

23 May 2024

Dr James Popple
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Dear Dr Popple

**FINANCIAL SERVICES REGULATORY FRAMEWORK – SUBMISSION TO
PARLIMENTARY JOINT COMMITTEE OF CORPORATIONS AND FINANCIAL SERVICES**

Thank you for your invitation to make a submission sent undercover of Memorandum dated 16 April 2024.

This matter was referred to the Law Society's Elder Law and Succession Committee. The Law Society has previously engaged directly with the Australian Banking Association regarding these matters. In 2022 for example, the Banking Code Compliance Committee invited the Law Society of Western Australia to make submissions with respect to deceased estates.

Simply, all of the below are ongoing issues which should be address, if possible. These all relate in some way to financial abuse, though I note that your invitation to make a submission also asks for commentary on "*other potential for reform*".

Recognition of Enduring Powers of Attorney

There is no uniform training or understanding on the part of bank counter staff as to the legal meaning and operation of an Enduring Power of Attorney ("EPA"). For example, practitioners in Western Australia have reported the following:

- a) Banks outright refusing to recognise validly executed and Landgate registered Enduring Powers of Attorney;
- b) Banks requiring that the donor and donee present themselves together prior to the bank recognising any Enduring Power of Attorney;
- c) The bank requiring the solicitor who drafting an Enduring Power of Attorney certify its authenticity by attending a branch in person to explain its operation and effect.

The lack of understanding of EPAs by banks opens the door to financial abuse.

The more difficult it is for and EPA to be properly executed and used, the more likely it is for account holders to turn to informal means to have their affairs managed. These informal means are usually outside the regulatory purview of whichever body has oversight over donees of EPAs. In Western Australia for example, this is the State Administrative Tribunal.

By driving donors away from using EPAs, banks are putting them in a position where the means that they utilise to assist managing their affairs leave them in a position of vulnerability, and well outside the framework that allows for accountability for anyone handling their money.

Phasing out of cheques and branches

Banks continue to close, and more and more banks continue to phase out cheques.

Many older Western Australians are heavily reliant on in-person banking to manage their finances. Pushing those people into unfamiliar territory as regards to managing their finances in their twilight years does open the door to financial abuse. It may leave them reliant on someone else to manage their finances.

Otherwise, the phasing out of cheques is concerning especially within Western Australia. The uptake of PEXA and other digital platforms for conveyancing is not complete in Western Australia and many settlements including some deceased estate settlement and all matrimonial transfers of land must be completed as in-person settlements. Cash payments are handled as cheques at these settlements and as such, ought to remain in circulation. There is no viable alternative to provide contemporaneous in person payouts/payments at paper settlements.

Deceased Estates

There is no uniformity with respect to how banks handle deceased estates.

Each bank has a different amount that they deem a "small estate". Each bank has their own procedures as regards to the requirements to close the deceased's accounts and deal with the assets. Though not directly related to financial abuse, the lack of uniformity does not assist with certainty.

For example, recently a practitioner on the ELSC had funds for a deceased estate released to them by ANZ Bank. A week later, ANZ Bank demanded the funds back having realised that they had made their own determination that they were not for some reason allowed to deal with the practitioner without receiving prior direct authorisation from the Executor (even though the Executor had provided such authorisation).

In our contention much financial abuse is enabled by the uncertainty in banking practises around the use of EPAs and the handling of Deceased Estates.

If this uncertainty can be rectified, it will go a long way to preventing elder abuse.

Fundamentally, the banks can only do so much themselves to directly prevent elder abuse. Part of any potential reform must focus on ensuring that elderly and disabled customers are easier able to use instruments such as EPAs with the bank. These instruments create their own rights, obligations and remedies that may assist in preventing elder abuse.

Yours sincerely



Paula Wilkinson
President