

9 March 2020

Elder Abuse Team
Family Safety Branch
Attorney-General's Department
3-5 National Circuit
CANBERRA ACT 2600

Dear Sir/Madam

Enhancing protections relating to the use of Enduring Power of Attorney instruments Consultation Regulation Impact Statement

Thank you for the opportunity to comment on the Consultation Regulation Impact Statement (RIS) regarding the proposal to introduce a national register for enduring powers of attorney (EPOA).

National Seniors is the independent advocacy voice for older Australians and works across a range of policy areas related to older people.

National Seniors has long had an interest in the issue of financial elder abuse. Over many years, we have supported the need to introduce uniform national legislation and a national register for EPOA documents to reduce the risk of abuse from the misuse of these documents.

We provided a significant submission to the Australian Law Reform Commission's inquiry into elder abuse and since this time, have been working closely with the Australian Banking Association to progress financial elder abuse reforms.

National Seniors was an active participant in the past two national elder abuse conferences, including as a member of the steering committee for the conference in Brisbane in 2019.

At the conclusion of the 2018 conference, members of the conference working group agreed that Option 2, as outlined in the RIS, was the best way forward.

We support earlier indications from the federal Attorney-General for a preference to progress Option 2 with state and territory counterparts.

Our response to the three options outlined in the RIS is detailed in the following section of this submission.

National Seniors is opposed to Option 1, maintain the status quo.

- Failure to implement a national register is not an acceptable option.
- Maintaining the status quo will continue to expose vulnerable older Australians to the risk of financial abuse from those who seek to misuse the funds of those relying on an EPOA to manage their financial affairs. This runs contrary to the intent of EPOA legislation.
- Maintaining the status quo will hamper efforts of third parties, particularly staff working in financial services organisations, from establishing the authenticity and legitimacy of EPOA arrangements on a day-to-day basis. The current ad hoc arrangements create an unnecessary burden on third parties that could be alleviated through a national register.
- The estimates of the number of new EPOA's enacted each year in Australia in the RIS (a quarter of a million, based on extrapolating data from Tasmania) serve to underscore the need to create and maintain an efficient and secure national EPOA register.

National Seniors supports Option 2, a mandatory national register.

- A mandatory register should be implemented as a matter of urgency as a means of better protecting vulnerable individuals.
- A mandatory national register will provide a clearer and easier system for assessing the authenticity and legitimacy of EPOAs.
- A mandatory approach will provide enhanced data on the use of EPOAs in Australia that could be used to inform research and future policy responses.
- A mandatory approach will ensure there is no doubt as to the authenticity and legitimacy of an EPOA. This will benefit staff employed in the financial services sector who must deal with transactions undertaken by attorneys on a day-to-day basis.
- By making the registration mandatory this will set in place strong expectations on attorneys and create a deterrent effect on those attorneys who might seek to abuse their role.
- By creating a mandatory national register this will remove the requirement to register an EPOA under separate state/territory schemes, reducing administrative burden.
- To minimise disruption to existing state/territory operations, the act of registering an EPOA could continue to be undertaken through existing state/territory offices (e.g. lands title office). Given the likelihood of ongoing differences in legislation, this would ensure that the EPOA could be checked locally to ensure it was compliant with state/territory legislation at the point of registration.

National Seniors is opposed to Option 3, a voluntary national register.

- A voluntary option would provide a less optimal approach to national registration and increase costs to individuals.

- There are no significant benefits of adopting a voluntary scheme over and above a mandatory scheme that would justify adopting a voluntary approach.
- A voluntary national EPOA register would provide sub-optimal protection from financial abuse for principals relative to a mandatory scheme because it would lead to inconsistency of protections, with some individuals receiving greater protection than others.
- A voluntary option places the onus on financial services providers to promote and encourage customers to register an EPOA which would be inefficient and onerous.
- Given there will be costs involved in registering an EPOA (under a national register), a voluntary approach could result in some individuals not registering their EPOA. There is also a risk that an individual may be coerced by an attorney to not register the EPOA under a voluntary model either to avoid the cost or to facilitate financial abuse. This would undermine the efficacy of the reform.
- With the individual cost of registration under a voluntary scheme likely to be higher than a mandatory scheme, the economy of scale provided by the mandatory scheme makes this a better option.
- Compulsory registration will act as a deterrent to potential abusers who may be less willing to abuse a principal as a result of the increased transparency afforded by registration under a mandatory scheme.
- A voluntary approach to registration would likely require extra promotion and awareness raising costs than under a compulsory approach to ensure that principals are aware of and understand the implications of using a national register. The risk is that a government, when faced with fiscal pressures, simply won't spend the money required to promote a voluntary register adequately. This would not occur under a mandatory approach.
- The argument in the RIS that Option 3 provides a benefit in that it is a more 'private' option between principal and trusted party is in our view invalid. An EPOA is not private to a principal and attorney, it exists to prove to third parties, primarily financial services organisations, that an agreement exists between a principal and attorney for the purpose of managing a principal's financial affairs. In providing a compulsion to register an EPOA, government is not seeking to be 'advised' of the arrangement. It is merely providing the means for third parties to prove this agreement exists and is valid. In doing so, this will reduce the inherent risks involved in operating an EPOA regime.

Should you require further information please contact National Seniors Advocacy Team directly.

Yours sincerely



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