



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 25 of 1984

An Act to provide for general powers of attorney and enduring powers of attorney; and to make other provision relating to powers of attorney and agency.

[Assented to 10 May 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

- Short title. 1. This Act may be cited as the "Powers of Attorney and Agency Act, 1984".
- Commencement. 2. This Act shall come into operation on a day to be fixed by proclamation.
- Interpretation. 3. In this Act—
 "enduring power of attorney" means an enduring power of attorney created pursuant to section 6.
- Application of this Act. 4. This Act applies in relation to a power of attorney, or any other power to act as an agent, of which the law of this State is the proper law, or which arises by virtue of a transaction of which the law of this State is the proper law.
- General power of attorney. 5. (1) A general power of attorney may be created by deed in the form set out in the first schedule or in a form to the same effect but expressed to be made in pursuance of this section.
 (2) The authority conferred by a general power of attorney may be expressed to be subject to specified conditions, limitations or exclusions.
 (3) Subject to subsection (4) and any conditions, limitations or exclusions to which it is expressed to be subject, a general power of attorney operates to confer—
 (a) on the donee of the power;
 or
 (b) where there is more than one donee, on the donees acting jointly or severally, as the case may be,

authority to do on behalf of the donor anything that he can lawfully do by an attorney.

(4) A general power of attorney does not operate to confer authority to perform functions that the donor has as a trustee or personal representative.

6. (1) An enduring power of attorney may be created by deed expressed to be made in pursuance of this section or containing words indicating an intention that the authority conferred is to be exercisable notwithstanding the donor's subsequent legal incapacity, or in the event of the donor's subsequent legal incapacity.

Creation and effect of enduring powers of attorney.

(2) A deed is not effective to create an enduring power of attorney unless—

(a) the attesting witness to the deed, or, where there is more than one attesting witness, at least one of them, is a person authorized by law to take affidavits;

and

(b) the deed has endorsed on it, or annexed to it, a statement of acceptance in the form set out in the second schedule, or in a form to the same effect, executed by the person appointed to be the donee of the power.

(3) An act done by the donee of an enduring power of attorney in pursuance of the power during a period of legal incapacity of the donor of the power is as effective as if the donor were competent and not incapacitated.

7. The donee of an enduring power of attorney must, during any period of legal incapacity of the donor, exercise his powers as attorney with reasonable diligence to protect the interests of the donor and, if he fails to do so, shall be liable to compensate the donor for loss occasioned by the failure.

General duty of donee of an enduring power.

8. The donee of an enduring power of attorney shall, if he fails to keep and preserve accurate records and accounts of all dealings and transactions made in pursuance of the power, be guilty of an offence and liable to a penalty (recoverable summarily) of an amount not exceeding one thousand dollars.

Offence if donee of enduring power fails to keep and preserve accounts of dealings, etc.

9. The donee of an enduring power of attorney may not renounce the power during any period of legal incapacity of the donor except with the leave of the Supreme Court.

Donee may not renounce power during incapacity of donor except with leave of Supreme Court.

10. Where the administration of the estate or a part of the estate of the donor of an enduring power of attorney is vested in another person as committee, administrator under the Mental Health Act, 1977, or manager under the Aged and Infirm Persons' Property Act, 1940—

Effect of appointment of committee, administrator or manager of estate of donor of an enduring power.

(a) the donee of the power is accountable to the other person as if the other person were the donor of the power;

and

(b) the other person has the same power to vary or revoke the power as the donor would have if he were competent and not incapacitated.

11. (1) Any person who has, in the opinion of the Supreme Court, a proper interest in the matter may, at any time during a period of legal

Powers of Supreme Court in respect of enduring powers.

incapacity of the donor of an enduring power of attorney, apply to the Supreme Court for an order—

- (a) requiring the donee of the power to file in the Supreme Court and serve on the applicant a copy of all records and accounts kept by the donee of dealings and transactions made by him in pursuance of the power;
 - (b) requiring such records and accounts to be audited by an auditor appointed by the Supreme Court and requiring a copy of the report of the auditor to be furnished to the Supreme Court and the applicant for the order;
- or
- (c) revoking or varying the terms of the power or appointing a substitute donee of the power.

(2) The donee of an enduring power of attorney may apply to the Supreme Court—

- (a) for an order referred to in subsection (1) (c);
- or
- (b) for advice and direction as to matters connected with the exercise of the power or the construction of its terms.

(3) The Supreme Court has, upon an application under this section, jurisdiction—

- (a) to make an order referred to in subsection (1);
- or
- (b) to make such other order (declaratory or otherwise) as to the exercise of the power, or the construction of its terms, as the Court thinks fit.

(4) An order under this section may be made subject to such terms and conditions as the Supreme Court thinks fit.

Protection for agent and third party in respect of acts done after principal's death or legal incapacity.

12. (1) A person who acts in good faith in the purported exercise of authority as an agent after termination of the authority by the death or legal incapacity of the principal does not, by reason of the termination, incur any liability in respect of the act if it was done without knowledge of the principal's death or incapacity.

(2) Where—

- (a) a person enters into a transaction in the purported exercise of authority as an agent after termination of the authority by the death or legal incapacity of the principal;

and

- (b) the other party to the transaction enters into it in good faith and without knowledge of the principal's death or incapacity,

the transaction is, as between the principal and the other party, as effective as if the authority had not been terminated by the principal's death or incapacity.

(3) Where probate or letters of administration have been granted to a person as attorney for some other person, this section applies in relation to

acts done or transactions entered into by the attorney as if the authority conferred by the grant had been conferred by the power of attorney.

(4) This section applies to an act done or transaction entered into after the commencement of this Act whether the agent's authority was conferred before or after that commencement.

(5) This section does not affect the operation of—

(a) section 160 of the Real Property Act, 1886;

or

(b) section 35 of the Registration of Deeds Act, 1935.

13. (1) Where—

(a) an agent executes a deed in his own name;

but

(b) it is apparent from the deed as executed that the agent was acting on behalf of his principal,

the agent is not, by reason only of the manner in which he executed the deed, personally liable upon the deed, and the deed has effect as if the agent had executed it in the name of his principal.

(2) This section applies in relation to a deed executed after the commencement of this Act whether the agent's authority was conferred before or after that commencement.

Effect of
execution of deed
by agent in his
own name.

SCHEDULES

s. 5

FIRST SCHEDULE

FORM OF GENERAL POWER OF ATTORNEY

THIS GENERAL POWER OF ATTORNEY is made pursuant to section 5 of the Powers of Attorney and Agency Act, 1984, this day of , 19 , by AB of

1. I appoint CD of and EF of jointly [or CD of and EF of jointly or jointly and severally] to be my attorney[s].

2. I authorize my attorney[s], subject to clause 3, to do on my behalf anything that I can lawfully do by an attorney.

3. The authority of my attorney[s] is subject to the following conditions, limitations or exclusions:

IN WITNESS etc.,

s. 6

SECOND SCHEDULE

FORM OF ACCEPTANCE OF ENDURING POWER OF ATTORNEY

I, , the person appointed to be the donee of the power of attorney created by the instrument on which this acceptance is endorsed [or to which this acceptance is annexed] accept the appointment and acknowledge—

(a) that the power of attorney is an enduring power of attorney and as such may be exercised by me notwithstanding any subsequent legal incapacity of the donor;

and

(b) that I will, by accepting this power of attorney, be subject to the requirements of the Powers of Attorney and Agency Act, 1984.

Signed
(Donee of the Power of Attorney)

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

C. L. LAUCKE, Governor's Deputy