



New South Wales

# Powers of Attorney Regulation 2016

under the

Powers of Attorney Act 2003

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

DOMINIC PERROTTET, MP  
Minister for Finance, Services and Property

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Powers of Attorney Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation prescribes:

- (a) the classes of persons who may certify that a document is a true and complete copy of an instrument creating a power of attorney, and
- (b) the form to create a general power of attorney, and
- (c) the form to create an enduring power of attorney, and
- (d) savings and formal matters.

This Regulation is made under the *Powers of Attorney Act 2003*, including sections 8, 44 (1) (a) (ii) and 53 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely, matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Powers of Attorney Regulation 2016

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### 1 Name of Regulation

This Regulation is the *Powers of Attorney Regulation 2016*.

### 2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Powers of Attorney Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

(1) In this Regulation:

*the Act* means the *Powers of Attorney Act 2003*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

### 4 Certification of copy of power of attorney

For the purposes of section 44 (1) (a) (ii) of the Act, the following classes of persons are prescribed:

- (a) in the case of any document endorsed within Australia, the classes of persons referred to in Part 1 of Schedule 1,
- (b) in the case of any document endorsed within a foreign country, the classes of persons referred to in Part 2 of Schedule 1.

### 5 Prescribed forms for power of attorney

The forms set out in Schedule 2 are prescribed for the purposes of section 8 of the Act.

### 6 Saving

Any act, matter or thing that, immediately before the repeal of the *Powers of Attorney Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1 Persons who may endorse documents under section 44 (1) (a) (ii) of the Act**

(Clause 4)

### **Part 1 Persons who may endorse documents within Australia**

accountants  
Australian legal practitioners  
bank managers  
chancellors, deputy chancellors or deans of faculties of universities  
commissioned officers in the defence forces of the Commonwealth of Australia  
commissioners for taking affidavits  
dentists  
fellows of the Institute of Legal Executives (Victoria)  
judges  
justices of the peace  
licensed conveyancers  
magistrates  
mayors or general managers of local government councils  
medical practitioners  
members of parliament of the Commonwealth or of any State or Territory  
members of the police force of the Commonwealth or of any State or Territory  
ministers of religion  
notaries public  
officers in charge of police stations  
pharmacists  
postal managers of post offices  
principals or deputy principals of schools or colleges  
registered surveyors  
registrars of local courts or magistrates courts  
stockbrokers  
veterinary surgeons

### **Part 2 Persons who may endorse documents within a foreign country**

Australian Consular Officers, or British Consular Officers, within the meaning of section 26 of the *Oaths Act 1900*, exercising functions in the country where the document is executed or witnessed  
commissioned officers in the defence forces of the Commonwealth of Australia  
commissioners for taking affidavits  
judges  
justices of the peace  
legal practitioners  
magistrates  
mayors or general managers of local government corporations

medical practitioners

notaries public

officers in charge of police stations

## Schedule 2 Prescribed forms for power of attorney

(Clause 5)

### 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 Civil and Administrative Tribunal or the Supreme Court).

You may set whatever conditions and limitations 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 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 of principal]*, appoint *[insert full name and address of first appointed attorney]* and also appoint *[insert full name and address of each additional attorney]* to be my attorneys. *[If you appoint more than one attorney, please insert the full name and address of every attorney and complete the relevant section below]*

**Only complete this section if more than one attorney is appointed.**

My attorneys are appointed: *[Tick one option only]*

- Jointly *[Your attorneys must all act together]*. I want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- Jointly *[Your attorneys must all act together]*. I do not want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- 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 (optional)

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

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

**Only complete this section if more than one attorney is appointed.**

My attorneys are appointed: *[Tick one option only]*

- Jointly [*Your attorneys must all act together*].
- 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.**

## 2 Powers

**My attorney may exercise the authority conferred 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 below. [*Tick any one or more options that apply and cross out the rest*]

- I authorise my attorney to give reasonable gifts as provided by section 11 (2) of the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the attorney to meet their reasonable living and medical expenses as provided by section 12 (2) of the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the following persons [*insert full name and address of each person*] 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 conditions and/or limitations on the authority of my attorney:** [*Insert any conditions and limitations*]

You can limit the attorney's power to only carry out certain tasks. For example, you can specify that the attorney may only act to sell your house, or that the attorney can only act to deal with your shares. You can also place any conditions on how those tasks are to be carried out. For example, you can require that the attorney must submit accounts to a nominated accountant every year for audit. If you do not want to have any conditions or limitations placed on your attorney, write "NIL".

## 4 Commencement

This power of attorney operates: [*Tick one option only*]

- Immediately.
- On and from [*Date*] up to and including [*Date*].
- While I am overseas.
- 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.**

## 5 Your signature to make the appointment

Signature:

Date:

Signature of witness:

Full name of witness:

Address 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. Your attorney 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 Civil and Administrative 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 a box in clause 2 if you want your attorney to have that power.
- 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 that you do not want to continue, you must revoke the earlier power of attorney. It is advisable that you notify the attorney, preferably in writing, of the revocation, 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, such as a bank.

### **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.

### Substitute attorneys

If you appoint a substitute attorney, the substitute attorney 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](http://www.lpi.nsw.gov.au)), the NSW Trustee and Guardian ([www.tag.nsw.gov.au](http://www.tag.nsw.gov.au)), a solicitor or a trustee company.

The NSW Government's Planning Ahead Tools website [www.planningaheadtools.com.au](http://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 Civil and Administrative Tribunal or the Supreme Court).

The prescribed witness certificate in clause 6 of this form must be completed. Before acting as your attorney, the attorney (including any substitute attorney) 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 of principal], appoint [insert full name and address of first appointed attorney] and also appoint [insert full name and address of each additional attorney] to be my attorneys. [If you appoint more than one attorney, please insert the full name and address of every attorney and complete the relevant section below]

**Only complete this section if more than one attorney is appointed.**

My attorneys are appointed: *[Tick one option only]*

- Jointly *[Your attorneys must all act together]*. I want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- Jointly *[Your attorneys must all act together]*. I do not want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- 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 (optional)**

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

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

**Only complete this section if more than one attorney is appointed.**

My attorneys are appointed: *[Tick one option only]*

- Jointly *[Your attorneys must all act together]*.
- 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.**

**2 Powers**

**My attorney may exercise the authority conferred 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 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 below. *[Tick any one or more options that apply and cross out the rest]*

- I authorise my attorney to give reasonable gifts as provided by section 11 (2) of the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the attorney to meet their reasonable living and medical expenses as provided by section 12 (2) of the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the following persons *[insert full name and address of each person]* 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 conditions and/or limitations on the authority of my attorney:** *[Insert any conditions and limitations]*

You can limit the attorney's power to only carry out certain tasks. For example, you can specify that the attorney may only act to sell your house, or that the attorney can only act to deal with your shares. You can also place any conditions on how those tasks are to be carried out. For example, you can require that the attorney must submit accounts to a nominated accountant every year for audit. If you do not want to have any conditions or limitations placed on your attorney, write "NIL".

#### 4 Commencement

This power of attorney operates: *[Tick one option only]*

- Once my attorney has accepted their appointment by signing this document.
- Once a medical practitioner considers that I am unable to manage my affairs (and provides a document to that effect).
- Once my attorney considers that I need assistance managing my affairs.
- 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 has accepted their appointment by signing this document.**

#### 5 Your signature to make the appointment

Signature:

Date:

Signature of prescribed witness:

Full name of prescribed witness:

Address of prescribed witness:

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

I *[insert full name and address of prescribed witness]* 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 am not an attorney under this power of attorney.
- (e) I have witnessed the signature of this power of attorney by the principal.

Signature:

Date:

*[Tick the appropriate category]*

- Australian legal practitioner
- Registrar of the Local Court
- Licensed Conveyancer who has successfully completed a course of study approved by the Minister
- NSW Trustee and Guardian employee who has successfully completed a course of study approved by the Minister
- A trustee company employee who has successfully completed a course of study approved by the Minister
- Legal Practitioner qualified in a country other than Australia who is instructed and employed independently of any legal practitioner appointed as an attorney under this power of attorney

#### 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.
- (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:

LPI OFFICE USE ONLY

### 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. Your attorney 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 Civil and Administrative 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 a box in clause 2 if you want your attorney to have that power.
- 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 only be able to do so while 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.
- This power of attorney does not automatically revoke earlier powers of attorney made by you. If you have made an earlier power of attorney that you do not want to continue, you must revoke the earlier power of attorney. It is advisable that you notify the attorney, preferably in writing, of the revocation, 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, such as a bank.

### 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.

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### **Substitute attorneys**

If you appoint a substitute attorney, the substitute attorney will only have authority to act as your attorney if the first appointed attorney dies, resigns or 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).

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