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ACHIEVING GREATER CONSISTENCY IN LAWS FOR FINANCIAL ENDURING POWERS OF ATTORNEY – CONSULTATION PAPER – SEPTEMBER 2023

Thank you for the opportunity to comment on proposals for model EPOA laws, set out in the Consultation Paper of September 2023. Relationships Australia welcomes the commitment of Australian Governments to promoting our dignity, security and autonomy as we age, and we look forward to a national plan aimed at ending abuse and neglect of older people within a generation, as well as upholding and vindicating human rights throughout the lifecourse.

Relationships Australia has previously participated in consultations about the development of a national register of enduring instruments, and remains committed to supporting work to ensure that enduring instruments fulfill their potential to act as powerful protection of individuals' autonomy, supporting their views, wishes and preferences, and to mitigate risks of misuse and abuse of enduring instruments. We welcome the commitment of governments to policy and legislative reforms to achieve these ends in respect of the financial sub-type of abuse, while expressing the hope that governments will vigorously pursue the critical work of ending emotional and psychological abuse, identified by AIFS as the most prevalent sub-type of abuse of older people at 11.7%; indeed, significantly more prevalent than financial abuse at 2.1%.[1]

Relationships Australia acknowledges that this consultation began only a few days before publication of the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission), and that the Attorney-General's Department will consider relevant findings and recommendations from that Royal Commission in the context of work on law reform in this area. This submission is informed by, among other things, the discussions in volume 6 of the Final Report, *Enabling Autonomy and Access*.

The work of Relationships Australia

We are an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choices, cultural background or economic circumstances. Relationships Australia provides a range of services, including counselling, various forms of dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Through our programs, we work with people to enhance within families, whether or not the family is together, with friends and colleagues, and across communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their

[1] Qu et al, 2021.

diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships.

Relationships Australia is committed to:

- ensuring that social and financial disadvantage is not a barrier to accessing services
- geographic equity in service provision, including by working in rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres
- collaborating with other local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children. We recognise that a complex suite of supports (for example, legal services, drug and alcohol services, family support programs, mental health services, gambling services, and public housing) is often needed by people engaging with our services, and
- contributing our practice insights and skills to better inform research, policy development, and service provision.

Framing principles of this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. Enjoyment by individuals of their full human rights is underpinned by access to effective and timely mechanisms to prevent breaches of their human rights and to remediate breaches when they occur.

Our commitment to human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to, *inter alia*, policy and programme development and service delivery.

Relationships Australia is committed to advocating for the recognition of the rights of older persons. We have joined the EveryAGE Counts Campaign and the Rights of Older Persons Australia network. We consider that ageism underlies yawning policy and service delivery gaps, including in the 'postcode lottery' of availability of services that can help older people affected by abuse or neglect, and reflected in short-term funding envelopes for elder abuse services that come nowhere close to matching the prevalence of abuse and neglect of older people (Qu et al, 2021).

Relationships Australia supports the principled approach to supported decision-making, defined in Volume 6 of the Final Report of the Disability Royal Commission.[2] Further, we support the supported

[2] See pp 122ff.

decision-making framework in relation to guardianship and administration orders as described at pp 159-160 of that Report.

Principle 2 – That the burden of fragmentation should not be borne by those least equipped to bear it

Relationships Australia welcomes governments' acknowledgement of the continuing impacts of fragmented laws relating to EPOA, which are substantial barriers to uptake and correct use. We heartily endorse the benefits of greater consistency outlined in the Consultation Paper.

Relationships Australia notes the statement in the Consultation Paper 'retaining jurisdiction-specific approaches in certain areas of financial EPOA law is necessary and appropriate.' (p 5) 'Necessary and appropriate' are unhelpfully vague terms, and the importance of the policy objective of national consistency (as stated by the Attorneys-General in the September 2023 communiqué[3]) warrants more detailed explanation of when, and in accordance with what principles, such special pleading should outweigh the benefits of consistency that are identified in the Consultation Paper. In the absence of clear, publicly accessible principles, governments may assert that they are committed to national consistency, but will readily excuse themselves, with the abstract language of 'necessary and appropriate', from committing the resources and effort to achieve genuine consistency – as has occurred over the past two decades with dreary regularity. In the meantime, people are put to the cost, inconvenience and complexity deriving from fragmentation.

In other words, the community continues to bear the burdens of fragmentation while deprived of the benefits of consistency.

It is unclear why, as a matter of principle, fragmentation of such laws in this sphere should be more tolerated than in laws relating to bankruptcy law, corporate law, consumer law, or insurance law, for example. If governments genuinely want to encourage people to engage in financial advance planning – and given the predicted wealth transfer of $3.5 trillion (Productivity Commission, 2021), they certainly should – then they need to invest energy and political will in removing obstacles to making valid and workable instruments, as they have invested energy and political will in achieving national laws across a range of other areas. Perhaps this means referrals of power; perhaps it means clearer mutual recognition laws. Whatever it means, it is uniquely within the hands of governments - not service users or service providers – to undertake.

Principle 3 Australian governments are responsible for proper stewardship of imminent wealth transfer

In 2021, the Productivity Commission found that, over the next 20 years, Australia would experience a wealth transfer of $3.5 trillion (an average of about $175 billion per year).[4] It is vital to Australia's economic security and social cohesion that this transfer is facilitated in an orderly, secure and lawful way, and that the community can have confidence in the integrity of the systems supporting this

[3] See https://www.ag.gov.au/sites/default/files/2023-09/scag-communique-september-2023_0.pdf , p 5 [accessed 4 November 2023]
[4] Productivity Commission, 2021, p 62.

transfer. These systems will include enduring instruments such as financial enduring powers of attorney. If the community cannot have this confidence, and if the wealth transfer occurs in ways that are disorganised, vulnerable to misconduct, or undermined by legal and technological systems that are not fit for purpose, the outcomes will include an unnecessarily disrupted economy, further erosion of public trust and the rule of law, and conflict at the national, community and family levels. Over the past decade, Relationships Australia has seen the rise of 'inheritance greed', devastating estrangement over 'family property', and outright abuse and exploitation driven by ageist and ableist beliefs. Our specialist services working with older people experiencing abuse or neglect (some Commonwealth funded, others not) have found that durable solutions to these kinds of conduct can be achieved through case management, mediation and a suite of other specialist services, including counselling and psycho-social education (of the clients and, where clients wish it, their families). Thus, law reform must be complemented by accessible and multi-disciplinary professional services to support safe and positive outcomes of intergenerational wealth transfer.

All Australian Governments can and should with urgency act to ensure that the systems that we rely on to support wealth transfer are fit for purpose, safe, secure and free of ageist and ableist assumptions. Relationships Australia views harmonisation of EPOA laws as a critical element of this work, and looks forward to supporting this law reform project as a key economic and social priority.

Principle 4 Proportionality of risk should underpin policy choices that balance encouraging uptake of enduring instruments and preventing abuse of them

The responses of Relationships Australia to the proposals set out in the Consultation Paper seek to balance competing considerations. On the one hand, it is highly desirable to increase the (currently low) uptake of enduring instruments, principally as a means of protecting people's autonomy and agency throughout the lifecourse, and also to scaffold the wealth transfer predicted by the Productivity Commission. On the other hand, there is ample evidence that enduring instruments have been exploited to prey upon the assets of people making powers of attorney. Clients of Relationships Australia have experienced coercion and undue influence to make powers of attorney, as well as experiencing financial losses caused by misuse of powers of attorney. Third parties who must rely on powers of attorney to provide goods and services to principals also have compelling interests in getting this balance right.

Law reform in this area thus demands of policymakers choices that encourage uptake (or at least do not deter it) by establishing mechanisms that facilitate making EPOAs, while being hardened against exploitation and misuse. These choices should offer a proportionate response to the likelihood of a risk materialising and the magnitude of consequences if it does.

Summary of responses and recommendations

Proposal reference	Response	Summary of accompanying recommendation (where applicable)
General principles	Support	
Decision-making capacity - definition	In principle support	Focus on 'ability', rather than 'capacity'
Execution of EPOA	Support	
Witnessing arrangements (p 9)	Conditional support	Clarify 'close relative' Consult with First Nations and Culturally and Linguistically Diverse communities
'Authorised witness'	Conditional support	Fund legal services to provide witnessing services to marginalised communities Facilitate online witnessing Expand FRCs to provide witnessing services Alternative to creating *two classes* of witness: require all witnesses to be authorised A 'reasonable belief' requirement, combined with including in the EPOA form the information suggested below in response to the question about prescribed information resources, could be a more practical alternative to 'authorised witnesses', while still offering meaningful safeguards for principals.
Witness obligations (p 10)	Support	
Enhanced witnessing obligations (p 11)	Conditional support	Subject to our comments about creation of class of authorised witnesses. Strengthen the proposal by imposing on witnesses a requirement to reasonably believe that that principal has decision-making ability and is acting freely and voluntarily Support development of prescribed information sources to be included as part of the EPOA form

Acceptance of appointment (p 13)	Support signed acceptance Support allowing different witnesses for principal's making and attorney's acceptance	That the activation provisions proposed by the Queensland Public Advocate[5] be reflected in the model laws. That Governments agree on a nationally consistent statement of acceptance
Revocation	Support	Criteria for making and revoking should be the same Specify how revoking events are to be established or demonstrated Subject to comments about authorised witnesses Address circumstances if an attorney loses their ability to perform their duties
Automatic revocation		Revoke when a new EPOA for financial matters made by the principal is executed, unless a principal specifies otherwise
Attorney eligibility		Dishonesty – support disclose and approve DFV conviction 5 year ineligibility – support Interim protection order 5 year ineligibility – support subject to clarification Bankruptcy – support disclose and approve Convictions for offences involving position of trust – 5 year ineligibility
Attorney's duties (p 23)	Support in principle	Attorney's duties proposed by the Queensland Public Advocate[6] should be reflected in the model laws Consult First Nations and culturally and linguistically diverse communities Attorneys must comply with the relevant legislation and with the terms of EPOAs appointing them

[5] Queensland Public Advocate, 2023, paragraphs 6-7.

[6] Queensland Public Advocate, 2023, paragraphs 17-21.

Attorney's duties (p 26)		Nationally consistent approach to a supported decision-making framework Substitute decision-making as a last resort only, in circumstances defined in primary legislation, and not using a 'best interests' test
Attorney's duties (questions at p 28)		Recommend that penalties for breach reflect the greater resources that public trustees and private trustee companies have at their command to support their management of a principal's affairs Recommend that there be no scope for courts or tribunals to excuse breaches committed by public trustees and private trustee companies.
Interstate recognition		Recommend simplification of legislation and the removal of barriers to mutual recognition. If an EPOA is valid in its originating jurisdiction, it should be recognised throughout Australia.
Access to justice (p 30)	Support in principle	Vest state and territory tribunals with jurisdiction to order compensation Full implementation of the Disability Royal Commission's recommendations as far as they relate to decision-making; resource tribunals accordingly National consistency of laws and practices relating to tribunals Mandated referral to accredited elder mediation and/or Eldercaring Coordination services, before filing any application for guardianship or any other order that detracts from a person's autonomy Substantial and ongoing investment in these services Ongoing investment in both systemic and individual advocacy services
Information, education		Ongoing funding for EAAA and Compass Encourage witnesses and attorneys to undertake to complete or work through a 'core' training module

Detailed discussion and responses to consultation questions

1. General principles and decision-making capacity

Relationships Australia **supports** the proposed general principles and gives **in principle support** to the definition of decision-making capacity, although we would prefer to see – consistent with the approach taken in the Final Report of the Disability Royal Commission, focus on ability rather than capacity.

2. Execution of Enduring Powers of Attorney

Relationships Australia **supports** the proposal.

3. Witnessing arrangements in relation to principals

Relationships Australia **conditionally supports** the proposal at p 9. We **recommend** further clarification of who would fall within the definition of 'a close relative'. The definition should reflect diversity of family composition and formation in contemporary Australia, and we **recommend** Governments consult, in particular, First Nations and other culturally and linguistically diverse communities.

3.1 Authorised witnesses

The question of witness qualifications throws into sharp relief the need to balance accessibility of EPOAs with robust safeguards. Requirements that are disproportionately stringent (having regard to the nature and magnitude of the risks) will deter many who might otherwise welcome the opportunity to make clear their choice of who can act for them and the nature of the decisions which that person could make.

The risks here are, first, that coercion, undue influence or other abuse might induce a principal to make an EPOA or to make it in particular terms. Second, there is a risk that the principal may not have the requisite capacity (or ability, to use the language preferred in the Final Report of the Disability Royal Commission) to make the EPOA. It appears that New South Wales has considered these risks to be sufficiently prevalent and the consequences sufficiently grave to warrant two key protective mechanisms: the establishment of a class of 'prescribed witness' and a requirement that the prescribed witness explain the effect of the EPOA to the principal before it is signed (see Consultation Paper, Appendix 1, p 38). This materially changes the character of the conventional, 'contentless' role of witnesses.

It further appears that the Consultation Paper has accommodated these mechanisms through a concept of two classes of witness, one class of which will be 'authorised witnesses': Australian legal practitioners or a member of other classes of persons to be prescribed by individual jurisdictions. It is proposed that authorised witnesses be subject to special obligations to explain certain matters to the principal.

Relationships Australia considers that the integrity of EPOAs requires independent witnesses to their making, who can provide some level of assurance that a principal has the ability to make an EPOA and is doing so voluntarily. We also agree that an explanation of the nature of an EPOA is equally important to the integrity and everyday usefulness of EPOAs. We have, however, some reservations about establishing two classes of witness.

The first of these concerns relates to people's *access to legal practitioners*. Cohorts who might especially benefit from putting in place EPOAs are cohorts who, it is well-documented, are marginalised and face specific additional hurdles to accessing justice (including through seeking legal advice).[7] If the concept of an authorised witness remains part of the model law, then we **recommend** that adequate provision be made for people to seek free and low cost legal advice about EPOAS. This could conveniently be done within the current review of the National Legal Assistance Partnership.

The second of these concerns relates to the proposed prescription of *additional classes of persons* who can be 'authorised witnesses'. It will be important to ensure that these persons have the skills and abilities to offer the explanations contemplated in the Consultation Paper.[8] In addition, Relationships Australia is concerned that requirements that witnesses have qualifications above and beyond being adults with an understanding of their function as witnesses may be disproportionate to the risks involved and may actively deter people from making EPOAs. For example, in rural, regional and remote areas, it would in past times have been practical to prescribe persons such as bank and post office employees, teachers etc. In recent years, however, the availability of such services has diminished, and so care should be taken not to inadvertently disadvantage people in these communities by reducing their access to appropriate witnesses.

Third, having differing obligations which are dependent upon the qualification of the witness is likely to delay and frustrate the process of having EPOAs accepted by third parties, due to confusion caused by the distinction. If there are different requirements for different classes of authorised witnesses, the risk is that third parties (such as major banks) will reject any EPOA which was not witnessed by a legal practitioner. We understand that there are already some banks (eg Westpac) which restrict what an attorney appointed pursuant to an EPOA can do, including closing accounts, notwithstanding the terms of an EPOA. We understand that (at least in South Australia) the bank will only allow Administrators appointed pursuant to a SACAT order to close accounts. If all EPOAs are to be treated equally, then the witnessing requirements should be consistent so that it does not, in fact or perception, inadvertently create a hierarchy of EPOAs.

If jurisdictions remain committed to requiring the involvement of 'authorised witnesses', then rather than having two classes of witnesses, governments could require that EPOAs are witnessed *only* by authorised witnesses who have undergone specific training. The training should focus on equipping witnesses to provide the necessary assurance that principals are acting independently and free of any undue influence, coercion or duress, and with understanding of the nature and effect of EPOAs. However, such a requirement will act as a practical barrier to making EPOAs in certain circumstances, if training does not have a wide take up (which seems likely in the absence of significant cultural change around the desirability of undertaking advance planning). No professional group (including legal practitioners and Justices of the Peace) should be exempt from undertaking the training if this alternative were adopted (although it should count towards CPD requirements).

In addition, governments proceed with the concept of 'authorised witnesses' with special qualifications and obligations, Relationships Australia **recommends** that governments consider ways to facilitate

[7] See, for example, the Law Council, 2018.
[8] Subject to our comments about prescribed information resources, explored later in this submission.

access to such persons. This may include online/electronic witnessing in addition to providing dedicated funding to legal services. Queensland, for example, allows certain documents to be witnessed through an audio-visual link, although EPOAs currently are not permitted to be witnessed in that way.[9] Authorised witnesses should also be supported in their role by

- public awareness and education campaigns that explain the special obligations imposed on such witness and advise where further information and assistance can be obtained by witnesses, and
- 'point of signature' reminders on the EPOA form.

Finally, Relationships Australia **recommends** that the Commonwealth consider expanding the functions of Family Relationship Centres to offer services around the making (and witnessing) of EPOAs. This would easily and seamlessly complement existing FRC functions, as well as other services that organisations offering FRCs provide. These include, of course, case management and mediation for older people experiencing abuse or neglect, family group conferencing, individual and group counselling and FDR. This would be done in the context of the current review of the Family Relationships Services Program, as a way of better enabling that Program to meet the needs of separating families (and acknowledging that separated families and complex family dynamics are associated with abuse and neglect of older people[10] – these are separate issues only in the world of government-created siloes).

3.2 Excluding persons from being authorised witnesses

Subject to the comments in section 3.1, Relationships Australia is concerned that allowing jurisdictions to exclude additional persons from being authorised witnesses might undermine consistency and mutual recognition; eg an instrument might not be recognised in a jurisdiction if a witness would be excluded in that jurisdiction, but was not excluded in the jurisdiction in which the EPOA was made.

3.3 Witness obligations

Relationships Australia **supports** the proposal on p 10.

3.4 Enhanced witnessing obligations

Relationships Australia **conditionally supports** the proposal on p 11, subject to our preceding comments about the creation of a special class of witness with special obligations. We **recommend** that the proposal be strengthened by imposing on witnesses a requirement to reasonably believe that that principal has decision-making capacity and is acting freely and voluntarily. Relationships Australia considers that such a requirement would act as a stronger safeguard while not creating so high a hurdle for witnesses to deter people from making EPOAs. A 'reasonable belief' requirement, combined with including in the EPOA form the information suggested below in response to the question about prescribed information resources, could be a more practical alternative to 'authorised witnesses', while still offering meaningful safeguards for principals.

[9] See https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/about-justice-of-the-peace/online-witnessing [accessed 4 November 2023]
[10] See Qu et al, 2021.

3.5 Consultation questions

Consultation Paper questions are in *italics* and proposed answers are highlighted in yellow.

1. *Is it practical (for principals, attorneys and witnesses) for a model provision to:*

- *require at least one authorised witness to an EPOA, and to retain jurisdiction-specific approaches to the number of witnesses required* See previous comments. Further, it should be emphasised that it is not practical to retain jurisdiction-specific approaches to the number of witnesses required, because of the confusion and delays which arise from such an inconsistency. When an attorney seeking to rely upon the EPOA in another jurisdiction provides the EPOA to third parties such as banks, utility companies, aged care providers etc, the third party must satisfy itself that the document is valid. The burden of checking witnessing requirements in the relevant jurisdiction is unreasonable and gives rise to considerable delay and confusion. Many institutions with which attorneys interact are nationally based and will require their legal team to validate the EPOA before giving the attorney access to the principal's information / account. Third parties should be able to readily identify whether an EPOA is, on its face, validly executed and witnessed. As acknowledged in the Consultation Paper, EPOAs must often be used in circumstances of urgency and current inconsistencies mean that this process can take at least a week in relation to some institutions, such as banks. This period can be further protracted if the bank requires that an attorney must attend an appointment at a branch, which still occurs. Having inconsistent requirements for witnessing also imposes an unreasonable burden on witnesses. Witnesses should not be expected to familiarise themselves with the witnessing obligations in each State and Territory and ensure that the information they are being provided is correct. The information provided to witnesses should therefore be uniform across Australia, and the number of witnesses and qualifications of witnesses should also be consistent.
- *retain jurisdiction-specific qualifications requirements for the required authorised witness?* See previous comments.
- *Alternatively, if you consider it appropriate that there is a consistent approach across jurisdictions in relation to the prescribed class of persons who may act as authorised witnesses, what qualifications should that class of witness be required to hold?* A consistent approach across jurisdictions would maximise take up and usefulness of EPOAs. If Governments pursue the 'authorised witness' approach (whether for one witness or all witnesses), then it would be desirable for authorised witnesses to have such qualifications and/or experience that enable them to explain, clearly and accurately, to the principal, matters including:
  - the nature and effect of the instrument they propose to sign, the rights of the principal and the powers and duties of attorneys
  - when and how it will come into effect, and
  - that and how it may be revoked (whether by the principal or otherwise by operation of law).

  Imposition of such requirements will have resourcing implications; otherwise, the proposed provisions are essentially requiring certain individuals to give free legal advice. This is not realistic.

2. *Feedback is sought on whether your experience of the witnessing requirements for financial EPOAs, as they apply in your jurisdiction, appropriately balance factors such as accessibility, with providing appropriate protection and assistance to principals.* See previous comments. There can be particular challenges in rural, regional and remote areas, particularly where 'social infrastructure' such as banks and post offices has been dismantled (or never existed). People can be deterred by both the cost of seeing a lawyer, and daunted by the experience of engaging with a lawyer, when they have not had reason before to use legal services. These apprehensions can be particularly acute among communities which have experienced marginalisation and/or intersecting circumstances of disadvantage and vulnerability. Relationships Australia supports the policy objective of encouraging people to engage in advance planning, and so supports measures to lower these hurdles while ensuring that witnessing requirements achieve their safeguarding purposes.

3. *Feedback is sought on the proposed establishment of prescribed information resources, which witnesses would draw to the attention of a principal. What matters do you consider should be addressed in the proposed prescribed information?* Relationships Australia supports the development of prescribed information resources to assist principals, witnesses and attorneys to understand the nature and effect of EPOAs through the publication of credible and authoritative materials. These materials should formally included in the prescribed form for EPOAs, and should include:

- information about what kinds of advance planning instruments exist (eg wills, powers of attorney for different purposes, advance health directives; people do confuse EPOAs with wills, and attorneys with executors), their nature and purpose – what they can and cannot do (eg be relied on to enter into a marriage on behalf of the principal)
- advice that an EPOA should only be made voluntarily by the principal, free from undue influence, coercion or duress, and information as to where someone can go if they are being pressured to make an EPOA, to witness an EPOA, or be named as an attorney
- information about how to seek advice in establishing a principal's ability to make or revoke an EPOA
- identification of who can make advance planning instruments, who can (and cannot) be witnesses, and who can (and cannot) act as attorneys
- information about decision-making ability (eg the current elements of decision-making capacity: to understand relevant information and the effect of a decision, retain that information to the extent necessary to make the decision, use or weigh that information as part of decision-making processes and to communicate the decision)
- information about supported decision-making and where principals and attorneys can get help and advice about how to operationalise it in specific contexts
- explanations of what is meant by 'wishes and preferences', as well as explanations of dignity of risk (with examples)
- explanation that witnesses must be satisfied that an EPOA is being made freely by the principal
- an explanation of what an EPOA is and what powers it confers, and obligations it imposes, on attorneys; this should be supplemented with clear examples of how EPOAs can (and cannot) be used
- information about attorney's duties, including explanations of what conflicts of interest are and what records must be kept and for how long

- information about the duration of EPOAs and other instruments (including making it clear that EPOAs are only effective during the lifetime of the principal)
- how decisions can be made (eg joint, several and majority)
- information that EPOAs can be revoked, and how that can be done
- information about potential consequences of breaches of duty by an attorney (and perhaps examples of common kinds of misuse of the instrument)
- information about sources of more tailored and detailed help and advice – including in circumstances of urgency and out of business hours - about making, implementing and revoking EPOAS (eg private lawyers, community legal centres, elder mediation services etc, and identification of free/low cost options), and encouragement to seek independent legal advice
- encouragement to ask principals and attorneys open questions to establish whether they understand the nature and effect of EPOAs, and their rights and obligations pursuant to the EPOA to be made
- advice that it can take several weeks for certain third parties (such as banks) to accept an EPOA, and that this should be considered if it is anticipated that the EPOA will need to be relied on in urgent circumstances, and
- advice that urgency should not outweigh the imperative of ensuring that the principal understands the nature and effect of making and revoking an EPOA.

This information should be accessible, presented in plain language and translations made available. Resourcing should be allocated to ensure that the information can be kept up to date, both online and in hard copy.

Because the information will be part of the EPOA form, it will also provide some assurance to third parties that it has been made available to principals and attorneys.

4. *Feedback is sought on the obligations proposed for authorised witnesses, and the model of having differing requirements for different types of authorised witnesses (such as Australian legal practitioners).* See comments above.

4. Acceptance of appointment

Relationships Australia **supports** the proposal at p 13 and supports a single national form. Requiring a signed acceptance is a proportionate safeguard that would not unduly complicate or protract the process of executing an EPOA, and is arguably even more necessary in circumstances of urgency. Subject to our previous comments about the creation of a class of 'authorised witnesses', we **support** the proposal that the authorised witness certifying acceptance does not need to be the same authorised witness who witnessed the principal's signature.

We **support** the proposed model provisions relating to activation of EPOAs set out at paragraphs 6-7 of the *Model financial enduring powers of attorney law* published by the Queensland Public Advocate, as well as the duties of an attorney set out at paragraphs 17-18 of that document. We **recommend** these be reflected in the model laws.

We **recommend** that jurisdictions reach agreement on the content of statements of acceptance, to avoid unnecessary complexities which will function as barriers to uptake of EPOAs.

4.1 Consultation questions

1. *Feedback is sought on the benefits and feasibility of establishing a single national attorney acceptance form.* The benefits of a single national attorney acceptance form closely align with those canvassed in the Consultation Paper in relation to consistency (see pp 3-4). Relationships Australia strongly supports a single form. The feasibility of achieving this is contingent on the degree of practical commitment of states and territories to make advance planning as efficient and accessible as possible – as a matter of urgency.

2. *Would the proposed role(s) for the authorised witness provide an appropriate degree of assurance that the attorney understands the obligations of their appointment?* Yes, subject to our previous comments about creation of a class of authorised witnesses.

3. *What matters do you consider should be addressed in the proposed prescribed information?* There is a significant overlap with the matters that should be addressed in the proposed prescribed information in respect of witnesses. In particular, prescribed material for attorneys should emphasise:

- principles in accordance with which attorneys must act, including the fiduciary nature of the role, what is (and is not) a conflict of interest etc
- information about the basis on which attorneys must make decisions; eg supported decision-making principles and how to provide that support
- information about applicable decision-making processes (the nature of joint, several and majority appointments)
- information about how and when EPOAs may be expressed to come into effect
- how the instrument may cease to have effect (eg by the principal's revocation or operation of law)
- circumstances in which attorneys may or may not resign from the role and the processes to be followed, and
- sources of assistance and advice (including any mandatory or voluntary training that is developed).

4. Does the proposed approach sufficiently account for situations where a. an EPOA needs to be put in place urgently and/or b. for attorneys to accept their appointment, where the attorney may be overseas or interstate? See above. If a potential attorney is overseas or interstate for a lengthy or indeterminate period, principals may be invited to consider their suitability for appointment. Circumstances of urgency will arise during operation of the instrument as they may on its execution. Nevertheless, the model should provide for instances in which a suitable attorney is in another jurisdiction. Relationships Australia does not, however, consider that the requirement of a statement of acceptance should be dispensed with in such circumstances; its importance remains as salient. Jurisdictions should reach agreement as to persons or officeholders in other domestic or international jurisdictions who would be suitable authorised witnesses.

5. Revocation of an EPOA

See our previous comments about authorised witnesses. Otherwise, Relationships Australia **supports** the proposal.

5.1 Consultation questions

1. *A risk identified above is that a principal may wish to revoke an EPOA when they are considered (by family members, witnesses or others), not to have decision-making capacity to do so. What qualifications or training requirements (if any) do you recommend are necessary to ensure a witness is able to make a considered determination as to the principal's decision-making capacity in the case of a revocation?* Relationships Australia **recommends** that the criteria should be the same as for making an EPOA; that is, reasonable belief that the principal has the ability to make the decision and that the decision is being made freely and voluntarily.

2. Do the proposed requirements for revocation of an EPOA balance the relevant considerations in relation to:

a. The extent of obligation placed upon the authorised witness, regardless of the qualifications or positions they hold Different classes of authorised witnesses in respect of making or revoking EPOAs would create unnecessary complexity and confusion, increasing risks of inadvertently invalid acts. Otherwise, we consider that the extent of the obligation is proportionate to the risks.

b. Ensuring a principal is supported to understand the effect of revoking an EPOA Yes

c. *Flexibility to accommodate circumstances where urgent revocation is required?* Yes

3. *Are there other suggested elements which would be beneficial to incorporate in a model provision?* Relationships Australia **recommends** that the model provision address circumstances if an attorney loses their ability to perform their duties (when the principal is and is not able to make a fresh appointment).

4. *What do you consider the prescribed information about the revocation of an EPOA should include?* The prescribed form of an EPOA should include information about revocation (see response to the earlier question concerning the proposed establishment of prescribed information resources, which witnesses would draw to the attention of a principal).

6 Automatic revocation of an EPOA

6.1 Consultation questions

1. *Feedback is sought on whether the range of proposed automatic revocation events are sufficiently clear and identifiable, so as not to create uncertainty about whether an EPOA is revoked.* Yes. We further **recommend** that the model laws specify how the occurrence of automatic revocation events is to be established or demonstrated.

It would also be desirable, in developing awareness and training materials, to explain the rationale for not identifying separation of de facto couples who are not in a registered relationship as a ground for automatic revocation. Relationships Australia considers that identifying separation in such relationships would create significant uncertainty, and so supports the proposal, but considers it likely (given the prevalence of such relationships) that questions will be asked. Governments should also make publicly available guidance about alternative methods of revocation.

2. *Feedback is sought on the proposal that an EPOA for financial matters would be revoked at such time as a new EPOA for financial matters made by the principal is executed, unless a principal specifies otherwise. An alternative approach is that the earlier EPOA is taken to be revoked to the extent of inconsistency with the later financial EPOA.* Relationships Australia **recommends** that, to maximise certainty and clarity, an EPOA for financial matters should be revoked at such time as a new EPOA for financial matters made by the principal is executed, unless a principal specifies otherwise.

3. *Certain model laws and inquiry recommendations suggest additional grounds for automatic revocation, where they occur after the execution of an EPOA. Feedback is sought on whether the following events (or other additional events), if occurring after the execution of an EPOA, should be grounds for automatic revocation:*

a. an attorney is convicted or found guilty of an offence involving dishonesty
b. an attorney is convicted of an offence involving violence occurring within the principal's family or domestic context
c. an attorney is a person against whom an interim or final family violence intervention or protection order has been made, where the order is relevant to the principal's family or domestic context
d. an attorney becomes bankrupt or personally insolvent.

Relationships Australia is concerned that automatic revocation on these grounds could create practical difficulties for principals and third parties who rely on EPOAs, especially if only a single attorney is appointed. For example, principals may be unaware of the occurrence of these triggering events and, if a principal no longer has capacity to make a fresh EPOA, automatic revocation in these circumstances could leave principals and third parties relying *bona fides* on EPOAs in invidious and uncertain positions. That said, we recognise the risks inherent in attorneys continuing to exercise powers under an EPOA in these circumstances. We would welcome opportunities to discuss alternative safeguards, such as provisions for persons seeking to exercise a power to apply to tribunals, with Government.

7. Attorney eligibility

7.1 Consultation questions

1. *Does the proposed range of attorney duties to be made more nationally consistent give appropriate coverage of safeguards, or should additional duties be incorporated?* We **support** the description of an attorney's duties set out at paragraphs 17-21 of the *Model financial enduring powers of attorney law* published by the Queensland Public Advocate. We **recommend** these be reflected in the model laws.

2. *Feedback is sought on whether the proposed five-year ineligibility period, is appropriate in each of the following cases. A prospective attorney:*

a. *has been convicted of an offence involving dishonesty* Relationships Australia **supports** the 'disclose and approve' approach as best recognising principals' autonomy and agency
b. *has been convicted of an offence involving violence occurring within the principal's family or domestic context* **Support**
c. *has been the subject of an interim or final family or domestic violence intervention order, where it relates to the principal's domestic or family context* Further detailed consideration is

necessary; for example, how would this operate in relation to a 'no admissions' consent order? What is meant by 'domestic or family context'?
d. *is a person who is bankrupt or personally insolvent, or who has been bankrupt or personally insolvent in the last five years prior to the execution of the EPOA.* Relationships Australia **supports** the 'disclose and approve' approach

3. Feedback is sought on whether the proposed disclose and approve approach is appropriate in each of the following cases:
a. a person who has been convicted of an offence involving dishonesty
b. a person who is bankrupt or personally insolvent, or who has been bankrupt or personally insolvent in the last five years prior to the execution of the EPOA.

Relationships Australia **supports** the 'disclose and approve' approach.

4. *Are there circumstances where it would be appropriate for a 'disclose and approve approach' to apply without a period of time?* Relationships Australia has not identified such circumstances.

5. *Are there other types of offences, intervention or protection orders or criteria, which should make a person:*
a. entirely ineligible for appointment under a financial EPOA, or
b. ineligible for a five year or other period?
Convictions for offences, or findings of civil liability, involving fraud or exploitation while occupying a position of trust or confidence.

8. Attorney duties

We **support** the description of an attorney's duties set out at paragraphs 17-21 of the *Model financial enduring powers of attorney law* published by the Queensland Public Advocate. We recommend these be reflected in the model laws. Further, Relationships Australia **supports**, in principle, the proposal at p 23. We agree that ideas about duties and what may constitute misconduct or abuse differ between families; more broadly, they are highly specific to cultural contexts. We **recommend** that governments consult closely with a diverse range of cultural groups in the framing of attorney duties.[11] Relationships Australia **supports** the proposal that attorneys be explicitly required to comply with the relevant legislation and with the terms of EPOAs appointing them.

8.1 Seeking and giving effect to the views, wishes and preferences of a principal

Relationships Australia **supports** the proposal on p 26. Further, we strongly **recommend** that Governments arrive at a nationally consistent approach to a supported decision-making framework, along the lines canvassed in the Final Report of the Disability Royal Commission. This is not an area in which jurisdictional differences ought to be tolerated. Autonomy and agency are not a function of location in Australia. It is utterly unacceptable, for example, that persons receiving services under

[11] See ECCV, 2023.

Commonwealth programmes such as residential aged care or the NDIS might receive varying support for the exercise of their autonomy and agency, depending on where they live.

8.2 Consultation questions

1. *Noting the increasing implementation of supported decision-making across different contexts in Australia, in what circumstances, if any, may substitute decision-making be appropriate under a financial EPOA?* Only as a last resort, and in circumstances defined in primary legislation, reflecting the gravity of displacing a person's wishes, views and preferences, and not using a 'best interests' test.

2. *In what circumstances may it be appropriate for a principal's views, wishes and preferences to be given less weight by an attorney acting under a financial EPOA (such as undue influence, coercion or risk of significant harm)? Should an attorney be required, in all instances, to follow the views, wishes and preferences of the principal (even if there is a high risk of significant harm to the principal's health or wellbeing)?* If an attorney holds a reasonable belief that wishes, views or preferences expressed by a principal are the product of undue influence, coercion or duress, or of an inability to understand the nature and effect of a particular course of action, then they should be permitted to consider what might be the principal's more authentic wishes, views or preferences, when not affected by such circumstances. The process of reflecting on what might be authentic wishes, views or preference, but for a particular circumstance, is a familiar one in this context; for example, in reflecting whether a principal would, but for the effects of a neurodegenerative disorder, wish to make a gift or donation. Risk of significant harm should be considered similarly, and we refer to Principle 3 articulated in the framework proposed by the Disability Royal Commission,[12] and its discussion of that Principle.

3. *Should all types of attorneys (family members/friends, public trustees and private trustee companies) be subject to the same obligations, regardless of their relationship with and access to the principal?* Public trustees and private trustee companies, as professionals in providing services for payment, ought to be held to higher standards of care and of transparency in their dealings. Certainly, Relationships Australia **recommends** that any arrangements for offences or the creation of civil liability ought to reflect the greater resources that such entities have at their command to support their management of a principal's affairs (including in the magnitude of prescribed penalties). Relationships Australia **recommends** that there should be no scope to excuse breaches committed by public trustees and private trustee companies.

4. *Is there a particular model law, an approach implemented in a jurisdiction, or an approach recommended in a particular inquiry which you consider provides the best framework to adopt for financial EPOAs?* Relationships Australia **supports** the approach taken in Volume 6 of the Final Report of the Disability Royal Commission.

[12] See Disability Royal Commission, 2023, Volume 6, pp 167-168.

9. Interstate recognition of EPOAs

9.1 Consultation questions

1. *Could the design of current interstate recognition arrangements for financial EPOA be improved or further simplified from a legislative perspective (that is, could amendment to the wording of interstate recognition clauses be improved)?* Relationships Australia has clients whose risk of financial abuse would have been mitigated by a national register of EPOAs, regardless of mutual recognition arrangements. Further, the language in 'mutual recognition clauses' gives rise to uncertainty among users and potential users of EPOAs as to the actual scope of recognition afforded. That uncertainty, in turn, creates risk and imposes costs of seeking advice. The Tasmanian requirement of certification by a legal practitioner explicitly creates hurdles of expense and accessibility for interstate operation of instruments. The Western Australian requirement to apply to the tribunal creates potentially even greater hurdles.

2. Feedback is sought on whether your experience of the interstate recognition requirements for financial EPOAs, as they apply in your jurisdiction, are working effectively, or on any challenges you have encountered.

The lack of clarity and the existence of legal hurdles in this area is a plain example of how Commonwealth, State and Territory Governments cast the burden of jurisdictional fragmentation on individuals and families who do not have the resources to navigate it – often in times of great stress and disruption in their lives. The onus is on governments to genuinely commit time and energy to resolve this fragmentation if their objective is to encourage uptake and correct usage of EPOAs.

3. *Are there non-legislative steps which could be taken to assist the interstate recognition of EPOAs? For example, would it assist if further practical guidance was provided about the circumstances in which an EPOA in one State or Territory would be recognised in another, and conversely the circumstances in which interstate recognition may not occur?* Authoritative and accessible guidance, on which principals, attorneys and third parties could confidently rely, would certainly be more helpful than the *status quo*. This should not, however, relieve governments of the immediate obligation to legislate to assist users of these instruments. Given the magnitude of the economic impacts of the predicted wealth transfer over coming decades, it is in governments' political and administrative interests to resolve this, as a matter of urgency, through their respective legislatures.

10. Access to justice issues – Jurisdiction, compensation and offences

10.1 Feedback is sought on stakeholder experiences of the current arrangements for managing EPOA disputes through the existing court and tribunal systems in their State or Territory, and options which could be considered to enhance access to justice in cases of potential breaches of attorney duties.

Relationships Australia **supports**, in principle, the proposals at p 30.

The Law Council's Justice Project (2018) drew attention to the particular barriers to accessing justice that are experienced by older people, and people with disability, in Australia. Since then, the Royal Commission into Aged Care Quality and Safety and the Australian Institute of Family Studies have identified widespread abuse and neglect of older people. A range of campaigns has been initiated to

counter ageism, which underlies abuse and neglect,[13] and vigorously assert that everyone, at all ages, has human rights and that everyone, at all ages, should be able to uphold their rights through relevant legal processes.[14]

In our recent submission on the proposed foundation principles for proposed aged care legislation, and our submission to the inquiry by the Parliamentary Joint Committee on Human Rights into Australia's human rights framework,[15] we have urged the Commonwealth Government to ensure that accessible, timely and meaningful remedies are available to older people whose human rights have been violated.

We share the reservations expressed in the Consultation Paper about the accessibility of remedies that are available only through litigation in Supreme Courts. Barriers of cost and time put such remedies effectively out of reach for most principals. Accordingly, we **support in principle only** the recommendation by the Australian Law Reform Commission to vest state and territory tribunals with jurisdiction to order compensation,[16] to complement existing powers relating to EPOAs (such as the power to revoke an EPOA). Current tribunal arrangements do not currently offer a credible or viable alternative forum in which to seek compensation or other remedies. The reasons for this include:

- chronic under-investment,[17] giving rise to consequences such as:
    - lengthy waiting times to come before a tribunal (contrary to the policy intent that tribunals offer quicker access to justice)
    - 'cut corners' such as 20 minute hearings where the person said to be at risk does not have an opportunity to be heard (and can be unaware of the proceedings until they are made aware of an order having been made against them)
    - reliance on substitute decision-making or guardianship orders other than as a last resort, and lack of use of supported decision-making
    - willingness to rely on applicants who are engaging in coercive control and/or systems abuse in relation to the person said to be at risk
- lack of transparency to persons said to be at risk, and
- lack of accountability to the public (arising from, among other things, gag rules imposed on principals and persons said to be at risk).[18]

We have identified these concerns among our clients. We note that they are also concerns that were identified by the Disability Royal Commission. In light of this, we have reservations about the degree of confidence expressed throughout the Consultation Paper in tribunals as safe places in which principals and other persons at risk will receive genuine support to express their will, values and preferences and to exercise their decision-making abilities. We consider that, in their current forms, tribunals are not

[13] For example, the EveryAGE Counts, of which Relationships Australia is a member. See https://www.everyagecounts.org.au/
[14] For example, the Rights of Older Persons Australia network, of which Relationships Australia is a founding member. See https://www.rightsofolderpersons.org.au/
[15] All submissions are available at https://relationships.org.au/research/#advocacy
[16] ALRC Report 131 (2017), paragraph 5.89, Recommendation 5-2.
[17] See, for example, Disability Royal Commission, 2023, Vol 6, pp 221-222.
[18] See, for example, Public Advocate (Qld), 2022.

equipped to exercise the range of functions envisaged in the Consultation Paper and by the ALRC.[19] We consider that substantial investment, accompanied by cultural transformation, will be needed before tribunals can be relied on to uphold and vindicate rights.

We **recommend**, therefore:

- full implementation of the Disability Royal Commission's recommendations as far as they relate to decision-making
- robust evaluation of the resources that would be required to enable tribunals to fully implement these recommendations, and investment accordingly, over the long term
- to provide geographic equity and comply with Australia's obligations under the Convention on the Rights of Persons with Disability – work to achieve national consistency of laws and practices relating to tribunals.

10.2 Feedback is sought on whether the proposed approach to compensation and offences is sufficient or requires further elements, to address particular trends for either principals or attorneys which you are aware of. See the complementary proposal set out in section 10.2.

10.3 Complementary proposal

It would be naïve and imprudent to think that the wealth transfer forecast by the Productivity Commission will occur without conflict, especially given what we know about the current prevalence of abuse of older family members, and some of the drivers of that abuse.[20] It is foreseeable that, in the absence of diversion to expert dispute resolution and counselling services, financial abuse will increase sharply.

As noted above, guardianship tribunals are already over-worked and under-resourced, and the pressures under which they work are inimical to authentic supported decision-making, as well as to working with multi-disciplinary teams to build families' capacities in safety, communication and conflict resolution. Further, clients of our various elder abuse services have been clear that they want options that are not legal options (whether the criminal or civil law). They often want to preserve valued relationships, while living in them in greater safety from violence, abuse, neglect or exploitation.[21] The Final Evaluation of the service trials of the case management and mediation program found that these services were valued by clients, met their needs, and should continue to be funded by the Commonwealth. We have, in other submissions and advocacy, urged the Australian Government to act on these recommendations and provide geographic equity for older people who need these services to be safe and thrive.

[19] For example, the ALRC proposal that tribunals 'should have the power to assess and determine the suitability of individuals, with convictions for fraud and dishonesty, to act as enduring attorney in each individual case': ALRC, 2017, paragraph 5.69.
[20] Qu et al, 2021.
[21] See, eg, Qu et al, 2021; Wong et al, 2023.

To support safe and successful mediation which addresses these issues, our services offer clients and, where they wish, family members:

- counselling
- psycho-education
- case management and coordination, and
- referrals to complementary services, within or outside our federation.

Wraparound support before, during and after mediation protects our clients while also enabling the relationships to continue - and in some cases grow. Our experience confirms that the risk and impact of abuse can be reduced by employing holistic models, tailored to the individual's circumstances and supporting a combination of case coordination and management, mediation and counselling. In this way, we lay foundations for enduring change, addressing old wounds and pivoting the family towards different, and better ways of being together.

Case management enables complex and interconnected vulnerabilities affecting clients' safety and well-being to be identified and considered. In doing so, this means that clients' rights and agency are enshrined at the centre of our services. Beyond the federally-funded case management and mediation services provided in Queensland, Canberra and Region, Western Australia and the Northern Territory, we also offer:

- state-government funded relationship and other services in Queensland and New South Wales
- support to Legal Aid services in Tasmania
- mediation services in Victoria,
- support for making and maintaining social connection in Queensland, and
- mental health services in residential aged care on behalf of Primary Health Networks in South Australia.

Service responses to elder abuse should be premised on sophisticated models allowing engagement with services in non-linear ways, reflecting the non-linear emotional and psychological experience of family conflict.

Cultural safety is critical. Our First Nations clients, for example, have told us that they value access to Aboriginal staff who can advocate for solutions that strive to harmonise relevant elements of law and traditional cultural practices. Cultural differences need to be unpacked and understood so that the family, and service providers supporting them, can navigate past traumas and collaborate in establishing positive and nourishing relationships.

Amplifying a single voice amidst dysfunctional relationships requires a sophisticated and integrated response. It requires a highly skilled and experienced workforce of professionals who are accountable to maintaining service standards that are responsive to the complex and sensitive nature of the work.

Accordingly, we **recommend** mandated referral to accredited elder mediation and/or Eldercaring Coordination services, before filing any application for guardianship or any order that detracts from a person's autonomy. This offers an option that centres the human rights and ongoing agency of people engaging in advance planning and stewarding their assets throughout the lifecourse. The New South Wales Ageing & Disability Commissioner has said that

> We believe that family mediation in relation to older people is an essential part of the elder abuse architecture and I'm more convinced of that today than I've ever been.[22]

Mandated alternative dispute resolution as a pre-filing requirement has been very successful in the context of the *Family Law Act 1975* (Cth). The vast majority of separating families with children have been empowered and supported to reach agreements that enable safe, durable and suitable co-parenting. We believe that it could be similarly successful in the context of resolving financial disputes involving EPOAs, and in dramatically reducing reliance on guardianship systems while better upholding our human rights as we age.

Specialist elder mediation services offer a blend of case management and mediation, to wrap around a person undertaking advance planning and, where that person wishes it, the whole family. Case management can include system navigation and warm referrals to a range of other capacity building and therapeutic services, including counselling and family group counselling. Further, people who have been experiencing abuse, violence and exploitation need a range of service options across diverse practices. Additional services may be needed to address co-morbidities including intergenerational trauma, harmful gambling, misuse of alcohol and other drugs. The value of wraparound services for families maximises:

- the possibilities that families are able to confidently support a person's exercise of autonomy and agency
- the quality of the support that family members can give, and
- the opportunities for durable change in family dynamics.[23]

In very high conflict families, practices such as Eldercaring Coordination can help to centre the rights of a person at risk and enable high conflict families to work safely and collaboratively to support the will, views and preferences of the person concerned. The Eldercaring Coordination model works with high conflict families to ensure their focus remains directed to the needs and desires of the older person; effectively centring the voice of that older person in decision making that affects them. It has been developed in the USA as a human-rights centred alternative to guardianship. It is also used for high conflict families who would otherwise make repeated returns to court.

A group of Australian practitioners, researchers and other stakeholders has been exploring the potential implementation of this model here in Australia, in the hopes that we can replicate the successes seen in the USA. Thanks to the combined efforts of the University of South Australia, the South Australian Adult Safeguarding Unit and Relationships Australia South Australia, a pilot of the model is being implemented and evaluated. The findings of this pilot will then be used to inform the future direction of Eldercaring Coordination in Australia.

We **recommend** substantial and ongoing investment in these services to better support guardianship in its proper role as a last resort, as well as providing protective factors against needing expensive tertiary

[22] Quoted in Wong et al, 2023, p 5.
[23] See, eg, Wong et al, 2023, p 7.

and crisis services. We further **recommend** ongoing investment in systemic and individual advocacy services like those supported by OPAN.

11. Information, resources or training for witnesses and attorneys

11.1 Consultation questions

1. *Feedback is sought on the resources, assistance and guidance which should be made available to assist witnesses, attorneys and principles [sic] to undertake their roles under financial EPOAs.* See below. Relationships Australia does not support mandatory training, which we consider to be impractical, likely to undermine efforts to encourage advance planning (particularly among communities experiencing disadvantage and marginalisation), and unduly costly in terms of monitoring initial and ongoing training. Against this background, the optimal way to ensure that principals, witnesses and attorneys have the information they need is to include it in the proposed prescribed resources, and leverage the prescribed resources as the training and education mechanism. As suggested in our response to Question 3, we **recommend** that the prescribed information should be included as part of the EPOA form.

2. *Do you consider voluntary online training modules as being a suitable path to explore further, as a way to inform and support principals, attorneys and witnesses?* Yes, but non-digital resources should also be developed, recognising that there are significant cohorts that face hurdles to digital inclusion.[24] Resources should also be targeted at particular cohorts, including young people, to prepare them for making advance planning instruments, including wills and powers of attorney. Resources should be publicised and highly visible in key environments including public-facing government offices, doctors, pharmacists, post offices, hospitals, and educational settings (to support normalisation of advance planning from an early age), and be published in a variety of languages.

If, as a community, we are to successfully navigate demographic and resource challenges that are already underway, we need to foster a culture in which advance planning is normalised and as much a matter of routine as getting a driver's licence or a passport, and filing tax returns. This could also include encouraging discussions among families, along the lines of campaigns to promote discussions about organ donation. Resources to assist principals, witnesses and attorneys – and third parties who rely on EPOAS – should be central. Most people do want to do the right thing by their family members, and most witnesses and attorneys will be well-intentioned and conscientious. The first job of governments in this regard is to support those people – including by taking steps such as delivering national consistency, clear mutual recognition arrangements and accessible laws, policies and resources.

Feedback is sought on whether you are aware of particularly useful resources for witnesses, attorneys and principles [sic], which you would recommend be considered as a resource across jurisdictions. The EAAA Compass website, and other specialist bodies such as AGAC, publish a range of excellent resources.[25] EAAA's Compass website is a trusted source of information for people experiencing transitions and pressure points through ageing, as well as their loved ones and other supporters.

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[24] See, for example, Thomas et al, 2023.

[25] See https://www.agac.org.au/publications , including AGAC 2018 and AGAC 2019.

Relationships Australia encourages ongoing and increased funding to ensure that EAAA can continue to develop Compass to fulfil its vital role in informing, educating and empowering.

4. *Should there be any monitoring and/or reporting of training for witnesses, attorneys and principals?* Relationships Australia **does not support** mandatory training, as noted previously in this submission. As described in earlier responses about prescribed information resources, we **recommend** that such resources should include information about available training and sources of advice and assistance. They should also require principals, witnesses and attorneys to acknowledge that they are aware of these. We **recommend** that governments encourage witnesses and attorneys to undertake to complete or work through a 'core' training module.

5. *How can witnesses, attorney and principals be encouraged to undertake training, including any ongoing/refresher training?* Normalisation of advance planning, and participating in it as a witness or attorney (as well as a principal) should be a priority. Initial and ongoing training should be in the form of an offer of support and assistance in capacity building, rather than in a 'regulatory' or punitive way.

12. Feedback is invited on other non-legislative work which the Commonwealth, States and Territories could be prioritising to prevent and respond to financial elder abuse, in particular, which would complement work to achieve greater consistency in financial EPOA laws.

This question merits a consultation process in its own right. There is an extensive body of work that has been produced over the past decade to inform government's consideration of non-legislative work. This includes authoritative public reports such as the ALRC's Report 131 and, more recently, the Final Report of the Disability Royal Commission. Service providers and advocacy bodies have offered governments substantive and detailed advice about issues that our clients face in dealing with banks, utility companies, and other commercial bodies, as well as government agencies who should be assisting the public in making and using advance planning instruments, and in seeking remedies for financial elder abuse. For example, our clients face significant obstacles in using 'external dispute resolution' mechanisms such as the Australian Financial Complaints Authority and the Telecommunications Industry Ombudsman to achieve timely and practical solutions, as well as engaging with government entities such as Services Australia, which remains highly problematic.

Conclusion

Thank you again for the opportunity to make this submission. Please do not hesitate to contact me if we can contribute further to your inquiry, at ntebbey@relationships.org.au / 02 6162 9300, or our National Policy Manager, Dr Susan Cochrane, at scochrane@relationships.org.au.

Kind regards

Nick Tebbey
National Executive Officer

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