



**NSW
MACA**

MINISTERIAL ADVISORY
COMMITTEE ON AGEING

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BY: LACA

Ms Joanne Towner
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
House of Representatives
Parliament House
CANBERRA ACT 2600

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Dear Ms Towner

The NSW Ministerial Advisory Committee welcomed the opportunity to appear before the House Standing Committee on Legal and Constitutional Affairs regarding the Inquiry into older people and the law.

The Committee would also like to respond to the request for further information from members of the Standing Committee in relation to cross-jurisdictional recognition of Powers of Attorney. Please note that this letter does not purport to be a comprehensive list of jurisdictional differences, which the Committee assumes falls within the remit of the Standing Committee's Inquiry.



The NSW Ministerial Advisory Committee on Ageing provides the following additional information on Powers of Attorney in line with its original submission.

As mentioned in the Committee's submission, Powers of Attorney are governed by state/territory based legislation. It is important, therefore, to note s25 of the *Powers of Attorney Act 2003* (NSW) which states:

- (1) *An interstate enduring power of attorney has effect in this State as if it were an enduring power of attorney made under, and in compliance with, this Act, but only to the extent that the powers it gives under the law of the State or Territory in which it was made could validly have been given by an enduring power of attorney made under this Act.*
- (2) *In particular, an interstate enduring power of attorney to which subsection (1) applies:*
 - (a) *has effect in this State subject to any limitations on the power that apply to it under the law of the State or Territory in which it was made, and*
 - (b) *does not operate to confer any power on an attorney in this State that cannot be conferred on an attorney under an enduring power of attorney made in this State.*

Similar provisions can be found in the various state/territory legislation.

However, there are issues associated with this recognition. For example, in some jurisdictions a donor can revoke a Power of Attorney verbally, whilst in others the revocation has to be in a prescribed form.

Another example is the Tasmanian legislation which requires a Power of Attorney to be registered. However, in other states registration is not required unless the attorney is engaging in land/property transactions. This means that an attorney could attempt to act upon a Power of Attorney in Tasmania and fail because the document was not registered in that state.

There are further issues in respect of recognition of Powers of Attorney by agencies such as Centrelink and the Department of Health and Ageing.

Specifically, a person may nominate themselves as the representative of an individual (or conceivably coerce an older person to nominate them) and the relevant agency would then 'deal' with that person pursuant to their own legislation ie *Aged Care Act 1997* (Cth) or *Social Security Act 1991* (Cth) rather than the attorney who has been appointed pursuant to state/territory legislation.

There are also differences in relation to the scope of Power of Attorney powers. As documented in the MACA's original submission, Powers of Attorney in NSW only cover financial decision-making; separate instruments called Enduring Guardianship and Advance Care Directives deal with personal and health decision-making. In contrast, in Queensland, Powers of Attorney incorporate two documents which address both financial and personal decision-making.

If you need any assistance or clarification in relation to these matters, please contact Megan Nicholson, Senior Policy and Projects Officer, MACA Secretariat on 02 8270-2146 or Megan.Nicholson@dadhc.nsw.gov.au.

Yours sincerely

Felicity Barr
Chair