



COTA SA RESPONSE

SOUTH AUSTRALIAN LAW REFORM INSTITUTE'S REVIEW OF SA POWER OF ATTORNEY LEGISLATION

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Who is COTA SA?

COTA SA is an older people's movement run by, for and with older people. We represent the aspirations, interests and rights of more than 630,000 older South Australians. COTA SA reflects the diversity of modern ageing in terms of living arrangements, relationships, income, health, ambitions and aspirations. COTA SA connects with thousands of older people each year throughout SA. COTA SA's social enterprise, The Plug-in is available to facilitate access to older people with lived experience and feedback about health in SA. COTA SA is part of the COTA Federation with independent COTAs in each state and territory and COTA Australia.

INTRODUCTION

COTA SA welcomes the investigation into the effectiveness of the current laws that apply to Enduring Powers of Attorney (POAs) and whether they are working to protect vulnerable South Australians. Power of Attorney legislation provides an important mechanism for people, including older people, to manage their affairs in instances of incapacity but it is also open to misuse and to abuse.

We note the five discussion points identified by SALRI to focus on in the review - Capacity, Medical Assessments to activate EPOAs, Composition of Attorneys, Stopping the Abuse, and Penalties.

COTA SA has been guided in its feedback to the review by older people through their calls, enquiries and feedback and in a workshop with our COTA SA Policy Council made up of 20 older people representing a wide range of interests and backgrounds.

Our recommendations in this paper reflect the real and lived experiences of older people as they (with their families and networks) navigate power of attorney legislation and operation.

COTA SA FEEDBACK

COTA SA undertook a workshop (including a presentation by SALRI) at its 24th July 2020 Policy Council meeting and then participated in the industry round table hosted by the SA Law Reform Institute (SALRI) on 20th August 2020.

In addition to our contributions at those events we offer the following comments -

- POA legislation and operation needs to strike a balance between simplicity and ease of access and operation on one hand and adequate protections and safeguards to prevent abuse
- Legislation should enable the person's wishes and preferences to be reflected as much as possible rather than resort to a third-party interpretation of "best interests"
- Wherever possible the capacity of the person should be supported and given agency such that power of attorney is only invoked to the extent and in areas where there is established incapacity
- There needs to be a requirement for an Attorney to show they acknowledge and agree to their responsibilities and promise to exercise within the principles of the Act
- There should be an established point of contact where people can go if they become aware or suspicious that something is wrong which is well advertised and which uses a "no wrong door" referral approach.
- A government obligation to provide accessible and widespread community education about Power of Attorney legislation needs to be included in the legislation
- The legislation needs to be sensitive to a reluctance to "dob" in a family member but acknowledge that elder abuse, like family violence, must stop being overlooked as a private matter and start being tackled as a community responsibility. Where appropriate, penalties must create disincentive and reflect the seriousness and criminality of the abuse of POA.
- There need to be opportunities and expectations for institutions like banks to check power of attorney, watch for unusual transactions and report suspicions.
- There needs to be, as far as it is possible, a national approach to power of attorney legislation which, while not necessarily achieving harmonised legislation, sits within an agreed and

consistent national framework. This reflects the recommendations of the Australian Law Reform Commission's 2017 recommendations for nationally consistent laws.

- There needs to be a state register of Powers of Attorney which is free for the person registering their POA and which, as much as possible mimics and moves toward a national register another key and overdue recommendation of the Australian Law Reform Commission's report.
- POA legislation must be accessible across diverse cultural groups and languages, as must opportunities to seek information, advice and redress.
- POA access must be fully accessible in both digital and non-digital formats
- The legislation should consider ways that POA can be set up, used and challenged throughout SA including in rural areas
- Also, members within the LGBTI Communities do not all have children, and some are alienated from their family. Both are examples of how a "one approach" does not suit all. How can the law respond to the diverse needs within diverse communities?
- POA legislation must provide for and respect families of "choice" especially for people identifying as LGBTI, anticipating that this may sometimes be in conflict with so-called "birth" families.
- The legislation must provide for much higher levels of protection against financial abuse to prevent the assets and resources of older people being depleted unlawfully
- There should be provision to create conditions on a POA.