

Powers of attorney have changed

What is a power of attorney?

Powers of attorney are legal documents that enable a person (the principal) to appoint someone (an attorney) to make decisions on the principal's behalf. Enduring powers of attorney are helpful if the principal becomes unable to make decisions due to illness or an accident.

What has changed?

From 1 September 2015, the *Powers of Attorney Act 2014* (the Act) makes important changes including:

1. Consolidating enduring powers of attorney:

- the enduring power of attorney (financial) and the enduring power of guardianship will be consolidated into a single enduring power of attorney. The new enduring power of attorney will allow principals to manage their financial matters (for example, investment of money) and / or personal matters (for example, where the principal lives).

2. Improved safeguards against abuse, such as:

- **more stringent requirements** for the making and revoking (cancelling) of enduring powers of attorney. For example, one of the witnesses must be a medical practitioner or someone who is authorised to witness an affidavit, such as a member of the police force who is a sergeant or above.
- **creating new offences** for dishonestly obtaining or using an enduring power of attorney or supportive attorney appointments, punishable by up to five years' imprisonment.
- **new powers** for the Victorian Civil and Administrative Tribunal (VCAT), including the power to order compensation for any loss caused by the enduring attorney contravening the law.
- **new definition of decision-making capacity** and guidance about how it should be assessed to protect a person's right to make their own decisions, where possible.

- **clear duties of enduring attorneys**, including to act honestly, diligently and in good faith, and to exercise reasonable skill and care.

3. Introducing the supportive attorney appointment:

The Act introduces the role of supportive attorney to support the principal to make and give effect to some or all of the principal's decisions. This is a first for Victoria and Australia.

A supportive attorney will not make decisions on behalf of the principal. A principal may authorise a supportive attorney to access, collect or obtain information, communicate or assist them to communicate supported decisions, or carry out decisions (other than decisions about significant financial transactions).

The law introduces safeguards against abuse of the supportive attorney appointment.

4. As part of the changes, there will be new forms for making powers of attorney and supportive attorney appointments. The forms will be available from 1 September 2015 at www.publicadvocate.vic.gov.au

For more information about the changes to powers of attorney visit www.justice.vic.gov.au/powersofattorney

What has not changed?

Valid powers of attorney made before 1 September 2015 will remain valid after that date.

The legislation relating to powers of attorney (medical treatment) has not changed.

To learn more about powers of attorney visit www.publicadvocate.vic.gov.au or free call 1300 309 337.