



28 February 2017

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Dear Rosalind

Subject: Elder Abuse (DP 83)

Thank you again for meeting with us last week. CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. Against this background and in the public interest, we provide this submission in response to the second consultation paper on elder abuse.

CPA Australia's comments on DP83 focus, in the main, on elder financial abuse. However it is appropriate that DP83 considers other forms of elder abuse more broadly, including both medical and personal abuse.

Australian households have never been wealthier¹ and like many other countries we also have an ageing population. For example, male life expectancy is projected to increase from 91.5 years in 2015 to 95.1 years in 2055, and female life expectancy is projected to increase from 93.6 years to 96.6 in 2055. The number of Australians aged 65 and over is projected to more than double by 2055 compared with today.²

Taking these two things together, unless steps are taken to develop a nationally consistent framework to address elder abuse – in particular financial abuse - we expect that the risk of abuse will only increase, and the consequences will become more profound as the stakes continue to rise.

Recognising both the current and increasing future risk of elder abuse, CPA Australia recently undertook work in this area with other relevant partners, developing a member toolkit providing guidance for members regarding the identification of financial abuse.³

As trusted professional business and financial advisers, the professional accountant will often be in the position to first identify elder financial abuse. However while CPA Australia's toolkit is of use to the identification of potential financial abuse, identification is really only a first step.

Unless Australia has a robust system of governance in this area, abuse will continue and cases will fall between the cracks - of a system hampered by mismatched rules between states and territories. Accordingly we are supportive of a national response and the development of a national framework as envisaged and proposed by the ALRC in the abovementioned discussion paper.

However members have raised their significant concerns with us regarding how the DP83 has been framed.

Specifically it has been noted that DP83 makes no reference to important role the thousands of accounting professionals have played over the years to help ensure the law in respect of enduring powers of attorney actually work as intended. Further DP83 has not listed members of the accounting profession as one of the

¹ For example, see <http://au.pressfrom.com/news/money/-1409-australia-youve-never-been-wealthier/>

² <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report>

³ See - <https://www.cpaaustralia.com.au/professional-resources/public-practice/financial-abuse-of-older-people>

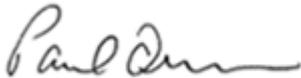
occupation options for witnessing such documents in the future. As conveyed in our recent meeting with you, we are absolutely of the view that the ongoing role of the accounting profession – and the accounting professional - is critical to the workings of these laws.

Our comments on this matter as well as issues raised in DP83 more fully are articulated in the **Attachment** to this letter.

Please treat this submission as a public submission.

If you have any questions regarding this submission, please do not hesitate to contact me via telephone or email, as provided below.

Yours faithfully

A handwritten signature in black ink, appearing to read "Paul Drum". The signature is fluid and cursive, with a long horizontal stroke at the end.

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CPA Australia provides the following the consultation paper's specific proposals.

RELEVANT CHAPTER / ALRC PROPOSALS AND QUESTIONS	CPA AUSTRALIA COMMENTS
2. National Plan	
Proposal 2–1 A National Plan to address elder abuse should be developed.	Supported.
Proposal 2–2 A national prevalence study of elder abuse should be commissioned.	Supported.
3. Powers of Investigation	
<p>Proposal 3–1 State and territory public advocates or public guardians should be given the power to investigate elder abuse where they have a reasonable cause to suspect that an older person:</p> <ul style="list-style-type: none"> (a) has care and support needs; (b) is, or is at risk of, being abused or neglected; and (c) is unable to protect themselves from the abuse or neglect, or the risk of it because of care and support needs. <p>Public advocates or public guardians should be able to exercise this power on receipt of a complaint or referral or on their own motion.</p>	Supported.
<p>Proposal 3–2 Public advocates or public guardians should be guided by the following principles:</p> <ul style="list-style-type: none"> (a) older people experiencing abuse or neglect have the right to refuse support, assistance or protection; (b) the need to protect someone from abuse or neglect must be balanced with respect for the person's right to make their own decisions about their care; and (c) the will, preferences and rights of the older person must be respected. 	Supported.
<p>Proposal 3–3 Public advocates or public guardians should have the power to require that a person, other than the older person:</p> <ul style="list-style-type: none"> (a) furnish information; (b) produce documents; or (c) participate in an interview relating to an investigation of the abuse or neglect of an older person. 	Supported.

<p>Proposal 3–4 In responding to the suspected abuse or neglect of an older person, public advocates or public guardians may:</p> <ul style="list-style-type: none"> (a) refer the older person or the perpetrator to available health care, social, legal, accommodation or other services; (b) assist the older person or perpetrator in obtaining those services; (c) prepare, in consultation with the older person, a support and assistance plan that specifies any services needed by the older person; or (d) decide to take no further action. 	Supported.
<p>Proposal 3–5 Any person who reports elder abuse to the public advocate or public guardian in good faith and based on a reasonable suspicion should not, as a consequence of their report, be:</p> <ul style="list-style-type: none"> (a) liable, civilly, criminally or under an administrative process; (b) found to have departed from standards of professional conduct; (c) dismissed or threatened in the course of their employment; or (d) discriminated against with respect to employment or membership in a profession or trade union. 	Supported.
4. Criminal justice responses	
(No proposals in this chapter.)	N/A
5. Enduring Powers of Attorney and Enduring Guardianship	
<p>Proposal 5–1 A national online register of enduring documents, and court and tribunal orders for the appointment of guardians and financial administrators, should be established.</p>	Supported.
<p>Proposal 5–2 The making or revocation of an enduring document should not be valid until registered. The making and registering of a subsequent enduring document should automatically revoke the previous document of the same type.</p>	Supported.
<p>Proposal 5–3 The implementation of the national online register should include transitional arrangements to ensure that existing enduring documents can be registered and that unregistered enduring documents remain valid for a prescribed period.</p>	Supported.
<p>Question 5–1 Who should be permitted to search the national online register without restriction?</p>	<p>Please consider CPA Australia’s comments here in conjunction with its comments at 5-4 below. It is important that members of the accounting profession - such as CPA Australia members- should be permitted to search the national online register without restriction.</p> <p>(The same equally applies to financial institutions, members of the legal profession, and public service agencies such as the ATO, Centrelink, Dept. of Community Services etc.)</p>

<p>Question 5–2 Should public advocates and public guardians have the power to conduct random checks of enduring attorneys’ management of principals’ financial affairs?</p>	<p>Supported.</p>
<p>Proposal 5–4 Enduring documents should be witnessed by two independent witnesses, one of whom must be either a:</p> <ul style="list-style-type: none"> (a) legal practitioner; (b) medical practitioner; (c) justice of the peace; (d) registrar of the Local/Magistrates Court; or (e) police officer holding the rank of sergeant or above. <p>Each witness should certify that:</p> <ul style="list-style-type: none"> (a) the principal appeared to freely and voluntarily sign in their presence; (b) the principal appeared to understand the nature of the document; and (c) the enduring attorney or enduring guardian appeared to freely and voluntarily sign in their presence. 	<p>CPA Australia is generally supportive of a reduced list of occupations that can witness enduring documents. However a key issue here is access. In many parts of rural and regional Australia people do not have ready access to the witness occupations referred to in 5-4 (a)-(e) inclusive.</p> <p>Further many will not see their medical practitioner or go to a legal practitioner until a significant event occurs. Conversely 74 per cent of Australians will see their accountant annually to prepare their income tax return. They know their client, and providing document witnessing facilities is a natural extension of their relationship with the client. For these reasons we are of the view that for the effective working of the law in this area it is essential that members of the accounting profession retain their legal status as witnesses.</p>
<p>Proposal 5–5 State and territory tribunals should be vested with the power to order that enduring attorneys and enduring guardians or court and tribunal appointed guardians and financial administrators pay compensation where the loss was caused by that person’s failure to comply with their obligations under the relevant Act.</p>	<p>Supported.</p>
<p>Proposal 5–6 Laws governing enduring powers of attorney should provide that an attorney must not enter into a transaction where there is, or may be, a conflict between the attorney’s duty to the principal and the interests of the attorney (or a relative, business associate or close friend of the attorney), unless:</p> <ul style="list-style-type: none"> (a) the principal foresaw the particular type of conflict and gave express authorisation in the enduring power of attorney document; or (b) a tribunal has authorised the transaction before it is entered into. 	<p>Supported.</p>
<p>Proposal 5–7 A person should be ineligible to be an enduring attorney if the person:</p> <ul style="list-style-type: none"> (a) is an undischarged bankrupt; (b) is prohibited from acting as a director under the Corporations Act 2001 (Cth); (c) has been convicted of an offence involving fraud or dishonesty; or (d) is, or has been, a care worker, a health provider or an accommodation provider for the principal. 	<p>Supported.</p>

<p>Proposal 5–8 Legislation governing enduring documents should explicitly list transactions that cannot be completed by an enduring attorney or enduring guardian including:</p> <ul style="list-style-type: none"> (a) making or revoking the principal’s will; (b) making or revoking an enduring document on behalf of the principal; (c) voting in elections on behalf of the principal; (d) consenting to adoption of a child by the principal; (e) consenting to marriage or divorce of the principal; or (f) consenting to the principal entering into a sexual relationship. 	Supported.
<p>Proposal 5–9 Enduring attorneys and enduring guardians should be required to keep records. Enduring attorneys should keep their own property separate from the property of the principal.</p>	Supported.
<p>Proposal 5–10 State and territory governments should introduce nationally consistent laws governing enduring powers of attorney (including financial, medical and personal), enduring guardianship and other substitute decision makers.</p>	Supported.
<p>Proposal 5–11 The term ‘representatives’ should be used for the substitute decision makers referred to in proposal 5–10 and the enduring instruments under which these arrangements are made should be called ‘Representatives Agreements’.</p>	Supported.
<p>Proposal 5–12 A model Representatives Agreement should be developed to facilitate the making of these arrangements.</p>	Supported.
<p>Proposal 5–13 Representatives should be required to support and represent the will, preferences and rights of the principal.</p>	Supported.
6. Guardianship and Financial Administration Orders	
<p>Proposal 6–1 Newly-appointed non-professional guardians and financial administrators should be informed of the scope of their roles, responsibilities and obligations.</p>	Supported.
<p>Question 6–1 Should information for newly-appointed guardians and financial administrators be provided in the form of:</p> <ul style="list-style-type: none"> (a) compulsory training; (b) training ordered at the discretion of the tribunal; (c) information given by the tribunal to satisfy itself that the person has the competency required for the appointment; or (d) other ways? 	6-1 (a) and (b). In the proposed nationally coordinated system, and with the ongoing evolution of online learning facilities, we consider that compulsory training would be advantageous, and support further development of what such an arrangement would entail/ require.
<p>Proposal 6–2 Newly-appointed guardians and financial administrators should be required to sign an undertaking to comply with their responsibilities and obligations.</p>	We query whether by virtue of accepting the role then they have already effectively agreed to comply with their responsibilities and obligations.

<p>Question 6–2 In what circumstances, if any, should financial administrators be required to purchase surety bonds?</p>	<p>As a comment we query whether compulsion of financial administrators to purchase surety bonds may inadvertently lead to a shortage of appropriate financial administrators.</p>
<p>Question 6–3 What is the best way to ensure that a person who is subject to a guardianship or financial administration application is included in this process?</p>	<p>As a comment we note that the person who is subject to the guardianship will ordinarily be the signatory to the legal document that establishes the arrangement.</p>
<p>7. Banks and superannuation</p>	
<p>Proposal 7–1 The Code of Banking Practice should provide that banks will take reasonable steps to prevent the financial abuse of older customers. The Code should give examples of such reasonable steps, including training for staff, using software to identify suspicious transactions and, in appropriate cases, reporting suspected abuse to the relevant authorities.</p>	<p>Supported.</p>
<p>Proposal 7–2 The Code of Banking Practice should increase the witnessing requirements for arrangements that allow people to authorise third parties to access their bank accounts. For example, at least two people should witness the customer sign the form giving authorisation, and customers should sign a declaration stating that they understand the scope of the authority and the additional risk of financial abuse.</p>	<p>Supported.</p>
<p>Question 7–1 Should the Superannuation Industry (Supervision) Act 1993 (Cth) be amended to:</p> <ul style="list-style-type: none"> (a) require that all self-managed superannuation funds have a corporate trustee; (b) prescribe certain arrangements for the management of self-managed superannuation funds in the event that a trustee loses capacity; (c) impose additional compliance obligations on trustees and directors when they are not a member of the fund; and (d) give the Superannuation Complaints Tribunal jurisdiction to resolve disputes involving self-managed superannuation funds? 	<p>7-1(a). There are currently over 570,000 SMSFs in Australia, most of which will not have a corporate trustee. While there are some clear benefits to using a corporate trustee, such as when changing members, asset protection, and continuous succession, in some ways such a structure moves the problem from one where a trustee must be replaced to one where a director of the corporate trustee must be replaced. In summary CPA Australia does not support the mandating of a particular trustee structure, as each arrangement should be determined on the overall circumstances of the client(s).</p> <p>7-1(b). Qualified support – we believe there is scope to prescribe certain arrangements for the management of self-managed superannuation funds in the event that a trustee loses capacity. However it is important to note that most of the risks associated with the event of a trustee losing capacity stem not from the trustee structure but from the fact that when an attorney becomes a trustee they do so in their personal capacity not in their capacity as an attorney. We believe they should be required to act in the best interests of the member they represent not themselves.</p> <p>7-1(c) Supported. The main requirement should be that they not make personal gain without independent oversight. For example, they should not be able to execute a binding death benefit nomination that would benefit</p>

	<p>themselves.</p> <p>7-1(d) Not supported. As most of the risk stems from abuse of powers of attorney there are other legal avenues to deal with them. The SCT is set up to support individuals in dispute with third party trustees who may be disadvantaged by other legal avenues. It is not equipped to with related party disputes.</p>
<p>Question 7-2 Should there be restrictions as to who may provide advice on, and prepare documentation for, the establishment of self-managed superannuation funds?</p>	<p>There are restrictions already with advice being restricted to licensed financial advisers and the preparation of legal documents by lawyers.</p>
<p>8. Family Agreements</p>	
<p>Proposal 8-1 State and territory tribunals should have jurisdiction to resolve family disputes involving residential property under an 'assets for care' arrangement.</p>	<p>Supported.</p>
<p>Question 8-1 How should 'family' be defined for the purposes 'assets for care' matters?</p>	<p>CPA Australia encourages the ALRC to consider the definitions of family that are used in other statutes in Australia.</p>
<p>9. Wills</p>	
<p>Proposal 9-1 The Law Council of Australia, together with state and territory law societies, should review the guidelines for legal practitioners in relation to the preparation and execution of wills and other advance planning documents to ensure they cover matters such as:</p> <ul style="list-style-type: none"> (a) common risk factors associated with undue influence; (b) the importance of taking detailed instructions from the person alone; (c) the importance of ensuring that the person understands the nature of the document and knows and approves of its contents, particularly in circumstances where an unrelated person benefits; and (d) the need to keep detailed file notes and make inquiries regarding previous wills and advance planning documents. 	<p>Supported.</p>
<p>Proposal 9-2 The witnessing requirements for binding death benefit nominations in the Superannuation Industry (Supervision) Act 1993 (Cth) and Superannuation Industry (Supervision) Regulations 1994 (Cth) should be equivalent to those for wills.</p>	<p>Supported, provided it does not create a more onerous or costly requirement on members.</p>
<p>Proposal 9-3 The Superannuation Industry (Supervision) Act 1993 (Cth) and Superannuation Industry (Supervision) Regulations 1994 (Cth) should make it clear that a person appointed under an enduring power of attorney cannot make a binding death benefit nomination on behalf of a member.</p>	<p>Supported.</p>

10. Social Security	
Proposal 10–1 The Department of Human Services (Cth) should develop an elder abuse strategy to prevent, identify and respond to the abuse of older persons in contact with Centrelink.	Supported.
Proposal 10–2 Centrelink policies and practices should require that Centrelink staff speak directly with persons of Age Pension age who are entering into arrangements with others that concern social security payments.	Supported.
Proposal 10–3 Centrelink communications should make clear the roles and responsibilities of all participants to arrangements with persons of Age Pension age that concern social security payments.	Supported.
Proposal 10–4 Centrelink staff should be trained further to identify and respond to elder abuse.	Supported.
11. Aged care	
Proposal 11–1 Aged care legislation should establish a reportable incidents scheme. The scheme should require approved providers to notify reportable incidents to the Aged Care Complaints Commissioner, who will oversee the approved provider's investigation of and response to those incidents.	Supported.
<p>Proposal 11–2 The term 'reportable assault' in the Aged Care Act 1997 (Cth) should be replaced with 'reportable incident'.</p> <p>With respect to residential care, 'reportable incident' should mean:</p> <ul style="list-style-type: none"> (a) a sexual offence, sexual misconduct, assault, fraud/financial abuse, ill-treatment or neglect committed by a staff member on or toward a care recipient; (b) a sexual offence, an incident causing serious injury, an incident involving the use of a weapon, or an incident that is part of a pattern of abuse when committed by a care recipient toward another care recipient; or (c) an incident resulting in an unexplained serious injury to a care recipient. <p>With respect to home care or flexible care, 'reportable incident' should mean a sexual offence, sexual misconduct, assault, fraud/financial abuse, ill-treatment or neglect committed by a staff member on or toward a care recipient.</p>	Supported.
Proposal 11–3 The exemption to reporting provided by s53 of the Accountability Principles 2014 (Cth), regarding alleged or suspected assaults committed by a care recipient with a pre-diagnosed cognitive impairment on another care recipient, should be removed.	Supported.

<p>Proposal 11–4 There should be a national employment screening process for Australian Government funded aged care. The screening process should determine whether a clearance should be granted to work in aged care, based on an assessment of:</p> <ul style="list-style-type: none"> (a) a person’s national criminal history; (b) relevant reportable incidents under the proposed reportable incidents scheme; and (c) relevant disciplinary proceedings or complaints. 	Supported.
<p>Proposal 11–5 A national database should be established to record the outcome and status of employment clearances.</p>	Supported.
<p>Question 11–1 Where a person is the subject of an adverse finding in respect of a reportable incident, what sort of incident should automatically exclude the person from working in aged care?</p>	No comment.
<p>Question 11–2 How long should an employment clearance remain valid?</p>	No comment.
<p>Question 11–3 Are there further offences which should preclude a person from employment in aged care?</p>	No comment.
<p>Proposal 11–6 Unregistered aged care workers who provide direct care should be subject to the planned National Code of Conduct for Health Care Workers.</p>	Supported.
<p>Proposal 11–7 The Aged Care Act 1997 (Cth) should regulate the use of restrictive practices in residential aged care. The Act should provide that restrictive practices only be used:</p> <ul style="list-style-type: none"> (a) when necessary to prevent physical harm; (b) to the extent necessary to prevent the harm; (c) with the approval of an independent decision maker, such as a senior clinician, with statutory authority to make this decision; and (d) as prescribed in a person’s behaviour management plan. 	Supported.
<p>Proposal 11–8 Aged care legislation should provide that agreements entered into between an approved provider and a care recipient cannot require that the care recipient has appointed a decision maker for lifestyle, personal or financial matters.</p>	Supported.
<p>Proposal 11–9 The Department of Health (Cth) should develop national guidelines for the community visitors scheme that:</p> <ul style="list-style-type: none"> (a) provide policies and procedures for community visitors to follow if they have concerns about abuse or neglect of care recipients; (b) provide policies and procedures for community visitors to refer care recipients to advocacy services or complaints mechanisms where this may assist them; and (c) require training of community visitors in these policies and procedures. 	Supported.

<p>Proposal 11–10 The Aged Care Act 1997 (Cth) should provide for an ‘official visitors’ scheme for residential aged care. Official visitors’ functions should be to inquire into and report on:</p> <ul style="list-style-type: none"> (a) whether the rights of care recipients are being upheld; (b) the adequacy of information provided to care recipients about their rights, including the availability of advocacy services and complaints mechanisms; and (a) (c) concerns relating to abuse and neglect of care recipients. 	<p>Supported.</p>
<p>Proposal 11–11 Official visitors should be empowered to:</p> <ul style="list-style-type: none"> (a) enter and inspect a residential aged care service; (b) confer alone with residents and staff of a residential aged care service; and (c) make complaints or reports about suspected abuse or neglect of care recipients to appropriate persons or entities. 	<p>Supported.</p>