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27 February 2017

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

By email: elder_abuse@alrc.gov.au

Dear Sir or Madam,

ELDER ABUSE

Thank you for the opportunity to comment on the document ALRC Discussion Paper 83, 2016, *Elder abuse (Discussion Paper)* released by the Australian Law Reform Commission (**ALRC**) for comment in December 2016.

The Australian Finance Conference was formed in 1958 and is a non-institutionally based association of financiers. Our members include finance companies, banks, specialist equipment financiers and general financiers providing consumer and commercial credit facilities. The AFC also provides a directorate service for a number of finance product-specific industry bodies. These affiliated entities are the Australian Equipment Lessors Association, the Australian Fleet Lessors Association, the Debtor and Invoice Finance Association, and Insurance Premium Financiers of Australia. This submission is made on behalf of the Australian Finance Conference and affiliated entities, collectively referred to as the **AFC**.

As providers of consumer and commercial credit our members have a particular interest in the parts of the Discussion Paper which concern financial abuse. While the AFC deplors all such incidents, our members are not aware that they occur with any significant frequency or scale. We would therefore be cautious that any recommendations to put in place system-wide safeguards do not create systems and other compliance costs out of proportion to the problem being addressed, particularly for smaller and niche financiers. This caution applies both in terms of strict legal compliance as well as at the level of external dispute resolution schemes which may apply a further standard deriving from a sectoral code (eg. Code of Banking Practice) designed and agreed to suit particular circumstances. Therefore recommendations should seek to maximise the protection afforded at the least compliance cost.

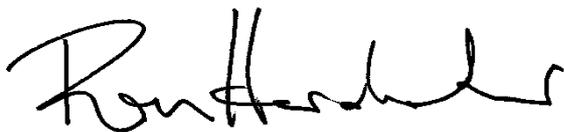
The AFC makes the following specific observations in relation to Proposal 5-1 to establish a national online register of enduring documents, and court and tribunal orders for the appointment of guardians and financial administrators. Our members:

- do not typically deal with high volumes of enduring powers of attorney (EPOA);

- have in place controls to minimise the possibility of financial abuse. For example, one member, a credit card provider, restricts dealings which can be transacted under an EPOA to closing an account (including paying out any balance owing to the credit provider) and entering into a waiver or settlement arrangement. It does not permit EPOAs to be used to open new accounts, increase credit limits, order supplementary cards etc;
- perceive there to be a benefit in establishing a national online register. This should assist Members in ensuring the currency and validity of an EPOA on each relevant transaction date, as it will highlight whether the EPOA has been revoked. In the case of further relevant transactions with existing or previous customers it should speed-up the transaction. This is because as a matter of process at present front-line staff often refer EPOAs to internal legal departments to ascertain their validity and extent of authority. With an on-line register it should be possible for front-line staff to be able to more quickly establish EPOA status;
- are cautious about how the register will be financed. They note the already high cost of compliance in Australia's financial system. They also note that the costs of searching the Personal Property Securities Register are typically passed on to customers. It is likely that costs of searching the proposed national online register would be similarly passed on to customers;
- consider that a national online register would serve to minimise, but not entirely prevent, financial abuse from occurring through the misuse of EPOAs; and
- that if a national online register were not to proceed there would be benefit in harmonising the format of EPOAs. If there was a national form this would reduce confusion and the possibility of human error as all EPOAs would have the same fields to check. If there were a national online register then it would not be necessary to check the documents at all, only their status.

If you have any queries in relation to the AFC submission please do not hesitate to contact me on (02) 9231 5877 or Paul Stacey, Associate Director – Policy on (02) 9225 3810.

Yours truly,

A handwritten signature in black ink, appearing to read 'Ron Hardaker', written in a cursive style.

Ron Hardaker
Executive Director