



# National Register of Enduring Powers of Attorney – Public Consultation Paper

Submission to the Attorney-General's Department

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## Introduction and summary

National Legal Aid (NLA), representing the directors of the eight Australian State and Territory legal aid commissions (LACs), thanks the Commonwealth Attorney-General's Department (AGD) for the opportunity to provide this submission to the Public Consultation Paper (PCP) about a National Register of Enduring Powers of Attorney (EPOA).

## National Legal Aid and legal aid commissions

LACs are independent, statutory authorities established under respective State or Territory legislation. They are funded by Commonwealth and State or Territory governments to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged. Around 2 million legal assistance services are provided to people each year.

The LACs assist people in connection with Enduring Powers of Attorney and in responding to elder abuse through a range of our legal assistance services, such as legal information, legal advice, legal task, ongoing legal representation, and community legal education and training, as well as through our specialist programs. As AGD is aware, the Commonwealth funds specialist units at LACs responding to family and domestic violence including family and domestic violence which is elder abuse, and, at some LACs, specialist units to respond to elder abuse. The respective LACs gratefully acknowledge the funding received for these purposes.

## A National Register of Enduring Powers of Attorney

### **Question 1: Would a National Register reduce financial abuse? How could this be achieved?**

NLA notes the report of the Australian Law Reform Commission, *Elder Abuse - A National Legal Response*,<sup>1</sup> about whether a National Register would reduce financial abuse. NLA considers that any measure that increases the prospect of oversight has the potential to reduce abuse. As Legal Aid ACT submitted to the Australian Law Reform Commission, "compulsory registration of powers of attorneys may assist in preventing elder abuse, as it may alert attorneys to a further level of oversight required in complying with their duties and responsibilities."<sup>2</sup>

Tasmania is the only state that currently has mandatory registration. The Tasmania Legal Aid (TLA) Senior Assist unit's experience is that registration does not prevent financial elder abuse.

*Attachment A* is some case studies from TLA.

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<sup>1</sup> Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, Report No. 131 (2017).

<sup>2</sup> Ibid 186.

The physical possession of an EPOA sometimes becomes an issue of contention where a family member loses capacity and there is interpersonal conflict between other family members. If the document is not in safe custody, then it may be lost, or not produced. A register has the potential to increase security and transparency and to potentially decrease logistical, relationship, and other issues.

A National Register would:

- (a) where appropriate, provide a central point for family, banks, and other service providers, to identify who has a power of attorney for an older person and over what decisions; and
- (b) make it easier to identify an EPOA if a person has moved across states/territories;
- (c) help to ensure that revoked EPOAs are not used inappropriately.

However, as the abuse is often in the use of the EPOA rather than its creation, other measures to respond to elder abuse will also be required.

**Question 2: Are there any risks associated with the National Register? If so, how could these be minimised?**

Some of the potential risks associated with the National Register are:

1. Users will rely on the information they access on the National Register to the detriment of the people the National Register is designed to protect. The National Register is intended as a source of information about EPOAs, however, the onus remains with the user to exercise due diligence regarding the validity of the EPOA.
2. Adverse impacts on privacy if permissions to access information are not appropriately set in the National Register. E.g. the Northern Territory no longer uses EPOAs but includes all decision-making power for financial, health, legal and lifestyle decisions under Advance Personal Plans. The PCP focuses on financial abuse, but the registration of a significant amount of information about a person's other beliefs and choices could be a concern for both the principal's privacy, and for the certainty of interested parties about what information is on the register and what it is to be used for.
3. Resources are insufficient to ensure that the register is appropriately maintained, monitored, and secure from data breach.
4. Removing choice and control from people about how they record and store private legal documents.

Risks are likely to be minimised by:

- Appropriately resourced comprehensive ongoing nationwide community legal education about the National Register, including information about how to access relevant legal assistance and other support services.

- Increased funding to legal assistance services to support them to assist people to understand rights and obligations, respond to concerns about potential/abuse, create and lodge documents, and to access the National Register.
- A system that captures access to the National Register, whether or not an “application” to access the National Register is required. Such a system may discourage any potential for improper or unauthorised access. Privacy considerations will need to be addressed.
- Appropriately resourcing the National Register. The PCP suggests that the National Register will have a “querying” function, and that access will be largely “permission” based. It would be helpful to have a better understanding of potential functionality and the resourcing available to those operating the National Register as these are likely to be strongly related to avoidance/minimisation of risks associated with the National Register.
- Any potential for harmonising relevant laws across states and territories.

**Question 3: How can the registration scheme be designed to ensure accessibility and facilitate use by Aboriginal and Torres Strait Islander people, those from culturally and linguistically diverse communities, and those in rural and remote areas?**

Appropriate consultation with respective communities should instruct design elements considered important by those communities.

The design of the registration scheme should also take account of the needs of people who are inmates in corrective facilities.

Supporting services which would be likely to enhance general accessibility to the National Register include:

- Point/s of contact to receive calls from people who may have questions or need assistance to use the National Register.
- A physical presence in local communities to provide face-to-face assistance, e.g. through arrangements/partnerships with local agencies which might include Centrelink centres, Australia Post Offices. local councils etc.
- Appropriately resourced comprehensive ongoing nationwide community legal education.
- Funding for legal assistance services to further/assist people.
- Linking through the person’s myGov account?

## Access arrangements consistent with the purpose of the National Register

### Question 4: Do you support the proposed access arrangements in section 3.2.6? Are there any other users who need access?

The PCP states “Roles and responsibilities, costs, and changes to legislation to enact the National Register are not covered here. Consideration of these issues will be informed by the outcome of this consultation.”<sup>3</sup> Any costs to users for access will likely be linked to uptake. It is considered that if fees for use are to attach, then provision for waiver of costs should be made. This should include where a person is in receipt of legal assistance, and/or where they are in receipt of a pension/benefit etc. E.g. the cost of mandatory registration of an EPOA in Tasmania is currently \$149.32 and the cost of registering a revocation is \$116.32. These costs are considered prohibitive for many of the people that TLA assists.

Otherwise, NLA is generally supportive of the proposed access arrangements in PCP 3.2.6, noting the following concerns:

- The proposed access arrangements in 3.2.6 b) are open-ended, i.e. public guardians etc. exercising their functions, courts and tribunals, and land titles offices have access without permission, however, it is not clear which other entities “with a legitimate business or public interest need for real time access” are envisaged as also not needing permission? Who would have the authority to determine what was a “legitimate business or public interest need for real time access”? There is significant concern that it may not be appropriate for entities in 3.2.6 b) other than those named/specified, to access the Register without authority from either the principal or attorney unless provided by legislation, an order of a court or appropriate tribunal.
- Lawyers will have permission for access from their principal/attorney client, and this permission may be ongoing rather than once-off, i.e. lawyers could be within 3.2.6 b) (whilst having permission they do not have to evidence permission beyond asserting that they are the lawyer for the person thereby establishing the legitimate business interest), or 3.2.6 e).
- Whilst financial institution access as described in 3.2.6 c) is permission dependent, NLA is concerned that access arrangements are not structured beyond what is necessary in the circumstance. There could potentially be significant resourcing implications associated with ensuring permissions for respective levels of access to the National Register have been appropriately given.
- The concepts of permission/consent should form part of comprehensive ongoing nationwide community legal education.

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<sup>3</sup> *National Register of Enduring Powers of Attorney Public Consultation Paper (April 2021)*, 3.

**Question 5: Why might someone need to apply to access the register (if not in categories (a)-(d) at 3.2.6)? What should be considered a legitimate need?**

Subject to the concerns expressed above at Question 4, NLA considers that the categories in 3.2.6 articulate who should have access to the National Register.

Legitimate need should be determined by a person at the National Register with the appropriate knowledge, skill and experience.

**Question 6: What reasons should be sufficient for a person to be given access by application?**

For which, if any, of the scenarios in 3.2.6 is it envisaged that an application might need to be made and in relation to what information? Is it those entities not specified/named in 3.2.6 b) who would need to apply, and/or as is suggested by Question 7, is it to help identify what a “legitimate need” might be for those referred to in 3.2.6 e)? Is access beyond the access proposed in 3.2.6 contemplated by this question? Are applications (beyond registration of the enquiry being made) only required for more sensitive information?

Apart from the reference to entities not specified/named in 3.2.6.b) the access proposed in 3.2.6 appears to be either by court/tribunal, relevant state/territory entity, or permissions-based. It will therefore be important to understand what the permissions system might look like, and how/to what extent permission would need to be evidenced, as this will help inform whether an “application” would need to be made, and what form/s applications might take. Noting the suggestion in 3.2.6.c) that a unique registration number could be given by the principal or attorney to a financial institution, would it be enough for the entities and individuals in 3.2.6.d) to use a unique registration number/code given to them by the principal or attorney to log in to the National Register? Would a unique registration number/code-based approach be different depending on the information in or registered with the EPOA? Could “one-time” access codes be generated?

The reasons for approving an application, and how much detail might need to be provided in support of the application, may depend on the circumstances of the individual matter. Applications should be determined at an appropriate level within the registering authority.

Awareness that access to the National Register is being tracked will likely support the principle that access is confined to what is necessary.

**Question 7: Where access is by application, what information should be provided to demonstrate a legitimate need? What is a reasonable time for processing this kind of request for access?**

Information to be provided will depend on the circumstances including the level of access that might already exist. Evidence of identity should be required and recorded.

Processing time should be related to factors relevant to the application.

**Question 8: Where access is by application, would any circumstance justify the need for urgent access? What are these?**

It is conceivable that circumstances which would justify the need for urgent access might arise.

Applications for urgent access to the Register will need to be determined by someone with appropriate knowledge, skill and experience.

**Question 9: If applicants are denied access, should they be entitled to request a review of this decision? If so, what would the review process look like?**

A decision to refuse access is likely to be an administrative decision subject to judicial review.

An internal review process may reduce the need for external review, potentially protracted proceedings, and associated costs. An internal review would occur on application, provide an opportunity to provide further materials in support, be timely, and be conducted by a person/people with appropriate qualifications, skill and experience.

External review processes should be readily accessible.

**Question 10: Are there any circumstances in which access should be given without an attorney or principal's consent? What are these? How should this work in practice?**

By way of legislation, order of a court or tribunal.

**Question 11: Should users be required to inspect an imaged copy of the executed instrument to satisfy themselves of the terms of the EPOA?**

If the issue is the existence or terms of the EPOA, access to a summary/reflection of the terms of the EPOA other than in an imaged copy of the executed instrument may suffice.

The principal and attorney should have access to an imaged document.

Access by other people to an image of the document may assist if there are concerns about the validity of the document by reason of its execution.

There are, however, concerns that it may not be appropriate for some potential users to access some of the detail that may exist in some executed instruments. Images of executed documents may reveal sensitive information unrelated to the dealing.

The proposed permissions-based system will address some privacy and safety issues but an improved understanding of what this might look like is required.

**Question 12: In what ways should the register enable information collected online to be interrogated by persons who search the register?**

The ability to interrogate the National Register should depend on who the interrogator is, the reason for the inquiry, the information which would be accessible, the level of permission granted, and the decision on any application.

Unique registration numbers and ‘one time codes’ may be ways of supporting limited but necessary interrogation.

## **Making phase**

**Question 13: Are there any issues in allowing online creation of EPOAs? If so, how could those issues be addressed?**

Legislation may have to be amended to incorporate provisions that recognise electronic forms and signatures including witness signatures.

A number of jurisdictions, e.g. NSW and Queensland, have/had special provisions for electronic signing/witnessing in response to COVID-19.

As is the situation with creation of hard copy EPOAs, there are concerns in relation to creation of online EPOAs that vulnerable principals are not coerced into completing a form in favour of an attorney who may not appreciate their legal responsibilities and obligations. Additional risks may exist in connection with coercion and misuse/theft of digital signatures.

**Question 14: How should the register ensure that the information entered online in creating an instrument is identical to the signed and witnessed document?**

A PDF version of the signed and witnessed document should be scanned into the National Register.



The National Register will need to cross-check the information in the PDF with information entered online. There may be reasons for differences between the information entered online and the information in the signed and witnessed document, e.g. a change of address since the document was executed.

The National Register will need to be appropriately resourced to perform its functions.

## Lodgement phase

### **Question 15: Who should be able to lodge an EPOA for registration?**

The principal or the attorney or a lawyer so instructed.

Evidence of the identify, and role, of the person lodging the document for registration should be recorded.

The responsibility for lodgement should form part of comprehensive ongoing nationwide community legal education to accompany the introduction of a National Register.

NLA refers to concerns expressed above about lodgement fees.

### **Question 16: What information should be checked on an EPOA when it is lodged? How should this information be checked?**

As the PCP states “While the National Register will assist in determining the existence and scope of an EPOA, it will not make representation about the EPOA’s validity or status. The National Register will be a source of information for users, who must interpret that information and undertake their own due diligence.”<sup>4</sup> As the Register is intended to record the existence and scope of an EPOA, then information to be checked when the EPOA is lodged should include:

1. Details of the principal.
2. Details of the attorney/s.
3. Details regarding the revocation of any previous EPOAs.
4. Details of any condition of the EPOA.
5. That the EPOA has been appropriately signed and witnessed.
6. Who the principal permits to access what information.

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<sup>4</sup> Ibid 6.

The same question is asked in relation to registration. When information should be checked may depend on the manner of lodgement, and the systems in place to respond to the intended lodgement. If the EPOA is checked on lodgement, then the person lodging the document can immediately have any issues brought to their attention. If documents have been appropriately checked on lodgement, then they should not need to be re-checked on registration.

The National Register will need to be appropriately resourced to be checking EPOAs lodged. Varying state and territory requirements may be a factor in how, and the extent to which, the National Register is to be resourced.

**Question 17: How should people be able to lodge EPOAs for registration – online, by post, in person?**

As many options as possible will make it easier for people. E.g. in Tasmania, there is only one registry which is in Hobart. All other Tasmanians must send the documents by post. Simple things like lack of accessibility to stamps can present issues. TLA's Senior Assist unit has case managers who assist people with lodgement of documents which include, notably, revocations.

**Question 18: Are there any additional options that should be available for people living in remote communities?**

Please refer to the answer to Question 3 above.

**Question 19: Are there any risks in allowing people to lodge EPOAs online? What safeguards could be implemented to protect against these risks?**

Lodgement, including online lodgement, should require evidence of identity and role and these should be recorded.

## Registration phase

### *Registration*

**Question 20: What documents should be included on the National Register?**

1. Copy of the original EPOA.
2. Copy of any revocation of any previous EPOA.
3. Potentially a scanned copy of medical reports, where relevant to attest to the activation of an EPOA.

The fact of inclusion of the above documents should not automatically result in access to all the information contained therein. The potentiality to include medical records brings additional privacy concerns and associated need to control levels of access.

**Question 21: When should EPOAs be required to be registered (when they are made or before first use)?**

EPOAs should be required to be registered when they are made. In Tasmania, the requirement in relation to registration is before first use. A concern is executed EPOAs retained on instruction by the principal's lawyers and then only registered on further instruction. This has the potential to be problematic if cognitive issues are in play triggering the enduring phase.

Many principals may currently retain the original of an EPOA either at home or with a solicitor and allow no copies to be made. This would provide a level of comfort that an EPOA will not be used inappropriately or until it is necessary. There may be less concern about registration upon execution if there is confidence in privacy and permission controls.

**Question 22: What information should be checked on an EPOA when it is registered? How should this information be checked?**

Please see answer to Question 16. What is registered, should not necessarily be accessible to everybody.

**Question 23: What information should that person have to give to a registering authority to confirm their identity?**

It is suggested that the standard 100 points check of identity would be appropriate. Online systems will need to permit the uploading of relevant documents.

**Question 24: Should registration of revocations by the principal be mandated? If so:**

- a. **What would be the effect of failing to register a revocation?**
- b. **Who should be able to lodge revocations for registration?**
- c. **Should the register record other revocation events (for example, the death of the principal, bankruptcy of attorney) and, if so, how?**

If the Register is a source of information about an EPOA, it should be mandatory to lodge a revocation and notify revocation events.

There will potentially be issues if people fail to lodge the revocation, e.g. because they were not aware of a requirement to do so but the Register has been relied upon by third parties.

The need for comprehensive ongoing nationwide community legal education about the introduction of any National Register is noted again.

**Question 25: To what extent should the register reflect the status of an EPOA?**

Regarding revocation, please refer to Question 24.

The PCP states “While the National Register will assist in determining the existence and scope of an EPOA, it will not make representation about the EPOA’s validity or status. The National Register will be a source of information for users, who must interpret that information and undertake their own due diligence.”<sup>5</sup>

Whether the EPOA is in the enduring phase or not has been experienced by TLA as the most problematic issue in cases in Tasmania of alleged/suspected/elder abuse.

Potentially, a flag system might identify activation, thereby controlling the amount of personal information accessible to National Register users.

*Historical EPOAs (i.e. EPOAs in existence prior to mandated national registration)*

**Question 26: What arrangements would need to be made for historical EPOAs to be registered?**

Some historical EPOAs may be decades old and a principal may have lost capacity.

Responsibilities for lodgement of historical EPOAs will need to form part of comprehensive ongoing nationwide community legal education.

**Question 27: What arrangements would need to be made to require historical EPOAs already registered on state or territory registers to be registered on the National Register? Should a fee be payable for historical EPOAs to be registered? Should this be any different where the EPOA is already registered on a state or territory register?**

Fees should not be payable on historical EPOAs whether previously registered or not. It is not considered appropriate that a payment that was not required at the time the EPOA was executed is imposed on people.

Arrangements would need to rely on a principal or authorised person lodging at the National Register or a transfer or linking of EPOAs on existing registers to the National Register. Transfers/sharing would need to be consent based and would likely be resource

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<sup>5</sup> Ibid 6.

intensive. It does not seem appropriate that a principal (who may have lost capacity in the meanwhile) or an attorney should have the effort associated with lodging a second time when the National Register requirement did not exist at the time that they made their EPOA.

**Question 28: For solicitors holding historical EPOAs in safe custody – how could the principal/attorney be contacted to arrange registration?**

It is envisaged that solicitors would be communicating with respective clients whose documents that they hold in whatever manner was indicated best by the client. If the client has lost capacity, moved without notice etc. then there may be potential challenge to the communication being received, and the solicitor being able to take any next/other steps.

The potential for significant impact on the businesses of solicitors holding historical EPOAs is noted.

**Unregistered EPOAs**

**Question 29: What should be the effect of reliance on an unregistered EPOA? Should this be any different for historical EPOAs?**

The suggestion in the PCP is that “an EPOA relating to financial matters would not be valid unless registered”.<sup>6</sup> “While the National Register will assist in determining the existence and scope of an EPOA, it will not make representation about the EPOA’s validity or status. The National Register will be a source of information for users, who must interpret that information and undertake their own due diligence.”<sup>7</sup> Arguably, if registration is for information only, there should be no legal disadvantage to relying on an unregistered but otherwise valid EPOA as the onus remains with the user to satisfy themselves that the document was properly and legally created.

**Question 30: What process should there be for considering whether an EPOA can be registered after first use or out of time? Who should be empowered to make decisions about this? The registering authority? Courts or tribunals?**

Is “out of time” intended to refer to a legislatively prescribed time frame for lodgement?

If, having been checked by someone with the appropriate knowledge, skill and experience, the EPOA appears to be valid then it should be accepted by the registering authority.

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<sup>6</sup> Ibid 5.

<sup>7</sup> Ibid 6.

## Notifications

**Question 31: Should the register provide a notification function to parties of an EPOA? How should this work? For example, should certain identified persons be notified when a search query for an EPOA occurs?**

Contact details would need to be kept up to date for this to be effective. An opt-in process could be used at lodgement.

## Options to address dual registration

**Question 32: What principles should be taken into account in considering options for dealing with dual registers?**

Dual registration principles should include:

- No additional cost or effort to consumer.
- Reliance on existing state/territory based entities as far as possible to avoid duplication, reduce potential confusion, and support uptake.
- Dual/registration to be supported by comprehensive ongoing nationwide community legal education.

**Question 33: Are there any issues specific to dealing with lands related EPOAs?**

Cost and potential confusion are issues associated with dealing with EPOAs that are lodged in land titles offices in connection with land transactions, e.g. in South Australia EPOAs are required to be lodged with other land transaction related documents at the time of the transaction. Some people choose to “lodge” their EPOA prior to any land transaction which if they do so it is for a fee. Should they need to retrieve the EPOA for another financial transaction there is another cost in relodging the document back with the Lands Title’s Office. Lodging the EPOA with the Land Titles Office in South Australia is often mistaken as general registration of the document.

**Question 34: Is there any feedback on the options described, or alternative options that could be considered?**

The technical data transfer solution proposed would appear to impose least on consumers, providing that the cost of the solution is not passed on to them, and that all necessary arrangements to support such transfer have been made, i.e. legislation, consent, data security controls etc.

Any alternative implemented should not reduce or remove existing protections and recourse.

Noting that the option has been previously considered, mandatory registration on separate State and Territory registers.<sup>8</sup>

**Question 35: Do you have any information on the proportion of EPOAs that your agency or clients make that are registered on the land titles register (if applicable)?**

LACs are not generally involved in land transactions. Any data will not have been captured by electronic systems.

**Question 36: Are separate EPOAs prepared specifically for land transactions?**

Not to our knowledge.

**Question 37: Do you have any information on the average length of time between the making of an EPOA and the registration of an EPOA on the land titles register?**

The best information is likely to be available from the land titles registers.

**Question 38: Do principals have any concern about registering the EPOAs on the land titles register due to privacy concerns (i.e. that the instrument would then become publicly searchable)?**

TLA clients have not expressed any concern about the privacy aspects of a searchable EPOA register. If people do hold concerns, they are likely the people who hold onto instruments and only register when necessary.

The Legal Services Commission of South Australia's experience is that principals appreciate the formality of registration. As indicated above, there are concerns that some people may think that this is more general registration. It is also possible that some people are not aware of the search functions of a land titles register and therefore do not turn their mind to any privacy concerns.

**Question 39: Would principals or attorneys object to paying two registration fees?**

Yes. E.g. the filing fee in Tasmania for registering an EPOA or revocation is not an insignificant cost. It would be problematic to have more than one fee. If fees are to be introduced, then waivers should also be introduced for those who are in receipt of legal assistance, and/or cannot afford to pay.

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<sup>8</sup> Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, Report No. 131 (2017) 191.

## Safeguards

### **Question 40: What safeguards should be included in the National Register for older persons who may not be digitally capable?**

Access to face to face assistance is considered an essential safeguard where people may not be digitally capable.

Comprehensive ongoing nationwide community legal education should address concerns that may be held by individuals about the potential effects of a lack of digital capability, and who can assist them. Support services such as free legal advice and legal assistance should also be appropriately funded so that people, particularly those in circumstances of vulnerability, are aware that there are avenues of assistance.

### **Question 41: What safeguards should be included in the National Register to help protect individuals where there is family violence?**

### **Question 42: What safeguards should be included in the National Register to help protect individuals where there is elder abuse?**

The question of safeguards is related to who can access the National Register and on what basis.

Safeguards should include recording of revocation and revocation events, and a system which recognises/updates appropriate permissions.

Limited accessibility of information or access refused depending on circumstances.

A system which tracks access.

### **Question 43: Should a support person be able to lodge an EPOA on behalf of the principal? If yes, who should be able to act as this support person?**

Yes, with appropriate safeguards as the support person could potentially also be an abuser. Proof of identity and statement of relationship and contact details should be recorded.

### **Question 44: If the registration process is too complex, a potential principal may use alternative forms of financial management with less safeguards. How could this be avoided?**

- Comprehensive ongoing nationwide community legal education.
- Appropriately funded legal advice and assistance services for clients in vulnerable circumstances in relation to advice, drafting, lodgement of instruments, and use of the National Register.



## Additional comments welcome

**The department welcomes general comments or feedback relating to this National Register of Enduring Powers of Attorney public consultation.**

As indicated above, the PCP states “Roles and responsibilities, costs, and changes to legislation to enact the National Register are not covered here. Consideration of these issues will be informed by the outcome of this consultation.”<sup>9</sup>

NLA would seek further consultation on these issues. Of particular concern to us are:

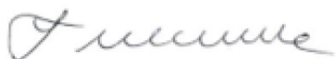
- Cost - That the costs of the National Register are not passed on to consumers in the form of registration and access fees. If the purpose of mandatory registration on the National Register is to reduce abuse, its use should be encouraged as much as possible.
- Complaints handling and regulation of the National Register - The PCP addresses review, other complaints handling and regulation may need further consideration.

## Conclusion

Thank you for the opportunity to provide a submission to this consultation.

Should you require any further information from us please be in touch with the NLA Secretariat on 03 6236 3813 or [nla@legalaid.tas.gov.au](mailto:nla@legalaid.tas.gov.au)

Yours sincerely,



Louise Glanville  
Chair

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<sup>9</sup> Ibid 3.

## Appendix A – Tasmania Legal Aid Role

1. An attorney sold the donor's house using the EPOA. The transaction took place when the donor was unwell and arguably in the enduring phase. The transaction was under market value and to a family member. The attorney also collected rent from the property personally and borrowed money from the donor and refused to repay it. The EPOA was revoked and the donor referred to the pro bono scheme to attempt to recover loss.
2. An attorney accessed funds from the attorney's elderly parents' account (the donor) to pay for the attorney's personal expenses and to buy assets. TLA assisted the donor to revoke the EPOA and obtain a restraining order against the attorney for ongoing abuse and harassment. The donor did not want to recover the funds or make a complaint to the police.
3. An attorney convinced the donor parent to transfer property into the attorney's name as a joint tenant. The donor did not understand what they were signing and did not get legal advice because of the donor's trust in the attorney. The property was the donor's only asset. The donor had other children who the donor wanted to benefit from the estate. The donor was referred to a private lawyer to sever the joint tenancy and to prepare a new Will. The EPOA was revoked.
4. An attorney sold a property of the donor while the donor was experiencing a delirium. The sale proceeds were transferred into an account in the donor's name and at a subsequent date the attorney transferred the entire funds into the attorney's own account. The EPOA was revoked but the donor did not want to make a complaint to the police or pursue civil recovery of the funds. There were repercussions with the donor's pension that took a long time to resolve and the donor wanted to change their Will but passed away before doing so.