

***National Register of Enduring
Powers of Attorney:
Submission to the Attorney-
General's Department***

July 2021

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Executive summary and thirteen recommendations

The Attorneys-General from all Australian jurisdictions are pursuing reforms to enduring documents to prevent the misuse and financial abuse that occurs through such appointments. In the April 2021 Public Consultation Paper various proposals and policies are detailed and focus on the establishment of a National Register of Enduring Powers of Attorney (**National Register**). This approach has reduced the ambit of the Australian Law Reform Commission Report 131 (Elder Abuse – A National Legal Response) (**ALRC report 2017**) recommendation 5-3,¹ and poses a number of equity, access and scope issues that must be addressed.

Justice Connect welcomes the opportunity to make a submission to the Public Consultation Paper, which builds on our attendance at the Attorney-General's Department National Register of EPOAs stakeholder roundtable on 30 June 2021. This submission draws on our extensive experience working together with older people seeking to implement enduring documents to protect their choices after a loss of capacity, and those who are experiencing elder abuse. Justice Connect's Seniors Law program undertakes a significant amount of client case work assisting vulnerable older clients undertake enduring appointments. In 2020, despite the impacts of COVID-19, Justice Connect's Health Justice Partnerships in Victoria and New South Wales (**NSW**) provided 338 client services, of which 46% related to guardianship and administration matters.² In that time, Justice Connect has also had increased demand for secondary consultations to Health Justice Partnership health professionals, with 1219 Secondary Consultations undertaken, of which 35% related to guardianship and administration matters.

Elder abuse has significant impacts for individuals and at a community-wide level due to costs related to health, legal, financial and other systems.³ In Justice Connect's experience, preventing elder abuse brings improved personal and financial outcomes for both older Australians and our community. In this context, Justice Connect supports the creation of a National Register as way to address the impact of financial elder abuse on vulnerable Australians. For the National Register to succeed in its aim to reduce elder abuse, it must be implemented with 'wrap around provisions' such as funding specialised legal supports, multi-channel service delivery, digital inclusion strategies, and human centred design approaches that embody service-user perspectives.

To best-ensure full and equitable access to the National Register by all older Australians, including those facing elder abuse, Justice Connect suggests focussing on the thirteen evidence-based recommendations below, which have been grouped in terms of our key insights (see pages 6-9). We have also provided targeted responses to selected questions in the Public Consultation Paper that are most-relevant to Justice Connect's casework and client-based evidence (see pages 10-13).

Recommendations

Harmonising the legal framework and more protections from misuse of EPOAs are required to ensure the impact of a National Register

Recommendation 1

Prioritise the implementation of the Australian Law Reform Commission's (**ALRC**) proposed harmonisation of the legal framework for enduring documents to prevent financial elder abuse, as well as providing additional safeguards against misuse of an Enduring Power of Attorney (**EPOA**) by the appointed attorney.

Recommendation 2

Legislative consequences should be introduced, which require an attorney to pay compensation for the misuse of EPOAs by attorneys that cause a Principal loss.

¹ For further detail, please see: https://www.alrc.gov.au/wp-content/uploads/2019/08/elder_abuse_131_final_report_31_may_2017.pdf

² These matters include EPOA and Medical Treatment Decision Maker (**MTDM**) appointments in Victoria and Powers of Attorney and Enduring Guardianship appointments in NSW.

³ For further discussion of the costs of elder abuse to health systems, individuals and the wider-community, see: https://socialequity.unimelb.edu.au/__data/assets/pdf_file/0011/2777924/Elder-Abuse-A-Scoping-Study.pdf.



Accessibility is essential for a National Register

Recommendation 3

Ensure that the National Register is accessible to all older Australians, and provide measures to make sure that Aboriginal and Torres Strait Islander (ATSI) peoples, Culturally and Linguistically Diverse (CALD) community members, and those who are in regional or remote locations are not disadvantaged.

Recommendation 4

The National Register must have multiple access points for all people seeking to make an EPOA (including online and face-to-face).

Recommendation 5

People in receipt of Health Care Cards should be able to use the National Register without fee, and the price of registration needs to be low to ensure that all older people can access these protections.

Recommendation 6

The National Register system should be introduced with extensive targeted community education and engagement, raising awareness and improving accessibility.

Recommendation 7

Legal assistance sector services, particularly Community Legal Centres that deliver Health Justice Partnerships, should be resourced to deliver services, support community education and undertake all aspects of EPOAs and the registration and revocation processes.

Recommendation 8

Address the digital divide through appropriate investment to remove barriers to justice for older people. In particular, further consideration should be given to specific service models that exist to support technological uptake by older people, including the role of Health Justice Partnerships in assisting vulnerable clients to access justice through digital interventions.

Recommendation 9

Digital witnessing should continue after the coronavirus (COVID-19) public health pandemic and be standardised across Australia.

Recommendation 10

Human centred design should be used to build an accessible user interface, so that all service users can engage with the National Register.

Revocations and notifications to attorneys are needed to prevent elder abuse

Recommendation 11

Require that a Revocation of EPOAs must also be registered, in addition to registering an EPOA. The National Register should have responsibility for notification of all parties throughout the process.

Recommendation 12

The National Register should be linked to the State or Territory Births Deaths and Marriages Office, so that there is an option to provide automatic notice of a Principal's death to the Register on the issue of a death certificate.

Value of including other enduring appointments in proposed National Register

Recommendation 13

The National Register should be expanded to include other supported decision-making documents, such as medical EPOAs, guardianship, administration and all appropriate future planning documents.



About Justice Connect

In the face of rising unmet legal need, Justice Connect designs and delivers high-impact interventions that increase access to legal support and progress social justice. We believe in a fair and just world where people and communities are supported to engage with and fully participate in our legal and social system and avoid the negative impacts on their wellbeing or organisational health that flow from unresolved legal problems.

Our Seniors Law program has been operating for more than ten years and we provide specialised legal help to older people on legal issues associated with ageing, with a particular focus on preventing elder abuse.

Through Health Justice Partnerships, our lawyers work on-site at several hospitals and community-based health services in Victoria and NSW, where we provide face-to-face assistance to patients identified by health staff as experiencing or at risk of elder abuse. Making and revoking Enduring Powers of Attorney and Appointments of Enduring Guardian documents for clients forms a significant proportion of our work. Justice Connect sees these documents as instrumental in protecting older Australians against elder abuse.

Justice Connect acknowledges of our government, philanthropic, health and community sector partners for their support related to this submission. We have shared de-identified Justice Connect practice-based stories, which have informed and given light to our recommendations, and we thank our clients for their valuable contributions.

Justice Connect

PO Box 16013

Melbourne VIC

T +61 3 8636 4400

justiceconnect.org.au

Pam Morton

Lawyer, Seniors Law

T +61 3 8636 4467

E pam.morton@justiceconnect.org.au

Samantha Sowerwine

Head of Community Programs

T +61 3 8636 4470

E samantha.sowerwine@justiceconnect.org.au



Key insights

Harmonising the legal framework and more protections from misuse of EPOAs are required to ensure the impact of a National Register

Recommendation 5-3 of the ALRC Report 2017 advised the establishment of a National Register for enduring documents following agreement on nationally consistent laws for enduring appointments. The current consultation has narrowed the focus of the Recommendation 5-3 to the establishment of a National Register to limit the impact of financial elder abuse as a result of EPOAs (financial). The current proposal does not include further assessment of the significant benefit that nationally consistent laws for EPOAs would provide. Dispersed families, the national footprint of banks, service providers and other agencies means that for EPOAs to work well, and provide protections against elder abuse, the laws must be harmonised. Without consistency of State and Territory laws, there is a risk that a National Register will increase the cost and complexity to the process of making an EPOA, rather than improving the access and efficacy of making and registering EPOAs by older people.

Justice Connect strongly supports the implementation of the ALRC's proposed harmonisation of the legal framework for enduring documents to prevent financial elder abuse. However, registration by itself will not remedy financial elder abuse, and should be introduced as part of a broader range of protections, including:

- The harmonisation of the legal framework for enduring documents across all States and Territories (**Recommendation 1**); and
- Incorporating legislative consequences that requires an attorney to pay compensation for the misuse of EPOAs by attorneys that cause a Principal loss (**Recommendation 2**).

Accessibility is essential for a National Register

Barriers to access

Justice Connect's Seniors Law program assists clients who are 65 years and over or 50 years and over if they identify as ATSI. Our experience demonstrates that clients aged between 60 to 75 are more likely than clients who are aged over 75 to have access to the technology and skills required to use this. Recent research assessing the Australian Digital Divide Index (**ADII**) suggests that some ATSI peoples, CALD community members and those from regional or remote locations may be impacted by a "digital divide", and may not be able to access the technology required to execute their documents remotely.⁴ However, there are ways in which older clients can be supported to access and use digital tools. For example, Justice Connect's legal services are embedded in the health system and it is possible to use the infrastructure and expertise of health workers to assist older clients to both access and use this technology.⁵

We anticipate that there would be significant access issues that need to be considered and addressed in relation to a National Register, particularly for key groups including ATSI peoples, those from CALD communities and people living in regional or remote locations (**Recommendation 3**).

Addressing barriers to access

It is essential that the National Register have multiple access points for all people seeking to make an EPOA (**Recommendation 4**). The needs of older people lacking technical skills and digital access must be adequately considered. Access would therefore need to include both digital or online access, *and* non-digital access such as in person lodgement options or via postal services. It is also essential that the cost of registration of any document on the National Register should be nominal to reduce barriers to accessibility.

⁴ Thomas, J, Barraket, J, Wilson, CK, Rennie, E, Ewing, S, MacDonald, T Measuring Australia's Digital Divide - The Australian Digital Inclusion Index 2019 RMIT University and Swinburne University of Technology, Melbourne, for Telstra. https://www.csi.edu.au/media/2019_ADII_Report.pdf.

⁵ For example, since 2020 Justice Connect has piloted a 'Telelaw' Health Justice Partnership project in Murrumbidgee, leveraging telehealth infrastructure and our Health Justice Partnership model to work with local health services to engage patients who were facing elder abuse.



People in receipt of Health Care Cards should be able to use the register without fee, and the price of registration needs to be low to ensure all older people can access these protections (**Recommendation 5**).

Additionally, it will be critical that the National Register system be the subject of extensive targeted community education and engagement by virtue of the significant changes that will occur with the introduction of this system (**Recommendation 6**).

Resourcing for the legal assistance sector

Legal assistance sector services currently provide legal information, initial advice and in some cases ongoing assistance and pro bono referral, with a focus on helping people who face economic and social disadvantage.

There are over 3.8 million Australians over the age of 65, and this cohort is growing.⁶ Our experience of executing EPOAs and other planning documents is that while not every person needs support to complete the process of EPOAs, many people need a great deal of support to complete the process. Reviews into effectiveness of CLCs have been proved over different evaluations to be a cost effective and efficient means of providing legal support for the community.⁷ In particular, Health Justice Partnerships have been identified by the Attorney General's Department through their National Plan, as a key tool for addressing elder abuse, including for clients in low socio-economic or rural and remote communities.⁸ For these reasons, specialised legal assistance sector services should be appropriately resourced to support the successful implementation of the National Register (**Recommendation 7**).

As part of this, specific resourcing should also be considered for innovative service models that exist to support technological uptake by older people, including Health Justice Partnerships that help vulnerable clients to access justice through digital interventions (**Recommendation 8**).

Digital witnessing and human centred design

It is also important that the ongoing use of remote witnessing continue beyond the COVID-19 public health pandemic, provided appropriate safeguards are in place to protect vulnerable older people from abuse. The digital witnessing of documents should be harmonised across states and territories (**Recommendation 9**) and Justice Connect support adopting the approach taken in the Queensland regulation, which requires a person witnessing a document remotely to (among other things):

- be satisfied that the signatory gave their signature freely and voluntarily;
- take reasonable steps to verify the identity of the signatory and that the name of the signatory matches the name of the signatory written on the relevant document; and
- sign a certificate stating, among other things, that the document was signed and witnessed during the relevant period, in accordance with the Queensland regulation, and the steps the witness took to verify the signatory's identity.

In this context and more broadly to encourage engagement and support use of a National Register, human centred design will also be valuable in developing and delivering a registration system that works to its intended purpose (**Recommendation 10**).

Revocations and notifications to attorneys are needed to prevent elder abuse

Justice Connect works day-to-day with clients facing elder abuse, and in our experience, it is common to have clients who are too afraid to notify the attorney they have revoked an EPOA. By having this process incorporated in the National Register, notice or revocation will be provided to all relevant parties, (financial institutions, family members as appropriate) and Principals are spared the stress of contacting the attorney. Justice Connect supports this change (**Recommendation 11**).

⁶ For further detail, please see: <https://www.aihw.gov.au/reports/older-people/older-australia-at-a-glance/contents/demographics-of-older-australians/australia-s-changing-age-and-gender-profile>.

⁷⁷ For further detail, please see: <https://www.justice.nsw.gov.au/Documents/publications-research/Final-Report-CLC-Services.pdf>.

⁸ For further detail, please see: <https://www.ag.gov.au/rights-and-protections/protecting-rights-older-australians>.



Principals who are facing elder abuse may be at increased risk where they revoke an EPOA and appoint a new attorney, so consideration should also be given to complementary safeguards that could be introduced as part of this process, such as tailored pathways to legal supports. The following practice-based stories (names have been changed) demonstrate how critical the registration of a Revocation of an EPOA will be in addressing elder financial abuse.

Heather's story

At Justice Connect's health justice partnerships, we frequently encounter older people who are experiencing elder financial abuse perpetrated by their power of attorney. These older people require our assistance to revoke the power of attorney and at times to draft a new power of attorney appointing another attorney. However, it is sometimes difficult to notify the attorney that their appointment has been revoked as the relationship between the Principal and attorney has broken down.

This leaves the older person in a difficult situation where they are concerned that the former attorney may continue to use their power unfettered. We assist the older person to contact their bank and other relevant agencies, however this does not remove the risk that the revoked power of attorney may be used by the former attorney elsewhere. In other situations, the older person may know of the location of their former attorney but are afraid to notify them of the revocation for fear of repercussions, either in the form of physical or psychological abuse.

This included one former client, Heather, in her late 70s. She had completed a revocation of the power of attorney appointing her daughter, who had stolen in excess of \$60,000 of her savings. However, Heather was too afraid to notify her daughter of the revocation, even after being advised of the risk of her daughter continuing to use her powers. If a revocation could have been registered, this would have provided valuable protection for Heather, as others could have been made aware that the power had been revoked (despite the attorney not being personally notified).

Another example shows how the registration of a Revocation of an EPOA would provide notice to financial institutions and third parties, thereby reducing the risk of elder abuse from an attorney acting on an out of date authorisation.

Sonja's story

Sonja has a son Billy, who had separated from his partner and moved back home with her. A few years before this happened, Sonja had appointed Billy as her enduring attorney. She had asked him to keep the original of that document as he had a safe to put it in. Billy started to drink heavily in Sonja's home, and she did not want to have her friends over anymore. Billy frequently yelled at Sonja, and she became increasingly afraid and isolated in her room. Sonja also found out that Billy gambled and was in significant debt.

Given the circumstances, Sonja decided that Billy was no longer a suitable person to be her attorney. She then signed a revocation of this appointment and put a new EPOA in place, appointing her daughter, Liz. Sonja gave Billy the revocation document and told him that his sister Liz was now her attorney.

In response, Billy told Sonja that she would never see her grandkids again. Billy then used the power of attorney appointing him to take out a loan out in Sonja's name without her knowledge. Billy did not inform the bank that the EPOA has been revoked or that he was no longer Sonja's attorney.

In our experience, the Principal or the Principal's legal representative would be best placed to lodge a revocation on the Register. This service will assist to alleviate the stress currently faced by Principals. Other



key events that must be included in the National Register include the death of the Principal, which acts to revoke the EPOA. This event must be recorded to prevent the attorney undertaking any further dealings under the EPOA and stop the potential for any financial abuse occurring. If the National Register is linked to the State or Territory Births Deaths and Marriages Office, there may be an option to provide automatic notice of a Principal's death to the Register upon the issue of a death certificate (**Recommendation 12**).

Another key event requiring mandatory registration would be where an attorney is made bankrupt, and unqualified to continue as an attorney. It is suggested that measures be adopted to provide notice to the Register from the Federal Circuit Court of Federal Court.

Value of including other enduring appointments in proposed National Register

The National Register proposal seeks to alleviate financial elder abuse through the mandatory registration of EPOA relates to arrangements impacting substitute decision making for the Principal's financial and legal affairs. In Justice Connect's view, this system does not address information or appointments relating to other enduring appointments made by the Principal for medical treatment or personal decisions.

By limiting the register to financial arrangements, critical information about other appointments made by the Principal or Advanced Care Planning completed to ensure their wishes and preferences are known and properly documented can be overlooked or disregarded. The National Register should also provide details of Guardianship and Administration Orders for relevant appointments made by State Tribunals that may impact the validity of a registered EPOA.

This potentially reduces the efficacy of the National Register, and exposes the Principal to other forms of elder abuse and increases the risk of unauthorised decision making by a perpetrator. However, this must be implemented sensitively and progressively, with protections for privacy and safeguards against abuse being incorporated (**Recommendation 13**).



National Register: Responses to specific questions relevant to our expertise

Q1. Would a National Register reduce financial abuse? How could this be achieved?

Registration would prevent third parties and organisations relying on an EPOA that had been revoked, or a former attorney seeking to act on a revoked instrument. Additionally, a National Register would make it less likely that banks and financial institutions would rely on their own third-party documents that provide less robust witnessing requirements and safeguards (**Recommendation 11**).

The ALRC report 2017 has also noted at paragraph 5.136, that "a register will not entirely prevent financial abuse by enduring attorneys but considers that more easily identifying and confirming who has power under a valid enduring document may assist in reducing abuse where there is a question as to who is the attorney or guardian."

Q2. Are there any risks associated with the National Register? If so, how could these be minimised?

The Public Consultation Paper - April 2021 notes at para 3.2.3 "While the National Register will assist in determining the existence and scope of an EPOA it will not make representations about the EPOAs validity or status". The National Register proposal indicates that an EPOA will not be valid unless registered under the mandatory scheme, but once registered it is still possible that the EPOA may not be a valid instrument. This means the Register will only be a source of information and then require further assessment by third parties and institutions seeking confirmation of the status of the EPOA. However, the Register will assist users to identify EPOAs that commence immediately or are "operative only in circumstances genuinely authorised by an older person upholding choice and control" (ALRC Report 2017 at para 5.112)

In this context, a risk associated with the National Register is that there may be confusion as to the validity of registered EPOAs, particularly historical EPOAs. This should be mitigated with public-facing information and resources that are clear, practical and support the community's awareness, education and engagement.

Q3. How can the Registration scheme be designed to ensure accessibility and facilitate use by Aboriginal and Torres Strait Islander people, those from CALD communities, and those in rural and remote areas?

In Justice Connect's experience, clients aged between 60 to 75 are more likely than clients who are aged over 75 to have access to the technology and skills required to use this. As discussed, recent research assessing the ADII suggests that some ATSI peoples, CALD community members and those from regional or remote locations may be impacted by a "digital divide", and may not be able to access the technology required to execute their documents remotely.⁹ For these reasons, it will be important for the National Register to prioritise accessibility for these cohorts of older Australians (**Recommendation 3**).

As part of this, Justice Connect recommends considering ways in which older clients from these cohorts can be supported to access and use digital tools. For example, since 2020, Justice Connect has piloted a 'Telelaw' Health Justice Partnership model in the Murrumbidgee region of NSW, working with local health services to engage patients who were facing elder abuse. Our pilot has demonstrated that while remote services can be delivered successfully, they benefit from being supplemented with external supports. Based on these learnings, it will also be valuable for the preparation, witnessing and lodgement of EPOAs to also have physical "shop fronts" or access points, such as Australia Post (**Recommendation 4**).

A Justice Connect report from July 2021 has recently highlighted that many older people are not aware that there are free and accessible tools available that will help them maintain control, and go towards the

⁹ Thomas, J, Barraket, J, Wilson, CK, Rennie, E, Ewing, S, MacDonald, T Measuring Australia's Digital Divide - The Australian Digital Inclusion Index 2019 RMIT University and Swinburne University of Technology, Melbourne, for Telstra. https://www.csi.edu.au/media/2019_ADII_Report.pdf.



prevention of elder abuse.¹⁰ This research, and our related-interviews with older people in the community, tells us that targeted community education and engagement will be essential if a National Register scheme is to succeed, and be fair and accessible to all community members. Information caravans accessing remote communities and connecting with CALD communities may offer a particular opportunity to improve knowledge of the system and uptake through the making and lodgement of EPOAs (**Recommendation 6**).

Q4. Do you support the proposed access arrangements in section 3.2.6? Are there any other users who need access?

Justice Connect endorses the different levels of access proposed in paragraph 3.2.6 that limit access to those with a legitimate need to review a particular EPOA, as a means of preventing elder abuse. As noted in Justice Connect's submission to the ALRC report 2017, only authorised people and organisations should have access to the register and to only those parts of the register they are permitted to view at any one time (Report 131 at para 5.161). This accords with the Victorian Law Reform Commission's proposed privacy controls in their Report on Guardianship. In addition to this, it is important that the Principal can nominate any other individuals they wish to access the register regarding their EPOA, including family members.

Q5. Why might someone need to apply to access the register (if not in categories (a)-(d) at 3.2.6) what should be considered a legitimate need?

As discussed, Justice Connect's Seniors Law program delivers Health Justice Partnerships in Victoria and NSW that provide specialised legal assistance to older people experiencing elder abuse and other legal issues. In Victoria, a Principal can elect to have an EPOA apply to personal and financial matters. To this extent, access to the National Register could be required by health providers, aged care and other service providers, case workers and social workers seeking information as to appointments and conditions relating to the Principal's personal affairs including accommodation decisions. This information could also assist in preventing elder abuse.

Q11. Should users be required to inspect an imaged copy of the executed instrument to satisfy themselves of the terms of the EPOA?

Justice Connect considers that it will be critical for as many users as possible to inspect an imaged copy of the executed instrument to complete further due diligence. It has been noted that registration does not verify the validity of the instrument, and a review of the actual image will assist with this due diligence process.

Q13. Are there any issues in allowing online creation of EPOAs? If so, how could these issues be addressed?

The ongoing impacts of COVID-19 have been significant, with temporary remote witnessing provisions introduced in both Victoria and NSW in 2020 to assist people to undertake legal arrangements during COVID restrictions. The *Powers of Attorney Act 2021 (Vic)* was recently amended to ratify the remote witnessing procedures, and the Department of Communities is currently assessing this matter in NSW. Justice Connect strongly recommends the ongoing use of remote witnessing beyond the COVID-19 public health pandemic, provided appropriate safeguards are in place to protect vulnerable older people from abuse (**Recommendation 9**).¹¹ These safeguards must incorporate:

- Verification of Identity;
- Provisions to mitigate the risks of duress;
- Proper assessment of the Principal's capacity;
- Understanding of the impact of elder abuse on Principal's autonomy and safety;
- Certification by a lawyer that the Principal freely and voluntarily executed the EPOA, and
- Recognition of the potential for fraud.

Although online creation of EPOAs is of great benefit for many people, some people are not able to access digital processes for a range of reasons including isolation, digital ability, disability or access. For these clients it is essential to offer other channels to access the National Register, such as over the counter help

¹⁰ For Justice Connect's report, *What's stopping us? Why people don't plan for a safe older age*, please see: <https://justiceconnect.org.au/wp-content/uploads/2021/07/Whats-stopping-us-Why-people-dont-plan-for-a-safe-older-age-July-2021.pdf>.

¹¹ For Justice Connect's submission, *Response to Department of Communities and Justice Consultation Paper on Remote Witnessing via audio-visual link*, please see: <https://justiceconnect.org.au/wp-content/uploads/2021/06/Response-to-remote-witnessing-consultation-paper-June-2021.pdf>.



Q17. How should people be able to lodge EPOAs for registration – online, by post, in person?

Vulnerable older people will require access to technology, not only to make EPOAs as proposed, but also to lodge EPOAs for registration. It will be critical that funding and assistance be provided to health and community services and Community Legal Centres to assist older people as Principals in this regard. In particular, this would be critical for older ATSI peoples, those from CALD communities, and those who are unable to access digital technology or lack computer-literacy. It is clear that access to the national register would be undermined for some older people if postal or in-person services were not provided as an option for registration (**Recommendation 8**).

Q20. What documents should be included on the National Register?

In situations where an EPOA does not become effective until the Principal has lost decision making capacity, it will be necessary to have adequate medical evidence filed to support the activation of the EPOA by the attorney. This information will obviously need to be subject to careful consideration of privacy implications and access restrictions.

Q21. When should EPOAs be required to be registered (when they are made or before first use)?

Justice Connect is of the view that registration should be undertaken when the EPOA is made, to be deemed valid. This could also assist to avoid some of the problems encountered by older clients when documents are misplaced or taken by others without their permission or consent.

Q24. Should registration of revocations by the Principal be mandated? If so:

A. What should be the effect of failing to register a revocation?

Justice Connect considers that registration of a revocation is critical - particularly where the Principal has not made another EPOA. This will then provide notice to users

B. Who should be able to lodge revocations for registration

The Principal, or Principal's legal representative, would be best placed to lodge a revocation on the Register.

C. Should the register record other revocation events (for example, the death of the Principal, bankruptcy of attorney) and if so, how?

It will be important to have the death of the Principal recorded to prevent the attorney undertaking any further dealings under the EPOA, and stop the potential for any financial abuse occurring. It is suggested that the Registrar of Births Deaths and Marriages provide formal notice of the Principal's death to the Register upon the issue of a Death Certificate. It would be equally important where the attorney becomes unqualified to act as attorney through bankruptcy, that measures be adopted to provide notice to the Register from the Federal Circuit Court or Federal Court (**Recommendation 12**).

Q25. To what extent should the register reflect the status of an EPOA?

It is essential that information about the commencement of instrument is available, such as where the EPOA will not take effect until some pre-condition is met - such as the loss of capacity by the Principal. In this case notice is provided to users that the EPOA may not be operative, and additional medical information will be required to support the actions of the Attorney when activated.

Q30. What process should there be for considering whether an EPOA can be registered after first use or out of time? Who should be empowered to make decisions about this? The registering authority? Courts or tribunals?

The registration process should not impose unnecessary hurdles for older people seeking to register EPOAs. Any additional costs or procedural delays could impact a person's preparedness to undertake an EPOA and leave them more vulnerable to elder abuse through reliance on informal arrangements with family members or third parties.



Q31. Should the register provide a notification function to parties of an EPOA? How should this work? For example, should certain identified persons be notified when a search query for an EPOA occurs?

Justice Connect considers notification to both the Principal and attorney would provide notice of a transaction. This will inform the Principal that the EPOA had been activated. This notification would also assist to maintain the attorney's accountability to the Principal (**Recommendation 11**)

Q40. What safeguards should be included in the National register for older persons who may not be digitally capable?

The approach to access to the National Register, must be multi-faceted to ensure that there is equity for older people, including those who are digitally disadvantaged. In particular, **Recommendations 3–8** in this submission refer to multi-channel service delivery options (including digital and in-person), public awareness campaigns, and the funding of legal and other supports that will enable everyone who requires support to engage with the National Register, to get it.

Q43. Should a support person be able to lodge an EPO on behalf of the Principal? If yes, who should be able to act as this support person?

Justice Connect have older clients experiencing disability and mobility issues, many of whom are dependent on family or carers for assistance. It is submitted that many older clients, and particularly those who are digitally challenged or lack access to computers, may not be able to undertake the lodgement of an EPOA for registration themselves.

Q44. If the registration process is too complex, a potential Principal may use alternative forms of financial management, with less safeguards. How could this be avoided?

Sensitive, human centred design is essential to build a system that works to its intended purpose. (**Recommendation 10**). Utilising the input of service users, lawyers, government, financial service providers, family members and so on will provide the best opportunity to understand how service users interact with National Register, and give the initiative the best chance of success. A well designed customer interface, that can be used by anyone regardless of ability, culture, language, technical know-how, is the best way to avoid driving older people to less-safe options

Justice Connect's Additional Comments - Uniform National Laws

As discussed, recommendation 5-3 of the ALRC Report 2017 advised the establishment of a National Register following agreement on nationally consistent laws for enduring appointments. The current consultation has narrowed the focus of the National Register to measures designed to limit the impact of financial elder abuse as a result of EPOAs (financial). This proposal maintains the status quo of inconsistent state based laws for substitute decision making, and fails to capitalise upon the opportunity to develop nationally consistent laws that could improve access and efficacy of making and registering Enduring Appointments by older people.



