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ACT

Public Advocate of the ACT

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Mr Peter Slipper MP  
Chairman  
Standing Committee on Legal & Constitutional Affairs  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Dear Mr Slipper

I refer to the House of Representative Standing Committee on Legal & Constitutional Affairs inquiry into older people and the law.

As you may be aware, the Public Advocate of the ACT (PA ACT) is an independent agency within the ACT with a range of statutory functions, including:

- > to advocate for the rights of people with a disability (including older people with impaired decision making);
- > to promote the protection of people with a disability from abuse and exploitation; and
- > to act as legal guardian or manager for people with a disability when so appointed by the ACT Guardianship and Management of Property Tribunal.

In doing so, the PA ACT has contact with a many hundreds of older people, a significant proportion of whom are involved with the legal system (either voluntarily or involuntarily) due to fraud, financial abuse, and/or enduring power of attorney issues. Additionally, the PA ACT is, or has been, statutory guardian for many hundreds of older people with impaired decision making.

Accordingly, the PA ACT welcomes the Standing Committee inquiry into older people and the law, and would like to submit the following, brief, comments to the committee:

#### **Legal capacity**

The PA ACT supports the development of a *national measure, or standard, of legal capacity*. It is unfortunately common for practitioners, including experienced solicitors, to assume - sometimes on very shaky grounds - that a person has the capacity to make informed decisions with respect to legal matters, including signing an enduring power of attorney, a will, or other statutory agreement.

While in many of these circumstances solicitors may well be acting in good faith, or from a position of well intended ignorance, some solicitors also state quite openly



that they assessed their client to be competent, and that this assessment is solid, despite strong medical evidence to the contrary.

The development of a national measure of legal capacity would assist to resolve this matter, including, the requirement for solicitor's, when making such a judgement, to be required to refer to, and acknowledge, national standards regarding what exactly legal capacity is, and how it is measured or determined.

#### **Register of enduring powers of attorney**

Similar to the above, the PA ACT supports the development of a national register for enduring powers of attorney (EPA), and for the requirement that an EPA be lodged with that register to make it valid. Too frequently, vulnerable (and probably incompetent) people sign any number of EPAs, with copies of these being held by a range of agencies and relatives around Australia. It is frequently very difficult to determine, not only if a person has actually signed an EPA, but also, if any particular EPA is the latest version (and whether the person was competent when they signed it).

Any such register should, of course, be free, and easily accessible to both those making EPAs, and those agencies and individuals with the legal authority to access such information.

Thank you again for the opportunity to contribute to this inquiry. The PA ACT would welcome the opportunity to discuss the above comments further, or to appear before the Standing Committee to discuss this submission further. In the interim, should you wish to discuss this matter further, please contact me on 02-62070707.

Yours sincerely

**Anita Phillips**  
**ACT Public Advocate**

**23 October 2006**

