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BY: LACA New public inquiry into older people and the law

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~~MT~~ The Committee Secretary  
House of Representatives; Legal and Constitutional Affairs Committee  
PO Box 6021,  
Parliament House  
Canberra, ACT 2600

### Introduction

My name is Julius John Abrahams. I am a self-funded retiree. My last position was with CSR as Southern States Building Materials Marketing Manager. I have been involved with several cases of criminal abuse of Enduring Power of Attorney and in each case the predator has remained free to move on to another victim.

To illustrate how the trust given by General or Enduring Power of Attorney is open to abuse I will refer to my brother's story and to one other. Safeguards against such abuse are urgently needed and laws pertaining to (E)POA need to be tightened and enforced.

### **General and enduring power of attorney provisions**

An EPOA has the power to control every aspect of the donor's life (apart from real estate transfer, Qld), for the duration of that person's life, without being accountable to anyone. The donor is often incapacitated in some way, perhaps both mentally and physically. The establishment of a national central registry might prevent much abuse of power.

(E)POA is easily obtained. Anyone wanting EPOA for a frail donor has no difficulty in finding an obliging stranger to complete the paper work. The document need not be registered.

The identity of the person holding (E)POA can be kept secret. Family members need not know that a stranger has taken control of a relative's assets. Even if suspicious they would have no proof. Registration of documents could assure public access to names of EPOAs.

A new (E)POA automatically revokes the previous but the previous holder cannot know that theirs has been revoked unless they are told and no-one is under any obligation to tell them. A registry office could notify previous holders.

Donors are often led to believe that they are giving a carer EPOA only for the management of daily household expenses and that their financial affairs are being managed by the person they originally trusted with EPOA. A registry office could be responsible for bringing updated EPOA situations to attention.

(E)POA documents are readily accepted by financial institutions and once accepted the validity of the document is never again questioned. There is no way to check whether or not an (E)POA document is currently valid. Legality could be checked through a registry office.

### **Family agreements**

An EPOA document enabled an only son to help himself to a reward of more than a million dollars after shunning his parents for more than forty years and denying them all contact with their grandchildren and great-grandchildren. The son, a surgeon, took a Justice of the Peace to his mother's nursing home during the last weeks of her life and demanded she sign the document. His parents had told him that he would not be inheriting but by the time they died he had gained control of all their assets.

Names lodged at a central registry of citizens deemed to be untrustworthy to hold (E)POA could prevent many unwanted registrations.

### **Discrimination**

Lack of enforcement of the laws pertaining to (E)POA is the cause of current discrimination in favour of the EPOA and against the donor. The person granted EPOA has every legal right to make decisions regarding the donor's life and money. If they commit crimes, even to the point of murder, there is every indication that no-one will do anything about it so, for the criminal, the rewards are worth the risks.

### **Barriers to older Australians accessing legal services**

The Office of the Adult Guardian, the Public Trustees, and the Queensland Police each give reasons why they cannot assist in the investigation of the holder of EPOA who has criminally and fraudulently abused that trust. In this way they are all able to avoid giving legal service.

The Office of The Adult Guardian say that they can do nothing once a person has died and advise that this criminal (not civil) matter comes under the jurisdiction of the police.

The Office of Public Trustees advise that fraudulent abuse of EPOA is a criminal matter and one that the police are obliged act upon.

The police barristers say that they are unable to act after a person has died because they would have only one side of the story.

I believe that if laws are in place and those laws are broken the police are obliged to investigate.

### **Conclusion**

There is a strong possibility that a national central registry for wills and (E)POA documents would help control criminal activity and reduce distress and expense. Such a registry could be similar to the successful Share Registry.

A national registry for wills could ensure that an existing will could not be superseded without anyone being notified. This would avoid the need for small estates applying for grant of probate, a very expensive and time consuming exercise.

Some financial institutions insist on probate; why some and not *all*?. Perhaps a national registry for wills would satisfy the needs of all.

#### I believe the serious issues to be:

Laws pertaining to (E)POA are not enforced by the police

The person granted (E)POA is accountable to no-one

Witnesses to signatures are easy to acquire

The donor is often old or ill and in need of protection

Carers sometimes need protection from ongoing temptation

I believe that protection of the donor could be improved by:

The establishment of a national central registry for (E)POA registration

The national registry being responsible for notifying an (E)POA of revocation

Not granting one person complete power over both life and assets

The (E)POA submitting regular financial statements to an authority

The (E)POA being made aware that breach of trust is a criminal offense

The (E)POA being made aware that abuse of trust will be severely punished.

Immediate action that could make a difference to the number of crimes of abuse of (E)POA would be for the police to be given absolute directives to act on complaints of fraud even if they cannot, after questioning and investigation, place charges because of lack of evidence. In many cases there is plenty of evidence readily available. If the law is not worth defending then perhaps it should be changed or abolished.