

“Use it, don’t lose it!”

Powers of Attorney  
Legislative Changes in Victoria

*Kiren Chitkara*

# BACK TO BASICS



## Current Victorian Legislation

- Current legislation for Powers of Attorney is across **three** different Acts:

<i>Part XIA Instruments Act 1958</i>	➤ <i>Enduring Power of Attorney (Financial)</i>
<i>Section 5A Medical Treatment Act 1988</i>	➤ <i>Enduring Power of Attorney (Medical Treatment)</i>
<i>Section 24 Guardianship and Administration Act 1986</i>	➤ <i>Enduring Guardian</i>

- Three different forms, three different witnessing requirements
- Old legislation, out-dated, lack of guidance, confusion

# REQUIREMENT FOR REFORM



- Legislation is old
- Ageing population
- People are living longer and accumulating more wealth as they do so
- Greater opportunity for misuse or mistake
- Requirement for more clarity and direction

# POWERS OF ATTORNEY ACT 2014 – *COMMENCES 1 SEPTEMBER 2015*



- New Act will consolidate the laws in relation to:
  - General Powers of Attorney;
  - Enduring Powers of Attorney (Financial); and
  - Enduring Guardian Power of Attorney.
- Medical Power of Attorney remains.

# POWERS OF ATTORNEY ACT 2014 .... continued



- Clarification of existing legislation
- Directions and obligations of Attorney are noted - **guidance**
- Creation of “Supportive Guardian” role

# CONSIDERATIONS



- Make sure you appoint people who will act ethically!
- Appointment of Attorney is different to that of Executor/Trustee
- Greater / longer term responsibility of Attorney than Executor



# KEY LEARNINGS



1. **Know Your Client!**
2. **Understand and review their capacity:**
  - If they are on the edge of capacity – be proactive!
3. **Understand their commercial structures:**
  - Review control on trust deeds – check Appointor
4. **Understand their family dynamics:**
  - If there are crazy people in the wider family circle ensure control is managed through EPOAs and Will
5. **Avoid the VCAT and Office of Public Advocate!**
  - Non commercial, slow approach!

