

# GOVERNMENT RESPONSE TO THE PARLIAMENT OF VICTORIA LAW REFORM COMMITTEE INQUIRY INTO POWERS OF ATTORNEY REPORT

The Government welcomes the Parliament of Victoria Law Reform Committee's (VPLRC) Report of its Inquiry into Powers of Attorney (the Report).

## Terms of reference

On 4 December 2008, the Legislative Assembly referred terms of reference to the VPLRC to inquire, consider and report on law reforms aimed at strengthening and streamlining powers of attorney (POAs), to enable more Victorians to plan for their future financial, lifestyle and healthcare needs.

The terms of reference asked the VPLRC to review POAs made under the *Instruments Act 1958* (general and enduring POAs for financial and some legal decisions) and the *Guardianship and Administration Act 1986* (enduring POAs (guardianship)). The VPLRC did not review enduring POAs (medical treatment) made under the *Medical Treatment Act 1988*. The VPLRC was asked to consider a number of specific issues:

- the formality requirements for making POAs
- how to establish whether a principal has capacity to create a POA document, and when capacity is lost in relation to the activation of an enduring POA
- the powers that are granted by POAs
- how to minimise abuse of POAs
- whether a registration system for POAs should be introduced.

## Powers of attorney

POAs are legal documents that help people plan for their financial, health and lifestyle needs. They allow a person (in the Report called a 'principal') to choose another person (in the Report called a 'representative') to make decisions on his or her behalf. The Instruments Act provides for two types of powers of attorney:

- general POAs (in the Report proposed in future to be called 'general (non-enduring) powers of attorney') are used where the principal is still capable of making decisions but wants someone else to make decisions for him or her, for example, when the principal is on holiday, and usually operate for a limited time. The representative's powers stop automatically if the principal loses the capacity to make these decisions for himself or herself.
- enduring POAs (in the Report proposed in future to be called 'enduring powers of attorney (financial)') allow the representative to make a wide range of financial and other decisions such as banking or selling property. The representative's powers may start or continue (endure) after the principal loses the capacity to make these decisions for himself or herself.

The Guardianship and Administration Act allows a principal to make an enduring power of guardianship (in the Report proposed in future to be called 'enduring powers of attorney (guardianship)'). This allows the representative to make a range of decisions for the principal, including lifestyle and health care decisions. The representative's

powers start when the principal loses capacity to make these decisions for himself or herself.

The Report notes that Australia's population is ageing with about 13.2% of the population aged 65 years and over in 2008, projected to increase to 20.8% by 2046. An ageing population is associated with a high prevalence of severe disability and dementia as well as a growing concentration of wealth and assets which puts older people at greater risk of abuse. The Government is committed to preventing elder abuse and encourages people to make POAs to help them plan for the possibility of an accident or illness in the future, when they may be unable to make a decision for themselves. An ageing population means that POAs can potentially benefit many more people in the future.

### **Government Response to the Report**

The VPLRC's Report makes a number of key findings and 90 recommendations. The comprehensive Report notes that POAs are not as widely understood, used and recognised as they could be and may be subject to abuse. The Report's recommendations aim to make POAs accessible to more Victorians and ensure safeguards protect principals from abuse whilst not deterring people from entering into these arrangements. The VPLRC's key recommendations include simplifying the requirements for making POAs, raising awareness of POAs through education, providing guidance on assessing capacity, implement safeguards to minimise abuse of POAs and introducing a registration system.

Following the tabling of the Report on 31 August 2010, the Department of Justice (DOJ) conducted consultations with key stakeholders impacted by the Report including the Office of the Public Advocate (OPA); Departments of Premier and Cabinet, Treasury and Finance, Planning and Community Development, Human Services, Health, and Sustainability and Environment (Land Victoria); Registry of Births, Deaths and Marriages; Privacy Victoria; State Trustees Limited; Victorian Civil and Administrative Tribunal (VCAT); the Law Institute of Victoria; Victorian Bar; Seniors Rights Victoria and Council on the Ageing Victoria.

The Government Response takes into account the key findings and recommendations made by the VPLRC and the views of key stakeholders consulted by DOJ. The Government Response seeks to strike the appropriate balance between providing better safeguards against abuse while ensuring that people are not deterred from entering into these arrangements. The Government Response indicates either 'support' for a VPLRC recommendation; 'support in principle' for a recommendation with consideration of some elements of the recommendation needed; or 'further consideration' for a recommendation which requires closer examination before a determination is made whether to support it.

The Government Response notes that further consideration will be given at a later stage to a number of VPLRC recommendations where there is overlap with related projects. In particular, there is likely to be considerable overlap between the POA Act and capacity recommendations in the VPLRC Report and the outcomes of the Victorian Law Reform Commission's (VLRC) review of the Guardianship and Administration Act. In implementing the reforms, the Government will also give consideration to the interaction of the recommendations with existing laws.

## **The Report's recommendations**

### *(a) Formality requirements for making POA*

The VPLRC found that the complexity of the formality requirements for making POAs is a major barrier to more Victorians making these arrangements. Many Victorians find the different requirements for making a POA confusing. State-based laws provide no guarantee that Victorian POAs will be recognised in other Australian jurisdictions.

The VPLRC recommends a new consolidated POA Act to provide a simple and consistent framework, underpinned by a statement of principles and new simplified forms. It also recommends that Victoria implement a best practice model and advocate for uniform national POA laws through the Standing Committee of Attorneys-General (SCAG).

The Government's Response is to support a best practice model for POA laws, seek uniform national POA laws and mutual recognition of POAs through SCAG and to support in principle a new consolidated POA Act.

### *(b) Powers granted by POA*

The VPLRC found there is a lack of community awareness and understanding of the powers granted by POAs and an ad hoc approach to providing information, education and advice about POAs. POAs are not as widely used by Victorians as they could be, with only about 11 percent of the population having an enduring POA. POAs are also not widely recognised by service providers such as banks and government agencies.

The Government Response supports in principle providing coordinated information and education to increase Victorians' recognition of POAs and encourage better detection and reporting of abuse. The Government Response notes that further consideration will be given to promoting access to legal advice and assistance to those wishing to create POAs and whether the POA Act should regulate representatives making gifts of the principal's property.

### *(c) How to establish decision-making capacity*

The VPLRC found that the concept of capacity is central to POAs. However, there are no definitions of capacity or impaired decision-making capacity in the Acts. There are also no guidelines on how to establish whether a person has capacity to make a POA and when a person has impaired decision-making capacity to activate an enduring POA. The VPLRC noted that the VLRC is considering capacity extensively as part of its current review of the Guardianship and Administration Act and urged the VLRC to take its findings and recommendations about capacity into account.

The Government Response supports the VPLRC recommendation that a new POA Act include a presumption of capacity. It supports in principle the new Act including a definition of capacity and impaired decision-making capacity and principles to guide capacity assessments, as well as the development of a comprehensive capacity resource for the assessment of capacity.

### *(d) How to minimise abuse of POA*

The VPLRC noted that the extent of abuse of POAs, often perpetrated by family members, is unknown as it is rarely detected or reported. At present, the use of a POA by a representative has few regulatory safeguards and it can be difficult to recover assets, seek compensation or have criminal sanctions imposed for abuse of a POA.

However, the VPLRC considers that the benefits that POAs offer vastly outweigh the risk of abuse.

The Government Response supports in principle strengthening representative and witness requirements and support, and requiring written revocation of POAs. It also supports in principle the POA Act creating new criminal offences for abuse of POAs and empowering VCAT to revoke a representative's appointment where he or she has not acted in the principal's best interests and to order a representative to compensate a principal for any loss as a result of the abuse of an enduring POA.

The Government Response indicates that further consideration will be given to the recommendation that principals be allowed to appoint personal monitors, whether OPA is the appropriate body to receive reports of suspected abuse of POAs and whether the POA Act should provide for VCAT referring cases of suspected abuse to the Director of Public Prosecutions.

*(e) Whether to introduce a registration system for POA*

The VPLRC noted that no registration system exists for POAs in Victoria, however, most other states and territories provide for registration, particularly for POAs relating to land. This creates difficulties in locating, verifying and validating POAs made in Victoria.

The VPLRC found overwhelming support for a registration system and recommends mandatory registration of all documents making or revoking an enduring POA at the time of creation, and that the register be located at the Registry of Births, Deaths and Marriages. The VPLRC was of the view that the strategic design of the register should address concerns about privacy, costs and imposing an onerous bureaucratic process.

The Government Response supports in principle developing and implementing a register for POAs and promoting and supporting a national register of POAs through SCAG, subject to further consideration of the complex issues involved in the design and operation of a register, including costs. In particular, the Government Response notes that further consideration will be given to the mandatory registration of some or all documents creating and revoking enduring POAs for financial or guardianship matters, how to ensure the privacy of principals' information is protected and the location of a register. The position in other Australian jurisdictions will also need to be further considered given the desire for harmonisation.

The Government recognises the important contribution made by the many participants in the VPLRC's Inquiry. The VPLRC's recommendations provide a framework to make POAs more accessible and implement safeguards to ensure that principals' rights are protected to the maximum extent possible. With the population rapidly ageing and increasing rates of dementia and other disability, POAs have the potential to provide benefits to more Victorians. This Government Response sets out the Government's commitment to strengthening and streamlining POAs to assist Victorians to plan for their future financial, lifestyle and healthcare needs.

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INQUIRY INTO POWERS OF ATTORNEY REPORT**

RECOMMENDATION	GOVERNMENT RESPONSE
<b>Chapter 3: A legislative framework for powers of attorney</b>	
<p><b>Recommendation 1: A Powers of Attorney Act</b></p> <p>The Committee recommends the Victorian Government draft a Powers of Attorney Act which contains all laws about general (non-enduring) powers of attorney, enduring powers of attorney (financial) and enduring powers of attorney (guardianship).</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle a new Powers of Attorney (POAs) Act to provide a consolidated framework for general POAs and enduring POAs in relation to financial and guardianship matters. In this respect, the Government will also consider the outcomes of the review of the Guardianship and Administration Act (Guardianship review) currently being undertaken by the Victorian Law Reform Commission (VLRC).</p>
<p><b>Recommendation 2: National harmonisation of power of attorney laws</b></p> <p>The Committee recommends the Victorian Government, through the Standing Committee of Attorneys-General (SCAG), actively promote and support national harmonisation of power of attorney laws.</p>	<p><b>Support</b></p> <p>The Government supports working through SCAG to promote and support the harmonisation of POA laws across all Australian states and territories.</p>
<p><b>Recommendation 3: Founding principles of the Powers of Attorney Act</b></p> <p>The Committee recommends the Powers of Attorney Act contain a statement of principles that must be applied by all those exercising powers or functions under the Act in relation to a person with impaired decision-making capacity. The principles should include that those persons must exercise their powers and functions in relation to a principal with impaired decision-making capacity:</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act containing a statement of principles including principles of least restriction and supported decision-making to be applied by representatives exercising powers or functions for a person with impaired decision-making capacity. The Government will also consider the outcomes of the VLRC's Guardianship review.</p>

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<ul style="list-style-type: none"> <li>in a way that is as least restrictive of the principal's freedom of decision and action as is possible in the circumstances</li> <li>so that the principal is provided with appropriate support to allow him or her to exercise his or her legal capacity to the maximum extent possible.</li> </ul>	
<p><b>Recommendation 4: Consistent names for documents and powers</b></p> <p>The Committee recommends the Powers of Attorney Act call the power of attorney documents and the powers created under them 'general (non-enduring) power of attorney', 'enduring power of attorney (financial)' and 'enduring power of attorney (guardianship)'.</p>	<p><b>Support</b></p> <p>The Government supports the use of consistent names for documents and powers such as general (non-enduring) POAs and enduring POAs (financial) or (guardianship). The Government will also consider the outcomes of the VLRC's Guardianship review which will consider enduring POAs (guardianship).</p>
<p><b>Recommendation 5: Consistent names for parties to a power of attorney</b></p> <p>The Committee recommends the Powers of Attorney Act:</p> <ol style="list-style-type: none"> <li>call a person who creates all types of powers of attorney a 'principal'</li> <li>call a person appointed to exercise powers under all types of powers of attorney a 'representative'.</li> </ol>	<p><b>Support in principle</b></p> <p>The Government supports in principle the use of simple and consistent names for parties to a POA to facilitate understanding of the different parties. Common terms used in other jurisdictions are 'donor' and 'principal' for a person making a POA and an 'attorney' or 'donee' for a person appointed to represent that person in relation to financial matters. An 'appointor', 'principal', or 'donor' is used by a person making an enduring POA (guardianship) and more commonly 'an enduring guardian' for a person acting on his or her behalf. The Government will further consider whether the use of the generic term 'representative' may complicate the process of national harmonisation, as well as consider the outcomes of the VLRC's Guardianship review.</p>
<p><b>Recommendation 6: Reviewing the Powers of Attorney Act</b></p> <p>The Committee recommends the Victorian Government commission an evaluation of the new Powers of Attorney Act after it has been in operation for</p>	<p><b>Further consideration</b></p> <p>The Government supports the future review of a new POA Act to ensure it is meeting its objectives. However, the Government will give further consideration to when a review</p>

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five years, to determine whether it has been effective in meeting its objectives.	should take place, such as specifying a set period for review or review of the Act when required.
<b>Chapter 4: Creating a power of attorney</b>	
<p><b>Recommendation 7: Consolidated enduring powers of attorney document</b></p> <p>The Committee recommends the Victorian Government develop a consolidated document comprising a single form or package of forms for creating enduring powers of attorney (financial) and enduring powers of attorney (guardianship). This should allow different representatives to be appointed for different powers.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the development of a consolidated document comprising a form or forms for creating enduring POAs for financial and/or guardianship matters, allowing different representatives to be appointed for different powers. This will provide a more streamlined process to encourage more people to make POAs.</p> <p>The Government will give further consideration in designing the consolidated document to whether, for example, there should continue to be a single form for enduring POAs (financial) and explanatory material, in addition. The Government will also consider the outcomes of the VLRC’s Guardianship review and consult with key stakeholders.</p>
<p><b>Recommendation 8: General (non-enduring) power of attorney form</b></p> <p>The Committee recommends the Victorian Government develop a new form for creating general (non-enduring) powers of attorney. This form should highlight that the power ceases to operate when a principal has impaired decision-making capacity.</p>	<p><b>Support</b></p> <p>The Government supports the development of a new form for creating general (non-enduring) POAs, highlighting that the power operates whilst the principal has capacity.</p>
<p><b>Recommendation 9: Developing new power of attorney forms</b></p> <p>The Committee recommends the Victorian Government:</p>	<p><b>Support in principle</b></p> <p>The Government supports the development of new POA forms in consultation with stakeholders. The Government will give further consideration to when the forms will be</p>

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<p>a) in consultation with a wide range of stakeholders, including members of the community and representatives from the legal profession, the health and community sectors, seniors organisations and culturally and linguistically diverse communities, draft new power of attorney forms that are short, simple, written in plain English and provide appropriate information about how to complete the forms. The forms should have a consistent design</p> <p>b) widely test the draft power of attorney forms</p> <p>c) review the new power of attorney forms two years after they are implemented, and every five years thereafter.</p>	<p>reviewed.</p>
<p><b>Recommendation 10: Producing power of attorney forms and accompanying information in community languages</b></p> <p>The Committee recommends the Victorian Government:</p> <p>a) make the new power of attorney forms available in a range of community languages. The translated forms should be in a bilingual format, including both English and each community language</p> <p>b) make all information and educational materials about powers of attorney available in a range of community languages.</p>	<p><b>Support</b></p> <p>The Government supports new POA forms, information and educational materials being available in a range of community languages and the forms being available in a bilingual format with English and the community language.</p>

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<p><b>Recommendation 11: Powers of attorney to be in the prescribed form</b></p> <p>The Committee recommends the Powers of Attorney Act provide that all powers of attorney made under the Act must be in the prescribed form.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle that the POA Act provide that all powers made under the Act be in the prescribed form to provide consistency. The Government will give further consideration to whether a document that is to the like effect of a prescribed form should be considered sufficient without the need to apply to VCAT.</p>
<p><b>Recommendation 12: Location of prescribed power of attorney forms</b></p> <p>The Committee recommends the Powers of Attorney Act set out the forms for creating general (non-enduring) powers of attorney, enduring powers of attorney (financial) and enduring powers of attorney (guardianship).</p>	<p><b>Support</b></p> <p>The Government supports the POA Act setting out the forms for creating general (non-enduring) POAs and enduring POAs in relation to financial and/or guardianship matters, to enable the forms to be easily located.</p>
<p><b>Recommendation 13: Making power of attorney forms accessible</b></p> <p>The Committee recommends the Victorian Government make the forms for creating all powers of attorney widely available both online and in hard copy.</p>	<p><b>Support</b></p> <p>The Government supports the forms for creating all POAs to be widely available both online and in hard copy. The Government will also give further consideration (see recommendation 11) to whether a document creating a POA must be in the prescribed form.</p>
<p><b>Recommendation 14: The role of witnesses of power of attorney documents</b></p> <p>The Committee recommends the Powers of Attorney Act provide that each witness to a power of attorney must certify that:</p> <p>a) the principal has signed the power of attorney freely and voluntarily in the witness's presence</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle that the POA Act set out the certification role of witnesses to POAs to provide consistency and guidance to witnesses. The Government will give further consideration to whether witnesses must certify that the principal signed the document freely and voluntarily in the witness's presence and that the principal 'appears to have capacity' or whether modifications should be made to these requirements.</p>

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<p>b) the principal appears to have capacity and, in particular, appears to understand the nature and effect of the power of attorney.</p>	
<p><b>Recommendation 15: Who may witness a power of attorney document?</b></p> <p>The Committee recommends the Powers of Attorney Act require all power of attorney documents to be witnessed by two witnesses, one of whom is authorised to witness affidavits or is a medical practitioner.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle that all POAs should have two witnesses with appropriate qualifications. The Government will further consider issues related to limiting authorised witnesses.</p>
<p><b>Recommendation 16: Excluding parties and their relatives from witnessing power of attorney documents</b></p> <p>The Committee recommends:</p> <p>a) the Powers of Attorney Act prohibit the following persons from witnessing a power of attorney document:</p> <ul style="list-style-type: none"> <li>- a party to the document</li> <li>- any person who could benefit from the document</li> </ul> <p>b) the Powers of Attorney Act define a person who could benefit from the power of attorney document. This definition should be broad and include a relative of a party to the document</p> <p>c) the forms for creating all powers of attorney require each witness to declare that he or she is not a party to the document and is not related to any party to the document.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act excluding a party to a POA and any person who could benefit from a POA, witnessing POAs. The Government also supports in principle the forms creating POAs requiring a witness to declare he or she is not a party or related to any party to a document. The Government will further consider how to define a person who could benefit from a POA, including a relative of a party to a POA.</p>

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<p><b>Recommendation 17: Witnessing by a representative’s employees</b></p> <p>The Committee recommends the Powers of Attorney Act clarify that a person is not excluded from witnessing a power of attorney document merely because he or she is an employee of the representative who witnesses the document while acting in the ordinary course of employment.</p>	<p><b>Support</b></p> <p>The Government supports the POA Act clarifying that a person who is an employee of the representative who witnesses a POA is not excluded from witnessing POAs, while acting in the ordinary course of employment.</p>
<p><b>Recommendation 18: Authorised witness to state the basis of his or her qualification to witness the document</b></p> <p>The Committee recommends the forms for creating all powers of attorney require the authorised witness to state the basis of his or her qualification to witness the document.</p>	<p><b>Support</b></p> <p>The Government supports an authorised witness stating the basis of his or her qualification to witness a POA.</p>
<p><b>Recommendation 19: Power of attorney forms to emphasise the role and obligations of witnesses</b></p> <p>The Committee recommends that the forms for creating powers of attorney include information about the role and obligations of witnesses.</p>	<p><b>Support</b></p> <p>The Government supports the POA forms including information about the role and obligations of witnesses.</p>
<p><b>Recommendation 20: Education, training and resources for witnesses</b></p> <p>The Committee recommends the Victorian Government, in conjunction with relevant professional organisations, develop and provide:</p> <p>a) practical resources to help witnesses fulfil their role, including checklists to assess a principal’s understanding of the nature and effect of the document and information about how to identify</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate education, training and information resources relating to POAs. This may include working in conjunction with relevant professional organisations to develop and provide practical resources, education and training for authorised witnesses about their role.</p>

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<p>evidence of duress and evidence that may displace the presumption of capacity</p> <p>b) education and training for authorised witnesses about their role.</p>	
<p><b>Recommendation 21: Resources for principals</b></p> <p>The Committee recommends the Victorian Government provide simple, easy-to-understand information and educational materials for people making and contemplating making powers of attorney.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate education, training and information resources relating to POAs including simple, easy-to-understand information and educational materials for people making and contemplating making POAs.</p>
<p><b>Recommendation 22: Legal support and advice for people wishing to make powers of attorney</b></p> <p>The Committee recommends the Victorian Government implement a scheme to support and enable members of the community to access legal advice and assistance to create powers of attorney.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to options to promote access to legal advice and assistance to create POAs for members of the community.</p>

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<p><b>Recommendation 23: Acceptance of appointment by representatives</b></p> <p>The Committee recommends the Powers of Attorney Act:</p> <ul style="list-style-type: none"> <li>a) require all representatives to formally accept their appointment</li> <li>b) require representatives' acceptance of appointment to be witnessed by a person authorised to witness affidavits. This witness does not need to be the same person who witnessed the creation of the power of attorney document by the principal.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle that all representatives should formally accept their appointment, subject, however, to further consideration as to how the representatives' acceptance of the appointment should be witnessed and whether any exceptions should apply.</p>
<p><b>Recommendation 24: Dispensing with formal execution requirements</b></p> <p>The Committee recommends the Powers of Attorney Act provide that VCAT may declare valid an enduring power of attorney (financial) or enduring power of attorney (guardianship) document that does not meet the formal requirements, if satisfied that the principal intended the document to be such a power of attorney, that the principal had the necessary capacity to make a power of attorney and that the principal signed the document freely and voluntarily.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act allowing VCAT to declare valid an enduring POA for financial or guardianship matters that does not meet the formal requirements, such as not in the prescribed form, if satisfied that the principal intended the document to be a POA, had capacity and signed the document freely and voluntarily. The Government will further consider issues relating to the application of this provision, such as to revocations.</p>

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<p><b>Recommendation 25: Time of activation of an enduring power of attorney</b></p> <p>The Committee recommends the Powers of Attorney Act provide:</p> <ul style="list-style-type: none"> <li>a) a principal may elect to make an enduring power of attorney (financial) or enduring power of attorney (guardianship) effective immediately or upon another date, event or occasion</li> <li>b) if a principal does not specify when an enduring power commences, it commences immediately.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that a principal may elect to make an enduring POA for financial or guardianship matters effective immediately or upon another date, event or occasion. The Government notes that this will provide consistency between different enduring POAs. The Government will give further consideration to the POA Act providing that if a principal does not specify when an enduring power commences, it commences immediately.</p>
<p><b>Recommendation 26: Revoking a power of attorney document</b></p> <p>The Committee recommends the Powers of Attorney Act:</p> <ul style="list-style-type: none"> <li>a) provide that the revocation of all powers of attorney made under the Act must be in writing in the approved form</li> <li>b) set out an approved form for revoking a power of attorney</li> <li>c) provide that the revocation of a power of attorney must be witnessed in the same way as a document creating a power of attorney.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that the revocation of a POA must be in writing in the approved form and witnessed in the same way as a document creating a POA, to provide consistency and certainty, subject, however to further consideration of the need for some flexibility in the requirement for an approved revocation form and of the liability of the representative if the representative continues to act under the POA after being given an oral instruction by the principal to cease acting.</p>
<p><b>Recommendation 27: A later enduring power of attorney document revokes an earlier one</b></p> <p>The Committee recommends:</p>	<p><b>Support</b></p> <p>The Government supports the recommendation that the POA Act provide that unless the principal specifies otherwise, a later enduring power for financial or guardianship matters revokes an earlier enduring power. The forms for creating an enduring POA</p>

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<p>a) the Powers of Attorney Act provide that, unless a principal specifies otherwise, a later enduring power of attorney (financial) will revoke an earlier enduring power of attorney (financial) and a later enduring power of attorney (guardianship) will revoke an earlier enduring power of attorney (guardianship)</p> <p>b) the forms for creating enduring powers of attorney allow a principal to specify any previous enduring powers of attorney that the principal does not wish to revoke.</p>	<p>should allow a principal to specify any previous enduring POA that he or she does not wish to revoke.</p>
<p><b>Recommendation 28: Informing representatives that a power of attorney has been revoked</b></p> <p>The Committee recommends the Powers of Attorney Act provide that if a principal revokes a power of attorney, the principal must take reasonable steps to inform all representatives that the power has been revoked.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that if a principal revokes a POA, he or she must take reasonable steps to inform all representatives that the power has been revoked. In implementing this recommendation, the Government will give further consideration to what ‘reasonable steps’ would need to be taken by a principal.</p>
<p><b>Recommendation 29: Effect of guardianship or administration order</b></p> <p>The Committee recommends the Powers of Attorney Act provide:</p> <p>a) if VCAT makes an administration order in relation to a principal, the representative may exercise power under an enduring power of attorney (financial) only to the extent authorised by the Tribunal</p> <p>b) if VCAT makes a guardianship order in relation to a principal, the representative may exercise power under an enduring power of attorney (guardianship) only to the extent authorised by the</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that if VCAT makes an administration or guardianship order in relation to a principal, the representative may exercise power under an enduring POA in relation to financial or guardianship powers respectively, only to the extent authorised by VCAT. The Government will give further consideration to clarifying the nature of this power including the exception where the representative is expressly authorised by VCAT to exercise power and the status of any power that would have been exercisable but for the VCAT order, once the order is revoked.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
Tribunal.	
<p><b>Recommendation 30: Certified copies of power of attorney documents</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a power of attorney document can be proved by a copy of the document that is certified as a true and complete copy of the original by a legal practitioner, financial services licensee, regulated principal under the Corporations Act, justice of the peace, public notary or any other officer authorised by law to administer an oath or by a person of a prescribed class.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that a POA can be proved by a copy of a document that is certified as a true and complete copy of the original to provide consistency. The Government will give further consideration to who may certify the POA.</p>
<p><b>Recommendation 31: Making sure powers of attorney can be located when needed</b></p> <p>The Committee recommends the Victorian Government produce and distribute promotional materials such as wallet cards that can be used to inform people about the existence of a power of attorney and provide basic information such as representatives' names and contact details.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing materials such as wallet cards that can be used to inform people about the existence of a POA and provide basic information, such as representatives' details.</p>
<p><b>Recommendation 32: Mutual recognition of powers of attorney</b></p> <p>The Committee recommends:</p> <ul style="list-style-type: none"> <li>a) the Victorian Government, through the Standing Committee of Attorneys-General, actively promote and support the implementation of effective mutual recognition provisions for all enduring powers of attorney</li> <li>b) the Powers of Attorney Act provide, to the maximum extent possible, for recognition in Victoria of all power of attorney</li> </ul>	<p><b>Support</b></p> <p>The Government supports actively promoting and supporting the implementation of effective mutual recognition provisions for all enduring POAs through SCAG. The Government also supports the POA Act providing for recognition in Victoria of all POAs validly executed in another Australian jurisdiction, to the maximum extent possible.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
documents validly executed in another Australian state or territory.	
<b>Chapter 5: Capacity</b>	
<p><b>Recommendation 33: Presumption of capacity</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a person is presumed to have capacity to make his or her own decisions.</p>	<p><b>Support</b></p> <p>The Government supports the POA Act providing that a person is presumed to have capacity to make his or her own decisions.</p>
<p><b>Recommendation 34: Defining capacity and impaired decision-making capacity</b></p> <p>The Committee recommends the Powers of Attorney Act:</p> <p>a) state that a person has capacity to make a decision if he or she has:</p> <ul style="list-style-type: none"> <li>- the ability to understand the information relevant to making the decision</li> <li>- the ability to retain the relevant information</li> <li>- the ability to weigh up the relevant information</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>- the ability to communicate the decision in some way.</li> </ul> <p>b) state that a person has impaired decision-making capacity if, in</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act defining capacity and impaired decision-making capacity to provide clear guidance and consistency. In considering this recommendation, it will be important to take account of the relevant recommendations in the VLRC’s Guardianship review.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p>relation to a decision, he or she does not have:</p> <ul style="list-style-type: none"> <li>- the ability to understand the information relevant to making the decision</li> <li>- the ability to retain the relevant information</li> <li>- the ability to weigh up the relevant information</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>- the ability to communicate the decision in some way.</li> </ul>	
<p><b>Recommendation 35: Principles to guide capacity assessments</b></p> <p>The Committee recommends the statement of principles underpinning the Powers of Attorney Act recommended in recommendation 3 include principles to guide capacity assessments. These principles should include:</p> <ul style="list-style-type: none"> <li>• capacity is specific to each decision to be made</li> <li>• impaired decision-making capacity may be temporary or permanent</li> <li>• capacity should not be assumed based on a person’s appearance</li> <li>• a person must not be presumed to have impaired decision-making capacity merely because he or she makes a decision that is, in the opinion of others, unwise</li> <li>• a person should not be treated as unable to make a decision if it is possible for him or her to make that decision with appropriate</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle a statement of principles underpinning the POA Act to include principles to guide capacity assessments. In this regard, the Government will also consider the outcomes of the VLRC’s Guardianship review.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
support.	
<p><b>Recommendation 36: Capacity resource</b></p> <p>The Committee recommends the Victorian Government, in consultation with a wide range of stakeholders, including representatives from the legal and health care sectors, develop a comprehensive resource about capacity and capacity assessments, based on the New South Wales <i>Capacity toolkit</i>.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing a resource to assist in relation to capacity and capacity assessments. The Government will also consider the outcomes of the VLRC’s Guardianship review.</p>
<p><b>Chapter 6: The role of representatives</b></p>	
<p><b>Recommendation 37: Providing guidance about appropriate representatives</b></p> <p>The Committee recommends the Victorian Government provide simple, easy-to-understand information and educational materials for principals, and persons likely to advise principals, which includes information about the sorts of skills representatives require and guidance about appropriate appointments.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, including for principals, and persons likely to advise principals.</p>
<p><b>Recommendation 38: Excluding unsuitable representatives</b></p> <p>The Committee recommends the Powers of Attorney Act provide:</p> <ul style="list-style-type: none"> <li>a) a person is not eligible to be appointed as a representative under an enduring power of attorney (financial) if he or she has previously been convicted of an offence involving dishonesty</li> <li>b) a principal is entitled to apply to VCAT for approval to appoint as a representative under an enduring power of attorney (financial) a</li> </ul>	<p><b>Support</b></p> <p>The Government supports the POA Act excluding unsuitable people from being appointed as representatives, including people who have previously been convicted of an offence involving dishonesty.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p>person who has previously been convicted of an offence involving dishonesty</p> <p>c) when accepting an appointment as a representative, a person must declare that he or she is eligible to be appointed as a representative</p> <p>d) a person who accepts an appointment as a representative when he or she is not eligible, is guilty of an offence.</p>	
<p><b>Recommendation 39: Appointing multiple representatives</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a principal may appoint one or more representatives.</p>	<p><b>Support</b></p> <p>The Government supports the POA Act providing that a principal may appoint one or more representatives.</p>
<p><b>Recommendation 40: Decision making by multiple representatives</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a principal can appoint multiple representatives to act jointly, jointly and severally, or in any combination, for example as a majority. This provision should apply to powers of attorney made prior to the commencement of this provision.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that a principal can appoint multiple representatives to act jointly, jointly and severally, or in any combination. The Government will give further consideration to the application of this provision to POAs retrospectively.</p>
<p><b>Recommendation 41: VCAT directions when representatives cannot agree</b></p> <p>The Committee recommends the Powers of Attorney Act provide that representatives can apply to VCAT for directions when they cannot agree about a decision to be made in relation to the exercise of their power under an enduring power of attorney (financial) or an enduring power of attorney (guardianship).</p>	<p><b>Support</b></p> <p>The Government supports the POA Act providing that representatives can apply to VCAT for directions when they cannot agree about a decision to be made in relation to an enduring POA for financial or guardianship matters.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 42: Presumption that representatives are appointed jointly</b></p> <p>The Committee recommends the Powers of Attorney Act provide that if a principal does not specify how two or more representatives are appointed, they are presumed to be appointed jointly.</p>	<p><b>Support</b></p> <p>The Government supports the POA Act providing that if a principal does not specify how two or more representatives are appointed, they are presumed to be appointed jointly.</p>
<p><b>Recommendation 43: Effect of one joint representative's power ending</b></p> <p>The Committee recommends the Powers of Attorney Act provide that, unless the power of attorney document states otherwise, when a joint representative's power ends, any remaining representative or representatives may continue to exercise power under the power of attorney document.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to whether the POA Act should provide that when a joint representative's power ends, any remaining representatives may continue to exercise power unless the POA states otherwise.</p>
<p><b>Recommendation 44: Appointing multiple alternative representatives</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a principal may appoint one or more alternative representatives. This provision should apply to powers of attorney made prior to the commencement of this provision.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that a principal may appoint one or more alternative representatives. The Government will give further consideration to the application of this provision to POAs retrospectively.</p>
<p><b>Recommendation 45: Relinquishing power to an alternative representative</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a representative can relinquish all powers under an enduring power of attorney to an alternative representative nominated in the enduring power of attorney document by providing a signed notice stating that the representative is not willing to act in that role to the alternative representative and to the body responsible for registering enduring power of attorney documents.</p>	<p><b>Support</b></p> <p>The Government supports the POA Act providing that a representative can relinquish all powers under an enduring POA to an alternative representative nominated in the enduring POA document by providing a signed notice to the alternative representative and to the registration body.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 46: Legislated clarity about representatives' powers</b></p> <p>The Committee recommends the Powers of Attorney Act:</p> <ul style="list-style-type: none"> <li>a) provide that representatives appointed under an enduring power of attorney (financial) have powers in relation to financial and legal matters</li> <li>b) provide that representatives appointed under an enduring power of attorney (guardianship) have powers in relation to guardianship matters</li> <li>c) define 'financial and legal matters' and 'guardianship matters' and give examples of the type of matters that a representative may deal with under each power.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act clarifying respective representatives' powers under enduring POAs. The Government will give further consideration to how best to achieve this.</p>
<p><b>Recommendation 47: Decision of representative with guardianship powers to prevail</b></p> <p>The Committee recommends the Powers of Attorney Act provide that if there is conflict between a representative with powers in relation to guardianship matters (whether appointed by VCAT or a principal) and a representative with powers in relation to financial and legal matters, then the decision of the representative with powers in relation to guardianship matters prevails, and the representative with powers in relation to financial and legal matters must take such available steps as may be necessary to allow the decision of the representative with powers in relation to guardianship matters to be implemented.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to the best manner of resolving conflicts between representatives holding different powers.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 48: The duties of representatives</b></p> <p>The Committee recommends the Powers of Attorney Act:</p> <ul style="list-style-type: none"> <li>a) provide that representatives have duties to act honestly and in good faith, to put the principal's interests ahead of the representative's interests, to keep accurate records and to act within their powers</li> <li>b) require representatives to undertake to act in accordance with the legislated duties when accepting an appointment as a representative.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act setting out the duties of representatives along the lines recommended by the VPLRC, subject to further consideration of the nature of the duties.</p>
<p><b>Recommendation 49: Principles to guide decision making by representatives</b></p> <p>The Committee recommends the statement of principles underpinning the Powers of Attorney Act recommended in recommendation 3 include principles to guide decision making by representatives. These principles should include:</p> <ul style="list-style-type: none"> <li>• the starting point for any decision making should be the principal's wishes</li> <li>• principals should be encouraged to participate in decision making, even when they have impaired decision-making capacity</li> <li>• representatives must act in a way that promotes the personal and social wellbeing of the principal. This should be defined as including matters such as recognising the principal's role as a valued member of society, taking into account the principal's existing supportive relationships, values and cultural and linguistic environment and recognising the principal's right to confidentiality of information.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the statement of principles underpinning the POA Act to include principles to guide decision making by representatives. The Government will give further consideration to the specification of these principles.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 50: Representatives’ undertaking to act in accordance with the statement of principles</b></p> <p>The Committee recommends the Powers of Attorney Act require representatives when accepting an appointment to undertake to act in accordance with the statement of principles.</p>	<p><b>Support</b></p> <p>The Government supports the POA Act requiring representatives when accepting an appointment to undertake to act in accordance with the statement of principles.</p>
<p><b>Recommendation 51: Educating and supporting representatives</b></p> <p>The Committee recommends:</p> <ul style="list-style-type: none"> <li>a) the forms for creating powers of attorney and accepting an appointment as a representative set out in the Powers of Attorney Act provide a summary of representatives’ powers and duties</li> <li>b) the Victorian Government produce simple, easy-to-understand information and educational materials for representatives</li> <li>c) the Victorian Government provide advice and ongoing support to representatives, including through a telephone advice service and information sessions for new representatives.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, including representatives’ powers and duties being summarised in the POA forms.</p>
<p><b>Recommendation 52: Remuneration of representatives</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a representative is not entitled to be paid unless payment is specifically authorised by the power of attorney document.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that a representative is not entitled to be paid unless payment is authorised by the POA. The Government will give further consideration to exceptions, such as where payment is authorised by legislation or the representative is engaged in a professional capacity.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<b>Chapter 7: Protecting principals from abuse</b>	
<p><b>Recommendation 53: Increasing detection and reporting of abuse</b></p> <p>The Committee recommends the Victorian Government:</p> <ul style="list-style-type: none"> <li>a) develop and implement protocols and training for professionals in the health, aged care and community sectors about detecting and reporting abuse of powers of attorney</li> <li>b) work in conjunction with the Australian Government, other jurisdictions and the banking and finance sector to develop and implement a national system for detecting and reporting suspected financial abuse and a training program for banking staff.</li> </ul>	<p><b>Further consideration</b></p> <p>The Government will further consider options for achieving in the most effective and efficient manner the objectives of this recommendation.</p>
<p><b>Recommendation 54: Protecting whistleblowers</b></p> <p>The Committee recommends the Powers of Attorney Act provide protection from civil and criminal liability for people who, in good faith, report abuse of powers of attorney.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to the POA Act providing protection from criminal and civil liability for people who in good faith, report abuse of POAs.</p>
<p><b>Recommendation 55: Educating the general community about abuse</b></p> <p>The Committee recommends the Victorian Government develop and implement an education campaign to increase general community awareness about abuse of powers of attorney.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, which may include resources to increase general community awareness about the potential for abuse of POAs.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 56: Office of the Public Advocate to receive reports of abuse</b></p> <p>The Committee recommends the Victorian Government empower the Office of the Public Advocate to receive reports of suspected abuse of powers of attorney.</p>	<p><b>Further consideration</b></p> <p>The Government recognises the need for effective and accessible remedies for suspected abuse of POAs, but will give further consideration to whether the Office of the Public Advocate (OPA) is the most appropriate body to receive reports of suspected abuse of POAs.</p>
<p><b>Recommendation 57: Personal monitors</b></p> <p>The Committee recommends:</p> <ul style="list-style-type: none"> <li>a) the Powers of Attorney Act provide that a principal may appoint one or more personal monitors to oversee the operation of an enduring power of attorney (financial) or an enduring power of attorney (guardianship)</li> <li>b) the Victorian Government produce simple, easy-to-understand information and educational materials for personal monitors.</li> </ul>	<p><b>Further consideration</b></p> <p>The Government will give further consideration as to whether the POA Act should provide that a principal may appoint one or more personal monitors to oversee the operation of enduring POAs in relation to financial or guardianship matters and if so, consider also the provision of information resources for personal monitors.</p> <p>While this recommendation has potential benefits, issues that require further consideration include:</p> <ul style="list-style-type: none"> <li>• the potential powers, duties and liability of a personal monitor, including whether a monitor should oversee every decision, or receive notice of significant transactions such as selling the family home, allegations of abuse, registration and activation</li> <li>• whether a personal monitor would help prevent abuse of POAs.</li> </ul>
<p><b>Recommendation 58: Regulating gifts</b></p> <p>The Committee recommends the Powers of Attorney Act provide that a representative can make a gift of the principal's property, including to the representative, only if:</p> <ul style="list-style-type: none"> <li>• the gift is reasonable in the circumstances, particularly in view</li> </ul>	<p><b>Further consideration</b></p> <p>The Government recognises the importance of preventing the abuse of a POA by making inappropriate gifts. However, the Government will give further consideration to this recommendation, including whether, as recommended, the POA Act should permit the making of gifts by representatives of principal's property only in specified situations, and if so, the specification of the permitted circumstances.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p>of the principal's financial situation AND</p> <ul style="list-style-type: none"> <li>• the gift: <ul style="list-style-type: none"> <li>- is to a relative or close friend of the principal and is of a seasonal nature or for a special event OR</li> <li>- the gift is a type of donation that the principal made when he or she had capacity or might reasonably be expected to make.</li> </ul> </li> </ul>	
<p><b>Recommendation 59: Protecting gifts made in the principal's will</b></p> <p>The Committee recommends the Victorian Government conduct further consultation about whether the Powers of Attorney Act should protect the interests of beneficiaries under a principal's will.</p>	<p><b>Support</b></p> <p>The Government will conduct further consultation about whether the POA Act should protect the interests of beneficiaries under a principal's will.</p>
<p><b>Recommendation 60: Notification of activation of an enduring power of attorney</b></p> <p>The Committee recommends the Powers of Attorney Act provide that prior to commencing to act under an enduring power of attorney (financial) or enduring power of attorney (guardianship) that states that it commences when a principal has impaired decision-making capacity, the representative must give notice of his or her intention to activate that enduring power of attorney to the personal monitor or monitors, any other persons designated in the power of attorney document and the body responsible for registering enduring power of attorney documents in Victoria.</p>	<p><b>Further consideration</b></p> <p>The Government will further consider whether the POA Act should provide that the representative give notice of his or her intention to activate an enduring POA for financial or guardianship matters which commences when the principal loses capacity, to personal monitors, other persons designated in the POA and the registration body.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 61: Criminal offences for abuse of powers of attorney</b></p> <p>The Committee recommends the Powers of Attorney Act provide the following offences:</p> <ul style="list-style-type: none"> <li>• procuring a power of attorney by threat or deception</li> <li>• not acting honestly and with reasonable diligence to protect the principal's interests, having regard to the principal's expressed wishes</li> <li>• knowingly exercising powers under a revoked power of attorney</li> <li>• failing to keep accurate records.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act creating new criminal offences for abuse of POAs. The Government will give further consideration to the elements of possible criminal offences.</p>
<p><b>Recommendation 62: Compensation for victims of abuse</b></p> <p>The Committee recommends the Powers of Attorney Act provide that where VCAT finds that an enduring power of attorney has been abused, VCAT may order a representative to compensate a principal for any loss.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that VCAT may order a representative to compensate a principal for any loss where it finds that an enduring POA has been abused. The Government will give further consideration to the elements required to be met for VCAT to make findings of abuse and order compensation.</p>
<p><b>Recommendation 63: VCAT's power to revoke a representative's appointment</b></p> <p>The Committee recommends the Powers of Attorney Act provide that VCAT may revoke a representative's appointment under an enduring power of attorney (financial) or an enduring power of attorney (guardianship) if satisfied that the</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing that VCAT may revoke a representative's appointment under an enduring POA for financial or guardianship matters, if satisfied that a representative has not acted in the principal's best interests. The Government will give further consideration to the elements required for VCAT to</p>

RECOMMENDATION	GOVERNMENT RESPONSE
representative has not acted in the best interests of the principal.	find that the representative has not acted in the principal's best interests.
<p><b>Recommendation 64: Clarifying who has standing to apply to VCAT</b></p> <p>The Committee recommends the Powers of Attorney Act provide:</p> <ul style="list-style-type: none"> <li>a) the following people may apply to VCAT for an order about an enduring power of attorney (financial) or an enduring power of attorney (guardianship): the Public Advocate, the principal, the representative, a close relative of the principal, the personal monitor or monitors appointed by the principal, or any other person who VCAT is satisfied has a special interest in the principal's affairs.</li> <li>b) the following people must be given notice of an application to VCAT and any hearing of an application in relation to an enduring power of attorney (financial) or an enduring power of attorney (guardianship): the Public Advocate, the principal, the representative, a close relative of the principal, the personal monitor or monitors appointed by the principal, or any other person who VCAT is satisfied has a special interest in the principal's affairs.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the POA Act providing a list of people who may apply to VCAT or be given notice of an application to VCAT and any hearing of an application, for an order about an enduring POA in relation to financial or guardianship matters. The Government will give further consideration as to who may have standing to apply to VCAT.</p>
<p><b>Recommendation 65: Referral by VCAT to Director of Public Prosecutions</b></p> <p>The Committee recommends the Powers of Attorney Act provide that VCAT may refer cases of suspected abuse of enduring powers of attorney to the Director of Public Prosecutions.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to whether the POA Act should provide that VCAT can refer cases of suspected abuse of enduring POAs to the Director of Public Prosecutions or another body, or whether an alternative reference of cases of suspected abuse is preferable.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<b>Chapter 8: A register of power of attorney documents?</b>	
<p><b>Recommendation 66: A register for power of attorney documents</b></p> <p>The Committee recommends the Victorian Government:</p> <ul style="list-style-type: none"> <li>a) develop and implement a register for power of attorney documents</li> <li>b) through the Standing Committee of Attorneys-General, actively promote and support the development and implementation of a national register for power of attorney documents.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle the development and implementation of a register for POA documents to help establish the existence, location and validity of POAs. The Government also supports in principle actively promoting and supporting a national register of POA documents through SCAG.</p> <p>The Government will consider options for the most effective and efficient implementation of this recommendation. Issues that need further consideration include: whether registration will be mandatory and/or voluntary and the type of POAs that can be registered, the time of registration, the effect of non-registration, access to information on the register, fees, the location of the register and the role of the registration body in checking POAs, notice and objections to registration and the effect of registration in another jurisdiction.</p>
<p><b>Recommendation 67: Mandatory registration of enduring powers of attorney</b></p> <p>The Committee recommends the Powers of Attorney Act require all documents creating and revoking enduring powers of attorney (financial) and enduring powers of attorney (guardianship) to be registered.</p>	<p><b>Further consideration</b></p> <p>The Government will further consider whether the POA Act should require the mandatory registration of documents creating and revoking enduring POAs in relation to financial and guardianship matters in some or all circumstances. In particular, the Government will consider whether an additional step of mandatory registration of an enduring POA may be viewed as too complex and deter people in some circumstances. The Government will also consider the position in other Australian jurisdictions given the desire for harmonisation.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 68: Voluntary registration of general (non-enduring) powers of attorney</b></p> <p>The Committee recommends the Powers of Attorney Act permit documents creating and revoking general (non-enduring) powers of attorney to be registered.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to whether the POA Act should provide for documents creating or revoking general (non-enduring) POAs to be registered in the context of its broader consideration of registration of POAs.</p>
<p><b>Recommendation 69: The time of registration</b></p> <p>The Committee recommends the Powers of Attorney Act require all documents required to be registered under the Act to be registered at the time they are created.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to whether the POA Act should require all documents to be registered at the time they are created.</p>
<p><b>Recommendation 70: The effect of non-registration</b></p> <p>The Committee recommends the Powers of Attorney Act provide:</p> <ul style="list-style-type: none"> <li>a) any act performed under an enduring power of attorney (financial) or enduring power of attorney (guardianship) has no legal effect unless the document is registered</li> <li>b) VCAT may extend the time for a document creating or revoking an enduring power of attorney (financial) or enduring power of attorney (guardianship) to be registered if it believes the document is valid.</li> </ul>	<p><b>Further consideration</b></p> <p>The Government will further consider whether the POA Act should provide that any act performed under an enduring POA in relation to financial or guardianship matters has no legal effect until registered, and whether VCAT can extend the time for a document creating or revoking these enduring powers to be registered if it believes the document is valid.</p>
<p><b>Recommendation 71: Accessing information on the register</b></p> <p>The Committee recommends the Victorian Government, in implementing the</p>	<p><b>Further consideration</b></p> <p>The Government will further consider options for the implementation of a register</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p>registration system for power of attorney documents, ensure that the privacy of principals' information is protected by providing:</p> <ul style="list-style-type: none"> <li>a) a document verification system for approved service providers such as banks</li> <li>b) greater access to information on the register for health care providers</li> <li>c) access to information on the register only to members of the community who are able to clearly demonstrate that they have an interest in that information.</li> </ul>	<p>including how to protect the privacy of principals' information.</p>
<p><b>Recommendation 72: Registration fees</b></p> <p>The Committee recommends the Victorian Government, in implementing the registration system for power of attorney documents, ensure that registration fees are kept to a minimum, with concession rates or fee waivers available.</p>	<p><b>Further consideration</b></p> <p>The Government will further consider options for an effective and affordable registration system, including an appropriate fee structure.</p>
<p><b>Recommendation 73: Location of the register</b></p> <p>The Committee recommends the Powers of Attorney Act provide that the Registry of Births, Deaths and Marriages maintain the register of power of attorney documents.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to options for the appropriate location of a POA register. The Government will also consider the outcomes of the VLRC's Guardianship review.</p>
<p><b>Recommendation 74: Registration body to check power of attorney documents</b></p> <p>The Committee recommends the Powers of Attorney Act require the registration</p>	<p><b>Further consideration</b></p> <p>The Government supports the objective of this recommendation and will further consider options for a registration body conducting a basic check before registration of a</p>

<b>RECOMMENDATION</b>	<b>GOVERNMENT RESPONSE</b>
body to conduct a basic check to ensure that a document creating or revoking a power of attorney meets formal requirements before registering the document.	document creating or revoking a POA to ensure it meets the formal requirements.
<p><b>Recommendation 75: Notice of registration</b></p> <p>The Committee recommends the Powers of Attorney Act require the registration body to:</p> <ul style="list-style-type: none"> <li>a) notify any personal monitors nominated in an enduring power of attorney document of an application for registration</li> <li>b) notify the principal that an application for registration has been made if the application is made by a person other than the principal.</li> </ul>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to whether the POA Act should require a registration body to notify any personal monitors nominated in an enduring POA of a registration application or the principal of a registration application by another person.</p>
<p><b>Recommendation 76: Objections to registration</b></p> <p>The Committee recommends the Powers of Attorney Act:</p> <ul style="list-style-type: none"> <li>a) empower a principal, any personal monitors nominated in an enduring power of attorney document or any other person with a special interest in the affairs of the principal, to object to the registration of an enduring power of attorney document</li> <li>b) empower VCAT to hear and determine objections to registrations of enduring power of attorney documents.</li> </ul>	<p><b>Further consideration</b></p> <p>The Government will further consider options for a register, including whether the POA Act should empower a principal, personal monitor or person with a special interest in the principal's affairs to object to the registration of an enduring POA and VCAT to determine these objections.</p>
<p><b>Recommendation 77: Effect of registration in another jurisdiction</b></p>	<p><b>Support in principle</b></p> <p>The Government supports in principle promoting an arrangement through SCAG for a</p>

<b>RECOMMENDATION</b>	<b>GOVERNMENT RESPONSE</b>
<p>The Committee recommends:</p> <ul style="list-style-type: none"> <li>a) the Victorian Government, through the Standing Committee of Attorneys-General, actively support and promote an arrangement whereby a certified copy of an enduring power of attorney registered in one Australian jurisdiction is sufficient to satisfy the requirement to register an enduring power of attorney in another jurisdiction in order to deal with land in that jurisdiction</li> <li>b) the Powers of Attorney Act provide, to the maximum extent possible, for recognition of an enduring power of attorney document registered in another Australian state or territory.</li> </ul>	<p>certified copy of an enduring POA registered in one Australian jurisdiction to be recognised for registration in another jurisdiction in order to deal with land. In addition, the Government supports in principle the POA Act providing as far as possible for recognition of enduring POAs registered in another Australian jurisdiction.</p>
<p><b>Recommendation 78: Promoting the registration system</b></p> <p>The Committee recommends the Victorian Government:</p> <ul style="list-style-type: none"> <li>a) provide information about registration requirements on the forms for creating enduring powers of attorney (financial) and enduring powers of attorney (guardianship)</li> <li>b) conduct a public education campaign to inform members of the community who have already made an enduring power of attorney (financial) or enduring power of attorney (guardianship) about the option of registering the document.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, including registration requirements being included on the forms for creating enduring POAs for financial or guardianship matters.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<b>Chapter 9: Promoting powers of attorney</b>	
<p><b>Recommendation 79: A coordinated approach to providing information and education about powers of attorney</b></p> <p>The Committee recommends the Victorian Government adopt a coordinated, whole-of-government approach to providing information and education about powers of attorney.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information relating to POAs, including adopting a coordinated approach across government.</p>
<p><b>Recommendation 80: Increasing general community awareness and understanding of powers of attorney</b></p> <p>The Committee recommends the Victorian Government develop and implement an ongoing state-wide community education campaign to increase awareness and understanding of powers of attorney. The campaign should:</p> <ul style="list-style-type: none"> <li>a) provide simple easy-to-understand information about powers of attorney in plain English and in a variety of community languages</li> <li>b) use a wide variety of media, including websites, DVDs, TV, radio, newspapers, newsletters, pamphlets, fact sheets and posters</li> <li>c) include a community engagement component, with information sessions provided through a range of existing community forums</li> <li>d) be supported by advice and support mechanisms, including a telephone advice service.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information relating to POAs. This may include implementing on-going state-wide community education to increase use and promote awareness and understanding of the benefits and the powers granted by POAs and the potential for abuse. It is noted that the Office of the Public Advocate and Seniors Rights Victoria currently provide education about POAs through advice services and community education programs.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 81: Educating seniors about powers of attorney</b></p> <p>The Committee recommends the Victorian Government, in consultation with seniors and seniors' organisations:</p> <ul style="list-style-type: none"> <li>a) develop targeted information and resources about powers of attorney for seniors in a range of formats and disseminate these widely through appropriate media</li> <li>b) provide information sessions about powers of attorney for seniors through a range of existing community forums.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, which may include targeted information about POAs for seniors with input from seniors and seniors' organisations such as the Council on the Ageing and Seniors Rights Victoria.</p>
<p><b>Recommendation 82: Increasing awareness of powers of attorney in CALD communities</b></p> <p>The Committee recommends the Victorian Government:</p> <ul style="list-style-type: none"> <li>a) develop targeted information and resources about powers of attorney for people from CALD backgrounds. This information should be developed in consultation with CALD organisations and members of CALD communities, be available in a wide range of formats and be disseminated through appropriate media</li> <li>b) provide information sessions for members of CALD communities through a range of existing community forums.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, including a wide range of POA information and resources being developed for culturally and linguistically diverse (CALD) communities in consultation with CALD organisations and communities.</p>
<p><b>Recommendation 83: Education about powers of attorney for young people</b></p> <p>The Committee recommends the Victorian Government develop targeted</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p>information and resources about powers of attorney for young people. This information should be developed in consultation with young people and youth organisations and disseminated through youth-focused media.</p>	<p>relating to POAs, including information about POAs for young people.</p>
<p><b>Recommendation 84: Research about use of powers of attorney by members of the Aboriginal community</b></p> <p>The Committee recommends the Victorian Government, in consultation with Aboriginal people and organisations, conduct research into the level of use of enduring powers of attorney by members of the Aboriginal community. This research should identify ways in which the principles underpinning powers of attorney arrangements may be applied to better support members of the Aboriginal community in the event of impaired decision-making capacity.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle working with the Aboriginal community to investigate current levels of use of enduring POAs and identify any barriers to use. The Government will give further consideration to how best to conduct the research about the use of POAs by members of the Aboriginal community.</p>
<p><b>Recommendation 85: Research about who makes powers of attorney</b></p> <p>The Committee recommends the Victorian Government conduct a study of the demographic profile of people making powers of attorney in Victoria to inform the development of information and education about powers of attorney.</p>	<p><b>Further consideration</b></p> <p>The Government will give further consideration to the options for developing a demographic profile about who makes POAs.</p>
<p><b>Recommendation 86: Educating lawyers about powers of attorney</b></p> <p>The Committee recommends the Victorian Government:</p> <p>a) develop targeted information and resources about powers of attorney for lawyers. This information should be developed in consultation with legal organisations and disseminated through appropriate media</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, including information for lawyers about the making of, appropriate use of and safeguards relating to POAs, in consultation with legal organisations such as the Law Institute of Victoria (LIV). The LIV currently provides a number of education activities for lawyers on POAs.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<ul style="list-style-type: none"> <li>b) encourage law schools to incorporate substitute decision making into their curriculum, including education about powers of attorney</li> <li>c) encourage the Law Institute of Victoria to develop a training program on powers of attorney for lawyers and encourage lawyers to participate in this training as part of their continuing professional development.</li> </ul>	
<p><b>Recommendation 87: Educating the health and community sectors about powers of attorney</b></p> <p>The Committee recommends the Victorian Government:</p> <ul style="list-style-type: none"> <li>a) develop targeted information and resources about powers of attorney for those working in the health and community sectors. This information should be developed in consultation with community and health sector organisations and disseminated through appropriate media</li> <li>b) develop a training program on powers of attorney for workers in the community and health sectors in conjunction with relevant professional associations and encourage workers in these sectors to participate in this training</li> <li>c) encourage tertiary institutions to incorporate information about powers of attorney into relevant courses for the health and community sectors.</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs including information for those working in the health and community sectors about the making of, appropriate use of and safeguards relating to POAs, in particular GPs and staff at hospitals and aged care facilities who may encounter POAs or be in a position to refer someone to make a POA.</p>

RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Recommendation 88: Recognition of powers of attorney by Australian Government agencies</b></p> <p>The Committee recommends the Victorian Government, through the Standing Committee of Attorneys-General, advocate that all Australian Government agencies implement policies and practices to recognise powers of attorney that are validly created under state or territory law.</p>	<p><b>Support</b></p> <p>The Government supports the recognition of POAs validly created under a state or territory law by all Australian Government agencies, including for example, Centrelink. The Government through SCAG will seek to ensure that all Australian Government agencies implement policies and practices to recognise valid POAs made in states and territories.</p>
<p><b>Recommendation 89: Enhancing recognition of powers of attorney by financial institutions</b></p> <p>The Committee recommends the Victorian Government encourage the banking and finance sector to develop policies and procedures for accepting powers of attorney and provide appropriate training for staff.</p>	<p><b>Support in principle</b></p> <p>The Government will consider options for the most effective and efficient implementation of this recommendation.</p>
<p><b>Recommendation 90: Educating key professionals about the new Powers of Attorney Act</b></p> <p>The Committee recommends the Victorian Government, in conjunction with relevant professional bodies, conduct an education campaign to inform key professionals about the new Powers of Attorney Act. This should be targeted at those professionals who are likely to help people make powers of attorney or provide advice about powers of attorney.</p>	<p><b>Support in principle</b></p> <p>The Government supports in principle providing appropriate information resources relating to POAs, including information for key professionals who are involved in creating or advising on POAs, such as lawyers, financial advisers and trustee corporations, about the new POA Act.</p>

