

South Australia

Powers of Attorney and Agency (Interstate Powers of Attorney) Amendment Act 2013

An Act to amend the *Powers of Attorney and Agency Act 1984*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Powers of Attorney and Agency (Interstate Powers of Attorney) Amendment Act 2013*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Powers of Attorney and Agency Act 1984*

3—Amendment of section 4—Application of this Act

Section 4—delete "This Act" and substitute:

Subject to section 14, this Act

4—Insertion of section 14

After section 13—insert:

14—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 insofar as 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) 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.
- (3) Subsection (1) does not apply to a power of attorney of a kind prescribed by regulation.
- (4) In any proceedings relating to a power of attorney, 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 evidence in such proceedings and constitutes, in the absence of proof to the contrary, proof of the matters so certified.
- (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 donor of the power of attorney 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 a person—

- (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 Practitioners Act 1981*; and

(c) who practises in that State or Territory.