary, the Recorder may accept for registration a power of attorney, annexure or alteration to a power of attorney that does not comply with this Act if the Recorder considers it appropriate to do so in the particular circumstances.
- (6) All fees retained by the Recorder in accordance with subsection (5) are to be paid into the Public Account.

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- (7) The Recorder is not personally liable for any damage or loss caused to a person by, or as a consequence of, the registration under this Act of –
- (a) a purported enduring power of attorney signed by a witness who is a party to, or a close relative to a party to, the enduring power of attorney; or
 - (b) an annexure to an enduring power of attorney, or purported enduring power of attorney, which annexure is signed by a witness who is a party to, or a close relative to a party to, the enduring power of attorney; or
 - (c) an alteration or correction made to –
 - (i) an enduring power of attorney or a purported enduring power of attorney; or
 - (ii) an annexure to an enduring power of attorney or purported enduring power of attorney –which alteration or correction is signed by a witness who is a party to, or a close relative to a party to, the enduring power of attorney.

12. Lodgment of powers of attorney, &c.

- (1) A power of attorney or other instrument under this Act may be lodged with the Recorder –

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- (a) by delivery of the original document; or
 - (b) if so authorised by the Recorder, by transmission to the Recorder of a copy of the original document –
 - (i) as a transparency or print from a transparency or from a machine copy; or
 - (ii) by facsimile process; or
 - (iii) in any other manner approved by the Recorder; or
 - (c) by the preparation and lodgment of the power of attorney or other instrument in any form otherwise than as a document –
 - (i) by any device used for the storage or transmission or processing of information approved by the Recorder; or
 - (ii) in any other manner approved by the Recorder.
- (2) On lodgment of a power of attorney or other instrument, the Recorder must –
- (a) identify the power of attorney or other instrument by endorsing on it a distinctive number, a distinctive letter and number or any other identifying procedure; and
 - (b) take a copy of the endorsed power of attorney or other instrument; and

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- (c) return the endorsed power of attorney or other instrument to the person who lodged it.
- (3) A power of attorney or other instrument is taken to be registered –
- (a) if the register is kept in paper form, by a notation on the copy of the power of attorney that it has been registered; or
 - (b) if the register is kept on microfilm, by any other medium approved by the Recorder or in such device for storing or processing information as may be so approved, by the Recorder making a notation appropriate to that medium or device that the power of attorney or other instrument has been so registered.
- (4) A notation of registration is to record the date and time when a power of attorney or other instrument is registered.

13. Authority for lodgment by electronic process

- (1) The Recorder may make an agreement with a person authorising him or her to lodge a power of attorney or other instrument under this Act otherwise than by production of the original document.
- (2) The agreement must provide that the procedures to be followed –

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- (a) are to be comparable with the normal procedures adopted by the Recorder and will not adversely affect the register; and
 - (b) will ensure the accurate transmission of the power of attorney or other instrument.
- (3) The Recorder may require a person seeking to lodge a power of attorney or other instrument by electronic means to produce documentary evidence that he or she is authorised to do so.

14. Lodgment of supporting documents

The application of sections 12 and 13 extend to the lodgment by electronic means of any document required by the Recorder in support of a power of attorney.

15. Scope of powers of attorney

- (1) A power of attorney executed before the commencement of the *Powers of Attorney Amendment Act 2008* may be registered if, at the time of its execution, the power of attorney would have been capable of being registered under the relevant Act.

- (2) In this section –

power of attorney means a document creating a power of attorney for any purpose or varying, revoking or otherwise relating to a power of attorney;

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relevant Act means –

- (a) for the period commencing on 4 April 2001 and ending immediately before the *Powers of Attorney Amendment Act 2008* commences, this Act; and
- (b) for the period commencing on the commencement of the *Powers of Attorney Act 1934* and ending on 3 April 2001, the *Powers of Attorney Act 1934*.

16. Acts under power invalid until power registered

An act, deed or instrument done, executed or signed under a power of attorney by the attorney has no legal effect unless –

- (a) the power of attorney has been registered under this Act before the act, deed or instrument is done, executed or signed; or
- (b) in the case of an enduring power of attorney that is subject to an order of the Tribunal made under section 33, a copy of the order is so registered.

17. Death, &c., of donor of power may be registered

- (1) Where a power of attorney has been registered under this Act, notice of the death, bankruptcy or insolvency of the donor or of revocation of the

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power of attorney is to be registered as provided by subsection (2).

- (2) For the purposes of subsection (1), there is to be registered –
- (a) a declaration made by a person of the fact of the death, bankruptcy or insolvency of the donor of a power of attorney, or of an attorney under an enduring power of attorney, made before a person having authority to administer an oath in the place, whether in Tasmania or elsewhere, where the declaration is made; or
 - (b) an instrument of revocation of a power of attorney; or
 - (c) a notice of revocation under the hand of the donor of a power of attorney; or
 - (ca) notice of the revocation of an enduring power of attorney by virtue of section 32AE(3), under the hand of the donor, or the attorney, of the enduring power of attorney; or
 - (d) in the case of an enduring power of attorney that is revoked, or of which the terms are varied, by an order of the Tribunal under section 33, a copy of that order.

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18. Form of power of attorney

- (1) A power of attorney, other than an enduring power of attorney, may be made –
 - (a) by deed; or
 - (b) in accordance with form 1, conferring particular powers specified in it; or
 - (c) in accordance with form 2, conferring power on the attorney to do all things that the donor may lawfully authorise an attorney to do.
- (2) An enduring power of attorney may be made under Part 4.

Division 3 – Effect of powers of attorney

19. Application of Division

This Division applies to powers of attorney executed either before or after the commencement of this Act.

20. Authority conferred by power of attorney

Subject to, in the case of an enduring power of attorney, section 31(2B), a power of attorney operates to confer power on the attorney to execute any assurance or instrument or do any thing which the donor may execute or do if the performance of which may be delegated by the donor, but the exercise of the power is subject to

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any conditions or limitations expressed in the power of attorney.

21. Nature of authority conferred

The authority conferred by the power of attorney, according to the tenor of the instrument by which it is conferred and, in the case of an enduring power of attorney, subject to section 31(2B), may be unlimited or may be limited to specific acts and any such limitations may relate to the mode in which, or the time and place at which, the authority may be exercised.

22. Duration of power of attorney

A power of attorney remains in force until –

- (a) it is revoked under this Act; or
- (b)
- (c) the purpose or time for which it was created has been fulfilled or has passed.

23. Execution under power of attorney

- (1) An attorney may execute any assurance or instrument or do any thing in the attorney's own name and by the attorney's own signature and by the attorney's own seal, where sealing is required, by the authority of the donor.
- (2) An assurance, instrument or thing so executed or done has the same effect as if it had been

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executed or done by the attorney in the name and with the signature and seal of the donor.

24. Effect of power of attorney for value made irrevocable

If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, the following provisions have effect in favour of a purchaser:

- (a) the power is not to be revoked at any time, either by any thing done by the donor of the power without the concurrence of the attorney or by the death, mental incapacity, bankruptcy or insolvency of the donor;
- (b) an act done at any time by the attorney, under the power, is as valid as if any thing done by the donor of the power without the concurrence of the attorney had not been done or as if the death, mental incapacity, bankruptcy or insolvency of the donor had not happened;
- (c) neither the attorney nor the purchaser is at any time prejudicially affected by notice of any thing done by the donor of the power without the concurrence of the attorney or by notice of the death, mental incapacity, bankruptcy or insolvency of the donor.

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25. Effect of power of attorney irrevocable for fixed period

If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed period specified in the power, not exceeding one year from the date of the instrument, the following provisions have effect in favour of a purchaser:

- (a) the power is not to be revoked, for and during that fixed period, either by any thing done by the donor of the power without the concurrence of the attorney or by the death, mental incapacity, bankruptcy or insolvency of the donor;
- (b) any act done within that fixed time, by the attorney under the power, is as valid as if any thing done by the donor of the power without the concurrence of the attorney had not been done or as if the death, mental incapacity, bankruptcy or insolvency of the donor had not happened;
- (c) neither the attorney nor the purchaser is at any time prejudicially affected by notice, either during or after that fixed period, of any thing done by the donor of the power during that fixed period without the concurrence of the attorney or by notice of the death, mental incapacity, bankruptcy or insolvency of the donor within that fixed period.

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26. Appointment of attorney by class

- (1) A power of attorney is taken to be valid notwithstanding that the attorney is expressed to be appointed as a member of a specified class of persons.
- (2) If a person does any act, or executes or signs a document, and purports to do so as a member of a class of persons appointed as attorneys under a power of attorney –
 - (a) any other person dealing with the purported attorney may assume the purported attorney has sufficient authority to do the act, or sign or execute the document, as such an attorney; and
 - (b) the doing of the act, or the signature on or execution of the document, is taken to be evidence that the purported attorney has sufficient authority to do the act, or sign or execute the document, as such an attorney.
- (3) This section does not apply to an enduring power of attorney.

Division 4 – Revocation of powers of attorney other than enduring powers of attorney

27AA. Application of Division

- (1) This Division does not apply in relation to an enduring power of attorney.

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- (2) Nothing in this Division is to be taken to limit the application of sections 24 and 25.

27. Revocation of power of attorney

- (1) A power of attorney, whether registered under this Act or not, is revoked if the attorney is notified of its revocation by the donor or of the death, bankruptcy or insolvency of the donor.
- (2) A power of attorney that is registered under this Act is revoked if notification of its revocation or of the death, bankruptcy or insolvency of the donor is lodged with the Recorder.

28. Effect on dealings with attorney in good faith

- (1) Where a power of attorney has been revoked or the donor has died or has become subject to a mental incapacity, bankrupt or insolvent, a person dealing in good faith with the attorney without notice of the revocation, death, mental incapacity, bankruptcy or insolvency is not affected by the revocation, death, mental incapacity, bankruptcy or insolvency.
- (2) In the application of subsection (1) to a power of attorney that is registered under this Act, the rights of a person dealing in good faith with the attorney are not preserved if notice of the revocation, death, mental incapacity, bankruptcy or insolvency has been given to the Recorder.

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29. Revocation of unregistered power of attorney

Where –

- (a) a power of attorney is not registered under this Act; and
- (b) the attorney cannot be found or it is impracticable to give notice of revocation or of the death, mental incapacity, bankruptcy or insolvency of the donor to the attorney –

the power of attorney may be revoked by lodging notice of the revocation together with a copy of the power of attorney with the Recorder.

PART 4 – ENDURING POWERS OF ATTORNEY

30. Creation and effect of enduring powers of attorney

- (1) A power of attorney is an enduring power of attorney for the purposes of this Act if it is created –
 - (a) by deed containing words indicating an intention that the authority conferred is to be exercisable notwithstanding the donor’s subsequent mental incapacity or in the event of the donor’s subsequent mental incapacity; or
 - (b) by an instrument in accordance with form 3, conferring on the attorney particular powers specified in it; or
 - (c) by an instrument in accordance with form 4, conferring on the attorney powers to do all things that the donor may lawfully authorise an attorney to do.
- (2) A deed or instrument is not effective to create an enduring power of attorney unless –
 - (a) the donor understands the nature and effect of the deed or instrument; and
 - (b)
 - (c) the deed or instrument has endorsed on it, or annexed to it, a statement of acceptance in accordance with form 3 or 4, or in a form to the same effect,

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executed by the person appointed to be the attorney.

- (3) For the purposes of subsection (2)(a), a donor is taken to understand the nature and effect of a deed or instrument only if he or she understands the following matters:
- (a) that the donor may, in the enduring power of attorney, specify or limit the power to be given to an attorney and instruct an attorney about the exercise of the power;
 - (b) when the power begins;
 - (c) that, once the power for a matter begins, the attorney has power to make, and will have full control over, the matter subject to terms or information about exercising the power included in the enduring power of attorney;
 - (d) that the donor may revoke the enduring power of attorney at any time when he or she has the mental capacity to do so;
 - (e) that the power the donor has given continues even if the donor subsequently loses his or her mental capacity;
 - (f) that the donor is unable to oversee the use of the power if he or she subsequently loses mental capacity.
- (4) An act done by the attorney under a power conferred by an enduring power of attorney

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during a period of mental incapacity of the donor of the power is as effective as if the donor were competent and not subject to a mental incapacity.

- (5) If before the commencement of this subsection an attesting witness was not present, as required by form 3 or form 4 as in force before that commencement, when an attorney signed the form of acceptance on or relating to an enduring power of attorney (whether or not the witness attested that he or she witnessed the attorney's signature) –
- (a) the enduring power of attorney is not and has never been, by that reason only, invalid; and
 - (b) any act done, or document signed or executed, by the attorney is not and has never been, by that reason only, invalid.

31. Scope of authority, &c., of attorney under enduring power of attorney

- (1) An enduring power of attorney –
- (a) may confer general authority in accordance with subsection (2) on the attorney to act on the donor's behalf in respect of all or a specified part of the property and affairs of the donor or may confer on him or her authority to do specified acts on the donor's behalf; and

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- (b) may be expressed to operate only during such period as may be specified in the power of attorney –

and, in any such case, the authority may be conferred subject to conditions or restrictions.

- (2) Where an instrument is expressed to confer general authority on the attorney, it operates to confer, subject to any conditions or restrictions specified in the instrument, authority to do on behalf of the donor any act which the donor can lawfully do by an attorney.
- (2A) In addition to any acts or powers expressly authorised in, or expressed to be included in, an enduring power of attorney, but subject to any conditions or restrictions of a power specified in the enduring power of attorney, the acts which the attorney may do on behalf of a donor under an enduring power of attorney include, but are not limited to including –
 - (a) collect, receive and recover any income or property to which the donor is entitled; and
 - (b) invest money in any manner in which trustees may by law invest; and
 - (c) take a lease of real estate at the rent, and on the conditions, that the attorney thinks fit; and
 - (d) exercise any power of leasing vested in the donor; and

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- (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
- (f) sell, exchange, partition or convert into money any property other than real estate; and
- (g) sell, exchange, partition or convert into money any interest in any real estate; and
- (h) mortgage, purchase, acquire, lease or charge any property or sever any joint tenancy; and
- (i) exercise any power of the donor in respect of any superannuation of the donor; and
- (j) pay any debts and settle, adjust or compromise any demand made by or against the estate of the donor, discharge any encumbrance on the estate and reimburse (whether legally obliged to make such reimbursement or not) any person who has expended money for the benefit of the donor; and
- (k) renounce, on behalf of the donor, the donor's right to apply for a grant of probate in respect of an estate in respect of which the donor has been appointed as an executor; and
- (l) renounce, on behalf of the donor, the donor's right to a grant of letters of administration; and

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- (m) carry on, so far as appears desirable, any trade, profession or business which the donor carried on; and
 - (n) agree to any alteration of the conditions of any partnership into which any donor has entered or to a dissolution and distribution of the assets of the partnership; and
 - (o) bring and defend actions and other legal proceedings in the name of the donor; and
 - (p) execute and sign deeds, instruments and other documents; and
 - (q) complete any contract for the performance of which the donor was liable or enter into any agreement terminating liability; and
 - (r) pay sums, or use the donor's property, for the maintenance and education of the donor's spouse or any child, parent or other person dependent on the donor; and
 - (s) expend money in the insurance, repair, maintenance, renovation, reconstruction or preservation of any property; and
 - (t) do all matters necessary or incidental to the performance of any of the matters specified in this subsection and apply any money, or any property, which it is necessary to apply for the purposes of this Act; and

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- (u) exercise any power, including a power to consent, vested in the donor, whether beneficially, or as a trustee, or otherwise.
- (2B) Despite subsection (2A), the acts which the attorney may do on behalf of a donor under an enduring power of attorney do not include a power to make on behalf of the donor a decision in relation to a personal matter in respect of the donor.
- (2C) For the purposes of subsection (2B), a *personal matter* in respect of a donor is a decision in relation to a matter that relates to the private life, lifestyle or health of the donor, including, but not limited to including, any of the following:
 - (a) the place or person where or with whom the donor lives;
 - (b) whether the donor works and if so, the kind and place of work and the donor's employer;
 - (c) whether the donor undertakes education or training or what kind of education or training the donor undertakes;
 - (d) whether the donor applies for a licence, or permit, other than a licence or permit for the conduct of a business or for other commercial reasons;
 - (e) day-to-day matters relating to diet, recreation, hobbies, companions, pet ownership, sexual expression, dress, hairstyle, persons with whom the donor

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- associates or clubs, associations or political parties that the donor may join;
- (f) consenting to the adoption of a child of the donor;
 - (g) consenting to the donor marrying, separating or divorcing, or entering into or terminating, a personal relationship within the meaning of the *Relationships Act 2003*;
 - (h) entering into, or agreeing to enter into, a surrogacy arrangement under the *Surrogacy Act 2012* or consenting to the making or discharge of a parentage order under that Act;
 - (i) the health care of, or the withdrawal of health care from, the donor, including any decisions relating to organ donation, pregnancy termination or conception, treatment to render the donor temporarily or permanently infertile or participation in health research or psychological treatment.
- (3) Unless there is a contrary intention expressed in the enduring power of attorney, an attorney may give away any property of the donor only if –
- (a) the gift is –
 - (i) to a relation or close friend of the donor; and

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(ii) of a seasonal nature or on the occasion of a special event (including, for example, a birth or marriage); or

(b) the gift is a donation of the nature that the donor made when the donor had mental capacity or that the donor might reasonably be expected to make –

and, in either case, the value of the gift is reasonable having regard to all the circumstances and, in particular, the donor's financial circumstances.

(4) An attorney or a charity with which an attorney has a connection is not precluded from receiving a gift under subsection (3).

(5) The Tribunal may –

(a) on the application of an attorney or of its own motion; and

(b) after a hearing in accordance with the *Tasmanian Civil and Administrative Tribunal Act 2020* –

authorise the attorney to make a gift of any property of the donor to any person approved by the Tribunal and for any purpose approved by the Tribunal.

(6) An enduring power of attorney created by a donor is of no effect in relation to a part of the estate of the donor if an administration order under the *Guardianship and Administration Act*

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1995 is in force in relation to the part of the estate.

32. Duties of attorney under enduring power of attorney

- (1) An attorney under an enduring power of attorney, during any period of mental incapacity of the donor –
- (a) is taken to be a trustee of the property and affairs of the donor according to the tenor of the power; and
 - (b) must exercise his or her powers as attorney to protect the interests of the donor –

and, if he or she fails to do so, is liable to compensate the donor for any loss occasioned by the failure.

- (1A) An attorney, in so far as doing so will not conflict with the attorney's duty under subsection (1) to protect the interests of the donor, must at all times exercise his or her powers under an enduring power of attorney as far as is possible and reasonable in the circumstances –
- (a) in the best interests of the donor; and
 - (b) in consultation with the donor; and
 - (c) taking into account –

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- (i) the wishes of the donor, in so far as those wishes have been, or can be, ascertained; and
 - (ii) what would be reasonably likely to be the wishes of the donor, if he or she were not subject to a mental incapacity.
- (1B) For the purposes of this section, an exercise of a power under an enduring power of attorney is not to be taken to constitute a failure to protect the interests of the donor, and is to be taken to be in the best interests of the donor, if –
 - (a) it is an exercise of a power that the donor would have been likely to make if he or she were not subject to a mental incapacity; or
 - (b) the exercise of the power consists of providing for those persons who the donor would expect to provide for, if he or she were not subject to a mental incapacity.
- (2) An attorney under an enduring power of attorney is not competent to appoint another person to perform any functions or exercise any powers in his or her capacity as such.
- (3) An attorney under an enduring power of attorney must keep any property of the donor (apart from property held by the attorney and the donor as tenants in common or joint tenants) separate from property of the attorney.

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Penalty: Fine not exceeding 50 penalty units.

32AA. Right of attorney to information

- (1) The attorney under an enduring power of attorney has, if the donor has become subject to a mental incapacity, a right to –
 - (a) all the information to which the donor is entitled; and
 - (b) all the information to which the donor would have been entitled but for the mental incapacity –

if the information is reasonably required for the purpose of exercising a power under, or determining whether to exercise a power under, the enduring power of attorney.
- (2) An attorney under an enduring power of attorney has, if the donor has become subject to a mental incapacity, a right to obtain, from a person who has possession of a will of the donor, a copy, of the will, that is certified by the person.
- (3) A person who has custody or control of information, or a will, to which an attorney under an enduring power of attorney has a right under subsection (1) or (2), must, at the request of the attorney, disclose to the attorney the information, or provide to the attorney a copy, of the will, that is certified by the person.

Penalty: Fine not exceeding 2 penalty units.

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- (4) Subsections (1), (2) and (3) are subject to any contrary intention, or express limitation, in the enduring power of attorney.

32AB. Power to take action to the benefit of attorney

- (1) An enduring power of attorney does not authorise the attorney to execute an assurance or other document, or do anything else, that would result in a benefit being received by the attorney, unless the power of attorney expressly authorises the attorney to take an action that would result in a benefit being received by the attorney.
- (2) Nothing in subsection (1) is to be taken to limit the application of section 11 of the *Public Trustee Act 1930*.

32AC. Transactions that may involve conflict of duty

- (1) An attorney under an enduring power of attorney may only enter into a transaction that results, or may result, in a conflict of interest, if –
- (a) the enduring power of attorney specifies that the transaction may, even though it will or may result in a conflict of interest, be entered into by the attorney; or
- (b) the transaction is a member of a class of transactions that the enduring power of attorney specifies may, even though the transactions will or may result in a conflict of interest, be entered into by the attorney; or

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- (c) the power of attorney specifies that, even though such a transaction will or may result in a conflict of interest, any transaction may be entered into by the attorney.
- (2) For the purposes of subsection (1), a conflict of interest is a conflict between –
- (a) the duties of an attorney in respect of the donor; 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.
- (3) Despite subsection (2), a transaction does not result, or is not to be taken to be a transaction that may result, in a conflict of interest only because, by the transaction, the attorney in the attorney’s own right and on behalf of the donor –
- (a) deals with an interest, in property, held by the attorney and the donor as tenants in common or joint tenants; or
 - (b) acquires an interest, in property, jointly with the donor as tenants in common or joint tenants; or
 - (c) obtains a loan or gives a guarantee or indemnity in relation to –

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- (i) the acquisition of an interest, in property, held by the attorney and the donor as tenants in common or joint tenants; or
- (ii) a dealing with an interest, in property, jointly with the donor as tenants in common or joint tenants.

32AD. Keeping of records, &c.

- (1) An attorney under an enduring power of attorney must keep an accurate record of all dealings and transactions made as the attorney.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person who has ceased to be an attorney under an enduring power of attorney must –
 - (a) retain, for at least 7 years after so ceasing, an accurate record of all dealings and transactions made as the attorney; or
 - (b) provide to the Tribunal an accurate record of all dealings and transactions made as the attorney.

Penalty: Fine not exceeding 20 penalty units.

- (3) A person with a proper interest in the matter may, in writing, request the Tribunal to exercise its power under subsection (4) in relation to a person who is or was an attorney under an enduring power of attorney.

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- (4) The Tribunal, after receiving under subsection (3) a request in relation to –
- (a) a person who is an attorney under an enduring power of attorney; or
 - (b) a person who was, within the previous 7 years, an attorney under an enduring power of attorney and who has not provided an accurate record to the Tribunal in accordance with subsection (2)(b) –

may, by notice in writing to the person, require the person to provide to the Tribunal, within the period of not less than 14 days specified in the notice, a document setting out an accurate record of all dealings and transactions made as the attorney.

- (5) A person who receives a notice under subsection (4) must provide to the Tribunal, before the end of the period specified in the notice, a document setting out an accurate record of all dealings and transactions made by the person as the attorney under an enduring power of attorney.

Penalty: Fine not exceeding 20 penalty units.

- (6) A document provided to the Tribunal by a person in accordance with a notice under subsection (4) –
- (a) is to be in a form approved by the Tribunal; and

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- (b) is to be verified by a statutory declaration that is signed by the person; and
- (c) is to be accompanied by other evidence, if any, that the Tribunal specifies in the notice is required to accompany the document.

32AE. Revocation of enduring powers of attorney

- (1) An enduring power of attorney, whether registered or unregistered, is revoked if notice of revocation by the donor is given to the attorney.
- (2) An enduring power of attorney, whether registered or unregistered, is revoked if the donor dies or becomes bankrupt or insolvent.
- (3) An enduring power of attorney, created by a donor, that gives a power to another person who is –
 - (a) a spouse of the donor; or
 - (b) a party to a personal relationship, within the meaning of the *Relationships Act 2003*, with the donor, which relationship is registered under that Act –

is revoked if paragraph (a) or (b) ceases to apply to the other person.

- (4) If an enduring power of attorney is revoked by virtue of subsection (3), the donor is, as soon as practicable, to notify the attorney in respect of the power.

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- (5) An enduring power of attorney is revoked if the attorney –
- (a) is the only attorney specified in the power of attorney or is appointed under the power of attorney to act jointly (but not jointly or severally) with another attorney; and
 - (b) dies, becomes subject to mental incapacity or becomes bankrupt or insolvent.
- (6) If –
- (a) an enduring power of attorney is not registered under this Act; and
 - (b) either –
 - (i) the attorney cannot be found, despite reasonable steps being taken by the donor to do so; or
 - (ii) it is impracticable to give to the attorney notice of the revocation, by the donor, of the power –
- the power of attorney may be revoked by lodging with the Recorder notice of the revocation by the donor together with a copy of the power of attorney.
- (7) Nothing in this section is to be taken to limit the application of sections 24 and 25.

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32AF. Effect of power of attorney when inconsistent with subsequent enduring power of attorney

- (1) Subject to sections 24 and 25, an enduring power of attorney that is made by a donor and is registered is of no effect to the extent that it is inconsistent with a power of attorney, or an enduring power of attorney, subsequently made by the donor and registered.
- (2) Subject to sections 24 and 25, if an enduring power of attorney (the *first power*) that is unregistered is made by a donor and subsequently another enduring power of attorney (the *second power*) that is inconsistent with the first power is made by the same donor and has not been revoked, the first power may not be registered.
- (3) If a donor makes a power of attorney, or an enduring power of attorney, (the *first-made power*) and subsequently makes another power of attorney or enduring power of attorney, (the *subsequent power*) the donor is to notify of the making of the subsequent power the attorney in respect of the first-made power.

32AG. Effect on dealings with attorney in good faith in respect of enduring powers

- (1) If an enduring power of attorney has been revoked, a person dealing with the attorney in good faith, without notice of the revocation, is not affected by the revocation.

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- (2) In the application of subsection (1) to an enduring power of attorney that is registered under this Act, the rights of a person dealing in good faith with the attorney are not preserved if notice of the revocation has been given to the Recorder.
- (3) If an attorney under an enduring power of attorney has been suspended under section 33, a person dealing with the attorney in good faith, without notice of the suspension, is not affected by the suspension.

32AH. Effect of adoptions of testamentary gifts by attorney under enduring power of attorney

- (1) In this section, a reference to a dealing with property includes a sale, mortgage, charge or disposition of property and any other dealing with property.
- (2) A person who is a beneficiary (a *relevant beneficiary*) under the will of a deceased donor of an enduring power of attorney has the same interest in any surplus money or other property arising from a dealing with property by the attorney under the enduring power of attorney as the relevant beneficiary would have had, in the property that is the subject of the dealing, if the dealing had not been made.
- (3) The surplus money or other property arising from the dealing with property as referred to in subsection (1) is taken to be of the same nature as the property dealt with.

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- (4) The Supreme Court, on the application of a relevant beneficiary, under the will of a deceased donor of an enduring power of attorney, to whom subsection (2) relates or another person who the Supreme Court considers has a proper interest in the matter, may –
- (a) make the orders, and direct the conveyances, deeds and things to be executed and done as it thinks fit in order to give effect to subsections (2) and (3); or
 - (b) if it considers that the operation of subsections (2) and (3) would result in one or more relevant beneficiaries –
 - (i) gaining an unjust and disproportionate advantage; or
 - (ii) suffering an unjust and disproportionate disadvantage –of a kind not contemplated by the will, make such other orders as the Supreme Court thinks fit to ensure that no relevant beneficiary gains such an advantage or suffers such a disadvantage.
- (4A) An application under subsection (4) is to be made not later than 3 months after the date of the grant of probate of the will, or letters of administration of the estate, of the deceased person.

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- (4B) The Supreme Court may extend the period referred to in subsection (4A) if it considers it necessary.
- (5) An order made by the Supreme Court under subsection (4)(b) –
 - (a) may provide that it has effect as if it had been made by a codicil to the will of the donor of the enduring power of attorney executed immediately before the donor's death; and
 - (b) has effect despite anything to the contrary in subsection (1) or (2).

32A. Substitution of The Public Trustee as attorney

- (1) If –
 - (a) an enduring power of attorney appoints only one attorney, that attorney may appoint The Public Trustee to act as attorney in his or her place; or
 - (b) an enduring power of attorney appoints more than one attorney, those attorneys jointly may appoint The Public Trustee to act as sole attorney in their places.
- (2) An appointment under subsection (1) is to be –
 - (a) in accordance with form 6; and
 - (b) signed by the attorney or all attorneys; and

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- (c) accepted by The Public Trustee in accordance with that form.
- (3) An appointment is of no effect until registered by the Recorder.
- (4) If The Public Trustee is appointed to act as attorney under this section, a reference in this Act to an attorney is taken to be a reference to The Public Trustee.

33. Power of Tribunal to make orders in respect of enduring power of attorney

- (1AA) In this section, a reference to an enduring power of attorney includes a reference to a purported enduring power of attorney.
 - (1) The Tribunal may –
 - (a) of its own motion; or
 - (b) on application by an attorney; or
 - (c) on application by or on behalf of a donor; or
 - (d) on application by any other person who the Tribunal believes has a proper interest in the matter –

hold a hearing in accordance with the *Tasmanian Civil and Administrative Tribunal Act 2020* to review an enduring power of attorney.

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- (1A) The Tribunal may dismiss an application for review if it is of the opinion that the application is frivolous, vexatious or lacking in substance.
- (1B) Without limiting the matters to which the Tribunal may have regard in relation to a review in respect of a donor, the Tribunal may open and read any paper or writing which purports to be, or is alleged to be, the will of the donor.
- (2) On the review, the Tribunal may, by order –
- (a) vary a term of, or a power conferred by, the enduring power of attorney; or
 - (b) appoint a substitute attorney; or
 - (c) appoint an administrator of the estate of the donor if he or she is over the age of 18 years; or
 - (d) declare that the donor did or did not have mental capacity to make a valid enduring power of attorney or to revoke an enduring power of attorney; or
 - (e) declare that the enduring power of attorney or the revocation of it by the donor is invalid if the Tribunal is satisfied that –
 - (i) the donor did not have the mental capacity to make the power or the revocation, respectively; or
 - (ii) the power or the revocation, respectively, does not comply

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with the other requirements of
this Act; or

(iii) the power or the revocation,
respectively, is invalid because
the donor was induced to make it
by dishonesty or undue influence
or invalid for any other reason; or

(f) revoke the enduring power of attorney
and, if the donor is over the age of 18
years and the Tribunal thinks fit, appoint
an administrator of his or her estate; or

(g) make such other order as to the exercise
of the power, or the construction of its
terms, as the Tribunal thinks fit.

(3) An appointment of a person as administrator under subsection (2)(f) has the same effect as if it had been made under Part 7 of the *Guardianship and Administration Act 1995*.

(4) When the Tribunal considers it proper to do so by reason of urgency, the Tribunal may suspend the attorney under an enduring power of attorney and, on doing so, the attorney ceases, for the period of the suspension, to be authorised to take any action under the power of attorney and the Tribunal may –

(a) appoint the Public Trustee or any other person as a substitute attorney to act in the place of the suspended attorney for the period for which the suspension remains in force; and

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- (b) make such other orders, and give such other directions, as to the exercise of the power as it thinks fit.

(4A) The Tribunal may –

- (a) suspend, for the period specified in the order, the attorney under an enduring power of attorney if the attorney (in this section referred to as the *suspended attorney*) fails to comply, with a direction of the Tribunal, within a reasonable period after the direction is given; and
- (b) appoint the Public Trustee or any other person to act as the attorney, in the place of the suspended attorney, for the period for which the suspension remains in force; and
- (c) if an attorney in relation to an enduring power of attorney is suspended under paragraph (a), make such other orders, and give such other directions, as to the exercise of the power as it thinks fit; and
- (d) if an attorney is suspended under paragraph (a), revoke the suspension, if the Tribunal is satisfied that the suspended attorney has complied with the direction to which the suspension relates; and
- (e) if, after conducting a hearing in relation to the matter, in accordance with the *Tasmanian Civil and Administrative*

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Tribunal Act 2020, to review an enduring power of attorney, it is satisfied that a suspended attorney in relation to a power of attorney has, after the expiration of a reasonable period after the suspension of the attorney under paragraph (a), continued to fail to comply with the direction to which the suspension related, revoke the power of attorney.

- (4B) If an attorney is suspended under subsection (4A) –
- (a) the suspension does not prevent the suspended attorney taking the actions necessary to comply with the direction to which the suspension relates, but the suspended attorney may not otherwise exercise during the suspension the power of attorney; and
 - (b) a person appointed under subsection (4A)(b) may, during the period of the suspension, act as the attorney, in the place of the suspended attorney, for the purposes of a power of attorney.
- (5) In the exercise of its powers under subsection (4) or subsection (4A) –
- (a) the Tribunal is not required to give notice to any person or, subject to subsection (4A)(e), to hold a hearing before making an order but the Tribunal

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Part 4 – Enduring Powers of Attorney

s. 33

- must make such inquiries or investigations as may be appropriate; and
- (b) the Tribunal may act on a request made, or information received, by telephone or any other means that the Tribunal considers appropriate in the circumstances.
- (6) An order under subsection (4) –
- (a) remains in effect for such period as the Tribunal determines but not exceeding 28 days; and
- (b) may be renewed but only once for a further period not exceeding 28 days.
- (6A) If the Tribunal adjourns a hearing held under this section, the Tribunal may make any interim order or give any directions it considers appropriate, including making an order appointing The Public Trustee as administrator of the estate of the donor.
- (6B) Subsection (6A) does not authorise the Tribunal to suspend an attorney under an enduring power of attorney, or extend such a suspension, which may only be done by the Tribunal under subsection (4) or (4A) or subsection (6)(b).
- (6C) An interim order has effect for the period of the adjournment and any subsequent adjournment or as specified in the interim order.

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Part 4 – Enduring Powers of Attorney

- (6D) The Tribunal may vary or revoke an interim order or make a further or subsequent interim order.
- (7) An order under this section may be made subject to such terms and conditions as the Tribunal thinks fit.
- (8) On making an order under this section, the Tribunal must forward a copy of the order to the Recorder who must register it.

34. Requirements for applications under section 33

- (1) An application under section 33 –
 - (a) is to be in writing; and
 - (b) is to contain the information referred to in subsection (2); and
 - (c) is to be lodged with the Registrar, within the meaning of the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- (2) For the purposes of subsection (1), the following information is required:
 - (a) the name and address of each of the following:
 - (i) the applicant;
 - (ii) the donor of the power;
 - (iii) the attorney;
 - (iv) any proposed substitute attorney;

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- (v) any interested parties to the application;
 - (b) in respect of each person referred to in paragraph (a), the telephone number or other means of transmission referred to in subsection (3);
 - (c) details of the order, advice or direction required and the reasons for seeking it.
- (3) For the purposes of subsection (2), a reference to a telephone number is taken to include a reference to any other means by which a copy of a document may be transmitted by facsimile process or any electronic or similar process approved by the Tribunal.
- (4) An application under section 33 is to be supported by a declaration by the person making the application that all the information contained in the application is true and accurate, that it is not misleading and that no details relevant to the application have been omitted.

35. Advice or directions as to enduring power of attorney

- (1) An attorney under an enduring power of attorney may apply for advice or direction by the Tribunal on any matter relating to the scope of his or her appointment as such or the exercise of any power by the attorney under the enduring power of attorney.

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Part 4 – Enduring Powers of Attorney

- (2) An application under subsection (1) may be made in accordance with section 34 or informally.
- (3) The Tribunal may require notice of an application under subsection (1) to be given to any person that the Tribunal directs and may exercise its powers under this section without a hearing.
- (4) The Tribunal may –
 - (a) approve or disapprove of any act proposed to be done by the attorney; and
 - (b) give such advice or direction as it considers appropriate; and
 - (c) vary the effect of the enduring power of attorney or make any other order that it could have made on an application under section 33.
- (5) The Tribunal of its own motion may direct, or offer advice to, an attorney in respect of any matter arising under the power of attorney.
- (6) Without limiting the powers conferred by this section, the Tribunal may –
 - (a) require an attorney to lodge with the Tribunal a copy of all records and accounts kept by the attorney of dealings and transactions made by him or her under the power; or

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Part 4 – Enduring Powers of Attorney

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- (b) require those records and accounts to be audited by an auditor appointed by the Tribunal and require a copy of the report of the auditor to be furnished to the Tribunal; or
 - (c) require the attorney to submit a plan of financial management to the Tribunal.
- (7) An attorney who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

36. Offence for false or misleading applications

If an application under section 33 or 35 contains a statement that is false or misleading in a material particular, the person making the application is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

37. Contracting out prohibited

This Part applies to an enduring power of attorney notwithstanding any contract or arrangement made by the donor and the attorney to the contrary.

38. Saving provision

Except as provided by this Part, nothing in this Part is taken to derogate from the law relating to powers of attorney.

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Part 5 –

PART 5 –

39 - 40.

PART 6 – FOREIGN POWERS OF ATTORNEY

41. Application of Part

This Part extends to an instrument creating or revoking a power of attorney that was executed before the commencement of this Act and to documents executed under any such power before that commencement.

42. Recognition of registration in other States and Territories

- (1) An instrument creating a power of attorney that is registered in another State or a Territory under a law that corresponds to this Act is taken to be registered in Tasmania for the purposes of this Act.
- (2) For the purposes of this section, the provisions for filing and noting of instruments of the *Transfer of Land Act 1893* of Western Australia are taken to be a corresponding law.

43. Registration of foreign powers of attorney

- (1) An instrument creating or revoking a power of attorney may be registered in Tasmania for the purposes of this Act, whether or not it was executed in accordance with the law of Tasmania.
- (2) If any such instrument is not executed in accordance with the law of Tasmania, it may be registered in Tasmania only if it was executed in

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Part 6 – Foreign Powers of Attorney

accordance with the law of another State or a Territory or with the law of the place in which it was executed.

- (3) This section does not affect the operation of any law that prohibits the registration of an instrument unless the requisite amount of tax or duty has been paid in respect of the instrument.

44. Proof of foreign execution or registration

- (1) For the purposes of this Part, a certificate of a legal practitioner that –
- (a) an instrument creating a power of attorney is registered in another State or a Territory; or
 - (b) an instrument creating or revoking a power of attorney was executed in accordance with the law of a specified State or Territory or the law of the place of execution –

is evidence of that fact.

- (2) A legal practitioner who gives the certificate may be a legal practitioner in Australia or in the other place of execution.
- (3) A certificate referred to in subsection (1)(b) is not evidence of the capacity of the donor to create or revoke the power of attorney.
- (4) For the purpose of this section –

legal practitioner means an Australian lawyer or, in the case of execution or registration of a power of attorney outside Australia, a legal practitioner of that place of execution or registration.

45. Registration based on certified copies

- (1) The Recorder may register a power of attorney or other instrument that has been certified as mentioned in section 44.
- (2) The Recorder may register a power of attorney or other instrument if a copy of it has been certified by an authority exercising functions similar to those of the Recorder under this Act to be a true copy of that power of attorney or other instrument.

46. Registration of instruments of variation or revocation

Where a power of attorney is registered under section 43 or 45, the Recorder may register an instrument varying or revoking the power of attorney.

47. Enduring powers of attorney made outside Tasmania

- (1) The application of this Part extends to a power of attorney that has the same, or substantially the same, effect as an enduring power of attorney and is registered under this Part.

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Part 6 – Foreign Powers of Attorney

- (2) The Tribunal may exercise its powers under Part 4 for the purpose of giving effect to any order, whether made by a court or not, that is in force under a law of another State or a Territory corresponding with this Act or the *Guardianship and Administration Act 1995*.

48. Powers of Tribunal to require production

- (1) Where –
- (a) an enduring power of attorney or other instrument relating to such a power is not required to be registered under this Act; and
 - (b) the power or instrument is in force under this Part –

the Tribunal may –

- (c) require a person who has the custody, possession or control of the relevant document or a copy of it to produce it to the Tribunal; and
 - (d) retain an instrument, whether produced under this subsection or otherwise, until it is no longer required for action in connection with this or any other Act.
- (2) The Tribunal may exercise its powers under this section if it appears that the powers conferred by the power of attorney may be exercised in Tasmania, whether or not they have been so exercised.

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Part 6 – Foreign Powers of Attorney

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- (3) A person who refuses or neglects to produce a document as required under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

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s. 49

Part 7 – Miscellaneous and Supplemental

PART 7 – MISCELLANEOUS AND SUPPLEMENTAL

49. Power to have effect as deed

A power of attorney made in accordance with form 1, 2, 3 or 4 is as valid and effectual to all intents and purposes as if made by deed duly executed and acknowledged.

50. Execution of power of attorney by direction of donor

- (1) Where an instrument creating a power of attorney is not executed personally by the donor, the instrument is taken to be validly executed if –
- (a) it is executed by some other person in the presence of, and by the direction of, the donor; and
 - (b) the signature of that other person is made or acknowledged by the donor in the presence of 2 or more witnesses present at the same time; and
 - (c) those witnesses attest and subscribe the power of attorney in the presence of the donor –

but no form of attestation is necessary for that purpose.

- (2) Subsection (1) does not apply to an enduring power of attorney unless the Tribunal, after a hearing in accordance with the *Tasmanian Civil*

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and Administrative Tribunal Act 2020, declares by order that that subsection is to apply.

51. Validity of payment by attorney under power without notice of death, &c.

(1) A person making a payment or doing any act, in good faith, under a power of attorney (other than an enduring power of attorney) is not liable in respect of the payment or act by reason that before the payment or act the donor –

(a) had died; or

(b) had become subject to a mental incapacity, bankrupt or insolvent; or

(c) had revoked the power –

if the fact of death, mental incapacity, bankruptcy, insolvency or revocation –

(d) was not at the time of the payment or act known to the person making the payment or doing the act; or

(e) ought not reasonably be expected to have been known, by the person making the payment or doing the act, at the time of the payment or act; or

(f) could not, by reasonable inquiry by the person making the payment or doing the act, have been known by the person at the time of the payment or act.

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- (1A) A person making a payment or doing any act, in good faith, under an enduring power of attorney is not liable in respect of the payment or act by reason that before the payment or act the power of attorney had been revoked by virtue of section 32AE, if the circumstances by virtue of which the power of attorney was so revoked under that section –
- (a) was not at the time of the payment or act known to the person making the payment or doing the act; or
 - (b) ought not reasonably be expected to have been known, by the person making the payment or doing the act, at the time of the payment or act; or
 - (c) could not, by reasonable inquiry by the person making the payment or doing the act, have been known by the person at the time of the payment or act.
- (2) This section does not affect a right against the payee of any person interested in any money so paid and that person has the same remedy against the payee as he or she would have had against the person making the payment if the payment had not been made by him or her.

52. Validity of acts done under power after registration of power and before registration of revocation

An act, deed or instrument done, executed or signed by the attorney of any power of attorney

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registered under this Act within the scope of the authority conferred –

- (a) after the death, bankruptcy or insolvency of the donor, or the revocation of the power; and
- (b) before the registration of the death, bankruptcy, insolvency or revocation under this Act –

is, in favour of a person who in good faith and without notice of the death, bankruptcy, insolvency or revocation has dealt with the attorney in the name of the donor, as valid and effectual as if the death, bankruptcy, insolvency or revocation had not taken place.

53. Application of sections 51 and 52 to powers of attorney made under repealed Act

A notice of revocation or of the death, mental incapacity, bankruptcy or insolvency of the donor of a power of attorney may be made on an instrument lodged for registration under this Act notwithstanding that the power of attorney was made under the repealed Act.

54. On registration, covenants for production to be inoperative

After a power of attorney has been registered under this Act, no legal proceeding may be brought or maintained on any covenant or agreement for the production of the power of

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attorney and, if any such proceeding is commenced, it is sufficient that the power has been registered under this Act.

55. Confirmation of acts of attorney sufficient without production of power

Where a person confirms in writing any deed or other act purporting to be executed or done by the person by his or her attorney, the confirmation is taken to be proof of the authority of the attorney to execute the deed or do the act at the relevant time, without production or proof of any power of attorney.

55A. Prescribed fees

- (1) The fees prescribed in Schedule 2 are payable under this Act for the matters to which they respectively relate.
- (2) A prescribed fee –
 - (a) is to be paid to the Recorder or an agent appointed by the Recorder under section 169E of the *Land Titles Act 1980*; and
 - (b) may be paid in any manner approved by the Recorder.
- (3) A person, if so authorised by the Recorder or an agent appointed by the Recorder under section 169E of the *Land Titles Act 1980*, may pay a prescribed fee after the transaction to which it relates.

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Part 7 – Miscellaneous and Supplemental

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56. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may require that an enduring power of attorney incorporate such information explaining the general effect of creating or accepting the power as may be specified in the regulations.

57. Administration

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and
- (b) the department responsible to the Minister for Primary Industries, Water and Environment in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.

58. Saving for powers of attorney registered under repealed Act

Where the registration of a power of attorney or a copy of an enduring power of attorney in accordance with the *Registration of Deeds Act 1935* was in force immediately before the commencement of section 59, that registration is

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Part 7 – Miscellaneous and Supplemental

taken to continue in force notwithstanding the repeals effected by that section.

58A. Validation

No regulation that prescribed a fee for the purposes of this Act before the commencement of the *Registration and Related Fees Act 2001*, or for the *Powers of Attorney Act 1934*, is to be taken as having ever been invalid by reason only of the amount of the fee so prescribed.

58B. Application of certain amendments made by *Powers of Attorney Amendment Act 2013*

(1) In this section –

amending Act means the *Powers of Attorney Amendment Act 2013*.

(2) Subject to this section, the amendments made by a provision of the amending Act to this Act apply to, and in relation to, a power of attorney created before the provision commences.

(3) Nothing in this section is to be taken to limit the application, of the amendments made by a provision of the amending Act to this Act, to a power of attorney created after the provision commences.

(4) The amendments made by a provision of the amending Act to Division 1 of Part 3 do not apply in relation to a power of attorney created before the provision commences.

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Act No. 68 of 2000

Part 7 – Miscellaneous and Supplemental

s. 58B

- (5) The amendments made by a provision of the amending Act to section 11(4A), section 20 or 21 apply to, and in relation to, an existing power of attorney created before the provision commences, but only to, or in relation to, the taking of an action, or an action taken, after the provision commences.
- (6) The amendments made by a provision of the amending Act to sections 31 and 32 apply to, and in relation to, an existing power of attorney created before the provision commences, but only to, or in relation to, the taking of an action, or an action taken, after the provision commences.
- (7) Sections 32AB and 32AC apply to, and in relation to, an enduring power of attorney created before the provision commences, but only to, or in relation to, the taking of an action, or an action taken, after the provision commences.
- (8) Section 32AD applies to, and in relation to, an enduring power of attorney created before the provision commences, but only in relation to a dealing or transaction made after the section commences.
- (9) Section 32AE(3) only applies to, and in relation to, a power of attorney created before the provision commences if a circumstance set out in section 32AE(3) arises in relation to the power of attorney after section 32AE(3) commences.

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- (10) If, before section 32AE(5) commences, an attorney in respect of a power of attorney dies, becomes subject to mental incapacity, or becomes bankrupt or insolvent, section 32AE(5) applies in relation to the power of attorney on the day on which section 32AE(5) commences.
- (11) Section 32AF only applies in relation to a power of attorney created before that section commences if a subsequent power of attorney referred to in that section and to which that section relates is made after that section commences.
- (12) Section 32AH applies to, and in relation to, an enduring power of attorney created before the provision commences, but only if the donor of the power is not mentally incapacitated before the section commences.

59. *The amendment effected by this section has been incorporated into the authorised version of the Powers of Attorney Act 1934.*

60. *Powers of Attorney Regulations 1997 rescinded*

The *Powers of Attorney Regulations 1997* are rescinded.

61. *The amendments effected by this section have been incorporated into the authorised version of the Guardianship and Administration Act 1995.*

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Part 7 – Miscellaneous and Supplemental

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62. *The amendments effected by this section have been incorporated into the authorised version of the Land Titles Act 1980.*

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Act No. 68 of 2000

sch. 1

SCHEDULE 1 – FORMS

Section 3(2)

Form 1

Section 18(1)(b)

Powers of Attorney Act 2000

PARTICULAR POWER OF ATTORNEY

THIS PARTICULAR POWER OF ATTORNEY is made under the *Powers of Attorney Act 2000*.

Name of donor:

Address of donor:

.....

1. I APPOINT

Name of attorney:

Address of attorney:

*Name of attorney:

*Address of attorney:

to be my attorney(s) *jointly/jointly and severally.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

2. I AUTHORISE my attorney(s) to do on my behalf any of the following things:

Signature of donor: Date:

I certify that the donor signed this particular power of attorney in my presence.

Signature of witness: Date:

Name of witness:

Address of witness:
.....

*Omit if not applicable.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

Form 2

Section 18(1)(c)

Powers of Attorney Act 2000

GENERAL POWER OF ATTORNEY

THIS GENERAL POWER OF ATTORNEY is made under
the *Powers of Attorney Act 2000*.

Name of donor:
Address of donor:
.....

1. I APPOINT

Name of attorney:
Address of attorney:

*Name of attorney:
*Address of attorney:

to be my attorney(s) *jointly/jointly and severally.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

2. I AUTHORISE my attorney(s) to do on my behalf anything that I may lawfully do.

Signature of donor: Date:

I certify that the donor signed this general power of attorney in my presence.

Signature of witness: Date:

Name of witness:

Address of witness:
.....

*Omit if not applicable.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

Form 3

Section 30(1)(b) and (2)(c)

Powers of Attorney Act 2000

PARTICULAR ENDURING POWER OF ATTORNEY

THIS PARTICULAR ENDURING POWER OF ATTORNEY is made under the *Powers of Attorney Act 2000*.

Name of donor:

Address of donor:

1. I APPOINT

Name of attorney:

Address of attorney:

*Name of attorney:

*Address of attorney:

to be my attorney(s) *jointly/jointly and severally.

2. I AUTHORISE my attorney(s) to do on my behalf any of the following things:

3. I DECLARE that this particular enduring power of attorney will continue to operate and have full force and effect despite any subsequent mental incapacity I may suffer.

Signature of donor: Date:

We certify that the donor has signed this particular enduring power of attorney in our presence.

Powers of Attorney Act 2000
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sch. 1

I certify that I am not a party to this particular enduring power of attorney nor a close relative to a party to it.

Signature of first witness: Date:

Name of first witness:

Address of first witness:

Signature of second witness: Date:

Name of second witness:

Address of second witness:

**STATEMENT OF ACCEPTANCE OF PARTICULAR
ENDURING POWER OF ATTORNEY**

*I/we, the abovenamed attorney(s) under the power created by this particular enduring power of attorney on which this acceptance is endorsed (*or* to which this acceptance is annexed) accept the appointment and acknowledge –

- (a) that this particular enduring power of attorney is an enduring power of attorney and may be exercised by *me/us despite any subsequent mental incapacity of the donor; and
- (b) that *I/we will, by accepting this particular enduring power of attorney, be subject to the requirements of the *Powers of Attorney Act 2000*.

Signature of attorney: Date:

*Signature of attorney: Date:

*Omit if not applicable.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

Form 4

Section 30(1)(c) and (2)(c)

Powers of Attorney Act 2000

GENERAL ENDURING POWER OF ATTORNEY

THIS GENERAL ENDURING POWER OF ATTORNEY is made under the *Powers of Attorney Act 2000*.

Name of donor:

Address of donor:

1. I APPOINT

Name of attorney:

Address of attorney:

*Name of attorney:

*Address of attorney:

to be my attorney(s) *jointly/jointly and severally.

2. I AUTHORISE my attorney(s) to do on my behalf anything that I may lawfully do.

3. I DECLARE that this general enduring power of attorney will continue to operate and have full force and effect despite any subsequent mental incapacity I may suffer.

Signature of donor: Date:

We certify that the donor has signed this general enduring power of attorney in our presence.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

I certify that I am not a party to this general enduring power of attorney nor a close relative to a party to it.

Signature of first witness: Date:

Name of first witness:

Address of first witness:

Signature of second witness: Date:

Name of second witness:

Address of second witness:

**STATEMENT OF ACCEPTANCE OF GENERAL ENDURING
POWER OF ATTORNEY**

*I/we, the abovenamed attorney(s) under the power created by this general enduring power of attorney on which this acceptance is endorsed (*or* to which this acceptance is annexed) accept the appointment and acknowledge –

- (a) that this general enduring power of attorney is an enduring power of attorney and may be exercised by *me/us despite any subsequent mental incapacity of the donor; and
- (b) that *I/we will, by accepting this general enduring power of attorney, be subject to the requirements of the *Powers of Attorney Act 2000*.

Signature of attorney: Date:

*Signature of attorney: Date:

*Omit if not applicable.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

Form 5

Section 3(1)

Powers of Attorney Act 2000

REGISTRATION APPLICATION

To: The Recorder

I apply to register the following instrument:

Type of instrument:

Number of pages (excluding this form):

Name of donor:

Name of attorney(s):

Identification number (*if applicable*):

I certify that the information contained in this registration application is correct to the best of my knowledge.

Signed: Date:

Name:

Capacity: (*donor, attorney, legal practitioner, other*):

Address:

.....

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

Form 6

Section 32A

Powers of Attorney Act 2000

**APPOINTMENT OF THE PUBLIC TRUSTEE AS
ATTORNEY UNDER ENDURING POWER OF
ATTORNEY**

1. ***I/WE APPOINT** The Public Trustee to act as attorney in
*my/our place(s) under the following enduring power of
attorney:

Name of donor:

Address of donor:

Name of attorney:

Address of attorney:

*Name of attorney:

*Address of attorney:

Date of execution:

Identification number:

Signature of attorney: Date:

*Signature of attorney: * Date:

*Omit if not applicable.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 1

ACCEPTANCE BY THE PUBLIC TRUSTEE

The Public Trustee accepts this appointment to act as attorney under the enduring power of attorney identified in this appointment.

Signed *by/for and on behalf of The Public Trustee:

.....

Date:

Name of signatory:

Position of signatory:

*Omit if not applicable.

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 2

SCHEDULE 2 – PRESCRIBED FEES

Section 3

Item	Matter for which fee is payable	Fee \$
1.	Lodgment of a power of attorney	90.50
2.	Application to search an index, power of attorney or other instrument	20.00
3.	Application or request for a photographic copy of a power of attorney or other instrument (if a fee has not been paid under item 2)	20.00
4.	Application referred to in item 2 or 3 where a copy certified by the Recorder is requested (whether or not a fee has been paid under item 2)	50.50
5.	Lodgment of an instrument for which a fee is not otherwise prescribed	70.50

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Act No. 68 of 2000

sch. 2

NOTES

The foregoing text of the *Powers of Attorney Act 2000* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 November 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Powers of Attorney Act 2000</i>	No. 68 of 2000	4.4.2001
<i>Registration and Related Fees Act 2001</i>	No. 98 of 2001	1.1.2002
<i>Evidence (Consequential Amendments) Act 2001</i>	No. 80 of 2001	1.7.2002
<i>Powers of Attorney Amendment Act 2008</i>	No. 14 of 2008	13.6.2008
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Powers of Attorney Amendment Act 2013</i>	No. 39 of 2013	1.2.2014
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2015</i>	No. 38 of 2015	13.10.2015
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 80 of 2001, Sched. 1, No. 98 of 2001, s. 14, No. 14 of 2008, s. 4, No. 39 of 2013, s. 4 and No. 18 of 2021, s. 306
Section 4	Amended by No. 14 of 2008, s. 5
Section 6	Amended by No. 80 of 2001, Sched. 1
Section 7	Repealed by No. 80 of 2001, Sched. 1
Section 9	Amended by No. 98 of 2001, s. 15

Powers of Attorney Act 2000
Act No. 68 of 2000

sch. 2

Provision affected	How affected
	Substituted by No. 14 of 2008, s. 6
	Amended by No. 39 of 2013, s. 5
Section 10	Substituted by No. 14 of 2008, s. 6
Section 11	Amended by No. 14 of 2008, s. 7, No. 39 of 2013, s. 6 and No. 4 of 2017, Sched. 1
Section 12	Amended by No. 14 of 2008, s. 8
Section 15	Substituted by No. 14 of 2008, s. 9
Section 16	Amended by No. 18 of 2021, s. 307
Section 17	Amended by No. 39 of 2013, s. 7 and No. 18 of 2021, s. 308
Section 18	Amended by No. 14 of 2008, s. 10
Section 20	Amended by No. 39 of 2013, s. 8
Section 21	Amended by No. 39 of 2013, s. 9
Section 22	Amended by No. 39 of 2013, s. 10
Section 26	Amended by No. 14 of 2008, s. 11
Section 27AA	Inserted by No. 39 of 2013, s. 12
Section 30	Amended by No. 14 of 2008, s. 12
Section 31	Amended by No. 39 of 2013, s. 13 and No. 18 of 2021, s. 309
Section 32	Amended by No. 14 of 2008, s. 13 and No. 39 of 2013, s. 14
Section 32AA	Inserted by No. 39 of 2013, s. 15
Section 32AB	Inserted by No. 39 of 2013, s. 15
Section 32AC	Inserted by No. 39 of 2013, s. 15
Section 32AD	Inserted by No. 39 of 2013, s. 15
	Amended by No. 18 of 2021, s. 310
Section 32AE	Inserted by No. 39 of 2013, s. 15
Section 32AF	Inserted by No. 39 of 2013, s. 15
Section 32AG	Inserted by No. 39 of 2013, s. 15
Section 32AH	Inserted by No. 39 of 2013, s. 15
	Amended by No. 38 of 2015, s. 43
Section 32A	Inserted by No. 14 of 2008, s. 14
	Amended by No. 39 of 2013, s. 16
Section 33	Amended by No. 14 of 2008, s. 15, No. 39 of 2013, s. 17 and No. 18 of 2021, s. 311
Section 34	Amended by No. 18 of 2021, s. 312
Section 35	Amended by No. 18 of 2021, s. 313
Part 5	Repealed by No. 18 of 2021, s. 314
Section 39	Repealed by No. 18 of 2021, s. 314
Section 40	Repealed by No. 18 of 2021, s. 314
Section 44	Amended by No. 66 of 2007, Sched. 1
Section 47	Amended by No. 18 of 2021, s. 315
Section 48	Amended by No. 18 of 2021, s. 316
Section 50	Amended by No. 18 of 2021, s. 317
Section 51	Amended by No. 39 of 2013, s. 18
Section 55A	Inserted by No. 98 of 2001, s. 16
	Substituted by No. 14 of 2008, s. 16
Section 58A	Inserted by No. 98 of 2001, s. 17

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Provision affected	How affected
Section 58B	Inserted by No. 39 of 2013, s. 19
Schedule 1	Substituted by No. 14 of 2008, s. 17 Amended by No. 39 of 2013, s. 20
Schedule 2	Inserted by No. 98 of 2001, s. 18