



**INSTITUTE OF LEGAL EXECUTIVES  
(VICTORIA)**

**ALERT**

**TO ALL ENROLEES AND MEMBERS  
REGARDING POWERS OF  
ATTORNEY CHANGES FROM 1  
SEPTEMBER 2015**

**We have been requested by the  
Department of Justice & Regula-**

**tion and the Law Institute of Victoria  
to bring the following matters to your  
attention in regard to the above  
changes, and in respect to clerks to  
Australian lawyers in particular.**

Changes to Victorian law on Powers of Attorney will take effect on **1 September 2015** and will **affect the eligibility of clerks to Australian lawyers to witness** enduring powers of attorney and the new supportive attorney appointment.

Compliance with the new requirements is **critical** for the validity of an enduring

power of attorney or supportive attorney appointment. Below are the following:

1. Media Release from the Department of Justice & Regulation;
2. Further information from the Law Institute of Victoria.

The list of persons who can receive Affidavits in Victoria (section 123C) and the list of persons who can witness Statutory Declarations in Victoria (section 107A) can be found in the *Evidence (Miscellaneous Provisions) Act 1958*.



**Victorian laws on powers of attorney are changing**

Powers of attorney (POAs) are legal documents that enable you to choose someone to make decisions for you. They are designed to give you choice and control over how your affairs are handled.

Changes to the Victorian laws relating to powers of attorney come into effect on 1 September 2015 with the commencement of the *Powers of Attorney Act 2014* (the Act). These reforms include:

1. consolidating enduring powers of attorney (financial) and enduring powers of guardianship into the

*enduring powers of attorney*, so that one form can be used to manage your financial and/or personal matters;

2. defining ‘decision making capacity’ and stating that a person is presumed to have decision making capacity unless there is evidence to the contrary;
3. clearly stating the responsibilities and duties of enduring attorneys and the limits on their powers;
4. establishing a new role – the supportive attorney – who can support the person appointing them as that person makes or gives effect to decisions (but not make decisions on that person’s behalf);
5. adding safeguards to increase the protection of people making an enduring power of attorney or

supportive attorney appointment; and

6. altering witnessing requirements:
  - a. One of the two witnesses required to make an enduring power of attorney must be eligible to witness an affidavit;
  - b. One of the two witnesses required in appointing a supportive attorney must be eligible to witness a statutory declaration.

Powers of attorney made before 1 September 2015 remain valid. The reforms do not affect enduring powers of attorney (medical treatment).

For more information about powers of attorney in Victoria contact the Office of the Public Advocate on tel. 1300 309 337 or [publicadvocate.vic.gov.au](http://publicadvocate.vic.gov.au).

**Further information from the Law Institute of Victoria regarding the changes to powers of attorney legislation in Victoria**

In addition to the above, the Act will **clarify the roles and increase protections of the principal’s interests:**

- The new Act explicitly states the duties and obligations of “attorneys”; introduces criminal offences for abuse of their role; and provides the Victorian Civil and Administrative Tribunal with power to award compensation for any loss suffered by the person making that appointment (ie the “principal”) as a result of the “attorney’s” misuse of the role; and
- In contrast to enduring attorneys, a supportive attorney can not
  - a) make decisions on behalf of the

principal, or b) support a principal in relation to ‘significant financial decisions’ (ie those involving more than \$10,000 or most real estate decisions).

**As part of these reforms:**

**1) Witnessing requirements for these instruments will change on 1 September 2015:**

- Clerks to Australian lawyers are currently eligible to witness enduring powers of attorney (financial) because they are among those eligible to witness statutory declarations.
- The new enduring powers of attorney will also need to be witnessed by two people, *one of whom* will need to be eligible to witness an affidavit.
- The list of those eligible to witness affidavits is narrower than the group eligible to witness statutory

declarations. The list of those eligible to witness affidavits does *not* include clerks to Australian lawyers.

- *However*, those eligible to witness statutory declarations (including clerks to Australian lawyers) *will* be eligible to witness the new supportive attorney appointments.

**2) People will need to use new forms to make enduring powers of attorney/supportive attorney appointments from 1 September 2015:**

- the prescribed versions of these forms are available on DJR’s website, where you will also find more information about the legislative changes:  
<http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/civil+law/powers+of+attorney+act+2014>.