

Powers of Attorney Act 2014

The long awaited *Powers of Attorney Act 2014* (Vic) (P of A Act) has received assent and is currently due to commence on 1 September 2015.

The Act incorporates a number of the changes recommended by the Victorian Parliamentary Law Reform Committee, *Inquiries into Powers of Attorney*, tabled in August 2010 and some of the recommendations of the Victorian Law Reform Commission's review of guardianship law – *Guardianship: Final Report*, tabled in April 2012.

The P of A Act:

- repeals Part XI (powers of attorney) and Part XIA (enduring powers of attorney) of the *Instruments Act 1958* (Vic) and the provisions under the *Guardianship and Administration Act 1986* (Vic) relating to the appointment of enduring guardians. The amendments to the *Instruments Act* and *Guardianship and Administration Act* do not affect the validity of powers in place prior to the commencement of the amendments.
- provides for general powers of attorney (including powers of attorney for security) and enduring powers of attorney for financial matters and personal matters
- makes provision for a further (unremunerated) appointment – that of supportive attorney – to support the person in making and giving effect to some decisions. The principal remains the decision maker.
- defines the meaning of decision making capacity for the purposes of the P of A Act
- clarifies various aspects of the law - for example, conflict transactions and permitted conflict transactions and when an attorney can make gifts of the principal's property
- expands the VCAT jurisdiction and, in particular, by providing that VCAT may order an attorney under an enduring power of attorney to compensate the principal for a loss caused by the attorney contravening

any provision of the Act relating to enduring powers of attorney when acting as attorney. Potential applicants include the principal and the executor or administrator of the principal's estate. There is a time limit for applications where the principal or attorney has died – within 6 months after the death. VCAT has power to refer such applications to the Supreme Court of Victoria.

- creates new offences – for example, it is an offence for a person to dishonestly obtain an enduring power of attorney or revocation of an enduring power of attorney to obtain financial advantage for the person or another person, or to cause loss to the principal or another person.

There is provision for Regulations with respect to prescribed forms (there are numerous forms and notices provided for under the P of A Act) and other matters but these are not currently in place. The Schedule sets out a form of general non-enduring power of attorney for the purposes of s 7 of the P of A Act.

The more significant changes will be the subject of future blogs.