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Dr Nicholas Horne
Inquiry Secretary
House of Representatives Standing Committee
On Legal and Constitutional Affairs
PO Box 6021
PARLIAMENT HOUSE
CANBERRA ACT 2601

Dear Dr Horne

At the recent public hearing in Perth in relation to older people and the law inquiry the Chairman indicated that additional questions would be brought to my attention for comment.

Thank you for supplying the questions. I have attached my responses and would be happy to provide further comment if required.

The Office of the Public Advocate's latest Annual Report is still being completed, but I will forward a copy to the Committee just as soon as it is available.

Yours sincerely

Michelle Scott
PUBLIC ADVOCATE

10 August 2007

Questions for the Public Advocate of Western Australia arising from the Older people and the law inquiry public hearing in Perth, 30 July 2007

1. Can you clarify for the Committee the different responsibilities and roles held by the Public Advocate and the State Administrative Tribunal in WA?

- *Is the Public Advocate funded by the Government or is it self-funded from fees and charges?*

The Public Advocate is an independent statutory officer appointed by the Western Australian Government to protect and promote the rights of people with decision making disabilities. The functions of the Public Advocate are primarily set out in section 97 of the *Guardianship and Administration Act 1990*.

The Public Advocate provides a range of vital services to ensure that vulnerable West Australians with a decision-making disability are protected. These services include:

- **information, advice and training** on how to protect the rights of people with decision-making disabilities;
- **investigation** of concerns about the well-being of a person with a disability and whether an administrator or guardian is required;
- **investigation** of specified applications made to the State Administrative Tribunal (SAT) to assist the Tribunal to determine whether a guardian or administrator is required; and
- **guardianship services** (for medical and lifestyle related decisions) when the SAT determines that there is no one else suitable or willing to act as the person's guardian.

The Public Advocate is a State Government agency funded by the State Government. More information about the role of the Public Advocate is available on the Public Advocate website, www.publicadvocate.wa.gov.au

The State Administrative Tribunal (SAT) is an independent statutory tribunal which:

- considers applications for the appointment of a guardian and/or administrator to a person with a decision making disability;
- makes orders for the appointment of guardians and administrators;
- reviews orders which have been made previously; and

- considers applications for intervention into Enduring Powers of Attorney.

More information about the State Administrative Tribunal is available on the SAT website, www.sat.justice.wa.gov.au

2. The Committee understands that it is possible for there to be concurrent general and enduring powers of attorney in WA (i.e. that the making of a new power of attorney does not automatically negate the previous grant).

- *Is this correct?*

The *Guardianship and Administration Act 1990* (the Act) provides for an enduring power of attorney (EPA). The Act does not refer to revocation of an EPA by a donor. Revocation is governed by the common law. A donor may revoke an EPA while he or she has legal capacity. Revocation in writing is not always necessary. However, the Public Advocate recommends that a donor provide written notification of any revocation to the attorney and to all relevant persons and organisations. Landgate which is the State Government agency with responsibility for land registration in Western Australia has specific requirements regarding the revocation of an EPA.

The issue of revocation will be considered in the current review of the Act.

3. Regarding the assessment of capability/capacity for older people, does the State Administrative Tribunal perform this function or does the Public Advocate also have a role?

The State Administrative Tribunal determines whether a person is a person for whom a guardianship order or administration order may be made (see section 43 and section 64 of the *Guardianship and Administration Act 1990*). Essentially this means that the Tribunal must be satisfied as to whether the person for whom an application has been made to the Tribunal does or does not have capacity to make decisions in their own best interest.

4. What is the Public Advocate's view of the idea that annual financial statements should be required from those holding enduring powers of attorney, as well as greater accountability for their actions? The Committee has been informed elsewhere that in WA those with power of attorney are required to keep records of transactions made on behalf of the donor in case of dispute.

Section 107 of the *Guardianship and Administration Act 1990* sets out the obligations of a donee of an enduring power of attorney in Western Australia. Section 107(1)(b) requires that a donee shall keep and preserve accurate records and accounts of all dealings and transactions made under the power. The Public Advocate supports this provision.

- 5. It has been suggested to the Committee that lawyers should not certify that legal advice given in relation to guarantor arrangements has been understood due to the difficulty of knowing that the client has understood the advice. On the other hand, it could be argued that lawyers are in the best position to provide such certification and that non-certification could undermine the perceived value of independent legal advice.**

• *Does the Public Advocate have a view on this?*

The Public Advocate does not have a view on this matter.