



Australian
Human Rights
Commission

Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney

Australian Human Rights Commission

Submission to the Attorney-General's Department

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1 Introduction

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to provide this submission in response to the Commonwealth Attorney-General's Department's Consultation Paper on *Achieving greater consistency in laws for financial enduring powers of attorney* (Consultation Paper).
2. The Commission strongly supports the move towards greater consistency in laws for financial enduring powers of attorney (EPOAs) and commends the Standing Council of Attorneys-General for undertaking this consultation to progress the next steps in achieving critical EPOA law reform.

3. The Commission's primary recommendation is that all Australian governments should move swiftly towards the achievement of greater national consistency in EPOA legislation as a priority. As Australia's population continues to age and with the largest intergenerational wealth transfer in Australia expected to take place in the coming decades, urgent reform to EPOA laws is needed to better protect the rights of older persons and prevent the abuse of older persons in all its forms.
4. This submission builds on the Commission's previous and ongoing advocacy for the implementation of recommendations from the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response* (ALRC Report), including the harmonisation of EPOA laws and the development of a national register of enduring documents after agreement on nationally consistent laws is achieved.¹
5. The Commission's advocacy over the years for EPOA law reform, primarily led by the former Age Discrimination Commissioner, the Hon Dr Kay Patterson AO, has included:
 - multiple representations and meetings with Federal Attorneys-General and state and territory Attorneys-General
 - joint letters to the Attorneys-General co-signed by key peer advocacy groups, including the Australian Banking Association, the Council on the Ageing, the Combined Pensioners and Superannuants Association, the Consumers Federation of Australia, Elder Abuse Action Australia, the Older Persons Advocacy Network and others
 - input to the Attorney-General's Department's Stakeholder Reference Group on EPOA Law Reform
 - public speaking engagements and media statements.
6. Underpinning the Commission's work and advocacy on EPOA law reform is a focus on human rights.
7. It is the Commission's view that a human rights-based approach – where human rights norms and principles are integrated into all aspects of decision-making, law and policy development, implementation and monitoring – is fundamental to addressing the systemic challenges caused by current inconsistencies in EPOA laws across jurisdictions and to safeguarding the rights, wishes and preferences of principals.
8. While the Commission does not have the specific expertise to comment in detail on the Consultation Paper's proposed model

provisions, where legal practitioners who specialise in the area and public advocates in each state and territory are better placed to advise, the Commission is well placed to provide input from a human rights perspective and on the rights of older persons.

9. This submission addresses the following topics in the Consultation Paper: key priorities and next steps in the move towards greater national consistency; attorney duties; information, resources or training for witnesses and attorneys; and other initiatives for preventing and responding to financial elder abuse. While the focus of this submission is on the rights of older persons, the Commission acknowledges that the issues intersect across different groups and encourages the Attorney-General's Department to consider the diverse needs and rights of all Australians.

2 Summary of recommendations

10. **Recommendation 1: The Australian Government adopt a human rights-based and person-centred approach to achieving greater consistency in EPOA laws that aligns with Australia's obligations under international and domestic human rights instruments.**
11. **Recommendation 2: The Australian Government adopt a new national human rights framework including a Federal Human Rights Act, in line with the Commission's proposed model, to ensure that the rights of all people are protected, all of the time.**
12. **Recommendation 3: All Australian governments commit to achieving the agreement and adoption of key nationally consistent EPOA provisions by a set timeframe.**
13. **Recommendation 4: All Australian governments work towards the development and use of a single national EPOA form.**
14. **Recommendation 5: The Australian Government prioritise national education and the development of a national register of EPOAs as the next steps following the achievement of greater national consistency in EPOA laws.**
15. **Recommendation 6: All Australian Governments closely consider the Australian Law Reform Commission and Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's recommendations for clear statutory guidance on a nationally consistent approach to embedding supported decision-making and national decision-making principles in EPOA legislation.**

- 16. Recommendation 7: In line with recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, all state and territory governments introduce adult safeguarding laws, independent statutory bodies to administer safeguarding functions, and develop a National Adult Safeguarding Framework.**
- 17. Recommendation 8: All Australian Governments consider the Australian Law Reform Commission and Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's recommendations for revising the language and terminology of EPOAs with a view to improving community understanding and application of these documents.**
- 18. Recommendation 9: The Australian Government invest in national education campaigns and training programs to:**
 - increase understanding about the roles, rights and obligations of witnesses, attorneys and principals under EPOAs**
 - increase knowledge among individuals and entities required to act on EPOAs about the applicability and limitations of EPOAs and the rights of principal**
 - raise public awareness of the importance of advanced planning and encourage the use of EPOAs generally.**
- 19. Recommendation 10: The Australian Government provide accessible and user-friendly EPOA information, resources and training via a range of formats, communication channels and methods, including both digital and non-digital options.**
- 20. Recommendation 11: The Australian Government involve the Law Council of Australia, Australian Banking Association and other industry peaks in the development, review, dissemination and monitoring of training courses for witnesses and third parties required to act on EPOAs.**
- 21. Recommendation 12: The Australian Government consider introducing a written declaration or statement of duties that attorneys and/or witnesses must read and sign before an EPOA is formalised.**
- 22. Recommendation 13: The Australian Government fund and facilitate interventions to educate people about ageism and address negative stereotypes of ageing.**

23. **Recommendation 14: The Commonwealth Attorney-General's Department include 'combatting ageism' as a key priority area of action in the next National Plan to Respond to the Abuse of Older Australians.**

3 Moving towards achieving greater national consistency

3.1 A human rights and person-centred approach

24. The Commission strongly supports greater national consistency of financial EPOA laws in Australia and recommends that this work be guided by a human rights and person-centred approach.
25. A human rights approach protects the dignity and worth of all people and ensures that human rights norms are embedded in all stages of decision-making. It is about empowering people to understand and claim their rights and giving them greater opportunities to participate in shaping the decisions that affect their rights. The approach is also about increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling those rights.
26. While the specifics of a human rights approach may vary in different contexts, common principles have been identified known as the 'PANEL principles': Participation, Accountability, Non-discrimination and equality, Empowerment and Legality.²
27. The translation of these principles into practice in the context of EPOA reform may include, for example: taking steps to ensure the active, free and meaningful participation of all principals in decisions about their future wishes and preferences; supporting and empowering older people and those with diminished decision-making ability to understand their rights and for those around them to protect and uphold their rights; providing clear, consistent and accessible information in a form and language that can be easily understood; and putting in place appropriate mechanisms to enable redress where a breach of human rights has occurred.
28. Central to a human rights-based approach is an understanding of the relevant human rights and associated requirements to respect, protect and fulfil these rights.

29. While there is no international Convention specifically relating to the rights of older persons, there are a range of binding international instruments that contain important provisions relevant to older people, including the *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*, *Convention on the Rights of Persons with Disability* and others. There are also non-binding instruments that specifically address the rights of older people, including the *United Nations Principles for Older Persons*, the *Madrid International Plan of Action on Ageing*, and the *Vienna International Plan of Action on Ageing*.³
30. Domestically, federal anti-discrimination laws prohibit unlawful discrimination on certain grounds with respect to protected characteristics, such as a person's race, sex, pregnancy, marital status, family responsibilities, breastfeeding, age, disability, sexual orientation, gender identity or intersex status.⁴ Human rights legislation and charters also currently exist in Victoria, Queensland and the Australian Capital Territory.⁵
31. Central to these international and domestic instruments are interrelated, interdependent and indivisible human rights and principles, which include, among others, the rights of older persons to protection from exploitation, violence and abuse; non-discrimination; equality before the law; security; independence, participation, self-fulfilment and dignity.
32. Responses to improve EPOAs laws and combat the abuse of older persons and people who may lack decision-making capacity should take reference and align with these international and domestic human rights instruments and should be developed through a rights-based lens that puts the person – the principal – at the centre.
33. The Commission additionally refers the Attorney-General's Department to the Parliamentary Joint Committee on Human Rights' *Inquiry into Australia's Human Rights Framework* and the Commission's work on *Free and Equal: An Australian conversation on human rights*, and the Commission's Position Paper proposing a model Human Rights Act in Australia, as part of the Commission's Free & Equal inquiry.⁶
34. A national Human Rights Act would embed human rights in federal domestic law and place a positive duty on public authorities to act compatibly with and consider human rights in making laws, policies and decisions. The Commission's final report in the Free & Equal project was tabled on 7 December 2023.⁷ It recommends a revitalised human rights framework for Australia. The Commission's work could

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inform the consideration of a human rights-based approach to EPOA law reform.

35. **Recommendation 1: The Australian Government adopt a human rights-based and person-centred approach to achieving greater consistency in EPOA laws that aligns with Australia’s obligations under international and domestic human rights instruments.**
36. **Recommendation 2: The Australian Government adopt a new national human rights framework including a Federal Human Rights Act, in line with the Commission’s proposed model, to ensure that the rights of all people are protected, all of the time.**

3.2 Achieve greater consistency as a priority

(a) Towards agreement on key nationally consistent provisions

37. The Commission recommends that all Australian governments move swiftly towards the agreement on and adoption of key nationally consistent EPOA provisions as a top priority.
38. The Commission agrees with the key benefits of greater national consistency outlined in the Consultation Paper and additionally stresses the importance of achieving agreement on a core set of nationally consistent provisions to alleviate the confusion, uncertainty and practical challenges currently faced by principals, attorneys and third parties to EPOAs across jurisdictions.
39. EPOAs are important tools for safeguarding Australians should they lose or have diminished decision-making ability. This is particularly relevant for Australians as they age and for Australians with cognitive impairments. However, as noted by the Commission and several stakeholders over the years, current inconsistencies across jurisdictions cause unnecessary confusion in the community – including among aged care providers, banks and other entities required to act on EPOAs. It also makes it difficult for experts to provide advice across jurisdictions and is an impediment to delivering much-needed national education to the Australian public about their rights and responsibilities under these documents.⁸
40. Australians today are a mobile population. Between 2016 and 2021, one in ten people moved to a different state in Australia. Queensland recorded the highest number of people moving interstate followed by Tasmania and the Australian Capital Territory.⁹ This mobility means that at different points in time, a principal may have an attorney or

multiple attorneys who live in another state or territory from themselves. The uncertainties and practical difficulties associated with interstate recognition of EPOAs, as noted in the Consultation Paper, highlights the need for greater consistency to make it easier for people to support older family members in other jurisdictions.

41. The unnecessary complexity caused by the lack of consistency between jurisdictions has also impacted third parties required to act on EPOAs – such as banks, which have put in place a number of initiatives, including ‘two to sign arrangements, pre-set digital and card limits and transaction notifications’, to assist their staff with identifying and preventing financial abuse.¹⁰
42. At times, this has caused frustration on the part of attorneys trying to carry out their duties under an EPOA. The Commission has received complaints from attorneys who have been unable to open bank accounts or reset pin numbers for their principal because of the requirements or restrictions imposed by third parties, such as banks and other service providers. These are usually complaints alleging age and disability discrimination in the provision of goods and services involving attorneys who are managing the financial affairs of an older family member with dementia or other cognitive impairments.
43. The ongoing impacts of current inconsistencies on communities across Australia highlight the critical need to achieve greater consistency and agreement on a core set of legislative provisions as soon as possible.

(b) The importance of a set timeframe for achieving reform

44. The Commission considers that reform to improve consistency in EPOA laws across jurisdictions is long overdue. The issues associated with differing EPOA laws and the need for national consistency was brought to the attention of the Standing Committee of Attorneys-General in 2000.¹¹ The House of Representatives Standing Committee on Legal and Constitutional Affairs then recommended, in its 2007 report *Older People and the Law*, that:

... the Australian Government encourage the Standing Committee of Attorneys-General to work towards the implementation of uniform legislation on powers of attorney across states and territories.¹²

In 2017, the ALRC Report and other subsequent inquiries reiterated the same issues and made similar recommendations.¹³

45. More than two decades on from when the issues were raised with the Attorneys-General, the recommended EPOA legislative reform is yet to be achieved. Throughout these years, the issues of financial abuse of

EPOAs have continued to negatively impact older people and communities.

46. Addressing the inconsistencies in EPOA laws across jurisdictions will only become more urgent and pressing as Australia's ageing population increases.
47. In the next 40 years, it is expected that the number of people in Australia aged 65 and over will more than double, and people aged 85 and older will more than triple.¹⁴
48. There are now more than 401,000 Australians living with dementia and this number is expected to more than double to over 849,300 by 2058.¹⁵
49. Australia is also expected in the next 20–30 years to undergo its largest intergenerational transfer of wealth, with estimates suggesting that over \$3.5 trillion will pass from older to younger generations.¹⁶
50. As Australia's ageing population continues to increase, the number of people who will enter into EPOA arrangements is expected to become greater.
51. While there is no comprehensive record of the total number of EPOAs in Australia, it is estimated that several hundred thousand bank accounts are being operated under some form of substitute decision-making arrangement, with this potentially being as high as 500,000. While this is a small portion of the total number of accounts which exist across Australia's financial institutions, the large majority of EPOAs are made by those in the 'older' age groups. With an ageing population, and significant increases in the number of Australians over the age of 65 predicted in the medium-term, it is reasonable to assume that the number of accounts, and therefore quantum of funds, being managed under a substitute decision-making arrangement will grow significantly in the next few decades.¹⁷
52. In this context of demographic and economic change, the unnecessary complexity and confusion surrounding EPOAs, coupled with the rising cost of living and increased pressures on household budgets, exposes older people to an ever-growing risk of financial abuse.
53. It is imperative that all governments move quickly and commit to a firm timeframe for the agreement and adoption of a core set of legislative provisions so that the greater benefits associated with a more consistent approach are not lost or hindered by protracted negotiations on the finer details of the provisions.

54. While this submission does not provide detailed commentary on the specifics of the model provisions proposed in the Consultation, the Commission suggests that one approach could be for the Attorney-General's Department to establish a working group – consisting of state and territory government officials, public advocates, legal professionals and other experts who specialise in this area – to finalise the key provisions with a set date for agreement and adoption. This working group should be guided by the human rights approach outlined at Section 3.1.

55. Recommendation 3: All Australian governments commit to achieving the agreement and adoption of key nationally consistent EPOA provisions by a set timeframe.

(c) Towards a single national EPOA form

56. Among the other benefits of greater consistency in key EPOA provisions outlined in the Consultation Paper, is the ability to develop a single national EPOA form. In the move towards greater consistency, the Commission strongly supports all governments to work towards the end-goal of developing and transitioning to a single national form as the new norm.

57. Consistent with a human rights and person-centred approach, a single national EPOA form would improve clarity and consistency for end-users as well as reduce complexity for those required to act on EPOAs. As suggested in the ALRC Report, guidance materials and educative tools could also be integrated with the national form to assist individuals to understand and protect their rights under an EPOA.¹⁸

58. The Commission is concerned that if jurisdictions pursue their own reforms to align with the agreed provisions, each according to their own timings, it would perpetuate confusion and uncertainty in the community; make it difficult for all parties involved and required to act on EPOAs to keep up with the changes; and as a result increase the risk of abuse and the likelihood of rights falling through the cracks during the transition period. The Commission considers that this is not an approach that puts people at the centre.

59. Recommendation 4: All Australian governments work towards the development and use of a single national EPOA form.

3.3 National consistency as prerequisite to national education and the development of a national register

60. The Commission recommends that agreement on key provisions and the development of a single national EPOA form should be followed by national education campaigns or programs to support Australians to understand their rights and obligations under EPOAs and raise community awareness of EPOA documents and the importance of future planning generally. See Section 5 of this submission for recommendations relating to EPOA information, resources and training.
61. The Commission further recommends, in line with recommendations from the ALRC Report, that the development of a national online register of EPOAs should be revisited after agreement on nationally consistent EPOA key provisions is achieved.
62. The benefits of a national register were outlined in the ALRC Report and considered in the Commonwealth Attorney-General's Department's 2021 *National Register of Enduring Powers of Attorney Public Consultation*.¹⁹
63. **Recommendation 5: The Australian Government prioritise national education and the development of a national register of EPOAs as the next steps following the achievement of greater national consistency in EPOA laws.**

4 Attorney duties

64. The Commission supports the establishment of a baseline of consistent attorney duties to increase clarity around attorney obligations and assist them to uphold the rights of the principal and avoid potential abuse, including inadvertent abuse due to lack of knowledge.

4.1 Move towards supported decision-making

65. In relation to the standards by which attorneys would be required to act, the Commission supports a shift away from substitute decision-making based on the perceived 'best interests' of the principal, to a supported decision-making approach based on the principal's views, wishes and preferences.

66. This approach is consistent with human rights conventions, particularly that of Article 12 of the Convention on the Rights of Persons with Disability, which recognises the autonomy of and importance of supports provided to people with disability to enable them to fully exercise their legal capacity.²⁰ It also reflects the principled approach recommended by the Australian Law Reform Commission in its 2014 and 2017 reports, and by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC) in its final report.²¹
67. As there is currently no uniform approach to supported decision-making across Australia, guidance is needed for attorneys on how best to implement this approach.²² While states such as Victoria and Queensland have legislated principles to guide decision making by attorneys, this approach is not applied consistently across all states and territories.
68. The 2014 ALRC Report recommended the adoption by all jurisdictions of National Decision-Making Principles to guide individual decision-making and a decision-making model that encourages supported decision-making at the national level.²³ In its final report, the DRC proposed supported decision-making principles that built and expanded on the ALRC's four National Decision-Making Principles and that a supported decision-making framework be embedded in Commonwealth and state and territory legislation.²⁴
69. The Commission agrees with the need for a broader national supported decision-making framework and the adoption of uniform principles to guide decision-making. This includes a consistent approach to safeguarding in line with principle 4 of the ALRC's national decision-making principles and Article 12(4) of the CRPD.²⁵
70. The Commission also emphasises that the successful implementation of a national supported decision-making framework will require adequate investment and resourcing by governments. In their Final Report, the DRC noted that it can take time and resources to understand the will and preferences of a person needing decision support.²⁶ Adequate funding for supported decision-making initiatives together with close consultation and involvement of those requiring support and their supporters will be critical to the successful implementation of a national framework.²⁷
71. In the context of EPOA law reform, the Commission urges all governments to move away from the 'best interests' approach with respect to attorney duties and agree on nationally consistent

Submission to financial enduring powers of attorney consultation, 13 December 2023 obligations for attorneys to promote and uphold the 'views, wishes and preferences' of principals. It is important that clear guiding principles accompany these provisions and are embedded in law to enable a consistent approach and support understanding and application of this approach by attorneys.

72. According to the principled approach to supported decision-making endorsed by the DRC, some substitute decisions can be considered part of the supported decision-making continuum where they are based on the 'will and preference' approach, but substitute decision-making based on 'best interests' is inconsistent with the principled approach.²⁸ The DRC goes on to say that substitute decision making may be allowed in very limited circumstances when necessary to prevent 'serious harm', but important considerations remain, noting that:

[w]here a representative decision-maker overrides a person's will and preferences to prevent serious harm, the decision-making standard that should apply is 'promoting a person's personal and social wellbeing with the least possible restriction on their dignity and autonomy'.²⁹

73. With respect to EPOA reform the Commission emphasises that the priority is to achieve agreement on nationally consistent key attorney duty provisions. The present focus should be on enabling a shift in thinking and behaviour on the part of attorneys away from 'best interests' to 'views, wishes and preferences'. Agreement of some form on a common approach to supported decision making, even if not considered by all to be the best approach, is preferable in the Commission's view to retaining the 'best interests' model in some jurisdictions, as it aligns with Australia's international human rights obligations.
74. The Commission suggests that the models which are more robust in giving effect to Australia's obligations under the CRPD – such as the current Victorian legislation and the Queensland Public Advocate's proposed model law – combined with close consideration of the ALRC and DRC's recommendations, would provide a strong starting point for this conversation.³⁰ However the Commission reiterates foremost the importance of achieving agreement on baseline attorney duties and provisions.
75. **Recommendation 6: All Australian Governments closely consider the ALRC and DRC recommendations for clear statutory guidance on a nationally consistent approach to embedding supported**

4.2 Adult safeguarding

76. The Consultation paper asks in what circumstances (such as undue influence, coercion or risk of significant harm) it may be appropriate for an attorney acting under a financial EPOA to give less weight to a principal's views, wishes and preferences.
77. The Commission's view is that where abuse, undue influence or coercion is suspected, the default response should not be to give less weight or override a principal's will and preferences. Instead, the Commission considers that safeguarding mechanisms, in particular adult safeguarding laws and agencies, play an important role in investigating and addressing a situation of suspected abuse and coercion through a principled and person-centred approach.
78. The 2017 ALRC Report discussed the importance of balancing protection with respect for a person's autonomy and their right to make decisions.³¹ The DRC Final Report also specifically recognises 'respect for dignity and dignity of risk' as a central principle of supported-decision making.³² As further noted in Section 6 of this submission, the overprotection of older people is often the direct result of ageism and can have devastating impacts on older people's dignity, autonomy and sense of control over their lives. The same is true of people with disability.
79. The Commission considers that adult safeguarding frameworks, as recommended in the 2017 ALRC Report, have a key role to play in balancing dignity and autonomy with protection of the principal by providing an opportunity to explore through a person-centred and strength-based approach, the principal's situation, concerns and views of the perceived risk or harm. They also fill an important gap in coordinating responses and supportive interventions to assist an at-risk adult to protect and uphold their rights to the greatest extent possible.
80. Following recommendations in the 2017 ALRC Report, South Australia and New South Wales have enacted adult safeguarding laws and established dedicated bodies to receive, assess and investigate cases of suspected abuse and coercion. Adult safeguarding laws in these states further set out the limited circumstances where action can be taken to protect an at-risk adult, such as from significant harm.³³

81. The DRC noted in its Final Report that it is clear that ‘these bodies are meeting a significant level of need’.³⁴ There have been strong calls in other states and territories for the introduction of similar laws.³⁵ The DRC Final Report recommended all state and territories introduce safeguarding laws, agencies and develop a National Safeguarding Framework.³⁶
82. The Commission supports these calls, emphasising that a nationally consistent safeguarding framework, underpinned by human rights and a principled approach to respecting the views, wishes and preferences of the person at risk, is essential in responding to situations of concern in the first instance. As noted in the DRC Final Report, overriding a person’s will and preferences should only happen as a ‘last resort and in the least restrictive manner’, rather than as a default response to a perceived circumstance of risk, coercion or undue influence.³⁷
83. **Recommendation 7: In line with recommendations from the DRC, all state and territory governments introduce adult safeguarding laws, independent statutory bodies to administer safeguarding functions, and develop a National Adult Safeguarding Framework.**

4.3 Language and terminology

84. The 2014 ALRC Report recommended use of the terms ‘supporter’ and ‘representative’ to address a lack of clarity about the attorney’s role and obligations to support the principal to make decisions.³⁸
85. The DRC similarly recommended use of the terms ‘supporter’ and ‘representative’ and other replacement terms including ‘enduring representation agreement’ and ‘decision-making ability’.³⁹
86. The Commission supports, in principle, these changes in terminology as a way to embed and signal the paradigm shift towards supported decision-making and clarify the role of the attorney as one of support and representation of the principal’s will, rights and preferences.
87. A human rights approach requires the translation of rights into everyday practice and reality. The simplification of the outdated lexicon to more direct, easy-to-understand language is one way of supporting improved community outcomes relating to EPOAs and the prevention of financial abuse.
88. As noted in the 2017 ALRC report, terms like ‘attorney’ can cause confusion and misunderstanding in the community because of its legalistic connotations.⁴⁰ It could lead, for example, to an aged care staff or other third party denying a principal’s rights because of

incorrect assumptions made about an attorney's special legal status or power over a principal. A simple change in terminology, combined with necessary guidance to inform behaviour, could support to communities to better understand and give effect to the role and limitations of an EPOA. This change could start with the terminology used in the single national EPOA form.

89. **Recommendation 8: All Australian Governments consider the ALRC and DRC's recommendations for revising the language and terminology of EPOAs with a view to improving community understanding and application of these documents.**

5 Information, resources or training for witnesses and attorneys

5.1 National EPOA education and training

90. The Commission recommends that the Australian Government invest in public education and awareness campaigns and training programs at the national level targeting:
- witnesses, attorneys and principals
 - individuals and entities required to act on EPOAs
 - the general public.
91. National education and training should be designed to assist witnesses, attorneys and principals to understand their roles, rights and obligations under EPOAs. This should include but not be limited to:
- information and training for witnesses to identify full or partial lack of decision-making ability on the part of the principal or signs of principal coercion and/or abuse
 - practical guidance and tools to assist attorneys to understand and fulfil their obligations in relation to supported decision-making, avoiding conflicts, keeping accurate records and other duties as well as to be informed about the potential consequences of breaching those duties
 - information for principals about their rights including to change or revoke their EPOA and to put in place arrangements to limit or qualify the powers held by an attorney and with respect to when an attorney's powers commence

- information about relevant safeguards, supports and services available to assist older persons at risk of or experiencing abuse, such as the National Elder Abuse phone line 1800 ELDERHelp.
92. It is critical that national EPOA education also extends to all individuals and entities required to act on EPOAs, such as those working in banking and financial services, law, health, aged care and other relevant sectors, so that they understand the scope and limitations of EPOA documents and are fully informed to recognise and uphold the rights of the principal.
 93. The Commission further recommends the development of a national public awareness campaign to raise awareness among all adult Australians about the importance of advanced planning and to encourage the use of EPOAs generally.
 94. Surveys indicate the use of powers of attorney and advance care directives is relatively low, which may be partly due to a lack of knowledge and/or unwillingness of people to discuss issues related to illness or mortality.⁴¹
 95. Focus groups conducted as part of a small exploratory study undertaken by the Commission in 2022 also found that while wills were widely understood and used by older Australians, there was lower awareness and use of other documents such as powers of attorney or advance care directives. Many participants reported feeling uncomfortable thinking and talking about future planning matters such as end-of-life and death while cultural and religious factors also came into play in the context of culturally and linguistically diverse communities.
 96. It is important to increase awareness among all Australians about the importance of planning ahead for later life and about the role of EPOAs. Early documentation of a person's views, wishes and preferences may assist in safeguarding their rights and choices in the future and may reduce any doubt about a person's capacity and the validity of the documents at the time they were signed.
 97. The Commission is currently undertaking a study to explore EPOA principals and attorneys' understanding of their rights and obligations under EPOA documents. The Commission anticipates that findings from the study, expected to be released in the first half of 2024, will shed further light on the education needs of EPOA principals and attorneys and assist in informing future research and national education on EPOAs.

98. **Recommendation 9: The Australian Government invest in national education campaigns and training programs to:**

- **increase understanding about the roles, rights and obligations of witnesses, attorneys and principals under EPOAs**
- **increase knowledge among individuals and entities required to act on EPOAs about the applicability and limitations of EPOAs and the rights of principals**
- **raise public awareness of the importance of advanced planning and encourage the use of EPOAs generally.**

5.2 Accessibility and responding to diversity

99. With respect to the development of EPOA education, resources and training, the Commission encourages the Australian Government to consider a range of formats, communication channels and methods, including accessible formats, in-language and Easy English communications, to meet the diverse communication needs and preferences of Australians.
100. It will be important to consider the viability of voluntary online training modules and other digital only resources through an accessibility lens, taking into account issues of access and inclusion that may affect different people and communities across Australia.
101. The 'digital divide' in Australia is a well-documented phenomenon, which refers to populations who are not benefiting fully from the Internet either because they are complete non-users, they are using the internet in a limited way, or they do not have access to internet services.⁴² In its 2021 report, the Australian Digital Inclusion Index puts the percentage of affected Australians as 17% of the total population.⁴³
102. Particular demographics appear more impacted by this divide, for example, 2018 Australian Bureau of Statistics data indicate 1.1 million (28.5%) people with disability had not used the internet in the previous three months (compared to 13% of the total population).⁴⁴ While there is evidence that older Australians are engaging in a notably broader range of online activities across different devices and connecting to the internet more than ever before, many older people continue to feel overwhelmed by technology changes and 38.4% are still not using the internet.⁴⁵ The digital divide also cuts across other demographics including low-income households, new migrants and refugees, rural and remote communities and First Nations peoples.⁴⁶

103. A human rights-based approach requires recognition and respect for difference and diversity. It is essential to ensure non-discrimination and equal access to information for all Australians so they can be empowered to protect their rights and make informed decisions about their future needs, wishes and preferences.
104. In practical terms, this means information and resources should be accessible, user-friendly and easily understood to improve clarity, understanding and support better outcomes overall for EPOA principals, attorneys and third parties.
105. **Recommendation 10: The Australian Government provide accessible and user-friendly EPOA information, resources and training via a range of formats, communication channels and methods, including both digital and non-digital options.**

5.3 Monitoring and reporting on training

106. The ALRC Report suggested that since legal tests of decision-making capacity underpin witness requirements the Law Council of Australia should be involved in reviewing the content of witness training courses.⁴⁷
107. The Commission considers that it would be beneficial to involve, in addition to the Law Council of Australia, other peak bodies in banking, health, aged care, disability and other sectors to support in monitoring and reporting on witness and third-party training. The involvement of industry peaks may also provide the opportunity for training programs to be further embedded into existing industry training or compulsory professional development platforms.
108. **Recommendation 11: The Australian Government involve the Law Council of Australia, Australian Banking Association and other industry peaks in the development, review, dissemination and monitoring of training courses for witnesses and third parties required to act on EPOAs.**
109. The Commission additionally recommends consideration of a written declaration that attorneys and/or witnesses must read and sign before an EPOA is formalised. The declaration should contain a simple statement in plain English of the attorney and/or witness' duties. The attorney and/or witness must be presented with this information prior to finalising an EPOA and be required to declare by signature that they have read and understood its contents.

110. **Recommendation 12: The Australian Government consider introducing a written declaration or statement of duties that attorneys and/or witnesses must read and sign before an EPOA is formalised.**

6 Other initiatives for preventing and responding to financial elder abuse

6.1 Addressing ageism

111. Ageism refers to 'the stereotypes (how we think), prejudice (how we feel) and discrimination (how we act) directed towards people on the basis of their age'.⁴⁸
112. Ageism undermines the human rights of older people and is an obstacle to growing older positively.
113. Ageist attitudes arise from negative beliefs about older people and ageing. This can include generalised negative views of older people as less deserving, incapacitated, burdensome and needing protection-views which are often generated and reinforced in popular culture and the media.⁴⁹
114. The World Health Organization's 2021 *Global Report on Ageism* found that one in two people worldwide are ageist, and called ageism 'prevalent, ubiquitous, and insidious'.⁵⁰ It is also widespread in Australia. The Commission's 2021 *What's age got to do with it?* report found that 90% of adults agree ageism exists in Australia, 83% consider it to be a problem, and 65% believe it affects people of all ages.⁵¹
115. Ageist attitudes can have a broad range of impacts on individuals and the community.⁵² For individuals, ageism can lead to discrimination, marginalisation, isolation and disempowerment.⁵³ It can result in older people disengaging, or being excluded from decision-making, including in the context of EPOA arrangements. It can also result in older people feeling they cannot exercise their rights and that their concerns will not be appropriately acknowledged and addressed.
116. Ageism may manifest in a 'benevolent' form, where restrictive assumptions and stereotypes lead to an overly protective response towards older people.⁵⁴ While often well meant, this nonetheless undermines the capability and the dignity of older people, diminishing their sense of autonomy and control over their lives and leading to patronising, even infantilised, treatment.

117. At times, ageism manifests overtly and malevolently through fear and dislike of older people, devaluing them and leading to neglect, and sometimes even elder abuse.
118. The link between ageism and elder abuse has also been noted in a number of reports, in that discriminatory attitudes towards ageing can contribute to trivialising, excusing or justifying such abuse.⁵⁵ The World Health Organization has listed ageism as a major reason why the abuse of older people receives so little attention and combatting ageism is one of its top five priorities for the UN Decade of Healthy Ageing.⁵⁶
119. Research commissioned by the World Health Organization indicates there are interventions which can reduce ageism and improve participants' knowledge of ageing. This includes educating people about ageism, investing in intergenerational contact interventions and strengthening policies and laws to address age discrimination and inequality, and to protect human rights.⁵⁷
120. The Commission's 2023 research, *Changing perspectives: testing ageism intervention*, found that a brief, one-off educational intervention can drive positive changes in attitudes and behaviour towards older adults and ageing. The research involved a survey of aged care and community workers before and after attending a single ageism awareness session which covered several topics relating to ageism. The follow-up survey conducted 2–3 months later, found that 90% of participants rethought the way they communicate with older people; 87% had discussed ageism with others, 86% actively considered actions they could take to address ageist attitudes in their workplace; and 82% reconsidered their attitudes towards ageing.⁵⁸
121. **Recommendation 13: The Australian Government fund and facilitate interventions to educate people about ageism and address negative stereotypes of ageing.**
122. **Recommendation 14: The Commonwealth Attorney-General's Department include 'combatting ageism' as a key priority area of action in the next National Plan to Respond to the Abuse of Older Australians.**

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