



Royal Victorian Association of Honorary Justices

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Law Reform Committee

Patron-in-Chief: Professor David de Kretser, AC, Governor of Victoria
Patron: The Right Honourable the Lord Mayor of Melbourne

21 August 2009

Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Sir,

The Royal Victorian Association of Honorary Justices is pleased to make a submission to the Victorian Parliament Law Reform Committee in respect to Powers of Attorney.

Please find our responses to your questions as set out in the attachment marked "A".

Thank you for inviting the Association to respond and we look forward to receiving advice about the outcome of your enquiry in the future.

Yours sincerely,

Garry Runge

Garry Runge JP
President
Royal Victorian Association of Honorary Justices

Attachment "A"

Response to the Victorian Parliament Law reform Committee on Powers of Attorney by the Royal Victorian Association of Honorary Justices (RVAHJ).

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- Should the different types of power of attorney documents, and in particular the formality requirements, the terminology and coverage of these documents, be streamlined? If so, how?

The current system that differentiates the powers is satisfactory. The increase in complexity, which is not onerous, is reflective of the weight of each power and its ability to affect a person's life and circumstance.

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- How should we determine that a donor has capacity to create a legally enforceable document at the time he or she creates a power of attorney?

The single witness for a general power of attorney should be an authorized person. All other powers should require two independent witnesses is satisfactory one of whom must be a person authorized under the evidence act for taking affidavits. This minor change is an increased protection without a significant burden being imposed.

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- How should we determine when a person loses capacity in the context of when an enduring power of attorney is activated?

On application to a medical practitioner and issuance of a certificate unless otherwise predetermined.

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- What powers does a donor grant to an attorney when making a power of attorney?

Present powers as determined by law are sufficient

- What safeguards should there be to ensure that power of attorney documents are not abused – both in relation to the execution and the exercise of powers under these documents?

1. The donor should be able to rescind the power at any time.
2. Any applicant on behalf of the donor may apply for a review
 - The medical decision on capacity
 - The execution of the power
 - The exercise of the power

We would suggest that the application be initiated through an authorized person issuing a certificate that would provide an interim injunction that would halt the exercise of the power and automatically initiate an application for review by the Office of the Public advocate or VCAT. There would need to be a system of priority for applications to be determined given the nature of the power

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