**State Trustees Limited**

**Submission to the Australian Law Reform Commission (ALRC)**

**in response to Elder Abuse Discussion Paper 83**

*6 March 2017*

State Trustees Limited (**State Trustees**) welcomes the opportunity to comment on the proposals, and respond to the questions, in the ALRC’s Discussion Paper regarding elder abuse.

In this submission, we have responded to those proposals and questions relating to matters on which State Trustees has most experience and knowledge.

**About States Trustees**

State Trustees is the public trustee for Victoria. Elder abuse, particularly financial elder abuse, is a central issue for State Trustees. We are committed to working with the Victorian and Commonwealth Governments, and relevant agencies and services, to find improved ways to identify, prevent and remedy instances of such abuse.

State Trustees plays a pivotal role in combatting elder abuse in the Victorian community:

* State Trustees has been appointed by the Victorian Civil and Administrative Tribunal (**VCAT**) as the financial administrator for approximately 10,000 Victorians who, due to disability, are unable to administer their own affairs. In many cases, the need for such appointment arises because the older person has been exposed to, or is vulnerable to, financial elder abuse because they have an age-related or other disability.
* Many Victorians have also entrusted the management of their financial affairs to State Trustees by appointing us under an enduring power of attorney, thereby ensuring their financial resources are protected and applied appropriately for their benefit, even where the person is unable to make decisions for themselves.
* A further State Trustees service that can involve detection and prevention of financial elder abuse is the examination of the accounts of private administrators appointed by VCAT. Where State Trustees identifies any such irregularities, it is open to VCAT to revoke the appointment of the private administrator and appoint a professional administrator such as State Trustees.

Its activities in these and other areas mean that State Trustees is playing a leading role in combatting elder abuse in the Victorian community.

**Responses to proposals and questions *Proposal 2–1*** *A National Plan to address elder abuse should be developed.*   
  
State Trustees supports this proposal.

There will be a critical need for co-ordination between governments at all levels, particularly given that most of the activity to actually combat elder abuse will occur at a state or local level, through public advocates and guardians, tribunals, public trustees, health workers, geriatricians, advocates, and police.   
  
We recommend that any national plan should be underpinned by agreed definitions and a comprehensive prevalence study (per Proposal 2–2 below) which should identify the diversity of the victims and perpetrators, and any key contributing factors to the occurrence of elder abuse.

***Proposal 2–2*** *A national prevalence study of elder abuse should be commissioned.*

State Trustees supports this proposal.

There is a distinct lack of reliable data on elder abuse, which impedes the ability of Government and responsible agencies to assess the most appropriate targeting and responses. In response to the deficiency in comprehensive Australian research in this area, State Trustees commissioned Monash University to undertake a three-year research project into elder financial abuse, entitled the *Protecting Elders Assets Study (PEAS): Ethical Management of Older Persons’ Financial Assets (2009-2011)*. The five PEAS reports generated in the course of the project are available at:

https://www.statetrustees.com.au/community/financial-elder-abuse/financial-elder-abuse-research/

Whilst the findings of the PEAS study have been of great value, it essential that a comprehensive prevalence study be undertaken to build on the existing research and data.

***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:*

*(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.*

*Public advocates or public guardians should be able to exercise this power on receipt of a complaint or referral or on their own motion.*

State Trustees supports this proposal.

In some instances it may be more appropriate for there to be immediate police intervention. We therefore recommend clear protocols be in put in place to ensure the older person is not exposed to any further unreasonable levels of risk, taking into account the older person’s decision making capacity, will and preferences.  Care would also need to be exercised as regards the manner in which these new powers were able to be exercised, having regard to the potential for some interventions to result in harmful overreach.

More broadly, and outside the scope of this inquiry, the entity given the responsibility to investigate elder abuse cases should not limit its use of power to older Australians, but rather be able to investigate cases of abuse involving all vulnerable adults.

***Proposal 3–2***

*Public advocates or public guardians should be guided by the following principles: (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.*

State Trustees supports this proposal.

***Proposal 3–3***

*Public advocates or public guardians should have the power to require that a person, other than the older person: (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.*

State Trustees supports this proposal.

### *Proposal 3–4 In responding to the suspected abuse or neglect of an older person, public advocates or public guardians may: (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.*

State Trustees supports this proposal

### *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: (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.*

State Trustees supports this proposal.

The persons protected from detriment in such circumstances should include legal persons, such as trustee companies.

***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.*

State Trustees supports this proposal, subject to the comments below.

On balance, State Trustees believes the creation of a mandatory, national, online registration system for enduring powers, supportive attorney appointments, and Court/Tribunal appointments of substitute decision makers, will bring overall benefits, so long as appropriate protections are maintained.

The Victorian Law Reform Commission (**VLRC**) in its 2012 report envisioned the register being initially within Victoria alone. STL envisions significant advantages starting with a state-based system of registration given the current significant differences between the laws, and forms of documents, for substitute decision-making appointments in the various Australian jurisdictions.

It should also be borne in mind that enduring documents that were validly made under a law previously in force will generally remain valid under the (new) current law: for example, in Victoria, enduring powers of attorney validly made prior to the commencement of the new Act (on 1 September 2015) are recognised as remaining valid under the new law. It is essential that any register allow the registration of all existing enduring documents that have been validly made, irrespective of whether they were made under the current legislation, or its previous equivalents. This is because it will not always be possible for the principal to ‘update’ their enduring document to the latest version; for example, the principal may no longer have the decision making capacity to make a new document. In the event a new law were to deem their existing appointment invalid, without any chance of preserving its validity by registration, then the only recourse would be an application to the relevant court or tribunal, with a consequential increase in the administrative burden on such forums, and the prospect that the principal’s wishes will not be followed. As an indication of the quantum of such existing appointments that exist, State Trustees alone holds in the order of 27,000 currently inactive enduring powers of attorney on behalf of its clients.

Establishment of a central register should not be made conditional upon the unavoidable invalidation of the estate planning arrangements that hundreds of thousands of Australians have thoughtfully put in place and are relying on for their future wellbeing. The law should not unilaterally negate the validity of the enduring appointment: the principal or the appointee (attorney, enduring guardian, etc.) should be able to maintain its validity by registering it within a generous transition period (the VLRC suggests five years).

This does not mean that there should not be greater uniformity in the law. However, attempts to bring about Australia-wide uniformity, in a variety of areas of the law, have had success in only a limited number of cases, and in some of those only to a limited degree. For example, the Legal Profession Uniform Law only currently applies in two jurisdictions, New South Wales and Victoria.) The process is also generally a very protracted one.

In our view, it would be difficult to design a central register to accommodate the current array of appointment types recognised in each state and territory, and creating one would take significant time. The design, establishment and operation of the register would initially be complicated and correspondingly expensive. Such a register could nevertheless be established as a joint state-federal initiative, with partial funding through annual subscriptions for frequent users, and search fees. An alternative option is that the register commence across those jurisdictions that adopt an aligned model (whether ‘Commonwealth’ or otherwise), and that prior, valid non-aligned documents remain valid under grandfathering provisions. This approach may result in a shared register being established sooner.

The entity selected, or set up, to operate the registry must have the qualities, skills and organisational competencies required for the running of a ‘dynamic’ registry; for example, the capacity to respond quickly to urgent registrations. If it were appropriately-funded, State Trustees could be the body to operate the register in Victoria.

Registration of advance care directives, such as are contemplated in the *Medical Treatment Planning and Decisions Act 2016* (Vic.),[[1]](#footnote-1) should be permitted, because the My Health site arguably fulfils a different purpose than that of the proposed register. However, due to the limited scope of such directives, it is submitted that non-registration should not render them ineffective.

Potential benefits of online registration include:

(i) reducing the risk of persons relying or acting on invalid documents;

(ii) being able to verify whether an enduring power exists and is current;

(iii) providing the ability to ascertain the scope of the power, and whether it has been activated;

(iv) providing scope for monitoring and imposing accountabilities on appointees; and

(v) providing the ability to determine at a later date whether financial transactions were made by the donor themselves, or by the relevant appointee*.*

The objective of registration should be to capture the existence of all Tribunal appointments and enduring powers irrespective of whether they are activated or dormant. Registration should ideally occur as soon as reasonably practicable after the relevant instrument is executed to promote awareness that registration is a necessary step in the creation of a valid enduring power. If registration has not occurred within a specified timeframe after the date of execution (e.g. within six months), it should still be possible to register, but only after an additional procedure to elicit the reasons for the delay (which could also involve an additional fee component) or Tribunal approval.

If registration is a condition precedent to the efficacy of an enduring appointment, then an efficient registration process will be crucial, particularly in urgent cases where any delay could be detrimental to the donor. If there is a hiatus between submitting the document and the issue of a registration certificate, it would be desirable to have a mechanism so that enduring powers of attorney executed and activated for immediate use can be registered and an ‘interim’ certificate of authority issued, granting certain limited powers to act.

Incentives should be built into the system to encourage registration of pre-existing appointments as well as protections to ensure pre-existing dormant enduring powers are not deemed ineffectual by virtue of non-registration. The VLRC recommended there be a generous lead-in period of five years for pre-existing documents to be registered.

The registration system should record whether the appointment is ‘active‘, however, the act of registration should not mean the appointment has been ‘activated’. The register could also capture loss of capacity notifications but the presumption of capacity must prevail until it is determined that a donor no longer has decision making capacity.

In this regard, State Trustees’ experience of powers of attorney under management include:

(i) Enduring powers made for future need – Enduring powers of attorney (financial) are a powerful estate planning tool that puts choice in the hands of the individual because the enduring power of attorney is not ‘activated‘ until either specified by the donor or from a time, in a circumstance, or on an occasion, specified in the document. In these circumstances, the power would not be ‘activated’ at registration.

(ii) Temporary circumstances – An enduring power may be made for temporary purposes e.g. due to a period of personal crisis (e.g. injury or grief) or physical absence (e.g. overseas holidays). The donor may require the attorney to assist in co-decision making, or for the attorney to manage a specific function associated with their personal circumstances. In these circumstances, the power would be ‘activated’ and ‘deactivated’ at the donor‘s request.

(iii) Fluctuating capacity – Enduring power of attorney (financial) clients frequently have fluctuating capacity. In such cases, the service provided by State Trustees is often, in effect, a form of supported decision making.

(iv) ‘Enduring’ circumstances – State Trustees’ practice of ensuring (wherever possible) that there is medical evidence of loss of capacity should be reflected in the registration system. There should also be powers provided to the relevant Tribunal to make a determination where such evidence is not able to be produced.

Ideally, registration would include validation of the instrument in accordance with the requirements for a valid enduring power under the relevant Act.

Registration should be the means of determining whether or not an appointment is current, and has not been revoked, so that the attorney can be contacted in relation to the principal. Automatic access to limited information held on the register could be provided to authorised organisations and certain approved third parties (e.g. the Public Advocate, police, banks, professional trustee organisations, health professionals and legal professionals), although access arrangements need to be designed on clear ‘need to know’ principles.

Appropriate information technology security mechanisms would be required to facilitate authorised access to the register and notifications of activation or cancellation. An attorney should not be able to act under an enduring power unless the appointment has been registered and activation has been notified. A crisis service is likely to be required of the registering organisation for emergency situations.

The new registry should ideally be designed in such a way that there is no duplication with other process for filing of powers of attorney (including enduring powers of attorney), e.g. with the relevant Registrar of Land Titles.

***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.*

State Trustees supports this proposal, subject to the observations already made relating to dormant enduring documents, and the following further qualification: Not all appointments should revoke a prior appointment of the same type: e.g. a principal can appoint a son to manage the principal’s shares, and, in a separate concurrent documents, a daughter to manage the principal’s manage bank accounts. The law in Victoria permits the principal to specify any existing documents that are not intended to be revoked by the making of a new enduring power of attorney.

***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.*

If the decision is made to adopt a national register, State Trustees would support such transitional arrangements. As noted, the processes in relation to existing documents of various types will necessarily be complex, but a transition to mandatory registration is achievable, particularly with a generous transition period (for example, 5 years). The onus should be on the principal to register, not the appointee; but it should be open to an appointee in possession of the original document to seek to have it registered without requiring additional instructions from the principal.

***Question 5–1****Who should be permitted to search the national online register without restriction?*

State Trustees submits that there should be several different levels of access, according to authorisation and/or need. It will be important to have sufficient controls and limitations that people are not deterred from making enduring documents because of privacy concerns.

The principal him- or herself should have full access to their particular registered documents, and the ability to grant the same access to one or more other trusted parties, by means of an access code, or the like.

A person who is being asked to rely upon the validity of a document presented to them should be able to confirm its currency by checking the register “live”, and possibly receiving a confirmation email.

One option is that each registered document would be stamped with a registration number. Any person could then use the registration number to check the currency of that document.

In such circumstances, the search would show:

* Is the document presented to me registered and current (based on its registration number)? YES / NO (and if no, on which date did it cease to be current?)

Beyond this document-confirmation circumstance, the degree of access could be staggered, according to public-interest need. The following table shows, for consideration, some potential candidates for ‘as of right’ access, including some observations as to ‘need to know’ restrictions:

| **Party type** | **Potential scope** |
| --- | --- |
| 1. **“First attenders”:**    1. Police | Full access. |
| * 1. the Aged Care Assessment Services (ACAS)   2. Ambulance | Access to ‘personal/health’ matter’ details only (not financial/property) |
| 1. **Other medical:**     1. the Royal District Nursing Service    2. hospitals    3. aged care facilities    4. medical practitioners |
| 1. **Federal agencies:**     1. Medicare    2. Centrelink [& DVA] | Full access |
| 1. **Financial:**     1. banks and other financial institutions    2. insurance companies | Access only where the principal appears to lack decision making capacity. |
| 1. **Judicial / investigative / legal:**     1. Courts and Tribunals    2. Coroner    3. State/Federal police    4. Public advocate/guardian | Full access |
| * 1. Public Trustees | Access where the principal is instructing in relation to a will or enduring appointment |
| * 1. Legal practitioner |

Again, to avoid discouraging use of enduring appointments, the scope of any access where there is no express consent of the person would require very careful delineation. There would also need to be strict consequences for abuse of the right to access the register, and those with a right of access would need to be accountable for each search performed.

***Question 5–2****Should public advocates and public guardians have the power to conduct random checks of enduring attorneys’ management of principals’ financial affairs?*

In Victoria, VCAT has the power to order examinations and audits of an attorney’s management of the principal’s financial affairs, but such orders are not ‘random’. An examination or audit, if ordered, would be performed by an accountant or auditor. The Office of Public Advocate is currently not sufficiently resourced or skilled to perform such examinations or audits. The scope of a ‘random check’ is likely to be of lesser scope than an ‘examination’ or ‘audit’, meaning that the result may be misleading or provide false comfort. Nevertheless the prospect of a random check would most likely have a deterrent effect on attorneys who are otherwise tempted to engage in financial abuse.

***Proposal 5–4****Enduring documents should be witnessed by two independent witnesses, one of whom must be either a:*

*(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.*

*Each witness should certify that:*

*(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.*

State Trustees favours the requirements as established by the *Powers of Attorney Act 2014* (Vic). Of the two witnesses, one must be either a witness authorised to witness affidavits or a medical practitioner.

The witnesses must confirm that:

* the principal appeared to freely and voluntarily sign in their presence; and
* that, at the time the principal signed the instrument, the principal appeared to have decision making capacity in relation to the making of the enduring power of attorney.

The attorney can sign their acceptance later.

***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.*

State Trustees supports this proposal. Section 77 of the *Powers of Attorney Act 2014* (Vic) provides an example.

***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:*

*(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.*

It would be very difficult to prove retrospectively whether someone ‘foresaw’ a particular conflict. State Trustees therefore prefers the existing law in Victoria under ss. 64 and 65 of the *Powers of Attorney Act 2014* (Vic). The authorisation for the conflicted transaction can occur other than in the document itself, and the Tribunal can retrospectively authorise a conflicted transaction.

***Proposal 5–7****A person should be ineligible to be an enduring attorney if the person:*

*(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.*

State Trustees’ position on items (a) to (d) of this proposal is as follows:

1. This is identical to s. 28(1)(b) of the *Powers of Attorney Act 2014* (Vic). State Trustees supports this provision.
2. This provision has no equivalent in current Victorian law. State Trustees supports it, however, as it would be an effective means of establishing good fame and character using a resource which is already maintained – the ASIC banned and disqualified register.
3. Under s. 28(1)(c) the Act still permits such a person to be appointed if they have disclosed the conviction or finding of guilt to the principal and the disclosure of the conviction or finding of guilt has been recorded in the enduring power of attorney. State Trustees submits that an absolute prohibition on anyone with any conviction of an offence of fraud or dishonesty would be too restrictive. In some cases, excluding all such people may not be in the best interests of the principal or person under administration.
4. This is identical s. 28(1)(d) of the Act. State Trustees supports this provision.

***Proposal 5–8****Legislation governing enduring documents should explicitly list transactions that cannot be completed by an enduring attorney or enduring guardian including:*

*(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.*

State Trustees supports these proposals.

The proposal in many respects mirrors the equivalent provisions in the *Powers of Attorney Act 2014* (Vic), s 26.

However, there are further restrictions in the Victorian Act that State Trustees would support, including prohibitions in regard to:

– making any decisions about the care of a child: s 26(e);

– surrogacy, and substitute parentage: s 26(f) & (g);

– managing the deceased estate of the principal: s 26(h);

– consenting to an unlawful act: s 26(i).

***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.*

State Trustees supports this proposal.

The *Powers of Attorney Act 2014* (Vic) contains provisions requiring attorneys to keep records (s. 63(1)(f), 66) and to keep property separate (s. 69).

***Proposals 5–10 to 5–13****State and territory governments should introduce nationally consistent laws governing enduring powers of attorney (including financial, medical and personal), enduring guardianship and other decision makers. The term ‘representative’ should be used for the substitute decision makers […] and the enduring instruments under which these arrangements are made should be called ‘Representatives Agreements’. A model Representatives Agreement should be developed to facilitate the making of these arrangements. Representatives should be required to support and represent the will, preferences and rights of the principal.*

State Trustees supports these proposals, subject to our comments above about the need to protect the estate planning arrangements that people have already put in place, and the difficulty of achieving nationally uniform laws. We are also concerned that the word ‘representative’ may lead to confusion with ‘personal representative’, the term that applies in respect of an executor/administrator administering a deceased estate, and may overstate the nature of the role in cases where the principal has limited the scope of the appointment.

**Question 6–1**   
Should information for newly-appointed guardians and financial administrators be provided in the form of: (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?

a)    Whilst State Trustees is mindful that a compulsory training requirement may deter some non-professional guardians and financial administrators from accepting appointments we accept it is necessary to ensure they are informed and can appropriately carry out their role.

The training should be accessible in both online and face-to-face formats and should aim to educate and empower users to carry out their role in a manner that respects the dignity and rights of the (older) person they have been appointed to make decisions for.

The training should explicitly highlight decisions or conduct that contravene their role and/or perpetuate any form of abuse, and should require an undertaking from the guardian or financial administrator.

b)    Training should be compulsory for all new guardians and financial administrators. Tribunals should use their discretion to direct existing guardians or financial administrators to complete training or retraining.

c)    No view.

d)    In addition, a thorough, plain-English guide, such as the Administration Guide produced for administrators in Victoria, should be made available to all new appointees.

***Proposal 6–2***  *Appointed guardians and financial administrators should be required to sign an undertaking to comply with their responsibilities and obligations.*

State Trustees supports this proposal in cases of non-professional guardians and financial administrators. The signed undertaking should clearly articulate that what is being signed is an acknowledgement of potential personal liability in the event of a breach of responsibilities and obligations resulting in loss.

It should not be necessary (and would be impractical) for a public trustees and licensed trustees companies to be required to sign such an undertaking, given the existing compliance and regulatory regimes that already apply to those entities.

***Question 6–2***

*In what circumstances, if any, should financial administrators be required to purchase surety bonds?*

State Trustees believes a surety bond should be a default requirement wherever the assets of the person requiring a financial administrator are believed by the Tribunal to be above a set threshold amount (e.g. $50,000). The requirement should apply to all financial administrators other than public trustees, licensed trustee companies, and principals of a law practice. There should be the option for the Tribunal to waive the requirement where the financial administrator is the person’s spouse or domestic partner.

Whilst it imposes a heavier burden on financial administrators, and is therefore likely to deter some people from acting in that role, a surety bond would at least ensure some compensation is available in the event of a financial loss caused by the financial administrator. We would welcome an evaluation of the efficacy of the current NSW scheme to enable further assessment of the specific circumstances requiring financial administrators to purchase surety bonds.

The *Powers of Attorney Act 2014* (Vic) has a provision (s. 77) permitting the Supreme Court or VCAT to order an attorney to compensate the principal for loss caused by a breach of any provision of the Act, and State Trustees submits that legislation in other jurisdictions related to financial administration should have an equivalent section.

**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?*

In Victoria, VCAT is increasingly conducting hearings at hospitals to ensure the person subject to an application is able to attend. In many instances, were it not for the location of these hearings it would prove difficult for the person subject to the application to safely attend the hearing.

In cases where it is not medically safe for the person to leave hospital it is common for the person subject to the application to be contacted by telephone during the hearing. This approach can be challenging especially if the person is in a noisy location, is hearing impaired with no access to hearing aids or is not familiar with the reason for the application. Telephone attendance in circumstances described above can be distressing to the person subject to the application.

To ensure the person subject to the application is included in the process, the applicant should be asked to verify they have explained the application to the person, taken all reasonable steps to ensure the person is able to attend the hearing and, in the event the person is not medically able to attend the hearing, made appropriate arrangements for the person to attend the hearing by telephone or other methods.

In all cases where the person subject to the application is unable to attend in person, the applicant should be required to verify the non-attendance is due to medical reasons and not due to an inability to facilitate the person’s attendance.

The opportunity for persons to attend via video conferencing should be explored to the extent it is effective and secure, so as to ensure the privacy of the proceedings. The use of video conferencing would require increased planning and collaboration between the applicant and Tribunals. The benefits of including this option seem obvious in situations where the person is unable to attend the hearing in person.

***Proposal 8–1****State and territory tribunals should have jurisdiction to resolve family disputes involving residential property under an ‘assets for care’ arrangement.*

State Trustees supports this proposal. The ability to resolve disputes relating to ‘assets for care’ arrangements in a low-cost jurisdiction is extremely positive.

***Question 8–1*** *How should ‘family’ be defined for the purposes ‘assets for care’ matters?*

State Trustees agrees that the definition of ‘family’ should extend to all family-like relationships, such as same-sex relationships, and situations involving the children, nieces or nephews of a deceased partner.

***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.*

State Trustees supports this proposal.

***Proposal 11–9*** *The Department of Health (Cth) should develop national guidelines for the community visitors scheme that:*

*(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.*

State Trustees supports this proposal.

We welcome any queries you may have in relation to this submission. In this regard, feel free to contact Mr Adam Wakeling, whose contact details are:

Phone: (03) 9667 6022 or

Email: adam.wakeling@statetrustees.com.au

**State Trustees Limited**  
6 March 2017

1. The Act commences on 12 March 2018, if an earlier commencement is not proclaimed. [↑](#footnote-ref-1)