



## Appendix D: Power of attorney legislation comparison table

## Power of attorney legislation comparison table

State/Territory Power of Attorney Legislation	Recognition provision	Registration provision	Witnesses provision	Other proxy decision-making legislation (eg. lifestyle)	Advance care planning legislation	Protective agencies
<b>ACT</b> Powers of Attorney Act 2006	Sec. 89 Recognition of enduring powers of attorney made under other laws (1) This section applies if— (a) a document (the interstate enduring power of attorney ) is expressed to be a power of attorney or guardianship document made under the law of a State or another Territory; and (b) the interstate enduring power of attorney is not— (i) revoked if the principal loses decision-making capacity; or (ii) expressed to be irrevocable, whether completely or for a stated period. (2) An interstate enduring power of attorney to which this section applies is taken to be an enduring power of attorney made under, and in compliance with, this Act, to the extent that the powers it gives could validly have been given by an enduring power of attorney made under this Act	S. 29 Powers of attorney are deeds (1) A power of attorney that complies with this Act is, for all purposes, taken to be a deed, even though it is not expressed to be a deed or to be sealed. Note A deed may be registered (see Registration of Deeds Act 1957 ) and must be registered for a dealing with land by the attorney to be registered (see Land Titles Act 1925 , s 130).  (2) In this section: "power of attorney" includes— (a) an amendment of a power of attorney; and (b) a revocation of a power of attorney.	S. 22 Certificates by witnesses to powers of attorney (1) If a power of attorney is signed by the principal, the power of attorney must include a certificate signed by each witness stating that— (a) the principal signed the power of attorney voluntarily in the presence of the witness; and (b) at the time the principal signed the power of attorney, the principal appeared to the witness to understand the nature and effect of making the power of attorney. Note A principal must understand the matters in s 17 to understand the nature and effect of making a power of attorney. However, in the absence of evidence to the contrary, the principal is taken to understand the nature and effect of making the power of attorney (see s 18).	Covered by Powers of Attorney Act 2006	Medical Treatment Act 1994	Guardianship and Management of Property Tribunal  Office of the Public Advocate  Public Trustee
<b>NSW</b> Powers of Attorney Act 2003	Sec. 25 Recognition of enduring powers of attorney made in other States and Territories (1) An interstate enduring power of attorney has effect in this State as if it were an enduring power of attorney made under, and in compliance with, this Act, but only to the extent that the 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 under this Act. (2) In particular, an interstate enduring power of attorney to which subsection (1) applies: (a) has effect in this State 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 (b) does not operate to confer any power on an attorney in this State that cannot be conferred on an attorney under an enduring power of attorney made in this State.	S. 51 Powers of attorney may be registered (1) Any instrument executed before or after the commencement of this Act that creates a power of attorney may be registered by the Registrar-General in the General Register of Deeds kept under the Conveyancing Act 1919 . (2) An instrument revoking a registered power of attorney may also be registered by the Registrar-General in that Register. S. 52 (1) A conveyance or other deed affecting land executed on or after 1 July 1920 under a power of attorney has no effect unless the instrument creating the power has been registered.	S. 19 Creation of enduring power of attorney (b) execution of the instrument by the principal is witnessed by a person who is a prescribed witness (not being an attorney under the power), and (c) there is endorsed on, or annexed to, the instrument a certificate by that person stating that: (i) the person explained the effect of the instrument to the principal before it was signed, and (ii) the principal appeared to understand the effect of the power of attorney, and (iii) the person is a prescribed witness, and (iv) the person is not an attorney under the power of attorney, and (v) the person witnessed the signing of the power of attorney by the principal. (2) ... a "prescribed witness" means: (a) a registrar of a Local Court, or (b) a barrister or solicitor of a court of any State or Territory of the Commonwealth, or	Guardianship Act 1987	No legislation covering this. Guidelines have been published in 2005 for end-of-life care and decision-making, and health services are encouraged to develop policies based on this.  Information about informed consent requirements: Circular 2004/84 – Patient information and consent to medical treatment.	Guardianship Tribunal  Office of the Public Guardian  Office of the Protective Commissioner  Public Trustee

	<p>(3) Subsection (1) does not apply to any power of attorney (or class of powers of attorney) prescribed by the regulations.</p> <p>(4) A document signed by a qualified interstate legal practitioner that certifies that an interstate enduring power of attorney was made in accordance with the formal requirements of the law of the State or Territory in which it was made is admissible in any proceedings concerning that power and is prima facie evidence of the matter so certified.</p> <p>(5) In this section:  "interstate enduring power of attorney" means a power of attorney made in another State or a Territory that, under the law of that State or Territory, has effect in that State or Territory as a valid power of attorney even if the principal loses capacity through mental incapacity after the execution of the instrument creating the power of attorney.  "qualified interstate legal practitioner", in relation to an interstate enduring power of attorney, means an individual:  (a) who has been admitted to legal practice in the State or Territory in which the power of attorney was made, and  (b) who holds a certificate or other form of authorisation that confers an authority to practise in that State or Territory that corresponds to the authority conferred by a practising certificate issued under Part 3 of the Legal Profession Act 1987, and  (c) who practises in that State or Territory.</p>		<p>(c) a licensee under the Conveyancers Licensing Act 1995, or an employee of the Public Trustee or a trustee company within the meaning of the Trustee Companies Act 1964, who has successfully completed a course of study approved by the Minister, by order published in the Gazette, for the purposes of this paragraph, or  (d) a legal practitioner duly qualified in a country other than Australia, instructed and employed independently of any legal practitioner appointed as an attorney under the instrument, or  (e) any other person (or person belonging to a class of persons) prescribed by the regulations for the purposes of this paragraph.</p>			
<p><b>NT</b> Powers of Attorney Act 1980</p>	<p>S. 7 Registration  (1A) An instrument creating a power of attorney that is a copy of an instrument that has been registered under a law in force in a State or another Territory of the Commonwealth may be registered under subsection (1).</p>	<p>S. 7 Registration  (1) An instrument creating or revoking a power may be registered.</p>	<p>S. 6 Execution of instruments creating or revoking powers  (4) Where a person executes an instrument creating a power by direction and in the presence of the donor of the power, the instrument shall be attested by 2 other persons (the donor of the power excepted) present as witnesses.  S. 14 Execution of instrument creating enduring powers  An instrument creating an enduring power shall be executed in the presence of a witness who is not the donee of the power or</p>	<p>No specific legislation addressing this</p>	<p>Natural Death Act 1988</p>	<p>Office of Adult Guardianship  Office of the Public Guardian  Public Trustee Department of Justice</p>

			a near relative of the donee.			
<b>QLD</b> Powers of Attorney Act 1998	Sec. 34 Recognition of enduring power of attorney made in other States If an enduring power of attorney is made in another State and complies with the requirements in the other State, then, to the extent the powers it gives could validly have been given by an enduring power of attorney made under this Act, the enduring power of attorney must be treated as if it were an enduring power of attorney made under, and in compliance with, this Act.	S. 25 Registration of powers of attorney and instruments revoking powers (1) A power of attorney may be registered. (2) An instrument revoking a power of attorney may be registered. (3) Subject to another Act or a contrary intention in the power of attorney, if the power of attorney has been registered under an Act, it does not cease to authorise the attorney to do for the principal anything relevant to the purpose for which it was registered until an instrument revoking the power of attorney has been registered. (4) This section also applies to a power of attorney made before the commencement of this Act. <sup>26</sup>	S. 31 Meaning of eligible witnesses (1) An eligible witness, for a document, is a person who-- (a) except for a document revoking an advance health directive--is a justice, <sup>31</sup> commissioner for declarations, notary public or lawyer; <sup>32</sup> and (b) is not the person signing the document for the principal; and (c) is not an attorney of the principal; and (d) is not a relation of the principal or a relation of an attorney of the principal; and (e) if the document gives power for a personal matter--is not a paid carer or health provider of the principal; and (f) for an advance health directive--is at least 21 years and not a beneficiary under the principal's will. (2) To avoid any doubt, it is declared that a person is not excluded from being an eligible witness merely because the person is an attorney's employee who is the witness for the document while acting in the ordinary course of employment. S. 44 Formal requirements (4) If an enduring document is signed by the principal, it must include a certificate signed by the witness stating the principal-- (a) signed the enduring document in the witness's presence; and (b) at the time, appeared to the witness to have the capacity necessary to make the enduring document.	Powers of Attorney Act 1998	Powers of Attorney Act 1998	Office of the Adult Guardian  Public Advocate  Guardianship and Administration Tribunal  Public Trustee
<b>SA</b> Powers of Attorney and Agency Act 1984	The Act has no specific provision addressing the recognition of powers of attorney made in other jurisdictions.	May be registered in accordance with the Registration of Deeds Act 1935, Part 2	S. 6 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 authorised by law to take affidavits ... Guardianship and Administration Act 1993 S. 3 Interpretation "authorised witness" means—	Guardianship and Administration Act 1993 Office of the Public Advocate	Consent to Medical Treatment and Palliative Care Act (1995)	Office of the Public Advocate [Guardianship Board]  Public Trustee

			<p>(a) a justice of the peace for this State or any other State or Territory of the Commonwealth; or</p> <p>(b) a commissioner for taking affidavits in the Supreme Court; or</p> <p>(c) a notary public;</p> <p>S. 25 Appointment of an enduring guardian</p> <p>(c) it is witnessed by an authorised witness who completes a certificate in the form or to the effect of the certificate set out in the Schedule.</p> <p>Under the Schedule, the witness must certify that 'the above appointer signed in this instrument freely and voluntarily in my presence and appeared to understand its effect'.</p>			
<p><b>TAS</b> Powers of Attorney Act 2000</p>	<p>S. 42. Recognition of registration in other States and Territories</p> <p>(1) An instrument creating a power of attorney that is registered in another State or a Territory under a law that corresponds to this Act is taken to be registered in Tasmania for the purposes of this Act.</p> <p>(2) For the purposes of this section, the provisions for filing and noting of instruments of the Transfer of Land Act 1893 of Western Australia are taken to be a corresponding law.</p> <p>S. 47. Enduring powers of attorney made outside Tasmania</p> <p>(1) The application of this Part extends to a power of attorney that has the same, or substantially the same, effect as an enduring power of attorney and is registered under this Part.</p> <p>(2) The Board may exercise its powers under Part 4 for the purpose of giving effect to any order, whether made by a court or not, that is in force under a law of another State or a Territory corresponding with this Act or the Guardianship and Administration Act 1995.</p>	<p>4. Register of powers of attorney</p> <p>(1) The Recorder must keep a register of all powers of attorney.</p> <p>(2) The register consists of all powers of attorney, instruments varying or revoking a power of attorney and other instruments relating to powers of attorney that are lodged with the Recorder under this or any other Act.</p> <p>(3) The register may be kept wholly or partly-</p> <p>(a) on paper, microfilm, magnetic tape, magnetic disk, optical disk or any combination of those media or in or on such other medium as may be approved by the Recorder; or</p> <p>(b) in such device for storing or processing information as may be approved by the Recorder –</p> <p>and the Recorder may at any time rearrange the register or change any such medium or device accordingly.</p> <p>(4) The Recorder may include in the register any power of attorney that, immediately before the commencement of this Act, is registered under the Registration of Deeds Act 1935.</p>	<p>S. 30. Creation and effect of enduring powers of attorney</p> <p>(2)(b)_ there are at least 2 attesting witnesses to the deed or instrument neither of whom is a party to it nor a relation of a party to it and each of whom has witnessed it in the presence of the donor and each other</p>	<p>Guardian and Administration Act 1995</p>	<p>No legislation providing for advance health directives.</p> <p>Consent to Medical Treatment is covered in the Guardianship and Administration Act 1995</p>	<p>Guardianship and Administration Board</p> <p>Office of the Public Guardian</p> <p>Public Trustee</p>
<p><b>VIC</b> Instruments Act 1958</p>	<p>S. 116. Recognition of enduring powers made in other States and Territories</p> <p>If an enduring power of attorney is made in another State or Territory and complies with the requirements of that other State or Territory, then, to the extent the powers it gives could validly have been given by an</p>	<p>S. 125C. Enduring power of attorney to be a deed</p> <p>An enduring power of attorney that complies with this Division is to be taken to be and have effect as a deed, even if it is not expressed to be executed under seal.</p>	<p>125A. What must the witnesses certify?</p> <p>(1) If an enduring power of attorney is signed by the donor, it must include a certificate signed by each witness stating that-</p> <p>(a) the donor signed the enduring power of attorney freely and voluntarily in the</p>	<p>Guardianship and Administration Act 1986</p>	<p>Medical Treatment Act (1988) Vic</p> <p>Guardianship and Administration Act (1986) Vic</p>	<p>Victorian Civil and Administrative Tribunal [Guardianship and Administration List]</p>

	<p>enduring power of attorney made under this Part, the enduring power of attorney is to be taken to be an enduring power of attorney made under, and in compliance with, this Part.</p>		<p>presence of the witness; and          (b) at the time, the donor appeared to the witness to have the capacity necessary to make the enduring power of attorney.          (2) If an enduring power of attorney is signed by a person for the donor, it must include a certificate signed by each witness stating that-          (a) the donor of the power directed the person to sign the enduring power of attorney for the donor; and          (b) the donor of the power gave that direction freely and voluntarily in the presence of the witness; and          (c) the person signed it in the presence of the donor and the witness; and          (d) at the time, the donor appeared to the witness to have the capacity necessary to make the enduring power of attorney.</p>			<p>Office of the Public Advocate  State Trustees Limited</p>
<p><b>WA</b> Guardianship and Administration Act 1990</p>	<p>104A . Recognition of powers of attorney created in other jurisdictions          (1) The donee of a power of attorney created under the laws of another State, Territory or country may apply to the Board for an order recognizing that power of attorney as an enduring power of attorney for the purposes of this Part.          (2) Where the Board is satisfied, on an application made under subsection (1), that-          (a) a power of attorney created under the laws of another State, Territory or country corresponds sufficiently, in form and effect, to a power of attorney created under section 104; and          (b) it is appropriate to do so, the Board may make an order recognizing that power of attorney as an enduring power of attorney for the purposes of this Part.          (3) Sections 41(1) and (3) and 42 apply, with all necessary changes, to an application under subsection (1) as if it were an application for an administration order.          (4) The Board may at any time on the application of a person who in the opinion of the Board has a proper interest in the matter revoke an order made under subsection (2).</p>	<p>Powers of attorney can be registered in accordance with the Transfer of Land Act 1893</p>	<p>104 . Execution of enduring power of attorney          (2) (a) there are 2 attesting witnesses to the instrument and both of them are persons authorised by law to take declarations</p>	<p>Covered by Guardianship and Administration Act 1990</p>	<p>No specific legislation addressing this. Amendments to the Guardianship and Administration Act 1990 are being planned, which will develop a legislative framework for advance care planning</p>	<p>State Administrative Tribunal  Office of the Public Advocate  Public Trust Office</p>