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Law Reform Committee



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Subject Inquiry into Powers of Attorney

In my experience as a lawyer and settlement clerk any attempt to create a standard form Power of Attorney should be kept as simple as possible. Of the many Enduring Powers of Attorney (Financial) I have had to check at settlement (of real estate) I would say about one third have been defective in form (eg. essential paragraph missing) which leads to cancellation of the settlement. Naturally as a result it is important to check the Enduring Power of Attorney (Financial) carefully at settlement, which is very difficult to do considering the time constraints. The same might apply if someone was to go to a bank, or anytime it has to be checked. It does take time to peruse such a lengthy document. The Enduring Power of Attorney (Financial) is perhaps most commonly used for dealings with land and the Titles Office apparently keeps some statistics on dealing refusals however these would not take into account defective Powers of Attorney at settlement stage. An amendment that should be made to the Enduring Power of Attorney (Financial) is to the Certificate of Witnesses where it should ask the witness authorised to witness the signing of statutory declarations to state their qualification. Often the qualification is not stated which leads to settlement being cancelled as the Titles Office will then require a statutory declaration stating their qualification.

Obviously a national form for Powers of Attorney would be good. Other States Powers of Attorney can be long and difficult to check. Of course the previous Victorian form of Enduring Power of Attorney was easier to check and caused less errors (virtually none). I'm sure those that have to check these documents would like a return to the previous form but still with at least one witness with some relevant qualification (eg. legal practitioner). Perhaps also a note could be included on the form saying for information on Powers of Attorney and rights/duties of the attorney refer to [www.....](http://www.vic.gov.au) That would be more streamlined and simplified than the current verbose and lengthy document.

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