



## **New Powers of Attorney in Victoria**

### **What do the changes mean for you?**

The new *Powers of Attorney Act 2014* (Vic) commenced on 1 September 2015.

Find out below what changes there will be and what this may mean for you, your family or someone you care about.

#### **What is a Power of Attorney?**

A Power of Attorney is a legal document that allows someone to choose another person to make decisions for them, to act for them, or make legally binding decisions on their behalf. If you are the holder of a Power of Attorney any decision you make will have the same legal effect as if the person who appointed you made the decision themselves.

#### **There are different types of Power of Attorney**

Powers of Attorney fall into two main categories – Enduring Powers of Attorney and General Powers of Attorney.

An Enduring Power of Attorney is useful if you are planning for the future and continues to operate even when a person is unable to make a decision for themselves, say as a result of an accident or illness.

A General Power of Attorney is more often used for a set period of time or for a set purpose. An example is if you are buying a home and will be overseas at the time of the sale, you may give someone a General Power of Attorney to finalise the sale on your behalf. In this example, the General Power of Attorney will end as soon as the sale is finalised. Although it can continue indefinitely, a General Power of Attorney is subject to the mental capacity of the person granting the Power of Attorney. If that person loses capacity, then the Power will no longer operate.

#### **Three Different Types of Enduring Power of Attorney**

Before the 1<sup>st</sup> of September there were three different types of Enduring Power of Attorney available which might still currently be in effect:

- Enduring Power of Attorney (Financial) – This allows the person appointed (called the Attorney) to make financial decisions, including decisions about legal matters that relate to financial or property affairs;

- Enduring Power of Attorney Guardianship – This allows the person appointed (called the Enduring Guardian) to make decisions about personal and lifestyle matters. This may include decisions about where someone lives and what medical care they receive; and
- Enduring Power of Attorney (Medical Treatment) – This allows the person appointed (called the Medical Agent) to make decisions about medical treatment which may include whether medication is given, and whether surgery or some other medical procedure is undertaken or refused.

### **What Changed on 1 September 2015?**

The changes that came into force on 1 September 2015 relate to Enduring Powers of Attorney only and will not affect General Powers of Attorney. In a nutshell you need to remember that:

- there will be **no changes** to the Medical Treatment Enduring Power of Attorney ;
- the current Enduring Power of Attorney (Financial) and Enduring Power of Attorney (Guardianship) will be combined into a single Enduring Power of Attorney document; and
- a new type of power of attorney appointment will be available called “the supportive attorney”.

Any Enduring Powers of Attorney Financial and Guardianship ***made prior to 1 September 2015*** will continue to be valid after this date. However, all new Enduring Powers of Attorney executed after this date will need to be prepared in accordance with new forms and guideline requirements.

### **What is a “supportive attorney”?**

The aim of a supportive attorney appointment is to encourage a person to have autonomy and dignity where they have the capacity to make certain decisions for themselves, so long as they have support to make the decision and to put it into effect.

From 1 September 2015 an adult can appoint a supportive attorney to assist in important life decisions provided they have the capacity to make the appointment in the first place.

For example, you may have an elderly relative who is capable of deciding that they want to sell their home and move into assisted accommodation, but in order to be able to do so they need assistance with the sale and purchase process including dealing with real estate agents and the care facility they would like to move to.

Provided your relative has the necessary capacity to appoint you as a supportive attorney you may be able to be appointed as supportive attorney so you can assist in this process without taking away their right to make these choices and the dignity that comes with having choice.

## **The new Act improves protection against abuse of Powers of Attorney**

The new Act states that a person is presumed to have decision-making capacity unless there is evidence to the contrary, provides principles to guide decision-making, sets out duties of enduring Attorneys and imposes more stringent execution requirements. It also creates new offences for dishonestly obtaining or using an Enduring Power of Attorney which are punishable by up to 5 years' imprisonment.

## **New Forms**

In line with the changes mentioned above there will be new forms that must be completed for the appointment of an attorney except for an Enduring Power of Attorney (Medical Treatment) which will not change.

## **How We Can Help**

It is always sensible to plan ahead, not just for expected major life events but even for things as simple as if you plan to travel overseas for an extended period of time and may need someone to keep an eye on things for you back at home.

If you or someone you know or care about is considering an Enduring Power of Attorney or even a General Power of Attorney it is important that you fully understand both the effect of the appointment and the responsibilities that come with being appointed. It is also important that all necessary forms are completed correctly to ensure the appointment is legally valid.

If you or someone you know wants more information or needs help or advice, please contact us on 03 9387 2424 or email [info@rrrlawyers.com.au](mailto:info@rrrlawyers.com.au).