



Powers of Attorney Amendment Regulation 2013

under the

Powers of Attorney Act 2003

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Powers of Attorney Act 2003*.

ANDREW CONSTANCE, MP
Minister for Finance and Services

Explanatory note

The object of this Regulation is to prescribe the forms that may be used to create a valid general power of attorney and enduring power of attorney. This Regulation is made as a consequence of the enactment of the *Powers of Attorney Amendment Act 2013*.

This Regulation is made under the *Powers of Attorney Act 2003*, including sections 8 and 53 (the general regulation-making power).

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Clause 1 Powers of Attorney Amendment Regulation 2013

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under the

Powers of Attorney Act 2003

1 Name of Regulation

This Regulation is the *Powers of Attorney Amendment Regulation 2013*.

2 Commencement

This Regulation commences on 13 September 2013 and is required to be published on the NSW legislation website.

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[1] Clause 4A

Insert after clause 4:

4A Prescribed forms for power of attorney

- (1) The forms set out in Schedule 2 are prescribed for the purposes of section 8 of the Act.
- (2) The form set out in Schedule 2 to the Act, immediately before its repeal by the *Powers of Attorney Amendment Act 2013*, is also prescribed for the purposes of section 8 of the Act.
- (3) Subclause (2) ceases to have effect on 1 March 2014.

[2] Schedule 2

Insert after Schedule 1:

Schedule 2 Prescribed forms for power of attorney

(Clause 4A (1))

Form 1 General power of attorney

Background information

A general power of attorney is a legal document that allows you (the *principal*) to nominate one or more persons (referred to as *attorneys*) to act on your behalf. A general power of attorney gives the attorney the authority, if you choose, to manage your legal and financial affairs, including buying and selling real estate, shares and other assets for you, operating your bank accounts, and spending money on your behalf.

A general power of attorney ceases if you lose your mental capacity after its execution. If you wish the power of attorney to continue if you lose your mental capacity, use the enduring power of attorney prescribed form. An attorney under a general power of attorney cannot make decisions about your lifestyle or health. These decisions can only be made by a guardian (whether an enduring guardian appointed by you or a guardian appointed by the Guardianship Tribunal or the Supreme Court).

You may set whatever limitations or conditions on your attorney that you choose. An attorney must always act in your best interest. If your attorney does not follow your directions or does not act in your best interest, you should

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revoke the power of attorney. You or someone on your behalf should inform the attorney of the revocation, preferably in writing. The attorney must then immediately cease to act as your attorney. If anyone else, such as a bank, has been advised about the power of attorney, that person or entity should also be informed of the revocation.

The **Important information** set out at the end of this form includes notes to assist in completing this form and more fully explains the role and responsibilities of an attorney.

1 Appointment of attorney by the principal

Principal—The person who appoints the attorney is known as the principal.

Attorney—The person you nominate to look after your financial affairs is known as the attorney. You can appoint more than one attorney.

I, *[insert full name and address]*, appoint *[insert full name and address]* and also appoint *[insert full name and address of each attorney]* to be my attorney(s). *[If you appoint more than one attorney, please name every attorney and complete the relevant section below.]*

Only complete this section if more than one attorney is appointed. *[Tick the option that applies.]*

My attorneys are appointed:

1. Jointly *[your attorneys must all act together]*
- (a) I want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- or
- (b) I do not want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
2. Jointly and severally *[your attorneys may act individually or can act together with the other attorneys if they choose].*

If no option is selected or the option chosen is unclear or inconsistent, I intend my attorneys to act jointly and severally.

Nomination of substitute attorney/s (optional)

If your attorney/s vacates office, you have the option to nominate someone else to take their place.

If my attorney/s vacate/s office, I appoint *[insert full name and address of substitute attorney/s]* to be my substitute attorney/s.

Only complete this section if more than one substitute attorney is appointed. *[Tick the option that applies.]*

My substitute attorney/s are to be appointed:

1. Jointly *[your attorneys must all act together].*
- or

2. Jointly or severally [*your attorneys may act individually or can act together with the other attorneys if they choose*].

2 Powers

My attorney/s may exercise the authority conferred on my attorney/s by Part 2 of the *Powers of Attorney Act 2003* to do anything on my behalf I may lawfully authorise an attorney to do.

Additional powers (optional)

You may also choose to allow your attorney to use your money and assets to pay for those things listed here in (a)–(c). [*Only tick those boxes which you wish to apply.*]

- (a) I authorise my attorney to give reasonable gifts as provided by section 11 (2) of the *Powers of Attorney Act 2003*.
- (b) I authorise my attorney to confer benefits on the attorney to meet his/her reasonable living and medical expenses as provided by section 12 (2) of the *Powers of Attorney Act 2003*.
- (c) I authorise my attorney to confer benefits on the following person/s [*insert full name and address*] to meet their reasonable living and medical expenses as provided by section 13 (2) of the *Powers of Attorney Act 2003*.

3 Conditions and limitations

I place the following limits and/or conditions on the authority of my attorney/s: [*insert any limits and conditions*]

You can place limits and conditions on your attorney. For example, you can specify that the attorney may only act to sell your house, that the attorney can only act to deal with shares or that the attorney must submit accounts to a nominated accountant every year for audit.

4 Commencement

This power of attorney operates: [*tick the option that applies*]

- (a) Immediately.
- (b) On and from [*date*] up to and including [*date*].
- (c) Whilst I am overseas.
- (d) Other [*insert other commencement here*].

If no option is selected or the options chosen are unclear or inconsistent, I intend that the power of attorney will operate immediately.

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5 Your signature to make the appointment

Signature:

Date:

Signature of witness:

Name of witness:

6 Attorney responsibilities

Your attorney must do the following:

- (a) Keep your money and property separate from the attorney's money and property.
- (b) Keep reasonable accounts and records of your money and property.
- (c) Not benefit from being an attorney, unless expressly authorised by you.
- (d) Always act in your best interests.
- (e) Always act honestly in all matters concerning your legal and financial affairs.

Failure to do so may incur civil and/or criminal penalties.

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Important information

- A power of attorney is an important and powerful legal document. You should get legal advice before you sign it.
- It is important that you trust the person you are appointing as attorney to make financial decisions on your behalf. They must be over 18 years old and must not be bankrupt or insolvent. If your financial affairs are complicated, you should appoint an attorney who has the skills to deal with complex financial arrangements.
- A power of attorney cannot be used for health or lifestyle decisions. You should appoint an enduring guardian under the *Guardianship Act 1987* if you want a particular person to make these decisions. For further information, contact the Guardianship Tribunal or NSW Trustee and Guardian.
- Clause 2 of the power of attorney contains powers which will permit your attorney to use your money and assets for the attorney or anyone

else as provided. You should only tick boxes in clause 2 if you want your attorney to have those power/s.

- This power of attorney is for use in New South Wales only. If you need a power of attorney for interstate or overseas, you may need to make a power of attorney under their laws. The laws of some other States and Territories in Australia may give effect to this power of attorney. However, you should not assume this will be the case. You should confirm whether the laws of the State or Territory concerned will in fact recognise this power of attorney.
- Your attorney must keep the attorney's own money and property separate from your money and property, unless you are joint owners, or operate joint bank accounts. Your attorney should keep reasonable accounts and records about your money and property. The cost of providing and maintaining these records by the attorney may be recoverable from you.
- If your attorney is signing certain documents that affect real estate, the power of attorney must be registered at Land and Property Information. Please contact LPI on 1300 052 637 to see whether the power of attorney must be registered.
- An attorney must always act in your best interest. If your attorney does not follow your directions or does not act in your best interest, you should consider revoking the power of attorney. If you revoke the power of attorney you should notify the attorney, preferably in writing, that they are no longer your attorney. The attorney must stop acting immediately once they have knowledge of the revocation.
- This power of attorney does not automatically revoke earlier powers of attorney made by you. If you have made an earlier power of attorney which you do not want to continue, you must revoke the earlier power of attorney and give notice of the revocation to your earlier attorneys, if you have not already done so. You should also give notice of the revocation to anyone who is aware of the earlier power of attorney.

Notes for completion

Joint attorneys

If you appoint more than one attorney, you should indicate whether the attorneys are to act jointly or jointly and severally. Attorneys who are appointed jointly are only able to act and make decisions together.

Attorneys who are appointed jointly and severally (ie together or separately) are able to act and make decisions independently of each other. However, you can specify that a simple majority (if you appoint 3 or more attorneys) must agree before they can act.

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Substitute attorney/s

If you appoint a substitute attorney, they will only have authority to act as your attorney if the first appointed attorney dies, resigns or otherwise vacates their position.

You can specify for whom the substitute is to act (eg if you appoint A and B as attorneys and X and Y as substitutes, you can specify that X takes A's place if A vacates office).

Attorney vacates office

Section 5 of the *Powers of Attorney Act 2003* states that there is a vacancy in the office of attorney if the attorney dies, resigns, becomes bankrupt, loses mental capacity or the authority to act is revoked.

If you have appointed a substitute attorney, it may be helpful that some sort of documentation evidencing the vacation of the original attorney is attached to this power of attorney when that vacancy happens. This will assist to satisfy a third party that the substitute attorney is entitled to act for you.

Further information

For information on powers of attorney, the attorney's duties and registration, contact Land and Property Information (www.lpi.nsw.gov.au), the NSW Trustee and Guardian (www.tag.nsw.gov.au), a solicitor, or a trustee company.

The NSW Government's Planning Ahead Tools website www.planningaheadtools.com.au provides up-to-date information and resources about powers of attorney, enduring guardianship, wills and advanced care planning.

Form 2 Enduring power of attorney

Background information

An enduring power of attorney is a legal document that allows you (the *principal*) to nominate one or more persons (referred to as *attorneys*) to act on your behalf. An enduring power of attorney gives the attorney the authority to manage your legal and financial affairs, including buying and selling real estate, shares and other assets, operating your bank accounts and spending money on your behalf.

The attorney's power continues even if for any reason you lose your mental capacity to manage your own affairs. Once you lose your mental capacity you cannot revoke this power of attorney. If you want the power of attorney to cease if you lose your mental capacity, use the general power of attorney form. An attorney under an enduring power of attorney cannot make decisions about your lifestyle or health. These decisions can only be made by a guardian

(whether an enduring guardian appointed by you or a guardian appointed by the Guardianship Tribunal or the Supreme Court).

The prescribed witness certificate in clause 6 of this form must be completed. Before acting as your attorney/s, the attorney/s (including any substitute attorney/s) must sign the acceptance in clause 7 of this form.

Please read the **Important information** set out at the end of this document. It includes notes to assist in completing this document and more fully explains the role and responsibilities of an attorney.

1 Appointment of attorney by the principal

Principal—The person who appoints the attorney is known as the principal.

Attorney—The person you nominate to look after your financial affairs is known as the attorney. You can appoint more than one attorney.

I, *[insert full name and address]*, appoint *[insert full name and address]* and also appoint *[insert full name and address of attorney]* to be my attorney(s). *[If you appoint more than one attorney, please name every attorney and complete the relevant section below.]*

Only complete this section if more than one attorney is appointed. *[Tick the option that applies.]*

My attorneys are appointed:

1. Jointly *[your attorneys must all act together]*.
- (a) I want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- or
- (b) I do not want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
2. Jointly and severally *[your attorneys may act individually or can act together with the other attorneys if they choose]*.

If no option is selected or the option chosen is unclear or inconsistent, I intend my attorneys to act jointly and severally.

Nomination of substitute attorney/s (optional)

If your attorney/s vacates office, you have the option to nominate someone else to take their place.

If my attorney/s vacate/s office, I appoint *[insert full name and address of substitute attorney/s]* to be my substitute attorney/s.

Only complete this section if more than one substitute attorney is appointed. *[Tick the option that applies.]*

My substitute attorney/s are to be appointed:

1. Jointly *[your attorneys must all act together]*
- or

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2. Jointly or severally [*your attorneys may act individually or can act together with the other attorneys if they choose*].

2 Powers

My attorney/s may exercise the authority conferred on my attorney/s by Part 2 of the *Powers of Attorney Act 2003* to do anything on my behalf I may lawfully authorise an attorney to do.

I give this power of attorney with the intention that it will continue to be effective if I lack the capacity through loss of mental capacity after its execution.

Additional powers (optional)

You may also choose to allow your attorney to use your money and assets to pay for those things listed here in (a)–(c). [*Only tick those boxes which you wish to apply.*]

- (a) I authorise my attorney to give reasonable gifts as provided by section 11 (2) of the *Powers of Attorney Act 2003*.
- (b) I authorise my attorney to confer benefits on the attorney to meet his/her reasonable living and medical expenses as provided by section 12 (2) of the *Powers of Attorney Act 2003*.
- (c) I authorise my attorney to confer benefits on the following person/s [*insert full name and address*] to meet their reasonable living and medical expenses as provided by section 13 (2) of the *Powers of Attorney Act 2003*.

3 Conditions and limitations

I place the following limits and/or conditions on the authority of my attorney/s: [*insert any limits and conditions*]

You can place limits and conditions on your attorney. For example, you can specify that the attorney may only act to sell your house, that the attorney can only act to deal with shares or that the attorney must submit accounts to a nominated accountant every year for audit.

4 Commencement

This power of attorney operates: [*tick the option that applies*]

- (a) Once the attorney/s have accepted his/her appointment by signing this document.
- (b) Once a medical practitioner considers that I am unable to manage my affairs (and provides a document to that effect).

-
- (c) Once my attorney considers that I need assistance managing my affairs.
- (d) Other [*insert other commencement here*].

If no option is selected or the options chosen are unclear or inconsistent, I intend that the power of attorney will operate once my attorney/s have accepted their appointment by signing this document.

5 Your signature to make the appointment

Signature:

Date:

Signature of prescribed witness:

Name of prescribed witness:

6 Certificate under section 19 of the Powers of Attorney Act 2003

I [*insert full name and address*] certify the following:

- (a) I explained the effect of this power of attorney to the principal before it was signed.
- (b) The principal appeared to understand the effect of this power of attorney.
- (c) I am a prescribed witness.
- (d) I have witnessed the signature of this power of attorney by the principal.

Signature:

Date:

[*Circle the appropriate category*]

- Solicitor/barrister,
- Registrar of the Local Court,
- Licensed Conveyancer,
- NSW Trustee and Guardian employee,
- A trustee company employee who has successfully completed a course of study approved by the Minister.

7 Acceptance by attorney

- (a) I accept that I must always act in the principal's best interests.
- (b) I accept that as attorney I must keep my own money and property separate from the principal's money and property.

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- (c) I accept that I should keep reasonable accounts and records of the principal's money and property.
- (d) I accept that, unless expressly authorised, I cannot gain a benefit from being an attorney.
- (e) I accept that I must act honestly in all matters concerning the principal's legal and financial affairs.

Failure to do any of the above may incur civil and/or criminal penalties.

Signature:

Name:

Date:

and

Signature:

Name:

Date:

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- A power of attorney is an important and powerful legal document. You should get legal advice before you sign it.
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- Clause 2 of the power of attorney contains powers which will permit your attorney to use your money and assets for the attorney or anyone else as provided. You should only tick those boxes in clause 2 if you choose that your attorney is to have those power/s.
- This power of attorney is for use in New South Wales only. If you need a power of attorney for interstate or overseas, you may need to make a power of attorney under their laws. The laws of some other States and

Territories in Australia may give effect to this power of attorney. However, you should not assume this will be the case. You should confirm whether the laws of the State or Territory concerned will in fact recognise this power of attorney.

- Your attorney must keep the attorney's own money and property separate from your money and property, unless you are joint owners, or operate joint bank accounts. Your attorney should keep reasonable accounts and records about your money and property. The cost of providing and maintaining these records by the attorney may be recoverable from you.
- If your attorney is signing certain documents that affect real estate, the power of attorney must be registered at Land and Property Information. Please contact LPI on 1300 052 637 to see whether the power of attorney must be registered.
- An attorney must always act in your best interest. If your attorney does not follow your directions or does not act in your best interest, you should consider revoking the power of attorney. You will be only able to do so whilst you retain your mental capacity. If you revoke the power of attorney you should notify the attorney, preferably in writing, that they are no longer your attorney. The attorney must stop acting immediately once they have knowledge of the revocation.
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The NSW Government's Planning Ahead Tools website www.planningaheadtools.com.au provides up-to-date information and resources about powers of attorney, enduring guardianship, wills and advanced care planning.