

28 June 2021

The Secretary
Attorney-General's Department
Attn: Elder Abuse Team, Family Safety Branch
3–5 National Circuit
BARTON ACT 2600

By email: nationalregister@ag.gov.au

Dear Secretary,

RE: National Register of Enduring Powers of Attorney

We the Society of Trust & Estate Practitioners Australia Pty Limited (STEP Australia) represent professionals from across Australia who are specialists in trusts, estate planning and in supporting the needs of families (young and old, wealthy and modest). The objective of a STEP Professional is to advance the interests of families across generations. This often involves us in identifying issues of relative importance to families and bringing these to the attention of those who can make a positive difference. This is the purpose of this submission.

STEP Australia's membership includes lawyers, accountants, financial wealth advisors and trustee company professionals from across Australia; our members bring a multi-disciplinary approach to the benefit of their clients. It is this unique multi-disciplinary approach that supports this submission.

Observations

STEP Australia agrees with the objective of preventing financial abuse under power of attorney by misuse or theft of the principal's money or assets. However, we are yet to be convinced that a National Register of Enduring Powers of Attorney will address this problem.

The proposal increases safeguards for principals and regulation for those relying on a power of attorney. It is not clear how this will prevent an attorney from misusing a valid power of attorney. Our experience, and a review of state tribunal decisions involving powers of attorney, shows that a majority of powers of attorney are validly signed. The problem is how the attorney conducts him or herself in that role.

The Australian Law Reform Commission report, *Elder Abuse—A National Legal Response (ALRC Report 131)*, doesn't state how the registration of powers of attorney will restrain attorneys from misusing their position. We respectfully suggest that once a power of attorney is signed, principals would be better protected by referring back to the safeguards described in paragraphs 5.51 to 5.80 of that paper:

- Restrictions on conflict transactions, as in Queensland and Victoria;
- Excluding inappropriate persons as attorneys;
- Expressly prohibiting attorneys from making certain decisions; and
- Mandatory record keeping.

We note that every state and territory has different laws regarding powers of attorney. This will present a great challenge for any authority trying to establish a national register. It will be very difficult to establish a coherent and consistent national register without national uniform laws regarding powers of attorney.

The issue of different jurisdictions raises a question about what authority the *Registering Authority* would have to administer and enforce registration of powers of attorney. Unless all of the jurisdictions pass submitting legislation, a national register would arguably be beyond the Commonwealth's authority. This issue should be resolved before a national register is considered further.

We further note that Recommendation 5-3 in the ALRC Report 131 considered that any National Register be established after agreement had been reached on nationally consistent laws governing enduring powers of attorney and the development of a national model enduring document.

We agree with the ALRC that mandatory record keeping by attorneys is an important safeguard for principals. That safeguard would be enhanced if attorneys were required to submit those records periodically to an authority with powers of oversight and the ability to investigate any potential irregularities, such as the various State Offices of the Public Guardian or the Adult Guardian. If the proposed National Register were to include that oversight, it is our view that it would provide greater protection of principals than registration alone.

Until it can be demonstrated that registration of powers of attorney would protect principals, we are of the view that the focus of reforms should be on safeguards for principals and redress against delinquent attorneys. It is our view that a national register, as proposed, would only create confusion and complexity to principals, attorneys, and those who rely on the documents.

We look forward to a consultation following review of the above feedback.

If you would like to discuss any of the above, please contact Peter Bobbin TEP, STEP Australia Board Chair, on email pbobbin@colemangreig.com.au and/or Danielle Bechelet TEP, STEP Australia Policy Committee Chair, on email danielle@avonlegal.com.au.

Yours sincerely,



Peter Bobbin TEP

Chair of STEP Australia

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