



Victorian Aboriginal Legal Service Submission on
Achieving Greater Consistency in Laws for Financial
Enduring Powers of Attorney

November 2023



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Background to the Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal Community Controlled Organisation (ACCO) with 50 years of experience providing culturally safe legal and community justice services to our people across Victoria.



In 2023, we're proud to launch the official logo of our 50th anniversary, 'Koori Woman of Justice'.

The artwork was designed by the deadly Natasha Corrigan, a Walabhul, Bundjalung, Dungidau/Dala and Jinibara artist born and living on Wurundjeri land.

In Natasha's words, the design is a representation of VALS' work over the past 50 years towards the Victorian Aboriginal Communities. The colours used are a depiction of our Aboriginal flag. Aboriginal symbolisms are used to showcase the journeys made by community members and VALS

representatives, these symbols tell the story of our journey from one place to another or symbolically from one situation to another. They represent each person, family and organisation that has been and continue to be supported by VALS.

Legal Services


Our legal practice serves Aboriginal people of all ages and genders. Our 24-hour criminal law service is backed up by the strong community-based role of our Client Service Officers (CSOs). CSOs help our clients navigate the legal system and connect them with the support services they need.

Our **Criminal Law Practice** provides legal assistance and representation for Aboriginal people involved in court proceedings. This includes bail applications; representation for legal defence; and assisting clients with pleading to charges and sentencing. We aim to understand the underlying reasons that have led to the offending behaviour and ensure this informs the best outcome for our clients.

Our **Civil and Human Rights Practice** supports clients with consumer issues, infringements, tenancy issues, coronial matters, discrimination issues, working with children checks, employment matters and Personal Safety Intervention Orders.

Our **Aboriginal Families Practice** provides legal advice and representation to clients in family law and child protection matters. We aim to ensure that families can remain together, and children are kept safe. We are consistent advocates for compliance with the Aboriginal Child Placement Principle in situations where children are removed from their parents' care.

Our **Wirraway Police and Prison Accountability Practice** supports clients with civil litigation matters against government authorities. This includes for claims involving excessive force or unlawful detention, police complaints, and coronial inquests (including deaths in custody).



Balit Ngulu is our dedicated legal practice for Aboriginal children providing support in criminal matters. Balit Ngulu is designed to be trauma informed and provide holistic support for our clients.

Community Justice Programs

Our Community Justice Programs (CJP) team is staffed by Aboriginal and Torres Strait Islander people who provide culturally safe services to our clients and community.

This includes the Custody Notification System, Community Legal Education, Victoria Police Electronic Referral System (V-PeR), Regional Client Service Officers and the Baggarrook Women's Transitional Housing program.

Policy, Research and Advocacy

VALS informs and drives system change initiatives to improve justice outcomes for Aboriginal people in Victoria. VALS works closely with fellow members of the Aboriginal Justice Caucus and ACCOs in Victoria, as well as other key stakeholders within the justice and human rights sectors.

Acknowledgement

VALS pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past, present and emerging. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

We pay our respects to all Aboriginal and Torres Strait Islander Elders who have maintained the struggle to achieve justice.

Across Australia, we live on unceded land. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

Contributors

Thanks to the following staff members who collaborated to prepare this submission:

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Note on Language

Throughout this document, we use the word 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander people, communities and organisations. VALS acknowledges that there are many Aboriginal people in Victoria who have Torres Strait Islander heritage, and many Torres Strait Islander people who now call Victoria home.



EXECUTIVE SUMMARY

VALS is pleased to engage in the Attorney-General's Department consultation on enhancing consistency in laws for Financial Enduring Powers of Attorney (EPOA). We recognise the urgency of addressing financial abuse within the contexts of elder abuse and family violence, particularly concerning vulnerable populations like older Aboriginal individuals and women. The submission welcomes the National Plan to Respond to the Abuse of Older Australians 2019-2023 for guiding government efforts and recommends aligning with the National Plan to End Violence against Women and Children 2022–2032 for a comprehensive approach.

The recommendations presented by VALS aim to establish uniform standards and enhance regulatory effectiveness in EPOA cases across jurisdictions. Emphasising the importance of authorised witnesses with forensic and unbiased capacities, the suggestions advocate for straightforward questioning, a national attorney acceptance form, and a comprehensive set of questions addressing coercion, family violence, and capacity.

VALS' submission underlines the intersection of EPOAs and family violence, recognising the potential for exploitation. It addresses the specific challenges faced by older Aboriginal individuals, highlighting the need for tailored legal safeguards and comprehensive research. VALS urges a proactive stance, ensuring EPOAs serve their intended purpose minimising susceptibility to abuse, especially in the distressing contexts of elder abuse and family violence.

Additionally, we advocate for a flexible approach in urgent scenarios, an in-person approach where feasible, and comprehensive training for stakeholders, with a focus on cultural awareness within Aboriginal communities. While legal assistance services are a non-prescribed service under the Victoria's Multi-Agency Risk Assessment and Management (MARAM), VALS strongly believes that they play a critical role as part of the system wide response to family violence.¹ Ensuring that legal practitioners receive comprehensive MARAM training will not only enhance their understanding of the complexities surrounding family violence but also empower them to contribute effectively to the system-wide response. This targeted training should emphasise cultural awareness within Aboriginal communities, fostering a more nuanced and responsive approach in addressing family violence issues.

VALS stresses the importance of funding Aboriginal Legal Services to provide community legal education, supporting community members in creating wills and POA documents. The submission concludes by emphasising the critical link between safeguarding legal instruments like EPOAs and preventing homelessness among older Aboriginal individuals and women facing elder abuse and family violence.

¹ Eastern Community Legal Centre, [‘The MARAM Framework and the legal assistance sector: Outcome Report’](#) p3



SUMMARY OF RECOMMENDATIONS

Recommendation 1. Establish uniform standards for authorised witnesses in EPOA cases across jurisdictions to prevent exploitation of legal variations and ensure regulatory effectiveness.

Recommendation 2. Authorised persons not only possess the authority to witness affidavits but also work in a profession that inherently demonstrates a capacity for a forensic and unbiased approach.

Recommendation 3. Propose the implementation of a uniform set of straightforward and unambiguous questions for witnesses, articulated in plain language, to significantly enhance the effectiveness of communication in legal proceedings.

Recommendation 4. Implement a single national attorney acceptance form for the appointment of attorneys, fostering consistency and efficiency in the present legal procedures.

Recommendation 5. Establish a written and witnessed attorney acceptance, ensuring a formal and legally sound process in attorney appointments.

Recommendation 6. Develop a comprehensive set of uniform questions in the attorney acceptance form, addressing attorneys' awareness of their rights and responsibilities, comprehension of jurisdictional laws, indication of any risks of coercive control and family violence, assessment of capacity, and confirmation of the absence of duress.

Recommendation 7. Incorporate specific questions about rights and responsibilities, jurisdictional law, coercion, family violence, capacity, and absence of duress in the proposed role(s) for the authorised witness.

Recommendation 8. Include examples and case studies illustrating instances of financial abuse within the context of EPOAs in the prescribed information.

Recommendation 9. Ensure that attorneys, irrespective of their location, are subject to the same requirements and uniform set of questions.

Recommendation 10. Ensure that, where feasible, an in-person approach is delivered, recognising its potential to provide a more comprehensive understanding of the situation.

Recommendation 11. Implement the same uniform questions that were asked during the initial capacity assessment— areas such as coercive control, family violence, capacity, and absence of duress should be reiterated to the witness when determining a revocation.

Recommendation 12. Consider adopting a more flexible approach for urgent scenarios that warrant revocation, such as a rapid decline in health, to accommodate the practical challenges of reaching the principal.

Recommendation 13. Reassess and potentially broaden the criteria for authorised witnesses, especially in the context of close friends, addressing concerns about potential abuse. Additionally, carefully reconsider the exclusion of individuals providing paid domestic support to ensure comprehensive protection for vulnerable individuals.



Recommendation 14. Initiate a review process for individuals with an IVO to assess suitability and ensure the absence of family violence within the context of the EPOA, as opposed to opting for automatic revocation.

Recommendation 15. Refrain from supporting the automatic revocation for an attorney becoming bankrupt or personally insolvent.

Recommendation 16. Reconsideration of the proposed five-year ineligibility period for individuals subject to an interim family violence order.

Recommendation 17. Individuals convicted of serious criminal offences such as murder, fraud, and property crimes like theft, supply, and trafficking drugs should be entirely ineligible for appointment under a financial EPOA.

Recommendation 18. Consideration should be given to other types of offences or criteria that may warrant ineligibility for a specific period. The determination of the appropriate period of ineligibility should be contingent on the nature and severity of the specific offences or criteria in question.

Recommendation 19. Ensure that an attorney is not mandated in all instances to unquestionably adhere to the views, wishes, and preferences of the principal, particularly when there is a high risk of significant harm to the principal's health or well-being.

Recommendation 20. Establish a comprehensive and clear framework for addressing identified risks in situations where an appointed person may need to make decisions in the best interest of the person they're representing. This should include a well-defined set of rules outlining the steps to be taken and how to handle potential problems.

Recommendation 21. Simplify existing arrangements, particularly through amendments to the wording of interstate recognition clauses, with a focus on prioritising consistency across all jurisdictions.

Recommendation 22. Provide clear and comprehensive practical guidance while establishing uniform laws for the interstate recognition of EPOAs. Ensure a straightforward understanding of the circumstances in which an EPOA from one State or Territory would be acknowledged in another, as well as instances where interstate recognition might not apply.

Recommendation 23. Fund additional training for courts and law enforcement agencies to better comprehend the nuances of family violence, including coercive control, elder abuse, and financial abuse.

Recommendation 24. Ensure the integration of tailored MARAM training for legal professionals in Victoria, enhancing their understanding of family violence complexities and empowering them to contribute effectively to the system-wide response.

Recommendation 25. Mandate comprehensive training for stakeholders involved in EPOA disputes, ensuring that the training is logged and registered for consistency.



Recommendation 26. Ensure that cultural awareness training is integrated into resources and training programs to address the nuances of family violence within Aboriginal communities, with a specific focus on elder abuse.

Recommendation 27. Mandate the implementation of online training modules for principals, attorneys, and witnesses involved in EPOAs offering insights into their obligations and potential risks related to a principal's decision-making capacity or coercion into establishing an EPOA.

Recommendation 28. Ensure reform aligns with the National Plan to Respond to Violence against Women and Children. Integrating insights from this crucial plan into the reform will enhance the effectiveness of EPOA-related strategies and responses.

Recommendation 29. Ensure that individuals involved in EPOAs undergo training before being approved or signed off on their respective roles. This training should be mandated, ongoing training to guarantee that their skills are continually updated and in line with the evolving nature of EPOA responsibilities.

Recommendation 30. Fund Aboriginal Legal Services to provide community legal education, ensuring support for community members in the process of creating wills and POA documents.

Recommendation 31. All training should be undertaken regularly, particularly cultural awareness training.

Recommendation 32. The Federal Government should collect stronger data regarding financial abuse and elder abuse. This should be done in line with principles of Indigenous Data Sovereignty and Indigenous Data Governance.



DETAILED SUBMISSIONS

Introduction

In the context of elder abuse, financial abuse is the misuse or theft of an older person's money or assets. It can include, but is not limited to, behaviours such as using finances without permission, using a legal document such as an EPOA for purposes outside what it was originally signed for, forcing financial decisions without free, prior and informed consent, withholding care for financial gain, or selling or transferring property against a person's wishes.² Research indicates that the most commonly reported form of abuse of older people in Australia is financial abuse and in the majority of instances, the abuse is by family members³. The number of people aged 65 years and over in Australia is growing rapidly and the challenges of aging often require support and assistance from family members, so it is important to develop strategies to prevent this form of abuse.⁴

Factors such as financial distress can make people more vulnerable to homelessness, emphasising the critical role of legal instruments like EPOAs. EPOAs are commonly used legal instruments that enable older people to plan for financial and asset management in the event of future incapacity. The policy objective of EPOAs – empowering control over money, investments and property – are frustrated when EPOAs are misused to financially exploit older people.⁵

We are aware that homelessness among older people is a growing problem in the country, with Aboriginal peoples making up eight percent of older people experiencing homelessness.⁶ For older Aboriginal individuals, the lack of specific data on financial abuse through these powers underscores the need for comprehensive research and tailored legal safeguards, as addressing financial vulnerabilities is crucial to preventing homelessness for Aboriginal people.

VALS is pleased to see the National Plan to Respond to the Abuse of Older Australians 2019-2023 is guiding the government's work on achieving greater national consistency in financial powers of attorney laws. However, we recommend the government also consider aligning to the National Plan to End Violence against Women and Children 2022–2032 for this reform.

Financial abuse can also be a common form of domestic and family violence, it can manifest in different ways but generally it is a type of controlling behaviour where the partner or family member seeks to control finances and assets to gain power and control over an individual. Tactics can include controlling access to or taking/spending someone's money without permission, pressuring someone

² National Older Persons Abuse Prevention Policy Working Group. (2020). National plan to respond to the abuse of older Australians. Retrieved from <https://www.ownnsw.org.au/wp-content/uploads/2020/02/National-plan-to-respond-to-the-abuse-of-older-australians-elder.pdf>

³ Bagshaw, D., et al. (2013). Financial abuse of older people by family members: Views and experiences of older Australians and their family members. *Australian Social Work*, 66(1), 86–103. doi:10.1080/0312407x.2012.708762

⁴ Bagshaw, D., et al. (2013). Financial abuse of older people by family members: Views and experiences of older Australians and their family members. *Australian Social Work*, 66(1), 86–103. doi:10.1080/0312407x.2012.708762

⁵ Ries, N. M. (2019). Enduring powers of attorney and financial exploitation of older people: A conceptual analysis and strategies for prevention. *Journal of Aging & Social Policy*, 34(3), 357–374. doi:10.1080/08959420.2019.1704143

⁶ Compass. (2023, May 25). Homelessness on the Rise for Older Australians. Retrieved from <https://www.compass.info/news/article/homelessness-on-the-rise-for-older-australians/>



to loan money and refusing to pay back loans, forcing someone to transfer their assets into someone else's name, and preventing someone from gaining employment, thereby limiting their financial autonomy.⁷ As noted in the National Plan to Respond to Violence of Women and Children, it is highlighted that economic abuse for many women, including those with disabilities and older women, can become more complex due to inadequate legal safeguards in substitute decision-making.⁸ Recognising the intersection of EPOAs and family violence is crucial in developing a comprehensive approach to address and prevent financial abuse in all its forms. In these situations, a partner or family member might exploit their authority over an EPOA to manipulate financial decisions, restrict access to resources, and exert coercive control over an individual's economic independence.

Many older women experience the compounding negative effects of taking on multiple unpaid caring roles, which can affect their employment and economic security and mean they have limited control over finances and decision-making.⁹ It is noted that older women are also the fastest growing group of people who are homeless or at risk of homelessness, increasing 31 per cent between 2011 and 2016, and family violence is the primary reason for older women seeking specialist homelessness services nationally.¹⁰

VALS provides a range of legal and community justice services to people affected by family violence where we have extensive experience supporting victim-survivors of family violence, in family violence matters as well as with other legal issues that may emerge from their experience of violence. From that experience, we are acutely aware of the fact that Aboriginal people experience family violence at disproportionate rates. This is particularly an issue for Aboriginal women, who are disproportionately affected by both family violence and homelessness. According to the National Plan to End Violence Against Women and Children, Aboriginal women are 11 times more likely to be killed due to family violence compared to non-Indigenous women.¹¹

While statistics on misuse of financial abuse through EPOA specifically are not available in Australia, there is no reason to doubt that Aboriginal people are also overrepresented as affected family members of this type of family violence. It would be valuable for the federal government to compile


⁷ Department of Social Services. (2022). National plan to end violence against women and children 2022-2032. Retrieved from https://www.dss.gov.au/sites/default/files/documents/11_2022/national_plan_to_end_violence_against_women_and_children_2022-2032.pdf

⁸ Department of Social Services. (2022). National plan to end violence against women and children 2022-2032. Retrieved from https://www.dss.gov.au/sites/default/files/documents/11_2022/national_plan_to_end_violence_against_women_and_children_2022-2032.pdf

⁹ Our Watch, Preventing intimate partner violence against older women, Our Watch, 2022.

¹⁰ AIHW, AIHW Specialist Homelessness Services (SHS) collection data cubes 2011–12 to 2016–17, AIHW, Australian Government, 2017.

¹¹ Department of Social Services. (2022). National plan to end violence against women and children 2022-2032. Retrieved from https://www.dss.gov.au/sites/default/files/documents/11_2022/national_plan_to_end_violence_against_women_and_children_2022-2032.pdf



strong, publicly published data about financial abuse and elder abuse, particularly through models that uphold Indigenous Data Sovereignty principles.

VALS seeks to raise awareness of the urgent issues faced by older Aboriginal individuals, especially women, who may have lost capacity to make financial decisions and require an EPOA, or those of whom are at risk of or are experiencing coercive control and financial abuse. VALS recognises the critical need for increased awareness and understanding within the legal support services sector concerning the associated risks and benefits of EPOAs. In its commitment to safeguarding the financial well-being of vulnerable individuals within the Aboriginal community, especially amidst the challenging landscapes of elder abuse and family violence. VALS advocates for EPOAs to be utilised and enforced in a manner that effectively protects financial well-being.

VALS calls for stronger safeguards to be implemented to prevent the misuse of EPOAs. The alarming prevalence of family violence and homelessness among older Aboriginal individuals and women underscores the critical need to safeguard instruments like EPOAs. The urgency of this matter is emphasised by the risk of housing distress and homelessness where there is elder abuse or family violence within these demographics. Implementation of adequate safeguards for legal instruments like EPOAs will help prevent against financial exploitation and abuse. Due to the complex nature of EPOAs, the Office of the Public Advocate recommends¹² individuals seek legal advice which could pose significant financial burden, VALS sees an identified need in funding and resources to be allocated to Community Legal Centres (CLCs) and Aboriginal and Torres Strait Islander Legal Services (ATSILS) to support the community in undertaking issues relating to wills, probate and EPOAs, thereby addressing the financial barrier, and promoting equitable access to protective legal measures.

Witnessing Obligations


Consistent Standards for EPOA across jurisdictions

In addressing the imperative for a consistent approach across jurisdictions regarding the prescribed class of persons who may act as authorised witnesses, it is vital to establish uniform standards for witnesses in EPOA applications. This uniformity is crucial to prevent individuals from exploiting or circumventing EPOA regulations due to jurisdictional inconsistencies.

Assessing the Balance of Witnessing Requirements for Financial EPOA's

VALS seeks clarity and strengthening of the current witnessing requirements for financial EPOA applications in Victoria, particularly concerning the definition of authorised persons. The current criteria, including individuals such as Victorian Public Service employees, may benefit from a more rigorous and categorised approach. It is proposed that authorised persons should not only have the authority to witness affidavits but also demonstrate a capacity for a forensic and unbiased approach. An authorised person should possess an independent ability to assess all relevant information

¹² Office of the Public Advocate, [‘Making an enduring power of attorney’](#)



presented. Strengthening and categorising the definition of an authorised person in this manner could contribute to a more balanced framework, ensuring accessibility while providing the necessary protection and assistance to principals in financial EPOA cases.

Examining Proposed Obligations for Authorised Witnesses: A Model with Varied Requirements

Feedback is sought on the obligations proposed for authorised witnesses and the model of having different requirements for various types of authorised witnesses, such as legal practitioners. The authorised witnesses' requirement to certify 'The principal appeared to freely and voluntarily sign the EPOA (in the presence of the authorised witness)' and 'At the time the principal signed the instrument, the principal appeared to the witness to have decision-making capacity in relation to the making of the EPOA (including that the principal appeared to understand the effect of the EPOA)' as stated in the proposal for feedback within the consultation paper, is ambiguous. It can be challenging for a witness to justify their view. VALS would prefer to see a uniform set of questions in plain language that are not as ambiguous. The greater the simplicity and directness in formulation, the more effective the communication. For example, specific questions about family violence and coercive control, such as "Were you forced to sign this by a family member?" This approach is also for the protection of both witnesses, attorneys, and principals.

RECOMMENDATIONS

Recommendation 1. Establish uniform standards for authorised witnesses in EPOA cases across jurisdictions to prevent exploitation of legal variations and ensure regulatory effectiveness.

Recommendation 2. Authorised persons not only possess the authority to witness affidavits but also work in a profession that inherently demonstrates a capacity for a forensic and unbiased approach.

Recommendation 3. Propose the implementation of a uniform set of straightforward and unambiguous questions for witnesses, articulated in plain language, to significantly enhance the effectiveness of communication in legal proceedings



Appointment of attorney

Feasibility and Advantages of a Unified National Attorney Acceptance Form

Establishing a single national attorney acceptance form for the appointment of attorney, is a recommended measure, given its potential benefits and feasibility. Requiring a written and witnessed attorney acceptance serves as a crucial safeguard against the risks of abuse arising from misunderstandings or deliberate actions, especially in cases of elder abuse, where attorneys may exploit vulnerability. Consistency across jurisdictions in adopting a national attorney acceptance form is essential to minimise the likelihood of attorneys exploiting the situation by claiming a lack of understanding of jurisdictional rules. Moreover, the development of uniform questions for attorneys to answer, addressing their awareness of rights and responsibilities, comprehension of jurisdictional laws, acknowledgment of coercive control and family violence, assessment of capacity, and confirmation of the absence of duress, is integral. This standardised approach not only enhances the protection of principals and attorneys but also contributes to a more comprehensive and nationally cohesive framework.

Assessing the Adequacy of Proposed Authorised Witness Roles in Ensuring Attorney Understanding


The proposed role(s) for the authorised witness would be more robust in providing an appropriate degree of assurance that the attorney understands the obligations of their appointment if specific questions about rights and responsibilities, jurisdictional law, coercion, family violence, capacity, and absence of duress were incorporated. Challenges often arise due to misunderstandings of duties, and the inclusion of these specific questions can effectively mitigate such issues. Improved processes and support mechanisms can address challenges stemming from misunderstandings of duties, contributing to a more secure and informed execution of attorney responsibilities. This approach not only enhances clarity and understanding but also reduces risk of liability for all parties involved.

Matters to Be Addressed in Proposed Prescribed Information

The proposed prescribed information for the principal to be drawn to on appointment of attorney, should comprehensively address various aspects to ensure a thorough understanding by attorneys. Firstly, it should encompass examples and case studies illustrating instances of financial abuse within the context of EPOAs. These examples should cover a spectrum, including instances of elder abuse, family violence, intentional financial abuse, and unintentional scenarios, providing attorneys with a nuanced and informed perspective.

Additionally, the prescribed information should include examples highlighting the potential isolation experienced by individuals facing elder abuse and financial exploitation due to a lack of access to support services. This aspect is crucial in illustrating the broader impact of financial abuse and emphasising the importance of safeguarding vulnerable individuals through EPOAs.

Moreover, it is imperative that the prescribed information incorporates examples specific to Aboriginal communities. This inclusion ensures cultural relevance and fosters an understanding of the



unique challenges faced by these communities in the context of financial abuse through EPOAs. By addressing these diverse elements, the prescribed information can provide a comprehensive and culturally sensitive guide for attorneys, enhancing their awareness and ability to navigate complex situations.

Assessing the Adequacy of the Proposed Approach for Urgent EPOA Situations and International/Interstate Attorney Appointments

VALS agrees that the proposed approach appropriately acknowledges situations where urgency is paramount or where attorneys may be overseas or interstate. VALS concurs with the perspective that the authorised witness certifying the attorney's acceptance does not necessarily have to be the same witness who observed the principal signing. This flexibility allows for a pragmatic and flexible approach without compromising the integrity of the process.

VALS emphasises that ensuring that attorneys, irrespective of their location, adhere to the jurisdictional requirements specific to where the application is being lodged and respond to a uniform set of questions. However, VALS notes that the absence of in-person oversight may raise questions about the capacity to fully understand the context, particularly in instances of potential abuse. While recognising the practicality of remote arrangements, VALS underscores that an in-person approach is preferred where feasible, given its potential to provide a more comprehensive understanding of the situation, especially considering the sensitive nature of EPOA appointments.

RECOMMENDATIONS

Recommendation 4. Implement a single national attorney acceptance form for the appointment of attorneys, fostering consistency and efficiency in the present legal procedures.


Recommendation 5. Establish a written and witnessed attorney acceptance, ensuring a formal and legally sound process in attorney appointments.

Recommendation 6. Develop a comprehensive set of uniform questions in the attorney acceptance form, addressing attorneys' awareness of their rights and responsibilities, comprehension of jurisdictional laws, acknowledgment of coercive control and family violence, assessment of capacity, and confirmation of the absence of duress.

Recommendation 7. Incorporate specific questions about rights and responsibilities, jurisdictional law, coercion, family violence, capacity, and absence of duress in the proposed role(s) for the authorised witness.

Recommendation 8. Include examples and case studies illustrating instances of financial abuse within the context of EPOAs in the prescribed information.

Recommendation 9. Ensure that attorneys, irrespective of their location, are subject to the jurisdictional requirements, specific to where the application is being lodged and uniform set of questions.



Recommendation 10. Ensure that, where feasible, an in-person approach is delivered, recognising its potential to provide a more comprehensive understanding of the situation.

Revocation of an EPOA

Qualifications and Training for Assessing Decision-Making Capacity in EPOA Revocation: Recommended Considerations

Recommended training requirements to ensure a witness can make a considered determination of a principal's decision-making capacity in EPOAs should encompass capacity assessment training. It is imperative that the qualifications held by a witness when assessing the principal's capacity to sign initially align with those needed to evaluate a potential revocation. The same decision-making skills are required for both assessments, ensuring a consistent and reliable evaluation process.

Moreover, the implementation of the same uniform questions that were asked during the initial capacity assessment—covering areas such as coercive control, family violence, capacity, and absence of duress—should be reiterated when determining a revocation. These questions serve as crucial benchmarks and should be documented clearly to ensure a thorough and transparent evaluation process, mitigating the risk associated with subjective interpretations of a principal's decision-making capacity in the case of a revocation.


Balancing Considerations in Proposed EPOA Revocation Requirements: Addressing Obligations, Supporting Understanding, and Allowing Flexibility

The proposed requirements for the revocation of an EPOA may be insufficient in certain scenarios, particularly when individuals cannot be easily contacted, as is often the case in regional and rural remote areas. Urgent scenarios that warrant revocation, such as a rapid decline in health, may necessitate a more flexible approach to accommodate the practical challenges of reaching the principal.

It is critical to differentiate between genuine urgent scenarios, like health emergencies, and those driven by external pressures from family members, which may not warrant immediate revocation. The proposed requirements should emphasise the importance of understanding the nature of urgency to ensure a balanced and considerate approach.

VALS recommends a more comprehensive approach to the authorisation of witnesses for EPOAs, considering the potential for abuse in situations of absolute dependency. Yes, the proposed requirements currently address the issue, but there are exclusionary provisions that warrant attention. The current limitations restrict authorised witnesses to (a) a party, (b) a close relative, or (c) someone signing on the direction of the principal. The concern lies in exception (b), particularly in Victoria's legislation where the criteria for a 'close friend' involve a two-part test—being a close personal friend and having a personal interest in the principal's welfare.

Moreover, the Act, mirroring the approach in most states, expressly excludes individuals providing paid domestic support from acting as authorised witnesses. This is significant, as a considerable



amount of elder abuse, including financial abuse through EPOAs, is perpetrated by individuals in positions of absolute dependency, such as those offering paid domestic support. VALS suggests revisiting and possibly expanding the criteria for authorised witnesses to include individuals with professional qualifications or positions that minimise personal interest, thus enhancing protection against potential exploitation.

VALS recommends ensuring a harmonious balance of considerations when it comes to revoking an EPOA. It's crucial that the proposed requirements prioritise the principal's understanding of the implications of revocation. A key recommendation is to have both the witness and executioner of the revocation certify their true independence. This certification serves as a robust safeguard, ready to be invoked in case of any disputes arising from the revocation process. By adhering to these recommendations, we can create a framework that truly supports and protects the principal's interests.

The proposed requirements for revoking an EPOA strike a commendable balance by offering the necessary flexibility. By maintaining a broad scope without delving into the specifics of various scenarios, these provisions ensure adaptability to unforeseen circumstances. VALS suggests that avoiding an exhaustive list of situations is wise, as it prevents the unintentional exclusion of novel circumstances that may arise. This approach supports a robust and versatile framework for urgent revocations while minimising the risk of oversight in unique and challenging situations.

RECOMMENDATIONS

Recommendation 11. Implement the same uniform questions that were asked during the initial capacity assessment— areas such as coercive control, family violence, capacity, and absence of duress should be reiterated to the witness when determining a revocation.


Recommendation 12. Consider adopting a more flexible approach for urgent scenarios that warrant revocation, such as a rapid decline in health, to accommodate the practical challenges of reaching the principal.

Recommendation 13. Reassess and potentially broaden the criteria for authorised witnesses, especially in the context of close friends, addressing concerns about potential abuse. Additionally, carefully reconsider the exclusion of individuals providing paid domestic support to ensure comprehensive protection for vulnerable individuals.

Automatic revocation

Consideration of Additional Grounds for Automatic Revocation: Feedback on Post-Execution Events

VALS opposes the automatic revocation of an interim family violence intervention or protection order. Recognising interim orders as temporary measures granted until a thorough assessment is conducted by a magistrate for a final decision, VALS advocates for a fair and measured approach. VALS stresses the principle that individuals should not face penalties until all facts and evidence have been comprehensively examined, emphasising the importance of due process and avoiding premature



judgments in family violence intervention matters. VALS recommends that where an individual does have an IVO that there is a review process to determine the suitability and ensure there's no risk of family violence within the context of the EPOA.

Similarly, VALS does not support the automatic revocation for an attorney becoming bankrupt or personally insolvent. The risk of fraud exists irrespective of solvency, and financial circumstances may not necessarily reflect an exacerbation of risk. It is crucial to consider associated risks related to fraud rather than basing revocation on individual financial situations unrelated to the issue at hand. VALS recognises that financial burden alone may not be a reliable reflection of an individual's capacity to act as an EPOA. If the insolvency or bankruptcy is linked to fraud, then consideration for revocation is warranted. However, a comprehensive understanding of personal circumstances is essential for making informed decisions in this regard.

RECOMMENDATIONS

Recommendation 14. Initiate a review process for individuals nominated to be an attorney who have an IVO to assess suitability and ensure the absence of family violence within the context of the EPOA, as opposed to opting for automatic revocation.

Recommendation 15. Refrain from supporting the automatic revocation for an attorney becoming bankrupt or personally insolvent.

Attorney eligibility

Evaluating the Adequacy of Proposed Nationally Consistent Attorney Duties: Safeguard Coverage and Potential Additions

The proposed range of attorney duties aimed at achieving national consistency is fairly comprehensive in providing appropriate coverage of safeguards. However, to enhance the effectiveness of these safeguards, it is recommended that the proposed uniform questions, as referred to earlier on to ask principals when appointing an attorney on capacity, coercive control, and family violence, be incorporated. The inclusion of these specific questions would further strengthen the attorney duties, ensuring a more robust and standardised approach to safeguarding the interests and well-being of principals. This additional layer of inquiry aligns with the overarching goal of establishing a nationally consistent framework that prioritises the protection of individuals involved in EPOA arrangements.

Assessing Appropriateness of Proposed Five-Year Ineligibility Period: Feedback on Specific Cases

The proposed five-year ineligibility period for prospective attorneys requires careful consideration in various scenarios. Firstly, in the case of an interim family violence order, the proposed period may not be appropriate. Interim orders, often obtained without forensic assessment and driven by public policy rather than clear indications of family violence, may not warrant a rigid five-year ineligibility.



Similarly, the automatic ineligibility due to financial insolvency or bankruptcy may need refinement. A more nuanced understanding of personal financial circumstances is essential, and an automatic application seems unduly harsh. For instance, instances where bankruptcy results from job loss, beyond the individual's control, challenge the practicality of a strict five-year ineligibility.

Moreover, it is crucial to recognise the potential disproportionate impact on Aboriginal people. The proposed five-year period may not align with the unique circumstances and systemic factors affecting financial situations within Aboriginal communities. Advocating for a more flexible approach acknowledges the need for cultural sensitivity and tailored considerations.

In summary, a thoughtful reconsideration of the proposed ineligibility period, taking into account the nature of interim family violence orders, the complexity of financial situations, and the potential impact on specific communities, is warranted to ensure a fair and effective framework for prospective attorneys.

Assessing the Appropriateness of the Proposed Disclose and Approve Approach

A disclose and approve approach is deemed appropriate, particularly in cases involving individuals with a history of dishonesty or financial insolvency. The principal has a right to be informed about the background of the appointed attorney. However, it is essential to note that while disclosure is necessary, automatic ineligibility may not be warranted in certain circumstances, as previously discussed concerning interim family violence orders and financial insolvency. These cases should be subject to a more nuanced evaluation rather than a blanket disqualification. Striking a balance between disclosure and eligibility, considering individual circumstances, remains paramount for an effective and fair EPOA framework.


Consideration of Additional Criteria for Financial EPOA Ineligibility

VALS recommends that individuals convicted of serious criminal offences such as murder, fraud, and property crimes like theft, supply, and trafficking drugs should be entirely ineligible for appointment under a financial EPOA. These offences signify a substantial breach of trust and integrity, rendering those convicted unsuitable for the responsibilities associated with a financial EPOA. Moreover, while not advocating for permanent disqualification, VALS suggests that consideration be given to other types of offences or criteria that may warrant ineligibility for a specific period. The determination of the appropriate period of ineligibility should be contingent on the nature and severity of the specific offences or criteria in question. Adopting a thoughtful and tailored approach to eligibility periods ensures a nuanced and effective framework for appointing individuals under a financial EPOA.

RECOMMENDATIONS

Recommendation 16. Reconsideration of the proposed five-year ineligibility period for individuals subject to an interim family violence order.

Recommendation 17. Individuals convicted of serious criminal offences such as murder, fraud, and property crimes like theft, supply, and trafficking drugs should be entirely ineligible for appointment under a financial EPOA.



Recommendation 18. Consideration should be given to other types of offences or criteria that may warrant ineligibility for a specific period. The determination of the appropriate period of ineligibility should be contingent on the nature and severity of the specific offences or criteria in question.

Attorney duties

Appropriateness of Substitute Decision-Making in Financial EPOAs Amidst the Rise of Supported Decision-Making in Australia

VALS acknowledges the growing implementation of supported decision-making across various contexts in Australia. Currently, the emphasis is on supporting individuals rather than resorting to substitute decision-making. It is crucial to thoroughly examine the circumstances where substitute decision-making may be deemed appropriate. Understanding the specific scenarios or complexities that warrant a shift from supported to substitute decision-making is essential for establishing a comprehensive and nuanced approach within the framework of a financial EPOA.

Circumstances for Limiting Principal's Input in Financial EPOAs

VALS emphasises that an attorney should not be required in all instances to unquestionably adhere to the views, wishes, and preferences of the principal, particularly when there is a high risk of significant harm to the principal's health or well-being. This underscores the rationale for restricting the pool of individuals eligible to act as power of attorney. Acknowledging the potential risks involved, especially in situations of potential harm, reinforces the need for a selective and ethically responsible approach in appointing individuals to wield power of attorney. The focal point remains safeguarding the well-being of the principal and navigating intricate scenarios with prudence and a heightened sense of ethical responsibility.

Furthermore, VALS highlights the need for a well-defined framework to address identified risks. Questions concerning the next steps and the mechanisms for dealing with potential risks must be explicitly outlined. This clarity is essential to ensure that the attorney, in the interest of the principal's well-being, can navigate and respond appropriately to situations where the principal's views pose a risk to their health or welfare.

RECOMMENDATIONS

Recommendation 19. Ensure that an attorney is not mandated in all instances to unquestionably adhere to the views, wishes, and preferences of the principal, particularly when there is a high risk of significant harm to the principal's health or well-being.

Recommendation 20. Establish a comprehensive and clear framework for addressing identified risks in situations where an appointed person may need to make decisions in the best interest of the person they're representing. This should include a well-defined set of rules outlining the steps to be taken and how to handle potential problems.



Interstate recognition of EPOA's

Improving Interstate Recognition of Financial EPOAs through Legislative Refinement

VALS suggests that achieving uniformity in interstate recognition arrangements for financial EPOAs is crucial to minimise the potential for exploitation. The improvement or simplification of existing arrangements, specifically through amendments to the wording of interstate recognition clauses, should prioritise consistency across all jurisdictions. This approach enhances clarity and contributes to a more streamlined and effective legislative framework. By addressing potential variations in wording and ensuring a standardised approach, the risk of exploitation is mitigated, fostering a more robust system of interstate recognition for financial EPOAs.

Enhancing Interstate Recognition of EPOAs Through Non-Legislative Measures and Practical Guidance

VALS recommends that providing practical guidance and establishing uniform laws and guidance would be highly beneficial in facilitating the interstate recognition of EPOAs. Clear and comprehensive practical guidance on the circumstances under which an EPOA in one State or Territory would be recognised in another, as well as instances where interstate recognition may not occur, is essential. This non-legislative approach ensures a consistent and transparent framework, fostering a smoother and more reliable process for the interstate recognition of EPOAs.

RECOMMENDATIONS


Recommendation 21. Simplify existing arrangements, particularly through amendments to the wording of interstate recognition clauses, with a focus on prioritising consistency across all jurisdictions.

Recommendation 22. Provide clear and comprehensive practical guidance while establishing uniform laws for the interstate recognition of EPOAs. Ensure a straightforward understanding of the circumstances in which an EPOA from one State or Territory would be acknowledged in another, as well as instances where interstate recognition might not apply.

Access to justice issues

Feedback on Stakeholder Experiences and Options for Enhancing Access to Justice in EPOA Dispute Resolution

VALS recommends maintaining support for the current arrangement in Victoria concerning the management of EPOA disputes. However, there is a need for additional training for courts and law enforcement agencies to better comprehend the nuances of family violence, encompassing coercive control, elder abuse, and financial abuse. Enhancing the understanding of these complex issues within the judicial and law enforcement systems is crucial to ensuring a more informed and just approach to



cases involving potential breaches of attorney duties. This non-legislative step can contribute significantly to improving access to justice and addressing the intricacies of EPOA disputes.

Older people who are being abused by their adult children may be reticent to seek help, or enacting the advice provided to them due to fear of adverse consequences for their child. Shame and stigma surrounding the reporting of elder abuse committed by adult children needs to be addressed. Older people need to be supported to take action earlier when there is less likelihood of adverse consequences.¹³

Enhanced training for courts and law enforcement is crucial in addressing elder abuse by adult children. By improving understanding of family violence nuances, professionals can identify and intervene in cases where older individuals fear seeking help due to societal pressures. Specialised training fosters a more compassionate approach, breaking down barriers of shame and stigma and empowering the system to combat elder abuse effectively.

RECOMMENDATIONS

Recommendation 23. Fund additional training for courts and law enforcement agencies to better comprehend the nuances of family violence, including coercive control, elder abuse, and financial abuse.

Information, resources, training

Feedback on Resources and Guidance for Roles in Financial EPOAs: Witnesses, Attorneys, and Principals

VALS recommends enhancing the current arrangements for managing EPOA disputes within the existing court and tribunal systems. Stakeholders involved in EPOA disputes should be required to undergo comprehensive training, with the training logged and registered for consistency. Ongoing professional education, akin to legal professionals' continuous legal education, is crucial for stakeholders to stay informed. Resources on EPOAs should offer clear guidance, including practical examples illustrating financial abuse within the context of elder abuse and family violence.

Additionally, VALS strongly believes that legal assistance services, while being a non-prescribed service under Victoria's MARAM, play a critical role in the system-wide response to family violence. VALS recommends the integration of MARAM training specifically tailored for legal professionals in Victoria. Comprehensive MARAM training for legal practitioners will not only enhance their understanding of the complexities surrounding family violence but also empower them to contribute effectively to the system-wide response. Emphasising cultural awareness within Aboriginal communities in this targeted training is crucial, fostering a more nuanced and responsive approach in addressing family violence

¹³ Dow, B., Gahan, L., Gaffy, E., Joosten, M., Vrantsidis, F., & Jarred, M. (2019). Barriers to disclosing elder abuse and taking action in Australia. *Journal of Family Violence*, 35(8), 853–861. doi:10.1007/s10896-019-00084-w



issues. This training is essential to prevent misidentification of related issues and promote cultural sensitivity. These recommendations collectively aim to improve access to justice and create a more informed and responsive system for handling EPOA disputes.

Exploring the Suitability of Voluntary Online Training Modules for Informing and Supporting Principals, Attorneys, and Witnesses

VALS recommends mandatory online training for principals, attorneys, and witnesses involved in EPOAs. Relying solely on voluntary training modules is deemed insufficient to ensure a comprehensive understanding of EPOAs. Mandatory training helps establish a baseline of knowledge and ensures that all relevant parties are adequately informed, contributing to a more robust and informed approach in the context of EPOAs.

Recommended Resources for Witnesses, Attorneys, and Principals

VALS recommends considering the inclusion of particularly useful resources for witnesses, attorneys, and principals across jurisdictions. The consultation paper is noted for failing to reference the National Plan to Respond to the Violence against Women and Children. Acknowledging the relevance of this plan is crucial, given that instances of financial abuse through EPOAs can manifest in this context, along with cases of elder abuse. Including such comprehensive resources enhances the understanding and response to complex issues surrounding EPOAs, contributing to a more informed and effective framework.

Exploring the Need for Monitoring and Reporting of Training for Witnesses, Attorneys, and Principals


Monitoring and reporting of training for witnesses, attorneys, and principals in the context of EPOAs should be mandatory. Individuals involved in EPOAs should undergo training before being approved or signed off on their roles, and this training should be regular and ongoing to ensure that skills are kept up to date. If training is not logged, there should be, at a minimum, a 'show cause' requirement, prompting individuals to provide a justification for not completing the necessary training. This approach establishes accountability and ensures that all relevant parties are consistently informed and equipped to fulfil their roles within the framework of EPOAs.

RECOMMENDATIONS

Recommendation 24. Ensure the integration of tailored MARAM training for legal professionals in Victoria, enhancing their understanding of family violence complexities and empowering them to contribute effectively to the system-wide response.

Recommendation 25. Mandate comprehensive training for stakeholders involved in EPOA disputes, ensuring that the training is logged and registered for consistency.

Recommendation 26. Ensure that cultural awareness training is integrated into resources and training programs to address the nuances of family violence within Aboriginal communities, with a specific focus on elder abuse.



Recommendation 27. Mandate online training for principals, attorneys, and witnesses involved in EPOAs.

Recommendation 28. Reference the National Plan to Respond to Violence against Women and Children in the consultation paper. It is recommended that future guidance incorporates insights from this crucial plan to enhance the effectiveness of EPOA-related strategies and responses.

Recommendation 29. Ensure that individuals involved in EPOAs undergo training before being approved or signed off on their roles. Implement a recommendation for regular and ongoing training to guarantee that their skills are continually updated and in line with the evolving nature of EPOA responsibilities.

Further recommendations

VALS recommends implementing comprehensive education and awareness initiatives in Aboriginal communities to address comparatively lower rates of wills and EPOA documents. These initiatives should highlight the significant benefits and importance of these legal instruments. Additionally, funding for Aboriginal Legal Services to support community members through the process of creating wills and POA documents is essential. This targeted support can facilitate greater understanding and engagement with these legal instruments, ensuring that community members are informed and empowered to make informed decisions about their legal affairs. This recommendation emphasises the importance of financial support to enable Aboriginal Legal Services to offer crucial educational resources, empowering community members in legal matters related to wills and POAs.

All training that is implemented should be undertaken regularly. Particularly, any cultural awareness training should be done by relevant individuals at least annually.

The Government should collect better stronger data regarding financial abuse and elder abuse. This should be done in line with principles of Indigenous Data Sovereignty and Indigenous Data Governance. VALS believes that it is important to be able to highlight a number of experiences within our community through such data. For instance, many similar data sets disaggregate the data by Aboriginality, age, and sex – but little data exists to highlight the experiences of Aboriginal people living with a disability, LGBTQIA+ Aboriginal people, or other lived experiences that are unique because of intersecting forms of discrimination.

RECOMMENDATIONS

Recommendation 30. Fund Aboriginal Legal Services to provide community legal education, ensuring support for community members in the process of creating wills and POA documents.

Recommendation 31. All training should be undertaken regularly, particularly cultural awareness training.



Recommendation 32. The Federal Government should collect stronger data regarding financial abuse and elder abuse. This should be done in line with principles of Indigenous Data Sovereignty and Indigenous Data Governance.