

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Powers of Attorney Act 2003* (the **Principal Act**) as follows:

- (a) to make specific provision for the appointment by principals of substitute attorneys (being persons who may act as attorney under the power of attorney during certain vacancies in the office of a specified attorney),
- (b) to remove the prescribed form for a power of attorney from the Principal Act and enable such forms to be prescribed by the regulations made under the Principal Act,
- (c) to give the Guardianship Tribunal the power to review the revocation of an enduring power of attorney,
- (d) to allow a person who appoints two or more persons as joint attorneys under a power of attorney to provide for the continuation of the power of attorney where the office of one or more of the attorneys becomes vacant (currently, the power of attorney is terminated if the office of one or more of the attorneys becomes vacant),
- (e) to make other consequential amendments and insert savings and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Powers of Attorney Act 2003 No 53

Schedule 1 [3] inserts a provision to enable the making of regulations prescribing the form that may be used to create a power of attorney that, once duly executed, is a **prescribed power of attorney** for the purposes of the Principal Act. **Schedule 1 [17]** removes the current form for a power of attorney from the Principal Act and **Schedule 1 [1], [2] and [4]–[6]** make consequential amendments.

Schedule 1 [7] makes it clear that an enduring power of attorney does not confer any authority on a substitute attorney until the substitute attorney has accepted the appointment by signing the instrument creating the power.

Schedule 1 [8] gives the Guardianship Tribunal (in addition to the Supreme Court) jurisdiction to deal with an application for review of a revocation of an enduring power of attorney. **Schedule 1 [14]** makes specific provision for the orders that may be made following such review (including orders declaring that the power of attorney remains valid despite a purported revocation). **Schedule 1 [9]–[13]** make consequential amendments.

Schedule 1 [15] provides for the appointment by principals of substitute attorneys (to act as attorney under a power of attorney during a vacancy in the office of a specified attorney) or during a vacancy of a kind specified in the instrument creating the power of attorney. **Schedule 1 [19]** makes it clear that this amendment does not affect the validity of the previous appointment of a substitute attorney. **Schedule 1 [16]** allows a person who appoints two or more persons as joint attorneys under a power of attorney to provide for the continuation of the power of attorney where the office of one or more of the attorneys becomes vacant so long as:

- (a) the power of attorney provides for that continuation, and
- (b) at least one of the attorneys or a substitute attorney remains in office.

Schedule 1 [18] enables the making of regulations of a savings or transitional nature consequent on the enactment of the amending Act (or any other Act that amends the Principal Act).

Schedule 1 [19] inserts savings and transitional provisions.