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Law Reform Committee

A PERSONAL LATE SUBMISSION TO THE VICTORIAN LAW REFORM
COMMITTEE INQUIRY INTO POWERS OF ATTORNEY

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Personal Background

I write as a lay person with limited experience of the operation of Powers of Attorney

1. Appointment of Attorneys

- Verification that those conferring PA's have full understanding of the consequences of their actions should be more rigorous
- Assurances as to the mental fitness of those conferring PA's should be more rigorous
- Criteria should be established for those being appointed as PA's and such persons should be encouraged to undertake appropriate training so that they understand their responsibilities and their limitations
- Directions are required identifying any persons who should not be nominated as PA's eg perhaps those with certain types of previous convictions, those currently serving prison sentences
- Information should be developed outlining pros and cons of family members or friends being appointed as PA's as opposed to selection of some kind of practicing professional
- Professionals suitable to act as PA's should be identified through a government approved register eg members of the legal profession, accountants, medicos, trustee companies, government officials or bodies, certified financial planners etc
- Consideration should be given to developing training programs for formal certification of those acting as PA's in a professional capacity
- A register be established of those nominating PA's and of PA's themselves, together with details of their nominators
- Persons with a family interest (interested parties) in decisions of the PA should be described in the PA itself

2. Revocation or reassignment of Powers of Attorney

- Clear processes should be developed enabling PA's to be withdrawn, cancelled, or reallocated

3. Conflict of interest

- PA's should have a clear understanding of when they are likely to find themselves making decisions impacted upon by conflicts of interest. Mechanisms should be developed to initiate alternatives to remove PA's from potential conflict of interest situations, or to permit exercise of an alternative decision making process

4. Authentication/Validation

- Current processes suggest the only validation of the authority of a PA occurs when it is presented to a third party for recognition. A formal register or some

other alternative might obviate this, and strengthen confidence in validation of authority

5. Accountability/Reporting

- PA's are accountable to no one but themselves. No checks and balances currently exist to ensure that PA's act with the best interests of the nominator foremost. Some formal reporting describing exercise of their powers, and auditing of these is desirable
- Introduction of appropriate penalties where clear misuse of powers of PA has occurred is essential
- Where financial misuse has occurred, restitution to compensate for improper actions is essential
- A government appointed body or official, eg an Ombudsman should be established to whom aggrieved individuals or organizations may bring complaints about misuse of PA's

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