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Proposal 2–1

Yes it is a national problem.

Proposal 2–2

Yes but this should not delay immediate action on registering enduring powers of attorney for example. Studies take time and often only confirm what is obvious.

Proposal 3–1

Yes but they must be adequately funded to have the resources to **act promptly.** For an elderly person time is of the essence. they have only a limited time of life left. Every day that passes without relief is a denial of justice. Unfortunately there are many examples of government agencies which have failed to act promptly on complaints so that the abuse has gone on until the consequences are irreversible.

Proposal 3–2

Yes but provided that elderly person is mentally competent to make such decisions.

Proposal 3–3

Yes and there must be penalties if that person fails to provide those documents. Those penalties could be financial but should also include automatic cancellation of any EPOA that they hold on the basis that this  EPOA may be mis-used and refusal to provide the required documents raises that suspicion.

Proposal 3–4

Yes but the "Take no action" option is often all too easy. The public advocates or guardians need to be personally accountable for their actions or inaction. If failure to act results in harm then there should be immediate avenues for redress on behalf of the person harmed.

Proposal 3–5

Yes provided that the complaint is not malicious and designed to improperly influence the actions of the public officer.

Proposal 5–1

**This is critical and urgent.** No enquiry is needed to demonstate the need for this.  At present no once  can check the currency or validity of an EPOA.

Only officially recognised and registered EPOA's should be accepted by any agency such as banks, solicitors, government departments etc. The registrar must also have authority to cancel or suspend EPOA's where there is evidence of mis-use of the EPOA or use contrary to the best interests of the person granting the EPOA.

Proposal 5–2

Yes this is essential.

Proposal 5–3

Yes **but this transitional period must be brief** [ say 3 months]  to prevent those persons holding EPOA's mis-using them before the national register is in place. A long period such as 1 year will allow improper use of EPOA's by dishonest persons to exploit elderly victims in a manner which cannot be reversed.   If the money has been spent it usually cannot be recovered especially by an elerly person who, after such robbery, may not have the means to initiate legal proceedings for recovery.

Question 5–1

Only persons who have provided the same 100 points of identification as required for a bank account and who have paid a modest fee.  This is to stop casual inspection by persons without good reason to inspect the register. In this way there will be an accurate record of those person who have inspected the register for future reference if needed.

Question 5–2

Yes this is necessary especially if a complaint has been made of suspected mis-use of the EPOA against the best interest of the elderly person who granted the EPOA.  Such investigation should be made promptly as money improperly taken usually cannot be recovered.

Proposal 5–4

Yes very important. The parties witnessing should also certify that in their opinion that at the time of signing the grantor of the EPOA appeared to be mentally competent to grant that EPOA and fully understood the implications of that signing.

Proposal 5–5

Yes. Accountability for decisions made is imperative to ensure that those making decision  give"due diligience" to the decision and are prepared to defend that decision before an appropriate body.  There are many examples of government agencies intended to protect children, who have failed to act when informed of children at risk because there is no penalty for such failure. The same principles apply to the protection of elderly people. In all other walks of life professional people making decisions which impact on other people's lives [ such as doctors] are fully accountable by civil action, criminal action and/or professional disqualification. Public servants should be no different.

Proposal 5–6

Yes, this is also essential. There should be powers to reverse any such transaction improperly entered into in breach of these rules by an appropriate Tribunal. In addition the EPOA should be automatically cancelled where it has been used for such an improper transaction.  There must  be appropriate penalties  imposed on the party who misused the EPOA. We have a 91-year-old friend who gave his enduring Power of attorney to his then trusted solicitor 10 years ago. That solicitor has used this power of attorney to do the opposite of what the 91-year-old property owner wanted done with his valuable shopping centre and there is no easy avenue of redress.  In addition the  Solicitor has helped himself to this man's bank account  in the guise of legal fees even though there is no costs agreement in place and the owner of the property has not received any invoices for the claimed legal work done.

Proposal 5–7

Yes but the prohibition should also include anybody who has been the subject of an AVO, assault, robbery, embezzlement, or any similar offence. A person granted an EPOA should be of the highest character and have an un-blemished criminal record.  The person should also be an Australian citizen and permanently resident in Australia and therefore subject to Australian laws and the jurisdiction of Australian courts. An overseas resident could acted dishonestly with impunity as they would not be subject to the Australian judicial system or legislation.

Proposal 5–8

Yes. In addition to the above list, the EPOA  should  prohibit the person  holding that power from choosing the solicitor, the medical attendants the hospital, accountant  or any similar  personal matters contrary to the wish of the person granting the power of attorney.

Proposal 5–9

Yes, and those records should be available for inspection if required by the Registrar overseeing the  National registration of such powers of attorney, by the solicitors, accountants, or other professional representatives of parties with a legitimate interest in the manner in which the power of attorney is being exercised. Failure to keep such accurate records should result in suspension or cancellation of the EPOA.  if the party holding the power of attorney is managing all the financial affairs then they must also be responsible for lodging a tax return and accepting responsibility for its accuracy on behalf of the  person granting the power of attorney.

Proposal 5–10

Yes definitely. If there is a difference in the legislation between the states then there will be an incentive to make the power of attorney subject to the laws of the most favourable state for somebody planning to mis-use that power.

Proposal 5–11

Does the term used really matter? What matters is having a national recognised register of such documents and having uniform requirements for the signing, witnessing, overseeing and if necessary, suspending or cancelling such documents should they be mis- used.

Proposal 5–12

Yes.

Proposal 5–13

Yes. And if it can be shown that the "representative" has misused the power of attorney contrary to the will, preferences, and rights of the principal  then there should be provisions for automatic and immediate suspension or cancellation of that power.

Proposal 6–1

Yes, but by whom? At the least, they should sign a document setting out these responsibilities which acknowledges that they have read and understand these responsibilities and obligations and further that they undertake to abide by them. This document should be filed and registered along with the EPOA.

Question 6–1

I suggest that an online Internet based training program with short modules, each one to be completed before proceeding to the next, with a certificate to be issued at the end of the training program, as an essential prerequisite before anyone can be appointed as an attorney. This training program can be easily linked via the Internet to the  National register of EPOA's.   Only persons who have successfully completed this training program and who have obtained a certificate upon completion would be eligible for such an appointment.

Proposal 6–2

Absolutely essential. This should be witnessed in the same manner as the document granting power of attorney.

Question 6–2

The cost of purchasing a surety bond would probably prevent many persons from being able to accept such an appointment. Perhaps a requirement that a third party go guarantor for the performance of the responsibilities under power of attorney would be adequate. The guarantor should be able to demonstrate that they have some assets to back up such a guarantee. That asset could include for example a piece of real estate, shares or bonds, or similar

Question 6–3

The national registrar of such powers of attorney should have authority to refuse the registration unless the previously mentioned parties witnessing the document certify **as part of that witnessing,** that the person who is subject to such an application is, in their opinion, happy that their wishes are documented in the power of attorney document and that they understand the person to whom the power of attorney is granted will carry out those wishes during their lifetime with integrity to the best of their ability.

Proposal 7–1

Yes this is absolutely necessary. Privacy legislation should not be used to prevent such reporting. There should be no penalties for such reporting but there should be penalties for not reporting suspicious transactions

Proposal 7–2

Persons witnessing the customer signing such authority should provide to the bank the same 100 points of identity that would be needed to open a new bank account. In this way they can be held accountable. In addition they should be Australian citizens who are permanently resident in Australia and thus subject to Australian Law and jurisdiction.

Question 7–1

What is the evidence that having a corporate trustee for a self – managed superannuation fund provides protection against mis – use of  powers of attorney? However it is logical that the matters mentioned in B, C, and D are self-evident and it would be beneficial to incorporate these in legislation.

Question 7–2

Sure if there is enough legislation governing self – managed superannuation funds in place at the present time. This issue seems remote from preventing misuse of powers of attorney or elder abuse. People will not be setting up a new self managed superannuation fund when they are so elderly as to be abused. This would appear to be a totally unnecessary proposal.

Proposal 8–1

Clear, fair, comprehensible, and accessible legislation needs to be in place to govern this situation to guide families where somebody is proposing such an arrangement. Such legislation may diminish substantially the need for a tribunal to resolve disputes by preventing the dispute in the first place. Do we really need another Tribunal? Surely there are enough tribunals in place already.

Question 8–1

Why is it necessary that only a member of the so defined "family" is involved in an "assets for care" arrangement?   The only issue is whether the person providing the care, whether a member of the defined family or not, has been party to a formal legal document which grants possession of an asset through the estate of the party granting that asset on a strict condition of defined care. That arrangement should be terminated if the agreed care is not provided. The level and quality and duration of the care should surely be the only thing that matters,  not whether the person providing that is included in whatever definition of family may exist.

Proposal 9–1

Yes to all these points. In addition the question of the mental competence of the person at the time should be clearly established to prevent the Will being challenged later, on the alleged basis of mental impairment at the time

Proposal 9–2

Yes because these nominations have exactly the same financial implications as the provisions of a will for the management of assets outside of superannuation.

Proposal 9–3

Yes

Proposal 10–1

 Yes but in my experience agencies such as the Public Trustee and the Adult Guardian have not acted in accordance with the wishes  or best interests of a 91-year-old elderly gentleman who is a friend. For example the Public Trustee is holding some $6 million of this man's money yet would not release sufficient funds to him to engage his solicitors to lodge an application with the Supreme Court for a statutory will. The adult Guardian specifically prohibit him from socialising with his friends and have placed him under virtual house arrest. Having a strategy on a piece of paper is of no use unless the people who are charged with the responsibility of implementing that can be held to account if they do not follow that procedure. In the case of our friend the failure of the Public Trustee has gone on unchallenged for four years. Our friend believes that it is the objective of the appointed public officers overseeing his case to delay the application to the Supreme Court for sufficient time for him to die without being able to amend his will. The strategy must have accountability provisions.

Proposal 10–2

Verbal checks alone are quite inadequate. Centre link staff must be provided with copies of the registered documents which give authority to the third parties who are proposing to enter into arrangements on behalf of others. Without such documents no such arrangement by a third party should be permitted. There is very good evidence of widespread abuse of Centre link payments by unscrupulous parties. The Federal Treasurer is warning that our present welfare system is unsustainable as it is. Loopholes will inevitably be exploited and in the end the entire welfare system may be unsustainable unless we stop this fraud.

Proposal 10–3

Yes. As stated above Centre link staff should hold copies of the documents authorising the third-party to make arrangements regarding any centre link payments. The party is proposing to act on  behalf of another  should also sign a document setting out their role and their responsibility and acknowledged that they have been informed of these responsibilities and that ignorance will not be accepted as a defence should they mis-use that authority.

Proposal 10–4

Yes this proposal sounds plausible that how are they going to do it in practice? Elder abuse is most likely to be observed by immediate family, by carers, by doctors, by nurses, or just friends who are in contact with the elder person suffering abuse. It is much more important that there is a simple accessible means of reporting such abuse to an agency which has the resources to immediately investigate. However there should be penalties for deliberate misleading or malicious allegations of such abuse to prevent people making frivolous allegations such has occurred under the race discrimination act.

Proposal 11–1

Yes a good theory in principle. However the experience with the failure of the various state protection agencies to respond promptly and effectively to reported allegations of child abuse does not suggest that such a scheme will be any more effective in the older population. The much-publicised failure of the  Race discrimination commission to deal fairly and effectively with allegations of racial discrimination is a recent further example of the failure of such agencies.  **Merely setting up such an agency modelled on existing failed agencies may look good but just prove a costly window dressing exercise.** An innovative new model needs to be developed that can respond promptly and effectively to legitimate complaints.

Proposal 11–2

Yes to all

Proposal 11–3

Yes

Proposal 11–4

Yes, very important. Any conviction for any criminal  offence should exclude a prospective aged care worker. In addition any history of mental illness should also exclude a prospective aged care worker. Any AVO  or record of violence,  Unsatisfactory employment record, drug abuse or the like, should also be an absolute  exclusion. Child pornography or similar offences should exclude an applicant.

Proposal 11–5

Yes, to avoid people with  an unsatisfactory employment record in one state gaining employment in another where their previous unsatisfactory conduct is unknown. This only places vulnerable older people in another state at an unacceptable level of risk.

Question 11–1

Verbal, physical, or sexual abuse of an older person or any other person working in an aged care institution in any capacity whatsoever.

Mis-use of drugs in any way such as self administration of prohibited drugs, failure to keep accurate records of drugs and of medication administered,

Mental illness that may impact on the employees ability to act responsibly and carefully at all times and endanger the elderly should all exclude such a person from employment in an aged care facility.

Any criminal record should automatically exclude employment.

Attending work whilst under the influence of alcohol should exclude  such employment.

Question 11–2

One year.

Question 11–3

See list above. In addition any infectious illness or other illness which may interfere with the employees ability to provide safe and reliable care  for example a cardiac arrhythmia which could result in fainting episodes at work.

Proposal 11–6

Yes the standard of care provided should be the same regardless of who provides.

Proposal 11–7

Yes, this sounds good in principle. However should be be a violent unexpected outburst which threatens the safety of other elderly people or staff there should be provision for immediate authorisation. These episodes may occur at nights and weekends when the independent decision makers are not available. There needs to be provision to cover such emergencies.

Proposal 11–8

Commonsense would suggest that an older person entering into aged care should appoint a trusted person, usually a close family member, to be their appointed decision-maker for such matters. In the absence of such a formal appointment notified to the aged care provider, what is the aged care provider supposed to do if the recipient becomes mentally incompetent and unable to make rational decisions for their own care and welfare? I suggest that such a legislation would in practical terms work to the disadvantage of the recipient.

Proposal 11–9

Yes but the effectiveness of this depends upon the effectiveness of the agency to which they report to investigate and remedy the issue. As stated above, the record of government departments charged with similar responsibilities for children is not encouraging. Replicating  a failed model which exists in theory but fails to act effectively in practice is only adding another costly bureaucracy without benefit. The personnel in the agency must be adequately resourced to deal with such complaints and  personnel must be accountable for the action or inaction which results

Proposal 11–10

What inspections are carried out at present on the operation of aged care facilities? Aren't the current inspections adequate to identify whether the rights of the elderly recipients are being recognised and adequate care is being provided? This sounds like just adding another layer of bureaucracy and sounds of questionable benefit. If there is no effective inspection regime in place at the moment, then clearly it is urgent that there should be regular careful inspection and written reports with the consequences for the operators of the facility if they fail to meet the appropriate standards. The report will be useless unless there are consequences.

Proposal 11–11

Surely this is being done at the present time for all aged care facilities! If it is not then regular inspections need to be urgently implemented. Once again the inspection will be useless unless the reports are acted upon promptly and there are consequences for the parties which are in breach.

File