The saga that is determining how many powers of attorney are required to create authority

- by Matthew Burgess, Director, View Legal

With an ageing population, the issues that arise in relation to ensuring appropriate authority is created for people to act under a power of attorney seem to be ever increasing.

Like many laws, ***the power of attorney legislation is frustratingly inconsistent***, with different acts applying in each Australian state.

In theory, there is also legislation requiring each jurisdiction to recognise the documentation prepared in each of the states. In practice, however, it is often extremely difficult to normally expect to see what is in fact legally binding.

There is an ongoing push, as part of having uniform succession laws across Australia, for the power of attorney laws to also be made consistent. The timeline for achieving such an outcome is difficult to predict given the number of vested interests involved.

Imminent Queensland changes

The various issues in this regard are arguably not helped by ongoing "iterations" to the standard forms in each state (Victoria is 1 leading example in this regard), and in some instances, complete overhauls.

In this regard, Queensland is a prime example.

Less than 25 years since last completely re-engineering its government-approved enduring power of attorney forms, another re-write is about to go live.

This means, **any existing forms must be signed on or before 29 November 2020 in order to be valid**.

From 30 November 2020, the new enduring power of attorney form must be used.

Unlike many other similar reforms, there is no changeover or transition period.

The new forms are radically different to the previous Queensland forms.

Both the old and new Queensland forms are also materially different to all other states.

A potential solution

One solution (although admittedly not particularly efficient) many people implement is to have a separate power of attorney prepared under each jurisdiction where they are likely to spend significant periods of time or have significant assets.

While not a perfect solution, this approach can provide significant practical benefits.

In adopting this approach, it is generally seen as best practice to include "duplication acknowledgement" wording.

Some example base wording in this regard is as follows:

"*For the avoidance of doubt I confirm that I have executed an instrument appointing an enduring attorney pursuant to the [#insert relevant state act] ("the [#insert state acronym eg NSW] Enduring Attorney") for any matter that requires signing by an Enduring Attorney duly appointed by the laws of [#insert state eg New South Wales].*

By this enduring power of attorney ("the [#insert state acronym eg QLD] Enduring Attorney") I appoint my Attorneys in respect of any financial matters not strictly required to be signed by an Enduring Attorney appointed by the laws of [#insert state eg New South Wales].

To the extent there is any inconsistency or overlap between the [#insert state acronym eg QLD] Enduring Attorney and the [#insert state acronym eg NSW] Enduring Attorney, the [#insert state acronym eg NSW] Enduring Attorney is to prevail and the [#insert state acronym eg QLD] Enduring Attorney is to be modified (and its operation suspended to that extent only) for such time as the [#insert state acronym eg NSW] Enduring Attorney remains in existence. In all other respects, the [#insert state acronym eg QLD] Enduring Attorney shall apply and remain in force."

This is far from a perfect (or even satisfactory) solution, and the desire for uniform power of attorney laws across Australia can only grow. Is that too much to ask for?