

Passed by both Houses



New South Wales

# **Powers of Attorney Amendment Bill 2013**

## **Contents**

---

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Powers of Attorney Act 2003 No 53	3

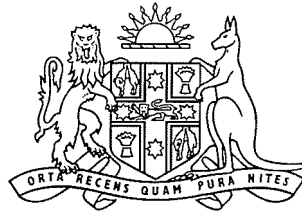
---



*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2013

*Clerk of the Parliaments*



New South Wales

## **Powers of Attorney Amendment Bill 2013**

Act No     , 2013

---

An Act to amend the *Powers of Attorney Act 2003* to make further provision with respect to powers of attorney; and for related purposes.

---

---

**The Legislature of New South Wales enacts:**

**1 Name of Act**

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

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

---

## **Schedule 1      Amendment of Powers of Attorney Act 2003 No 53**

**[1]    Section 3 Definitions**

Omit the definition of *prescribed form* from section 3 (1).

**[2]    Section 3 (4)**

Omit “(other than in Schedule 2)”.

**[3]    Section 8**

Omit the section. Insert instead:

**8    Creation of prescribed power of attorney**

An instrument (whether or not under seal) that is in or to the effect of a form prescribed by the regulations for the purposes of this section and is duly executed creates a *prescribed power of attorney* for the purposes of this Act.

**[4]    Section 14 Regulations may amend Schedule 3**

Omit “Schedule 2 or 3 (or both)” from section 14 (1).

Insert instead “Schedule 3”.

**[5]    Section 14 (2)**

Omit the subsection.

**[6]    Section 14A**

Insert after section 14:

**14A    Effect of amendment of prescribed form or Schedule 3**

The amendment or repeal of a form prescribed under section 8, or a provision of Schedule 3 that prescribes an expression or specifies a kind of gift or benefit for the purposes of section 11 (2), 12 (2) or 13 (2), does not:

- (a) confer any additional authority on an attorney under a power of attorney that was a prescribed power of attorney in force immediately before the day on which the amendment or repeal takes effect (an *existing authority*), or
- (b) remove any authority conferred on a principal by an existing authority, or

(c) otherwise affect the continued operation of an existing authority.

**[7] Section 20 Enduring power of attorney does not confer authority until attorney accepts appointment**

Insert after section 20 (3):

(4) To avoid doubt, this section extends to substitute attorneys.

**[8] Section 33 Reviewable powers of attorney**

Insert “(including a revocation of an enduring power of attorney)” after “enduring power of attorney” in section 33 (2).

**[9] Section 33 (4)**

Insert “or revocation” after “making” wherever occurring.

**[10] Section 34 Referral of application to different review tribunal**

Insert “or a revocation of an enduring power of attorney” after “enduring power of attorney” in section 34 (1).

**[11] Section 34 (2) (a)**

Insert “or revocation of enduring power of attorney” after “enduring power of attorney”.

**[12] Section 35 Who are interested persons and parties in relation to applications**

Insert “(including an attorney whose appointment has been purportedly revoked)” after “an attorney” in section 35 (1) (a).

**[13] Sections 36 (1) and (2) and 37 (1) and (3)**

Insert “, revocation” after “making” wherever occurring.

**[14] Section 36 Interested persons may apply for review**

Insert after section 36 (3):

**(3A) Orders relating to revocation of power of attorney**

A review tribunal may make either or both of the following orders with respect to the revocation of a power of attorney:

(a) an order declaring that the principal did or did not have mental capacity to revoke a power of attorney,

- (b) an order declaring that the power of attorney remains valid (either in whole or in part) if the tribunal is satisfied:
  - (i) the principal did not have the capacity necessary to revoke it, or
  - (ii) the revocation is invalid for any other reason, for example, the principal was induced to make the revocation by dishonesty or undue influence.

**[15] Section 45A**

Insert after section 45:

**45A Appointment of substitute attorneys**

- (1) A principal may appoint a person as a substitute attorney for a specified person who is appointed by the principal as an attorney (the *specified attorney*).
- (2) The appointment of a substitute attorney may be made by expressly including the appointment in the instrument creating the power of attorney.
- (3) The principal may appoint one or more substitute attorneys.
- (4) A substitute attorney may act as attorney under the power of attorney during a vacancy in the office of the specified attorney or a vacancy of a kind specified in the instrument creating the power of attorney.

**[16] Section 46 Effect of vacation of office of joint and several attorneys**

Insert after section 46 (1):

- (1A) However, such a power of attorney is not terminated if:
  - (a) the power of attorney provides otherwise, and
  - (b) at least one of the attorneys or a substitute attorney remains in office.

**[17] Schedule 2 Form for prescribed power of attorney**

Omit the Schedule.

**[18] Schedule 5 Savings, transitional and other provisions**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

**[19] Schedule 5, Part 4**

Insert after clause 4:

**Part 4 Provisions consequent on Powers of Attorney Amendment Act 2013**

**5 Definition**

In this Part, the *amending Act* means the *Powers of Attorney Amendment Act 2013*.

**6 Replacement of prescribed form for prescribed power of attorney**

The substitution of section 8 and the repeal of Schedule 2 by the amending Act does not:

- (a) confer any additional authority on an attorney under a power of attorney that was a prescribed power of attorney in force immediately before the commencement of that substitution and repeal (an *existing authority*), or
- (b) remove any authority conferred on a principal by an existing authority, or
- (c) otherwise affect the continued operation of an existing authority.

**7 Review of revocations of existing powers of attorney by Guardianship Tribunal**

The amendments made by Schedule 1 [8]–[14] to the amending Act extend to the review of revocations of powers of attorney created by an instrument executed before the commencement of those amendments.

**8 Authority of substitute attorneys under enduring powers of attorney**

Section 20 (4) extends to any enduring power of attorney created by an instrument executed before the insertion of that subsection.

**9 Existing appointments of substitute attorneys**

The insertion of section 45A by the amending Act does not affect the validity of any appointment of a substitute attorney made before the insertion of that section.



---

**10 Vacation of office by joint attorneys**

The amendment of section 46 by the amending Act does not apply in relation to a power of attorney created by an instrument executed before that amendment.