



## **Epidemic Preparedness (Protection of Personal and Property Rights Act 1988—Enduring Powers of Attorney) Immediate Modification Order 2020**

Patsy Reddy, Governor-General

### **Order in Council**

At Wellington this 23rd day of April 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 15 of the Epidemic Preparedness Act 2006—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Justice, made after being satisfied of the matters required by section 15(2)(b) of that Act and after receiving from the chief executive of the Ministry of Justice a written recommendation stating the matters required by section 15(2)(a) of that Act.

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## Order

### **1 Title**

This order is the Epidemic Preparedness (Protection of Personal and Property Rights Act 1988—Enduring Powers of Attorney) Immediate Modification Order 2020.

### **2 Commencement**

This order comes into force on 24 April 2020.

### **3 Enactments to which modifications made**

This order modifies requirements imposed by the following enactments:

- (a) the Protection of Personal and Property Rights Act 1988 (the **Act**); and
- (b) the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008 (the **Regulations**).

### **4 Requirements of Act and Regulations modified**

*Modifications override section 94A of Act and prescribed forms*

- (1) This clause has effect despite anything to the contrary in section 94A of the Act or in the relevant prescribed forms.
- (2) Any alteration may be made to a relevant prescribed form that is consistent with the modifications made by this clause.
- (3) Any such alteration is to be treated as insubstantial and immaterial for the purposes of section 95(2) of the Act.

*Document requirement modified to permit separate copies to be signed*

- (4) Signatories to an EPA may sign separate copies of the document concerned instead of the same physical document to enable signing at more than 1 place.
- (5) If separate copies are signed,—
  - (a) each document must clearly state that it is signed in accordance with this order; and
  - (b) each signed document, or a photograph or scan of the signed document, must be sent or delivered to the holder of the instrument creating the EPA (unless the signatory is the holder); and
  - (c) the full set of documents held by the holder (whether sent and held in hard copy or as photographs or scans) is to be treated as comprising the complete instrument.

*Presence and certificate requirements modified to permit use of audiovisual link*

- (6) Despite section 94A(2)(a) and (3)(a) of the Act,—

- (a) the document concerned may be signed, at the direction of the donor, by some other person in front of the donor by audiovisual link from another place; and
  - (b) if it is signed in front of the donor by audiovisual link, the person must make it clear on the document that it is signed in that way in accordance with this order.
- (7) To the extent that section 94A (including section 94A(2)(a)) of the Act requires the signature of a party to an EPA to be witnessed by a person in the presence of the party,—
- (a) the person may instead witness the signature of the party by audiovisual link from another place; and
  - (b) if it is witnessed in that way, the witness must make it clear on the copy signed by the witness that it is witnessed in that way in accordance with this order.
- (8) Despite section 94A(2)(b) of the Act, if the donor’s signature was witnessed by audiovisual link from another place,—
- (a) the certificate referred to in section 94A(7) of the Act may be a scan or photograph of the certificate; and
  - (b) the certificate is not required to be attached to the instrument creating the EPA so long as the scan or photograph can be provided along with the instrument.

*Definitions*

- (9) In this clause,—

**EPA** means an enduring power of attorney

**holder**, in relation to an instrument creating an EPA, means the person identified by the donor as the holder of the instrument for the purposes of this clause

**party to an EPA** means—

- (a) the donor, including a person signing the instrument creating the EPA at the donor’s direction under section 94A(3)(a) of the Act; or
- (b) the attorney

**relevant prescribed form** means whichever of the following forms prescribed in the Schedule of the Regulations is relevant:

- (a) form 1 (enduring power of attorney (EPA) in relation to property);
- (b) form 3 (enduring power of attorney (EPA) in relation to personal care and welfare);
- (c) form 5 (certificate of witness to donor’s signature on enduring power of attorney (EPA))

**signatory to an EPA** means—

- (a) a party to an EPA; or

(b) a person who is a witness to the signature of a party to an EPA.

## 5 Revocation

This order is revoked when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Rachel Hayward,  
for the Clerk of the Executive Council.

## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order is made under the Epidemic Preparedness Act 2006 and its effect is temporary. It comes into force on 24 April 2020 and is revoked when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked. It modifies requirements imposed by the following enactments that may be impossible or impracticable to comply with during an epidemic:

- the Protection of Personal and Property Rights Act 1988;
- the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008.

The modifications ensure that an enduring power of attorney (an **EPA**) can be created when the signatories (the donor, the attorney and witnesses) are in different places. In particular, the modifications—

- allow the signatories to sign separate copies of the same document, rather than a single physical document; and
- treat the full set of signed documents that are sent to a holder (which may include photographs or scans) as comprising the complete instrument creating the EPA; and
- enable audiovisual links to be used instead of requiring a person signing at the direction of the donor, or a person witnessing a donor's or an attorney's signature, to do that in the presence of the relevant party (the donor or attorney).

## Statement of reasons

The Minister of Justice is satisfied of the matters required by section 15(2)(b) of the Epidemic Preparedness Act 2006 for the reasons that follow.

*Effects are, or are likely to be, such that the requirement is impossible or impracticable to comply (or comply fully) with*

It is important that EPAs are able to be created while the Epidemic Preparedness (COVID-19) Notice 2020 is in force. During a lockdown period, it is impossible or impracticable (that is to say, practically impossible) for donors, attorneys, and wit-

nesses to sign and witness the same physical copy of the document creating an EPA, and to do those things in person.

Further, the Protection of Personal and Property Rights Act 1988 requires at least 4 people (the donor, the attorney, and 2 witnesses) to be involved in creating an EPA, and for the witnesses to be independent. In particular, the witness to the donor's signature must be independent of the attorney, and the witness to the attorney's signature cannot be the donor or the donor's witness.

Even if a lower alert level applies, it is likely to be important for vulnerable people to remain isolated.

*Modifications go no further than reasonably necessary*

The modifications are—

- limited to modifying requirements, generally set out in section 94A of the Protection of Personal and Property Rights Act 1988, for signing and witnessing signatures in documents creating EPAs; and
- temporary (they end when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 23 April 2020.

This order is administered by the Ministry of Justice.