

## COMPARATIVE TABLE OF RECOGNITION/REGISTRATION PROVISION FOR INTERSTATE ENDURING POWERS OF ATTORNEY/GUARDIANSHIP IN AUSTRALIAN STATES AND TERRITORIES

Date: August 2018

NB The following table does not deal with mutual statutory agency arrangements in place under state/territory legislation under which Public/State Trustees may appoint one another from time to time to be an agent for one another in the exercise of their powers and responsibilities.

State Terr.	Recognition provisions in force and legislation <sup>1</sup>	Statutory requirements of recognition	Extent of powers <sup>2</sup>	Is registration compulsory?	Extent of compulsory registration provisions	Contact person, Position and contact details
ACT	S.89 <i>Powers of Attorney Act 2006</i> recognises interstate enduring powers of attorney and powers of guardianship that are expressed to be enduring.	Must be a POA or guardianship document made under a State/Territory law that is not revoked if the principal loses decision-making capacity, or is expressed to be irrevocable.	Taken to be an EPOA made under ACT law to the extent that the powers given could validly have been given by an EPOA under the ACT law	Generally no, except as specified in next column	A deed may be registered (see <i>Registration of Deeds Act 1957</i> ) and must be registered for a dealing with land by the attorney to be registered (see <i>Land Titles Act 1925</i> , s 130).	Andrew Taylor Public Trustee and Guardian for the ACT (02) 6207 9816 <a href="mailto:andrew.taylor@act.gov.au">andrew.taylor@act.gov.au</a>  Last reviewed August 2018
NSW	<b>Enduring guardianship:</b> s 60 <i>Guardianship Act 1987</i> . Section recognises instruments appointing an interstate enduring guardian.  Reg 8 of	<b>Enduring guardianship</b> Instrument must be made in compliance with the requirements of the other jurisdiction  <b>Enduring powers of attorney:</b> Instrument must be made in compliance	<b>Enduring guardianship:</b> Instrument of appointment has effect in NSW, but only to the extent that the functions it confers under the law of the State or Territory in which it was made could validly have been conferred by an instrument appointing an enduring guardian made under relevant provisions of	<b>Enduring guardianship:</b> There is no formal process for recognising or registering these appointments.  <b>Enduring powers of attorney:</b> In NSW there is no general requirement that	<b>Enduring guardianship:</b> There is no formal process for recognising or registering these appointments.  <b>Enduring powers of attorney:</b> There is no formal process for recognising	Jane Pritchard, Registrar NCAT Guardianship Division (02) 9556 7601 <a href="mailto:Jane.Pritchard@ncat.nsw.gov.au">Jane.Pritchard@ncat.nsw.gov.au</a>  Last reviewed August 2018

<sup>1</sup> Specify if separate legislative provisions for attorneyship and guardianship and state legislative provisions for each

<sup>2</sup> are powers limited to management or are personal decisions included

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	<p>Guardianship Regulation 2016 prescribes the instruments for the purpose of defining an "interstate enduring guardian"</p> <p><b>Enduring powers of attorney:</b> s 25 <i>Powers of Attorney Act 2003</i>. Section recognises instruments appointing an interstate enduring power of attorney as defined.</p>	<p>with the requirements of the other jurisdiction</p>	<p><i>Guardianship Act 1987</i>.</p> <p>In particular, such an instrument:</p> <ul style="list-style-type: none"> <li>has effect in NSW subject to any limitations on the functions it confers that apply to it under the law of the State or Territory in which it was made, and</li> <li>does not operate to confer any function on an enduring guardian in NSW that cannot be conferred on an enduring guardian by or under relevant provisions of <i>Guardianship Act 1987</i>.</li> </ul> <p><b>Enduring powers of attorney:</b> The interstate enduring power of attorney has effect in NSW, but only to the extent that the powers it gives under the law of the State or Territory in which it</p>	<p>an enduring power of attorney be registered. However an instrument creating a power of attorney <u>may</u> be registered under the <i>Conveyancing Act 1919</i>: s 51 <i>Powers of Attorney Act 2003</i>.</p> <p>A conveyance or other deed affecting land executed under a power of attorney has no effect unless the instrument creating the power has been registered: s 52 <i>Powers of Attorney Act 2003</i>.</p> <p>There is no other formal process for recognising or registering the appointment of an attorney under an interstate enduring power of attorney.</p>	<p>or registering the appointment of an attorney under an interstate enduring power of attorney.</p>	

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			<p>was made could validly have been given by an enduring power of attorney made under the <i>Powers of Attorney Act 2003</i>.</p> <p>In particular, such an enduring power of attorney:</p> <ul style="list-style-type: none"> <li>• has effect in NSW subject to any limitations on the power that apply to it under the law of the State or Territory in which it was made, and</li> <li>• does not operate to confer any power on an attorney in NSW that cannot be conferred on an attorney under an enduring power of attorney made in NSW</li> </ul>			
<b>QLD</b>	Yes – s34 of <i>Powers of Attorney Act 1998</i> provides that enduring powers of attorney made in another State must be treated as if made	Enduring power of attorney must be made in compliance with the requirements of the other State.	Covers financial, health and personal matters. Recognition to the extent the powers it gives could validly be given under the Qld Act.	No, but would be required to register dealings with real property		Tina Guthrie, Senior Member QCAT (responsible for guardianship list) (07) 3006 2385 <a href="mailto:tina.guthrie@justice.qld.gov.au">tina.guthrie@justice.qld.gov.au</a>

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	under the Qld Act S40 of <i>Powers of Attorney Act 1998</i> has similar recognition provisions about enduring health care documents.					Last reviewed August 2018
SA	<p>Yes:</p> <ul style="list-style-type: none"> <li>Enduring powers of attorney (s 14 <i>Powers of Attorney and Agency Act 1984</i> (SA));</li> <li>Enduring guardianship [now known as an advance care directive] (s 33 <i>Advance Care Directives Act 2013</i> (SA))</li> </ul> <p>PLEASE NOTE: if instrument of appointment of enduring guardianship (under s 25 of the</p>	<p><u>Enduring powers of attorney (s 14(1))</u> Will be recognised if powers it gives under the law of the state or territory in which it was made could validly have been given by an enduring power of attorney made in South Australia.</p> <p><u>Advance care directives (s 33(1) - (2)(a))</u> Governor may, by regulation, declare a class of instruments made under a corresponding law to be an interstate advance care directive</p>	<p><u>Enduring powers of attorney:</u> Financial and legal affairs. Interstate enduring power of attorney is limited to the extent of powers that can be validly given in SA.</p> <p><u>Advance care directives:</u> Health care, residential and accommodation arrangements, and personal affairs.</p> <p>Advance care directive (ACD) cannot purport to compel a health practitioner to provide a particular form of health care to a person (s 6(1)), but this does not apply to health care comprising the withdrawal, or withholding, of health care to</p>	<p><u>Enduring powers of attorney</u> No registration system currently in place. However, before an attorney can register any dealing (i.e. buying, selling, leasing or mortgaging) of a protected person's real estate, the power of attorney must be registered at the Land Titles Office of the Department for Transport, Energy and Infrastructure (s156 <i>Real Property Act 1886</i> (SA)).</p> <p><u>Advance care directives</u> No registration system</p>	-	<p>Jacqui Rugless Executive Senior Member Community Stream SACAT (08) 7424 7123 <a href="mailto:Jacqui.Rugless@sacat.sa.gov.au">Jacqui.Rugless@sacat.sa.gov.au</a></p> <p>Last reviewed August 2018</p>

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	<p><i>Guardianship and Administration Act 1993 (SA)</i> in force immediately before commencement of <i>Advance Care Directives Act 2013 (SA)</i>, that instrument is taken to be an advance care directive – so s 33 <i>Advance Care Directives Act 2013 (SA)</i> applies in relation to interstate recognition.</p>	<p>(ACD). Once declared, an interstate ACD has effect in SA as if were an ACD made under SA's Act HOWEVER the interstate ACD cannot include provisions of a kind contemplated by ss 6, 12(1) and 13 [see next column].</p> <p>Regulation 12 of the <i>Advance Care Directives Regulations 2014 (SA)</i> declares classes of instruments as interstate advance care directives and sets out corresponding laws. See complete list at end of this document.</p>	<p>the person (s 6(2).</p> <p>ACD cannot make provisions of the following kinds(from s 12(1)):</p> <ul style="list-style-type: none"> <li>• A provision that is unlawful;</li> <li>• A provision that would require an unlawful act to be performed (such as euthanasia);</li> <li>• A provision that would cause a health practitioner or other person to contravene a professional standard or code of conduct (however described) applying to the health practitioner or person;</li> <li>• A provision comprising a refusal of mandatory medical treatment (such as medical treatment ordered under a community treatment order or inpatient treatment order under the <i>Mental Health Act 2009 (SA)</i>, medical treatment</li> </ul>	<p>currently in place.</p>		

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			<p>ordered by a court, medical treatment contemplated under ss 56 and 57 of the <i>Mental Health Act 2009</i> (SA) and medical treatment that is the subject of a requirement or direction of the Chief Public Health Officer under the <i>South Australian Public Health Act 2011</i> (SA);</p> <ul style="list-style-type: none"> <li>Any other provision of a kind to be declared by the regulations within the ambit of s 12.</li> </ul> <p>ACD cannot have effect of giving a power of attorney relating to decisions about financial and legal affairs (s 13(1)).</p> <ul style="list-style-type: none"> <li>ACD cannot make provision for prescribed treatment (sterilisation and termination of pregnancy) on behalf of a protected person.</li> </ul>			
<b>TAS</b>	<i>Guardianship and</i>	Enduring guardianship	Enduring guardians for	Yes for both enduring	Neither instruments has	Ms Aneita Browning

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	<p><i>Administration Act 1995 (GAA) section 81A</i></p> <p><i>Powers of Attorney Act 2000 (POAA) Part 6</i></p>	<p>a- Requires a certificate from a legal practitioner, a Registrar of a relevant Court, Board or Tribunal exercising a guardianship jurisdiction, that the instrument appointing an enduring guardian satisfies the requirements of the relevant corresponding law.</p> <p>The Minister may by notice in the Gazette declare that the law is a corresponding law for the purpose of section 81A GAA</p> <p>Enduring powers of attorney – requires a certificate of a legal practitioner that the instrument satisfies the requirements of the relevant corresponding law.</p>	<p>decisions about person or circumstances.</p> <p>Enduring power of attorney for management of the estate</p> <p>The GAB may exercise review powers to give effect to any orders relating to an EPA made under a corresponding law (section 47(2) POAA)</p>	<p>guardianships and enduring powers of attorney</p>	<p>legal effect unless registered (section 32(2) GAA, section 16 POAA)</p>	<p>Acting Registrar Guardianship and Administration Board (03) 6165 7500 guardianship@justice.tas.gov.au</p> <p>Last reviewed August 2018</p>

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		The Minister may by notice in the Gazette declare that the law is a corresponding law for the purpose of section 81A GAA. The power of attorney must be registered with the Recorder of Titles, DPIPWE.				
<b>VIC</b>	s.138 of <i>Powers of Attorney Act 2014</i> recognises enduring powers of attorney made in other states or territories, and an instrument in the nature of an enduring power of attorney, whether or not described as an enduring power of attorney.  From 12 March 2018, s.96 of the <i>Medical Treatment</i>	Must comply with law of originating state or territory.  Must comply with law of originating state or territory.	To the extent the powers it gives could be validly given under an enduring power of attorney in Victoria.  To the extent the powers the instrument of appointment gives could be validly given	No registration required in Vic, but if the originating state has a registration requirement in that state in order to be valid, that must be fulfilled.  No registration required in Vic, but if the originating state has a	Not relevant  Not relevant	Not relevant  Last reviewed August 2018  Not relevant  Last reviewed August 2018



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	<i>Planning and Decisions Act 2016</i> recognises appointments of medical treatment decision makers appointed in other states or territories.		under an appointment of medical treatment decision maker in Victoria.	registration requirement in that state in order to be valid, that must be fulfilled.		
<b>WA</b>	s.104A (Enduring Power of Attorney) s.110O (Enduring Power of Guardianship ) s.110ZA (Advance Health Directive ) <i>Guardianship and Administration Act 1990</i> (WA GA Act)	Under s.104A: s.110O and s.110ZA an application must be made to the State Administrative Tribunal (SAT) for an order to recognise an interstate instrument as valid in WA Requirements: the SAT must be satisfied that the document corresponds sufficiently, in form and effect, to an instrument created under s.104A; s.110O and s.110ZA of the WA GA Act	EPA limited to financial and real property decisions  EPG limited to personal, lifestyle and treatment decisions to be made by the Enduring Guardian/s AHD limited to treatment decisions in respect of a person's future treatment.	There is no registration of either power, however for a property transaction to be conducted an EPA must be lodged with Landgate for the attorney to conduct the transaction	Not relevant	Pauline Bagdonavicus Public Advocate 08 9278 7300  Last reviewed August 2018
<b>NT</b>	Yes - s.6A(4) & s.6(5) <i>Powers of Attorney Act</i> (NT) &	The requirements are complicated, by reason of the	A power of attorney (general or enduring) that is recognised under the <i>Powers</i>	Neither the <i>Powers of Attorney Act</i> nor the <i>Advance Personal</i>	For registration requirements affecting dealings in land see:	Leonie Smith Public Trustee's Office <a href="mailto:leonie.smith@nt.gov.au">leonie.smith@nt.gov.au</a>

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	s.86 of the <i>Advance Personal Planning Act</i> (NT) (see also regulation 8 of the <i>Advance Personal Planning Regulations</i> (NT)).	<p>application of two pieces of legislation.</p> <p>For general powers of attorney, recognition is via the <i>Powers of Attorney Act</i>.</p> <p>For enduring powers of attorney, recognition will usually be via the <i>Advance Personal Planning Act</i> and <i>Advance Personal Planning Regulations</i>.</p>	<p><i>of Attorney Act</i> takes effect in the NT as if created under that Act (s.5(3) and s. 5(5)).</p> <p>An enduring power of attorney recognised under the <i>Advance Personal Planning Act</i> has effect as if it were an advance personal plan under that Act (s.88). A decision maker under a recognised enduring power of attorney has, in the NT, the same rights powers and responsibilities as under the law under which the power was made (s.88(4)).</p>	<i>Planning Act</i> requires registration of interstate powers of attorney; however, instruments under both Acts (including recognised instruments) must be registered in order to give legal effect to dealings in land.	<i>Powers of Attorney Act</i> s.8; <i>Advance Personal Planning Act</i> Part 4A; and <i>Land Titles Act</i> s.148.	Last reviewed August 2018

**South Australia: Regulation 12 of the *Advance Care Directives Regulations 2014* (limited to ‘permitted provisions’ (ss 6 and 12 *Advance Care Directives Act 2013*) and not including provisions re financial and legal decisions)**

Classes of instruments declared to be interstate advance care directives, which have effect in SA as if they were advance care directives made under the *Advance Care Directives Act 2013* (SA):

- (a) an enduring power of attorney under the *Powers of Attorney Act 2006* of the Australian Capital Territory that is in force;
- (b) a health direction under the *Medical Treatment (Health Directions) Act 2006* of the Australian Capital Territory that is in force;
- (c) an instrument appointing an enduring guardian under the *Guardianship Act 1987* of New South Wales that is in force;

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- (d) an advance personal plan under the *Advance Personal Planning Act 2013* of the Northern Territory that is in force;
- (e) an enduring power of attorney under the *Powers of Attorney Act 1998* of Queensland that is in force;
- (f) an advance health directive under the *Powers of Attorney Act 1998* of Queensland that is in force;
- (g) an instrument appointing an enduring guardian under the *Guardianship and Administration Act 2000* of Tasmania that is in force;
- (h) an instrument appointing an enduring guardian under the *Guardianship and Administration Act 1986* of Victoria that is in force;
- (i) a refusal of treatment certificate under the *Medical Treatment Act 1988* of Victoria that is in force;
- (j) an enduring power of attorney (medical treatment) under the *Medical Treatment Act 1988* of Victoria that is in force;
- (ja) an enduring power of attorney under the *Powers of Attorney Act 2014* of Victoria that is in force;
- (k) an advance health directive under the *Guardianship and Administration Act 1990* of Western Australia that is in force;
- (l) an enduring power of guardianship under the *Guardianship and Administration Act 1990* of Western Australia that is in force;
- (m) an instrument (however described) corresponding to an advance care directive that is binding under the common law and in force.

**Note—**

Such instruments are often referred to as a living will.