

MEDIA RELEASE

STEP Australia Highlights Shortcomings of Proposed National Register of Enduring Powers of Attorney

A recently proposed government register for monitoring enduring powers of attorney may do more harm than good, according to expert review.

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The Society of Trust and Estate Practitioners Australia (STEP Australia) has identified several concerning issues with a proposal by the Federal Government to create a national register of Enduring Powers of Attorney. The goal of this proposal is to ameliorate potential elder abuse facilitated by powers of attorney, however, there is little evidence to suggest this will be an effective approach. In fact, such a register may create difficulties for both principals and attorneys when attempting to manage their affairs using the vital power-of-attorney system. It is imperative for the financial safety of elder Australians who depend on this system that any large-scale change be carefully considered and provide demonstrable benefit. In the case of this proposed register, this imperative has not been fulfilled.

The STEP Australia National Policy Committee have expressed concern over this register based on their review of state tribunal decisions on powers of attorney, which showed most powers of attorney are validly signed. Hence, abuse perpetrated by legitimately appointed attorneys is not addressed by this system. This is further demonstrated by the Australian Law Reform Commission (ALRC) Report on this subject (referenced by the Australian Government to accompany the register's proposal), which contains neither evidence nor discussion on how a national register would prevent appointed attorneys from abusing their power.

The viability of the register itself is also in question. Without uniform national laws regarding powers of attorney, it will be very difficult to establish a coherent register due to differences in law between states. Additionally, it is unclear whether the registering authority would have the necessary authority to administer and enforce registration of enduring powers of attorney. This is again echoed by the ALRC report which notes that consistency between states should be reached. These issues must be addressed before any further action can be taken.

STEP Australia recommends that Australians who sign a power of attorney adhere to the safeguards put forward by the ALRC paper, which include restricting inappropriate persons as attorneys, expressly prohibiting attorneys from making certain decisions, and mandatory record keeping.

Committee member, Philip Davis, stated: "Whilst the aim of reducing elder abuse due to misused powers of attorney is admirable, the proposed national register would not necessarily address the problem. What would protect people more would be stricter rules around the appointment of attorneys and a greater focus on accountability of attorneys."

Until it can be demonstrated that there will be any protective effect of a national register of enduring powers of attorney, STEP Australia strongly cautions against implementing this system. Not only is it likely to be ineffective in preventing most abuse, it is also likely to complicate the process of establishing and exercising powers of attorney at the expense of many vulnerable Australians who depend on this system.

CONTACT INFORMATION:

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ABOUT STEP:

STEP is the global professional association for practitioners who specialise in family inheritance and succession planning. STEP works to improve public understanding of the issues families face in this area and promotes education and high professional standards among its members. STEP members help families plan for their futures, from drafting wills to issues surrounding international families, protection of the vulnerable, family businesses and philanthropic giving. Full STEP members, known as TEPs, are internationally recognised as experts in their field, with proven qualifications and experience.

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