



Submission

Enhancing protections relating to the use of Enduring Power of Attorney instruments - RIS

Council on the Ageing (COTA NSW)
Karen Appleby
Senior Policy Officer
(02) 8268 9607
Level 11, 31 Market St.
Sydney NSW 2000

Email: karen.appleby@cotansw.com.au

COTA NSW

COTA NSW is the peak body representing people over 50 in NSW.

We're an independent, non-partisan, consumer-based non-government organisation. We work with politicians, policy makers, service and product providers as well as media representatives to make sure our constituents' views are heard and their needs met.

Background

The inherent risks and limitations of the current enduring power of attorney (EPOA) mechanism within New South Wales are well known to our organisation.

In 2015, our then CEO, Ian Day appeared before the parliamentary inquiry into elder abuse in New South Wales. In his testimony he raised the misinformation and misuse of EPOAs in the community to commit financial abuse, very often by family members. This ascertain is supported by a number of community consultations that COTA NSW has undertaken to explore this issue further.

Five focus groups were held in 2016 in both metropolitan and regional areas to ask older people to discuss their knowledge of EPOAs, their experiences and their concerns. The consultations found that there was widespread confusion about what an EPOA did and how that related to other legal instruments such as wills and enduring guardianship. There was also unease by some attendees on loss of control and what that might mean for their future care and relationship with family members. One Fairfield participant said, "Once you get older and become more frail decision making can be taken away from you", another at the same group said "Children can start to take over and that's when abuse can happen. I've seen it in our culture where kids start to make the decisions for the parents."

These focus groups informed the design and rollout of information sessions on EPOAs in partnership with the Cognitive Decline Partnership Centre in 2018. Approximately, 10 free community sessions were held across the state – with a high degree of interest and participation from older people. The lack of understanding about what EPOAs do and don't do again came to the forefront at these sessions, confirming the need for ongoing education campaigns within the community.

In October 2019, COTA NSW undertook a large survey on the topic of planning ahead. The survey received responses from 6,043 people aged 50 and over. The results of this report will be released on April 1 in *50+ Report 2020: Dignity, Respect, Choice: Planning for the final chapter*. The survey found the following use of EPOA by age group:

	50 – 54	55 -59	60 – 64	65 - 69	70 - 74	75 – 79	80+
EPOA	18%	28%	35%	42%	42%	44%	31%

Questions were also included within the survey that were designed to provide an indication on the level of knowledge of the different legal instruments amongst a broader sample.

With the options provided for an EPOA, approximately 52% of respondents selected the correct definition, indicating further attention is required to increasing knowledge of this document amongst older people.

COTA NSW runs the Legal Pathways program – a partnership with Legal Aid NSW that links older people on a pension with volunteer solicitors to provide wills, EPOAs or enduring guardianship at a heavily subsidised amount. COTA regularly responds to concerns and queries about these different mechanisms and in many instances has to refer older people to the NSW Elder Abuse Hotline or the Office of Trustee and Guardianship because of possible cases of financial abuse.

Position on proposed options

COTA NSW strongly supports *Option 2: Regulatory Option*. As recommended (5.3) by the Australian Law Reform Commission, Elder Abuse – A national legal response, we assert that a mandatory national register would be a critical safeguard for reducing the incidence of financial abuse against older people. We believe that it is essential that any national register be mandatory across the states and territories for the following reasons:

- As a cost is involved with lodgement, a voluntary system risks diluting the effectiveness of the register as many may be deterred by the cost and opt-out.
- An older person at risk of financial abuse may be unduly influenced by the possible perpetrator to not register the document.
- A voluntary system would also be reliant on engaged and motivated solicitors to explain the mechanism and encourage its use.
- Will provide robust data analysis on EPOA coverage.
- Will assist the appointed power to attorney to easily interact with different institutions e.g. banks and carry out their powers.
- Will ensure that revoked EPOAs are not able to be used.
- Allow financial institutions to assess the current EPOA and any associated conditions and/or limitations.
- In our view, the initial estimated investment and ongoing costs are justifiable and necessary to improve the safety of older Australians and other vulnerable groups.

In the event of the implementation of option 2 and possible registration costs, COTA NSW calls for consideration be given to the availability of a discounted rate for those in receipt of government benefits.

COTA NSW would like to thank the Attorney-General's department for the opportunity to comment on this RIS.