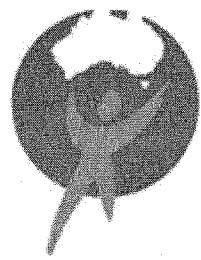


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National Seniors  
Association  
*The independent voice of senior Australians*

PARLIAMENT of AUSTRALIA  
HOUSE of REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Questions for National Seniors arising from the Older People and the Law Inquiry  
public hearing, 22 May 2007

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public hearing, 22 May 2007

1. *Would you support some form of mandatory reporting (by financial institutions etc) where fraud or financial abuse of the elderly is suspected?*

National Seniors believes that consideration should be given to introducing some form of mandatory reporting to protect older people from financial abuse.

A mechanism should be put in place that alerts financial institutions and legal practitioners of substantial withdrawals of money or transfer of property deeds.

Although State/Territory Guardianship Tribunals can review the actions of an administrator, a guardian, and people holding enduring powers attorney, this only assists those with impaired capacity.

Whilst a large proportion of victims do have capacity, making a complaint to the police and pressing charges is a highly confrontational strategy for an older person and one that few older people will elect to pursue, particularly against a family member and particularly with a limited range of care and support options available to the older person.

Notwithstanding this, protection still needs to be provided for all older people experiencing financial abuse.

2. *You have supported the requirement for mandatory police checks for all workers in aged care institutions and for all workers who make home visits. While this may exclude some who have criminal records, this probably won't do much for the small number of people who might abuse their positions of trust with vulnerable people and take financial advantage of them (perhaps in the form of 'gifts'). Do you have any comment?*

It would be virtually impossible to provide this form of protection to other persons of trust, primarily as the majority are family members, friends or neighbours.

The inherent difficulty in this is that an older person may consider a financial gift as a reward for kindness for services rendered while an outsider may consider the gift to be out of proportion to the nature of the service or kindness. Judgments about abuse are highly subjective. Because professionals are often assigned responsibility for reporting and investigating abuse, it is important that a professional's assessment takes into account the older person's perception of the act.

3. *One of the major issues about power of attorneys is the question of capacity of the individual to sign a power of attorney. Do you have a view of how that capacity should best be assessed? Should there be some form of uniform testing that can be used to judge capacity?*

Currently there is no comprehensive approach to assessing capacity or addressing the support needs of a person whose capacity is in question.

The absence of a formalised assessment process affects the work of professionals and the current ad hoc assessments are restrictive and inadequate.

It is our belief that a universal assessment process that provides more certainty, consistency, independence and reliability is required.

In saying this it is necessary that strategies are developed to ensure that professionals understand the complex issues surrounding assessment of competence and are skilled in assessing competence.

4. *You have indicated there should be compulsory registration for power of attorneys. Would you like to see this on a national level? Who should have access to such a register?*

Currently there are significant difficulties with cross-jurisdictional issues where other States and Territories do not recognise each others' powers of attorney. A national register would go some of the way to alleviate this issue.

It is imperative that easy access of the register be available to banking institutions, medical and legal professionals and the general public to ascertain the holder and nature of the current power of attorney.

*Are there privacy issues involved? Are you aware of any previous or current attempts to set up such a register?*

National Seniors is not qualified to give a definite answer on this, however, we would anticipate that such a register would be subject to the *Privacy Act* legislation.

We are not aware of any attempts made to set up a register for powers of attorney.

5. *Do you believe that the procedures for setting in place a power of attorney offer sufficient protection for all involved?*

It is our belief that more can be done to ensure older people are protected when entering into a power of attorney.

Our members have indicated that there is a strong need for the institution of a requirement that the person handing over the power of attorney be given comprehensive and easy to understand information on the legal issues involved, including information on elder abuse and how to report it.

In addition to a power of attorney, the practitioner should recommend the donor structures financial transactions so as to eliminate the temptation of abuse. A range of options could be implemented to achieve this including:

- Regular cheques being directed to the bank;
- Routine bills being paid automatically or by arrangement by a trusted friend or family member;
- Having an independent person review all papers before they are signed when money is to be transferred; and
- When assets are transferred, documenting the arrangements in a written document signed by both parties and giving it to an independent person for safekeeping.

National Seniors recommends that information about powers of attorney and older people's rights are a fundamental element of a National Framework to raise awareness and educate the community on elder abuse.

*6. Should someone operating on behalf of an older person under a power of attorney be required to be accountable for their actions? Should there be some independent monitoring of the activities of those exercising power of attorneys? If so, what would this involve?*

It is reasonable to expect that a person given the responsibility of acting on behalf of another person's interest be held accountable for the decisions they make. Donee's should be advised at the onset that abuse is a criminal offence and will be dealt with accordingly.

Although the principal of having a mechanism to monitor the use of powers of attorney has merit, the fact that the donee has the power to make all decisions for the donor means it would be difficult to establish.

*7. Family agreements seem to offer even less protection for all involved. Would you like to see such agreements formalised in some way (i.e. registered, witnessed etc.)?*

We believe there is merit in the idea of having a formal process for the administration of family agreements. However, the promise to 'care for life' does not take into account changes in the older person or family's health, finances and relationships. Making a family agreement is seen as a way of preventing legal recourse when accommodation arrangements break down into unhappy or abusive situations resulting in an older person having to take on the court system.

However, encouraging families to undertake a formalised family agreement must not be an onerous task. It would seem the most practical approach would be for family agreements to be drawn up in writing and witnessed by an independent and impartial person.

8. *We have received recommendations that the federal government should specifically allocate some legal aid funding for older people in the community. Do you believe that the eligibility requirements for older people need to be adjusted? Should there be any eligibility requirement (beyond that of the age of the client)?*

We would support the initiative of having the federal government allocate some legal aid funding for older people. Considering the push towards people funding their own retirement, it must be recognised that many of these self-funded retirees are surviving on low incomes, and therefore should be entitled to access the same legal aid services as pensioners.

However, it would be necessary to have some eligibility requirement (financial) to ensure that demand does not outstrip the services available.

9. *You have indicated in your submission that the Age Discrimination Act has had little effect on employers who continue to harbour negative age stereotypes and practice discriminatory behaviour. Can you explain what you have based that conclusion on? What else could be done to address this issue?*

Although considerable resources have been directed to assist older employees to remain in the workplace, it is still evident that some employers fail to see the advantages of the knowledge and experience that an older employee would bring to the workplace.

A media campaign directed at the value of older people and the positive contribution they make to the community would go some way to addressing this.