

Submission No. .... 88 .....
Date Received .....

RECEIVED  
01 DEC 2006  
BY: LACA

1 December 2006

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The Secretary  
House of Representatives  
Standing Committee on Legal and Constitutional Affairs  
PO BOX 6021  
PARLIAMENT HOUSE  
CANBERRA ACT 2600

Mr Chairman

**Inquiry into Older People and the Law**

State Trustees is pleased to present its recommendations to the Standing Committee on Legal and Constitutional Affairs' Inquiry into Older People and the Law.

We are the only State owned public trustee that has a corporatised business model that operates in the private sector. This establishes both our commitment and capability to serve two distinct communities of clients: our commercial clients through estate planning, executor and trustee services and over 8,500 Victorians living with a disability whose financial and legal affairs we manage.

We believe that there is significant need for reform to:

- improve Estate Planning for older people; and
- introduce measures that improve the prevention, detection, investigation and resolution of instances of financial abuse and fraud.

Of the clients whose affairs we currently manage under administration orders, 34% are aged 65 or over; the figure is 90% for clients we are actively assisting through an enduring power of attorney. As a result State Trustees is dedicated to work with stakeholders and industry peers to continually monitor and respond to the issues facing older Victorians. Of particular relevance to our experience and expertise, we are exploring the issue of Elder Financial Abuse and what role and accountabilities attorneys have in this matter.

We also have had the opportunity of sighting the Australian Guardianship and Administrative Committee's (AGAC) and the Trustee Corporations of Australia's draft submission and we are fully supportive of their comments.

If further information is required on any part of our submission or about our operations with regards to older people, please contact us. We will be pleased to send a representative to any further discussions that maybe convened by the Standing Committee.

Yours sincerely

**A G Fitzgerald**  
Managing Director



# State Trustees Limited

A.C.N 064 593 148

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## Inquiry into Older People and the Law

Submission to House of Representatives Standing  
Committee on Legal and Constitutional Affairs

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December 2006

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# 1 KEY POINTS

In this submission, we have focused on issues related to:

- (a) **estate planning** – including appointment of alternative decision makers (ADMs<sup>1</sup>) – as a means of increasing the financial and physical security and well being of Australians, especially if they become vulnerable due to age-related factors;
- (b) prevention, detection, investigation and resolution of instances of **financial abuse, fraud** and other financially adverse events (unfavourable family agreements, negligence of or neglect by ADMs).

Our key areas of concern are:

1. Increasing education and awareness around estate planning (including ADMs).  
An estate planning ‘literacy’ program, similar to the Australian Financial Literacy Foundation established by the Australian Government in June 2005 to give all Australians the opportunity to better manage their money.
2. Increasing workability and accountability of ADM arrangements, especially those involving enduring powers of attorney (EPAs), for example:
  - a. Increased oversight by independent bodies (e.g. State/Territory Tribunals or Courts).
  - b. Greater prescription in respect of financial record keeping, reporting and investment.
  - c. Consideration of a national register of EPAs.
  - d. Uniformity of EPA laws across all States and Territories to improve recognition and workability.
3. Improving avenues for addressing family conflict resolution by alternative means, for example, family mediation and counselling services.
4. Increasing the formal accountability of service providers to vulnerable older people (cooling-off periods, disclosure, independent review, dispute resolution mechanisms) similar to that provided by the Financial Planning industry for clients who are not satisfied with the service received.
5. Centralised register for telemarketing companies so that people can register their details if they do not want to be contacted for telemarketing-based activities.

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<sup>1</sup> The term alternative decision-maker (ADM) is used to cover a number of formal appointments, e.g. (in Victoria) appointments under Enduring Power of Attorney (Financial), Enduring Power of Attorney (Medical Treatment), and Appointment of Enduring Guardian (“Enduring Power of Guardianship”). Tribunal-appointed administrators (or financial managers) are also a form of ADM. In this submission, we focus primarily on ADMs appointed as Attorney under an Enduring Power of Attorney (Financial), abbreviated in this document to “EPA”.

6. Examination of avenues for creation of a national multi-disciplinary investigation and prevention unit to respond to instances of financial abuse. The Elder Abuse Prevention Unit (**EAPU**) in Queensland, and the Financial Abuse Specialist Teams (**FAST**) in Orange County, California are potential models.
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## 2 BACKGROUND

### 2.1 ABOUT STATE TRUSTEES LIMITED (STATE TRUSTEES)

State Trustees is a Victorian Government Business Enterprise; we are the only public trustee that has a fully corporatised model and operates competitively in the private sector.

This establishes our commitment and enduring capability to serve two distinct communities of clients through a range of financial and legal products and services.

We are a leading Victorian provider of estate planning, and executor and trustee services.

We also assist over 8,500 Victorians living with a disability (dementia, mental disorder, intellectual impairment, brain injury or physical disability) by managing and protecting their legal and financial affairs under administration orders made by the Victorian Civil and Administrative Tribunal (**VCAT**). We also actively manage the affairs of over 600 Victorians who have appointed State Trustees as Attorney under EPA.

Of the clients whose affairs we currently manage under administration orders, 34% are aged 65 or over; the figure is 90% for clients we are actively assisting through an EPA.

State Trustees also has a prominent role in the provision of other services and products to, or for the benefit of, older Victorians, in particular examination of accounts of other administrators appointed by VCAT in respect of the affairs of persons with a disability, and acting as trustee under trusts such as protective and special disability trusts.

### 2.2 COMPLEXITIES OF THE AGEING POPULATION

According to projections calculated by the ABS, by 2016, the proportion of the Victorian population aged over 65 and 80 respectively will increase by 36% and 32%.

The increasing incidence of dementia (Alzheimer's Victoria recently released a report - produced by Access Economics -- indicating those diagnosed with dementia is set to increase from 1.04% of the Victorian population in 2005 to 1.49% in 2020) means there will be a growing proportion of the population in need of assistance in maintaining their quality of life and in making financial and legal decisions. Greater

reliance may be placed on family and friends; the conflicts, emotional strain, and alienation that can arise in such circumstances have the potential to create the conditions in which financial abuse and fraud are more likely to arise.

These challenges are made more difficult by the increasing complexities of our individual circumstances:

- Personal and family circumstances have become more complicated (successive marriages, blended families, same-sex and de facto relationships, carer relationships).
- The financial and legal environment is less straightforward (evolving tax, superannuation and financial frameworks, greater diversity of financial products in the market, including in relation to estate planning, reverse mortgages, etc.)
- Greater and more diverse individual personal wealth: Over the last 20 years, the average individual's personal wealth has expanded to include local and overseas investments as well as trauma and life insurance.

### **2.3 OVERARCHING CONSIDERATIONS**

It is of paramount importance for support agencies involved with older people to respect the right of the older person to make their own life choices whilst ever they have the ability to make reasonable decisions. Increasingly, there is formal statutory recognition of such rights: see, e.g., the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, esp. ss 8, 12, 13, 17, 19 and 20.

Intervention by external agencies to address perceived financial vulnerability or abuse of older persons, can, at times, involve challenges to the older person's existing support relationships, e.g. family, friends and carers. Whilst there are risks that some relationships involve abuse, especially where there is a high degree of dependence upon one individual, in most cases such relationships are of positive benefit. When undertaking any formal intervention, external agencies must be ever mindful of the potential detriment that may result from any erosion of the older person's existing support constellation. Preserving and fostering the existing positive and supportive relationships should be a guiding aim wherever possible.

### 3 ESTATE PLANNING

In State Trustees' experience, some customers – particularly older ones – experience difficulty in taking up professional estate planning services that might assist in reducing their financial vulnerability. The causes of this are varied, and include:

- Lack of awareness of the importance of estate planning;
- Concerns about the cost of such services;
- Individual inhibitions such as being afraid to 'rock the family boat';
- Language or cultural barriers; or
- Varying degrees of physical or intellectual disability and/or mental illness.

A combination of these factors may contribute to some older people being persuaded or coerced (e.g. by a friend) into signing a Will and/or EPA that does not reflect their wishes or their interests. These new documents may replace sound arrangements that have been in place for many years. On some occasions, a new Will may be instigated by an individual in whom the older person has placed their trust, such as a friend or associate appointed to act as Attorney under an EPA.

The following example illustrates how an individual experiencing one or more of these factors can be more vulnerable and susceptible to some type of financial abuse or fraud.

State Trustees recently addressed a case where a woman in her 90s was befriended by her local handyman and made a new Will leaving everything to him and making him her Attorney under an EPA. Her prior Will had bequeathed her \$2M estate to a national charity. When she finally sought the advice of State Trustees, she was extremely distressed. Upon her request, documentation was immediately drawn up to revoke the latest Will and Enduring Power of Attorney; sadly, she passed away before the new documents could be executed. The charity is now seeking legal advice around the validity of the new Will.

In State Trustees' experience, the true facts of such cases are very difficult to prove, and all too often the victim does not engage a professional for assistance and proper investigation until after the worst of the damage has already been done.



### **3.1 SUGGESTED MEASURES**

#### **3.1.1 Promoting and developing further education and awareness**

Given the potentially drastic financial consequences of financial abuse and fraud, it is appropriate that there be a focus on the estate planning 'literacy' of Australians, in line with (and possibly in conjunction with) the initiatives of the Australian Financial Literacy Foundation (established by the Australian Government in June 2005 to give all Australians the opportunity to better manage their money).

Access to information about creating a valid and appropriate Will, appointing ADMs, financial planning and taxation principles, creating Trusts, protecting beneficiaries, etc., provides older people with greater freedom to make informed and sound decisions whilst they have the ability to do so.

The aim of such education campaigns would be to empower people to by increasing their awareness of their rights so they can make their estate planning decisions freely and with confidence. The campaigns could target areas such as:

- Assisting people to understand that making an appropriate Enduring Power of Attorney may reduce their vulnerability to financial abuse.
- Promoting the benefits of seeking the advice of Financial Planning and Tax professionals to assist in making estate planning decisions.
- Promoting the importance of reducing where possible the incidence and severity of family conflict.
- Warning of the potential pitfalls of family agreements relating to accommodation.

#### **3.1.2 Promote and develop access to Services and Advice**

There is scope to consider the establishment of telephone access services (providing independent advice on Will and EPA issues) to assist those who may be living in isolation (whether geographically or due to physical incapacity).

This service could also be extended to assist carers of older people.

#### **3.1.3 Enforce the Accountability of an Attorney**

Whilst individuals and entities who administer the affairs of persons under a disability (e.g., in Victoria, under a VCAT administration order) are subject to some formal

review, those appointed to act as Attorney under an Enduring Power of Attorney are generally not. Recent changes to the law in Victoria have made it easier for interested parties concerned about the actions of such an Attorney to have the matter brought before VCAT.

Investigation of alleged instances of financial abuse can often quickly descend into a forensic nightmare. In this context, there is a case to be made for greater formal prescription in relation to the types of records of transactions and investments Attorneys must maintain to demonstrate they are acting in the best interests of the donee of the EPA. It has also been State Trustees' experience that Police can be reluctant to treat alleged financial abuse by Attorneys as warranting criminal investigation, although in clear-cut instances this will not be the case.

Centrelink currently requires the annual submission of financial statements prepared by qualified individuals to verify recipients' entitlement to ongoing payment of certain pensions; the annual statements are verified by qualified Complex Assessment Officers. A similar procedure might be appropriate for those acting as Attorneys. Consideration might be given to whether individuals with a record of fraudulent or dishonest behaviour ought be *prima facie* barred from acting as an Attorney under an EPA. It is noted that the United Kingdom has in place, a formal register of persons known to have perpetrated elder abuse.

Issues as to the process and infrastructure required for such measures would obviously need careful consideration.

### **3.1.4 Uniform Enduring Power of Attorney legislation**

Uniformity of legislation across all States and Territories would be of benefit to the administration of people's affairs where assets are held in multiple jurisdictions. It would also assist financial and other like institutions in recognizing documents executed throughout Australia.

### **3.1.5 Witnessing of EPAs and Attorney acceptance**

The witnessing of Enduring Powers of Attorney (Financial) in Victoria has been made significantly more onerous under changes that came into effect on 1 April 2004. Under the changes, the person nominated as Attorney must formally accept their appointment, and undertake:

- (a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor;
- (b) to avoid acting where there is any conflict of interest between the interests of the donor and those of the Attorney; and
- (c) to exercise the powers conferred in accordance with the EPA legislation.

Whilst these changes are welcomed, they will not deter persons who are intent on obtaining an advantage by abuse or fraudulent use of an EPA.

The new legislation has resulted in an increased cost in the professional preparation of EPAs, and has made the document more complex, which is a deterrent for some older persons who would otherwise have made an EPA. There is, on the other hand, greater ability to access VCAT for a ruling on the scope and validity of an EPA.

### **3.1.6 A National Register for EPAs**

Tasmania is the only state where an EPA must be formally registered. Registration must be made with the Recorder of Titles (for a fee of \$90.50) before the document can be acted upon.

The proposal of a compulsory national register has prompted legitimate concerns around privacy of donors' and donees' information. There may, however, be regulatory means of addressing such concerns: for example, access to register data may be restricted to cases where the inquiring party can cite certain registration details (e.g. a unique identifier affixed to the EPA upon registration); it would thereby be of assistance to financial institutions seeking to confirm that a document presented to them is the current valid EPA. Conducting a search by name alone might only be permitted to be done by (for example) duly authorised personnel of a relevant Tribunal or Court.

We would support assessment of the avenues for creation of a register at a national level. Such an initiative would make it easier to track the documents of older people who may move interstate or become incapacitated. It will also promote better recognition of EPAs prepared in other States or Territories.

There is the prospect that such a register might also be capable of use for registering Wills (although in relation to Wills registration ought not be compulsory). Any such

register may also be used (presumably for a fee) as a repository for the latest copy of the Will and/or EPA.

### **3.1.7 Standardise Attorney's administrative practices**

Subject to the instrument under which they are appointed, a trustee when investing trust assets is generally subject to the so-called "prudent person principle", under both general law and statute: see, for example, the *Trustee Act 1958* (Vic.), ss 5-8. In practice, this means the trustee is free to invest in any form of investment so long as the trustee exercises the appropriate degree of care, diligence and skill, has regard to certain prescribed matters, where relevant, and review the performance of the investments at least once in each year. It would be appropriate that relevant amending legislation be enacted (at State and Territory level) to render Attorneys subject to the same obligations and requirements, subject to any contrary direction of the donor.

### **3.1.8 Standard EPA verification processes in Financial Institutions**

There is no consistency in the process for verifying EPAs from one financial institution to another. The Western Australian Public Advocate reports "an inconsistency in banks in accepting EPAs...others were told to go away and get an authorization from the donor<sup>2</sup>." This may, for the Attorney, delay management of an older person's assets (once the EPA is activated) where such assets are held across a number of institutions.

Ideally, these processes would be broadly consistent across all institutions. The national register may assist in this regard. Alternatively, a variation of the 100-point check process currently used by banks might be adopted.

### **3.1.9 Family mediation and counselling services**

Family conflict gives rise to recriminations and allegations of financial abuse, and may potentially be the cause of it. For example, where an aggrieved son or daughter might seek (by illegitimate means) to "get their share" of a parent's estate before one of their siblings does. Alternatively, a family member may believe their actions are necessary to protect what they believe is theirs, but with adverse consequences for the victim's

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2 "Uncovering elder abuse: powers of attorney, administration orders and other issues for banks." Banking and Financial Services Ombudsman Annual Conference Presentation. Julian Gardner, Public Advocate, Victoria. 25 November 2005.

quality of life. Conversely, there may be general suspicions about the actions of a family member who, in reality, is acting quite legitimately and in the older person's best interests.

More suitable avenues for resolution of such family conflict may in some cases assist in reducing the incidence of abuse and recriminations amongst family members.

An example of such an initiative is in the area of Special Disability Trusts (SDTs). This Federal Government initiative is aimed at helping immediate family members and guardians provide for the future financial well being of sons and daughters with a severe disability. Federal government assistance provided under the initiative will facilitate access to mediation and counselling services for such families. This means that families, who may be at risk of experiencing conflict when it comes to making decisions involving the future care and support of a child with a severe disability, will be eligible for family mediation assistance. This new initiative will be incorporated into the existing Family Relationships Services Program.

In a similar vein, the 'Decision making in advance' paper produced by Alzheimer's Australia (May 2006) advocates establishment of a 'one-stop-shop' service to be run by well-informed, accredited professionals who understand the disruption and difficulties arising from the onset of Alzheimer's disease in an individual. The one-stop-shop proposal would include access to information and appropriate witnesses as well as professional guidance and counselling. State Trustees sees great merit in any initiative along these lines in terms of improving access to appropriate legal services.

### **3.1.10 Guardianship order verification processes in Federal Government**

State Trustees is appointed as administrator by VCAT for clients living with a disability. Centrelink and other Federal Government agencies do not always recognise the status of State based law appointments compared to Federal law which makes the Administration of the older persons income needs difficult. This situation ought to be reviewed by such agencies.

### **3.1.11 Family Agreements**

In State Trustees' experience, Family Agreements are an area of considerable risk to older people; they can result in significant depletion of the older person's assets for minimal tangible benefit. Despite this, they are often perceived by family members,

including by the older person they are purportedly designed to benefit, as a sensible and practical solution to the older person's increasing dependency on the family for support in their daily lives. In practice, the family often neglects to consider the "what-ifs" of the situation; this will usually be to the detriment of the older person, especially if he or she has not obtained independent legal advice prior to entering into the agreement, and/or a family member with a (conflicting) interest in the Agreement is subsequently able to act as ADM for the older person (e.g. under EPA and/or Enduring Power of Guardianship: See the example below.)

Family Arrangements - Example: A father and his daughter entered into a family agreement whereby the father would be housed in an extension built at the property of a daughter and her husband. The father paid for the extension, in return for which the daughter and her husband were to care for the father for so long as the father was able to continue living at their property. The daughter later also acted under EPA for the father. After a certain point, the father was admitted to alternative fee-paying accommodation, but this was apparently not due to his inability to live at his daughters' property, but rather for reasons of personal conflict within the family. Ultimately, the children ended up in court in a bitter dispute over the father's deceased estate; the daughter was ultimately ordered to repay from her own money the accommodation expenses she (as Attorney) had paid from her father's money in circumstances where she was still under an obligation to house her father free of charge on her property. See: *Klotz & Klotz v. Neubauer & Klotz*, [2001] SASC 454.

Other examples where informal and/or formal arrangements between family members can ultimately be to the detriment of the older person include:

- A family member uses the opportunity presented by living with the older family member to take financial advantage of the older family member;
- A family member gains access (as nominee) to the older family member's Centrelink payments and does not account for their use;
- A family member gains unrestricted access to and misuses the older family member's bank account and/or other assets;
- A family member obtains rent-free accommodation by living in the home of the elderly person, but without providing any benefit in return; and
- A family member arranges the sale of the older family member's home contrary to their best interests, forcing them to live elsewhere.

Experienced estate planning professionals will often be able to assist their clients to work through the legal risks arising from their particular circumstances, including the implications of diminishing capacity.

When discussing Estate Planning needs State Trustees encourages clients with capacity to consider such issues that may arise. For clients without capacity, State Trustees can seek the intervention of the Office of the Public Advocate (OPA). It is not unusual that investigations by OPA conclude that despite evidence of an element of financial exploitation, the elderly person's overall needs are best satisfied by staying where they are rather than being forcibly relocated by an appointed guardian.

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## 4 PREVENTING FINANCIAL ABUSE AND FRAUD

### 4.1 FINANCIAL ABUSE

The National Advocacy Aged Care Program states that during 1998-1999, 354 people sought assistance from ARAS (Aged Rights Advocacy Service) about abuse of older people. The abuse was usually caused by family (93%) and friends (6%); overall, 34% related to financial abuse.

Many clients seeking State Trustees' assistance have experienced financial abuse inflicted by an Attorney acting under an EPA.

Example 1 illustrates such a situation.

Enduring Power of Attorney -- (Example 1): State Trustees recently took action for an older woman who was in hospital. After the recent death of her husband, she had executed a number of legal documents involving the president of a local club but was unable to detail exactly what they were. It was subsequently discovered that the president had been acting under an EPA signed by the woman, and had progressively sold all her possessions and the family home whilst she was in hospital. With State Trustees' guidance, the woman revoked the prior EPA and appointed State Trustees as her Attorney. State Trustees immediately took steps to cease the settlement of the property and begin recovery of as much of her property and possessions as possible.

### 4.2 FRAUD

In many instances, financial abuse will include an element of fraud. Other types of fraud will fall outside the concept of financial abuse because the perpetrator is an individual to whom the victim is a stranger (albeit that there may be some degree of connection).

As with financial abuse generally, the incidence of fraud against older people is difficult to quantify. Where the victim is isolated or suffers a disability, they may be reluctant to report what has occurred, or they may not even be aware that they have been the victim of fraud.

Often, by the time formal remedial steps are initiated, financial and emotional damage has been done. The recovery of assets misappropriated as a result of the fraud can be a difficult and costly undertaking (for reasons outlined earlier in respect of financial abuse).



### **4.2.1 Service Provider Accountability**

Service providers (handymen, utility companies, repairers, retailers, etc.) need to be more accountable when assisting older people. Providing more information may assist to make decisions in an informed way and without undue influence.

Consideration should be given to:

- Cooling off periods for any significant contracts (size of contracts possibly measured in dollar terms).
- Provision of references for previous work carried out where requested.
- Easy (i.e. via the telephone) access to qualified independent professionals.
- Telephone access service to recommended services providers. (Service providers will be required to meet certain qualifying criteria in order to be included in this information bank.)
- Independent inspections of work carried out to ensure quality services are provided that match the cost.

### **4.2.2 Access to a Complaint/Dispute-Resolution Mechanisms**

Where an organisation or industry has in place formal complaint or dispute-resolution process (whether or not sanctioned by statute), it is important that the process be accessible to vulnerable older persons on an informal basis (for example through, or with the support of, family members or carers) where the older person has no formal ADM arrangement in place.

The financial services industry has strict regulations in relation to provision of an internal and external dispute resolution process for clients who are dissatisfied with the service or product they have received. This process is provided at no cost to the client.

Similar regulation is found in other industries, and should be encouraged wherever there is the potential for vulnerable older people to suffer financial detriment not of their own making. For some industries such regulation would most likely require legislation at both State and Federal level.

### **4.2.3 Telemarketing companies, etc.**

The Federal legislation instituting a “Do Not Call” register (yet to commence)<sup>3</sup> in respect of telemarketing may offer some protection to vulnerable older persons from exposure to situations where they may be likely to make inappropriate spur-of-the-moment decisions adversely affecting their financial position. It is noted that religious organisations and charities are exempt under the legislation; some older persons are vulnerable to persuasion from such organisations in relation to making donations beyond what would be appropriate in their financial situation. Consideration should be given to extending the legislation to permit a person to override these exemptions.

Consideration should also be given to how easy it is to be registered on the Do Not Call Register. It will assist vulnerable older persons if the process is as simple as possible (e.g. able to be done by phone).

### **4.2.4 Awareness in the Financial Services Industry**

The “Uncovering elder abuse” paper<sup>4</sup> reports that in the US, voluntary reporting exists where banks train staff to recognize and report signs of financial abuse. One of the processes implemented is that the banks’ staff ask the older customer a series of simple questions (how much money is in the account, how much money did you withdraw, when did you last withdraw money from this account, what effect will this transaction have on your account) each time an amount of money is withdrawn by an older person, to assist in gauging the customer’s understanding of what they are doing.

Similar processes might be initiated by, or in co-operation with, Australian financial institutions.

### **4.2.5 National networks for protection of Older Persons’ legal rights**

A number of initiatives both within Australia and in overseas jurisdictions provide positive examples of measures that can be taken to help tackle financial abuse and assist older persons to protect their financial and legal interests.

For example, the following Queensland initiatives are currently in place:

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<sup>3</sup> Do Not Call Register Act 2006 (Cwth)

<sup>4</sup> Uncovering elder abuse: powers of attorney, administration orders and other issues for banks.” Banking and Financial Services Ombudsman Annual Conference Presentation. Julian Gardner, Public Advocate, Victoria. 25 November 2005.

- Elder Abuse Prevention Unit (EAPU) (Telephone Helpline, Community Awareness programs, Staff Training and Education, Peer Support Network<sup>5</sup>); and
- Senior's Advocacy Information and Legal Service (SAILS) – a free legal service currently available to older people (funded by the Department of Communities)

Consideration can be given to whether a national approach to these and other similar initiatives might be pursued.

#### **4.2.6 Clarification of privacy laws and actions to interested parties**

Concerns are sometimes raised that, under current privacy laws, an organisation whose customers may be older persons is not able to report to third party instances of their customers' suspected vulnerability to financial abuse without thereby breaching the provisions of the legislation. It would be of assistance if such concerns were able to be addressed by legislative or regulatory amendment.

Those involved in supporting older persons (carers, social workers, medical professionals) would often benefit from training as to how to identify instances where clients are susceptible to, or victims of actual, financial abuse, and if such exposure is identified, what measures can be taken by them without the risk of breaching privacy provisions. These are complex and evolving areas of law, but there is a good case for greater clarity being effected through legislative amendment.

## **5 OTHER RECOMMENDATIONS**

### **5.1 PROFESSIONAL SUPPORT NETWORK**

Consideration given to the introduction of nation-wide services network for providing support and assistance to older people vulnerable to, or experiencing, financial and other abuse. These services would ideally be accessible by older people's carers, professionals and family. Such an initiative could incorporate and co-ordinate existing services such as professionals and other independent bodies acting as Attorney under Powers of Attorney, aged-care assessment services, providers of financial, legal and tax advice, state and federal police and other professionals who are specialists in the prevention of abuse of older people.

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<sup>5</sup> The Peer Support Network is a state-wide multidisciplinary network available to assist, resource and support workers in rural and remote locations to respond to elder abuse. This operates via teleconferencing, e-group membership, newsletters and additional written communication.

## 6 CONCLUSION

The instances of financial abuse and fraud referred to in this submission are not a recent phenomenon. Older persons will continue to be exposed to adverse legal and financial consequences due, for example, to the age-related onset of a diminution of their capacities. The challenge is to find practical measures to reduce the incidence and severity of the adverse consequences (abuse, fraud, neglect) that can result from such exposure. Such measures need to be taken on a variety of levels and across a broad spectrum, including through research, legislation, financial measures, support service provision, education and training, and policing.

A major hurdle is the need to raise community awareness of the complex problems involved. The recently initiated campaign to promote financial literacy serves as a model for the type of program that can help raise the level of community understanding.

In State Trustees experience, much can be also gained from exchanging views and experiences with those organisations in other states and territories (and overseas) that share similar concerns. The momentum for developing common, consistent) and potentially uniform solutions (e.g. current steps towards uniform succession and uniform trustee companies laws) across Australia is to be encouraged.

### **Contact details and authorisation level**

Please direct any questions in relation to this submission to:

State Trustees Limited  
168 Exhibition Street  
Melbourne VIC 3000

This submission has been authorised by the Managing Director of State Trustees Limited.

Tony Fitzgerald  
**Managing Director**  
1 December 2006

## 7 APPENDIX – ABOUT STATE TRUSTEES

### 7.1 WHO IS STATE TRUSTEES

State Trustees Limited is a Victorian Government owned business providing Trustee Services to Victorians.

As part of our role we:

- Provide a range of legal, financial and asset management services for over 8,000 Victorian customers whose disability prevents them from managing their own financial and legal affairs.
- Specialise in the provision of services relating to the management of continuing personal trusts and those established for disabled people. For the year 2004/05 we managed trusts worth \$297million for 4,314 customers.
- Act as Trustee for over 3,200 beneficiaries of compensation arising from work place accidents, over 700 beneficiaries of compensation arising from motor accidents and over 700 minor (child) beneficiaries of deceased estates.
- We provide Estate Planning advice to Victorians, which includes the establishment of Trust Deeds, appointments under Enduring Powers (Financial, Medical Treatment, Guardianship) and bequests for the support of disabled persons.

As appointed Administrator or Trustee we are often called upon to make assessment and decisions considering the best interests of a disabled person. This often involves assessing the wishes of the disabled person in light of the needs and risks arising from their particular circumstances (financial and legal position, personal health, age, relationships with family and/or carers, etc.).

### 7.2 GOVERNANCE REQUIREMENTS

State Trustees Limited is a Government Business Enterprise, and a company under the *Corporations Act 2001* (Cwth).

It is subject to the full spectrum of governance requirements, including:

- all applicable Corporations Act requirements;
- the *Trustee Act 1958* (Vic.), and the *Trustee Companies Act 1984* (Vic.); and
- governance requirements applicable to the Victorian public sector.

### **7.3 BUSINESS OVERVIEW**

- State Trustees Limited (State Trustees) is an authorised trustee company under the Trustee Companies Act 1984 (TC Act).
- State Trustees became a State Owned Company under the State Trustees (State Owned Company) Act 1994 (STSOC Act). State Trustees' sole shareholder is the Government of Victoria. Its relevant Victorian Government Department is the Department of Treasury and Finance (DTF).
- State Trustees is a member of the Trustee Corporations Association of Australia, the peak body that represents trustee companies at the national level. Our membership of the Investment Financial Services Association Limited (IFSA) has also been approved.
- State Trustees is the successor in law of the State Trust Corporation of Victoria and of the Public Trustee of Victoria. Its core services are the provision of administration services for persons under a disability, Will preparation, acting under Enduring Powers of Attorney, acting as executor or administrator of estates and the provision of general trustee and related services for the Victorian community.
- The origins of State Trustees can be traced back further to circa 1915 when the Victorian Government first appointed a Curator of Estates of Deceased Persons and a Master in Equity (and previously the Master in Lunacy) to act for Victorians without mental capacity. These were the first Government entities to provide Public Trustee services in Victoria.
- In its representative or custodial capacity, State Trustees administers approximately \$1.3 billion.
- State Trustees is an Australian Financial Services (AFS) licensee. State Trustees' wholly owned subsidiary, STL Financial Services Limited (STLFSL), is also an AFS licensee.

### **7.4 THE PEOPLE**

State Trustees employs over 450 people who deliver services to the Victorian community and it is the largest provider of Trustee services to people with a disability within Victoria.

### **7.5 KEY STATISTICS -- CUSTOMER FINANCIAL DEMOGRAPHICS**

Of the clients State Trustees provides Estate Planning advice to, 79% own a residence, 53% have other investments and 33% have superannuation of some

description. The value of these assets is also substantial with 38% having assets in excess of \$500,000.

### **7.5.1 Key Statistics: Funds & Assets under Management**

State Trustees' Funds and Assets under Management at 30 June 2006 was \$726 million.

### **7.6 GUARDIANSHIP AND ADMINISTRATION ACT CLIENTS (“VCAT CLIENTS”)**

- State Trustees' Personal Financial Solutions (“PFS”) division is exclusively concerned with the delivery of financial services to people with disabilities.
  - With 120 team members, our Personal Financial Services teams have solid expertise in the delivery of client services to 8341 Clients (all adult) as at 1 October 2005 and increasing by over 1000 new clients each year (via VCAT).
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