OPAN and COTA
Joint Submission on
Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney

Contents

"... each state does not necessarily acknowledge such a document, despite its legal validity, so this makes it difficult for people to move across state boundaries when they no longer have capacity. This can often mean that the person who has been appointed to manage the individual's financial affairs (when the individual no longer has capacity to manage their own financial affairs) is no longer able to do so, due to financial institutions not accepting interstate documents, and this then means the need to head to NCAT (NSW), or other state or territory equivalent, for a formal order, thereby causing costs to occur or otherwise, for a state body to be the financial administrator, taking away the personal element, and incurring large fees."

(Survey Respondent)

1. About OPAN and COTA

OPAN

The Older Persons Advocacy Network (OPAN) is a national network comprised of nine state and territory organisations that have been successfully delivering advocacy, information and education services to older people across Australia for over 30 years. Our members are also known as Service Delivery Organisations (SDOs). The OPAN SDOs are:

ACT	ACT Disability, Aged and Carer Advocacy Services	SA	Aged Rights Advocacy Service (ARAS)
NSW	Seniors Rights Service (SRS)	TAS	Advocacy Tasmania
NT	Darwin Community Legal Service	VIC	Elder Rights Advocacy (ERA)
NT	CatholicCare NT (Central Australia)	WA	Advocare
QLD	Aged and Disability Advocacy Australia (ADA Australia)		

OPAN is funded by the Australian Government to deliver the National Aged Care Advocacy Program (NACAP). OPAN aims to provide a national voice for aged care advocacy and promote excellence and national consistency in the delivery of advocacy services under the NACAP.

OPAN's free services support older people and their representatives to understand and address issues related to Commonwealth funded aged care services. We achieve this through the delivery of education, information and individual advocacy support. In 2022/23, OPAN delivered information and advocacy support to over 37,000 people across the nation.

OPAN is always on the side of the older person we are supporting. It is an independent body with no membership beyond the nine SDOs. This independence is a key strength both for individual advocacy and for our systemic advocacy.

OPAN acknowledges the lived experience, wisdom and guidance provided by members of the OPAN National Older Person's Reference Group and others in preparing this submission.

COTA

Council on the Ageing (COTA) Australia is the peak body representing the more than nine million Australians over 50. For over 70 years our systemic advocacy has been improving the diverse lives of older people in policy areas such as health, retirement incomes, and more. Our broad agenda is focussed on tackling ageism, respecting diversity, and the empowerment of older people to live life to the full.

The COTA state and territory organisations are:

- COTA Australian Capital Territory
- COTA New South Wales
- COTA Northern Territory
- COTA Queensland
- COTA South Australia
- COTA Tasmania
- COTA Victoria | Seniors Rights Victoria
- COTA Western Australia

About our Survey

COTA and OPAN jointly conducted a survey of 1056 older people to help inform this submission COTA and OPAN ran a survey seeking the views of older people. We thank them for sharing their views and have outlined a snapshot of respondents in Appendix A of this submission.

2. Context

"I come from a social work background in working with older people, so I do not find the system difficult to navigate and have provided information to older people and their families in relation to EPOA (financial) for many years. The challenge lies in the states and territories having different systems and documents, and the names for these documents varying, such as in NSW, the EPOA is a financial document and Enduring Guardianship is a different document, whereas in other states, such as Victoria, an EPOA covers both financial and lifestyle decisions. This can be confusing when people move between states, and I have been aware of instances where government departments have not accepted an interstate document."

(Survey Respondent)

There have been numerous inquiries and national and state governmental discussion about harmonisation of laws and/or a national register for Enduring Powers of Attorney (EPOA). In 2000, Tasmania enacted legislation requiring the registration of Powers of Attorney (POAs). In 2012 the Victorian Law Reform Commission in its report *Guardianship: Final Report,* in Chapter Sixteen, advocated for an online register of POAs for Victoria. In 2017, the Australian Law Reform Commission called for a single national register and harmonisation of related laws. In 2018, the Australian Guardianship and Administration Council Elder Abuse National Project, released its Options Paper on" Enduring powers of attorney (financial)", this also called for a single national register and offered options on harmonisation of laws. Finally, the *National Plan to Respond to the Abuse of Older Australians* (Elder Abuse) 2019–2023 includes two actions – harmonisation of laws and a national online register. Each of these inquiries have generally demonstrated the benefits of harmonisation.

It is clear the issue is not if the laws should be harmonised and whether a national register should be developed but how to progress this work so that older people's rights are promoted and protected. The many challenges that will be faced by maintaining the status quo have already been well articulated by the Australian Guardianship and Administration Council and the Australian Law Reform Commission in their respective reports.

Substitute decision-making is a serious disruption to an older person's right to make decisions autonomously. The gravity of this and the impact on the older person of misuse of power of attorney documents means that a suite of elder abuse provisions is integral to realising the full potential of any reforms that prevent or respond to elder abuse. Harmonisation of EPOAs is one of these provisions as is ensuring that the legislation is rights based and a supported decision-making framework is embedded into the EPOA legislation.

We note that harmonisation of the relevant legislations will not be a 'silver bullet' that will eliminate all the issues that are associated with EPOAS. It is one tool that can contribute to a reduction of abuse of older people.

"Advocare believes that achieving greater consistency in laws for Enduring Powers of Attorney (EPOA) is an important step to ensuring clarity and protection for older people and their assets across different jurisdictions so we welcome any reform to the current legal system that will provide additional safeguards for some of the most vulnerable members of our communities."

Recommendation 1: Ensure the General principles and decision-making capacity as noted at the start of the consultation document underpin harmonisation of laws.

Recommendation 2: Ensure that steps to achieve greater consistency be applied to both general POAs and well as enduring POAs so that there are not disparities between the two within a state jurisdiction.

3. Principles

The following principles should underlie any changes to Enduring Power of Attorney Laws.

3.1 Rights

The human rights of the older person are upheld in all actions and interactions, and these are central to the harmonisation of legislation across Australia. This includes the right to be free from abuse. To achieve this legislation should prioritise protection from abuse for the older person rather than being solely focused on providing evidence that validates a decision or a transaction. For example, taking a rights-based approach should pick up on issues of fluctuating capacity and periods of transition.

A rights-based approach means that decisions are informed by the will and preferences of the older person rather than being made in the "best interests" of the older person.

3.2 Person-centred

Older people are placed at the centre of all processes related to enduing powers of attorney, including accessibility, affordability, and usability. This includes ensuring that implementing an EPOA is easy to use and understand, as well as being accessible in terms of format and language, and across rural, regional and remote areas or where internet connectivity can be problematic.

3.3 Informed Choice

Older people are given information in appropriate formats that enables them to exercise informed choice about EPOAs including who can be an EPOA, the duties of the EPOA, revocation, compensation and what protections are in place.

3.4 Capacity

The older person's capacity to make decisions is always assumed. It is recognised that older people enjoy legal capacity on an equal basis with other citizens and have a right to be supported to exercise that capacity. This is in line with the

National Decision-Making Principles articulated in the Australian Law Reform Commission's 2014 Equity, Capacity and Disability in Commonwealth Laws Discussion Paper:

- **Principle 1: The equal right to make decisions.**
  All adults have an equal right to make decisions that affect their lives and to have those decisions respected.
- **Principle 2: Support**
  Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.
- **Principle 3: Will, preferences and rights**
  The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.
- **Principle 4: Safeguards**
  Laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including to prevent abuse and undue influence.

This also aligns with Australia's responsibilities under the Convention on the Rights of Persons with Disabilities.

Moving towards utilising a supported decision-making model reduces the need to rely on capacity assessments except in some circumstances. For example, where multiple attempts at supported decision-making fails, this indicates that the person does not have capacity to respond on that particular issue and a substitute decision will need to be made. However, it is a decision-by-decision process not a presumption that not being able to respond to one question means the person cannot respond to any question.

3.5 Safety

EPOAs should be monitored and regularly reviewed to prevent the abuse of older people. This includes the right of independent advocates to represent older people when requested to have EPOAS changed or revoked.

3.6 Privacy and Confidentiality

Privacy and confidentiality are upheld and respected.

3.7 Low Cost

The design of future EPOA laws should have an eye to the cost of delivering such solutions. Wherever possible and appropriate low cost, self-directed solutions to

providing safeguards, education and compliance should be favoured. Doing this will maximise access to justice amongst people benefiting from an EPOA but who might otherwise be put off by the cost of visiting a legal professional.

3.8 Diversity

In recognising the diversity of older people, harmonisation ensures that legislation is accessible and inclusive, and tailored wherever possible to individual need. This recognises that particular groups can face barriers to accessing EPOAs and any protections that are in place for EPOAs, including, but not limited to, language, communication and location.

There are a range of diversity groups who will face additional barriers and challenges, these are identified in the Aged Care Act and include:

- People from culturally and linguistically diverse backgrounds (especially refugees)
- Aboriginal and Torres Strait Islander peoples,
- Lesbian, gay, bisexual, trans and gender diverse and intersex people (LGBTI),
- People who are homeless,
- People who are socio-economically disadvantaged,
- People with disability,
- People living in rural and remote communities,
- People with mental health issues, and
- Care leavers.

4. First Nations

Queensland research has found that there are fundamental incompatibilities between substitute decision making schemes, such as EPOs, and First Nations people's values and culture[1]. EPOA frameworks are predicated on the individualistic nature of a culture, versus a culture that is based on the collective. First Nations' cultural norms are based on group decision making and the concept of reciprocity. Consideration should be given, when harmonising EPOA legislation, on how to allow for collective responsibilities, such as the pooling of funds for use across a group of people or a community. There is often collective

[1] Cadet-James, D., Cadet-James, Y., Chenoweth, L., Clapton, J., Clements, N., Pascoe, V., Radel K., & Wallace V. (2011). Impaired decision-making capacity and Indigenous Queenslanders, final report. School of Human Services and Social Work, Griffith University, Brisbane; The Office of the Public Advocate (2013). Research Insights Aboriginal and Torres Strait Islander Queenslanders with impaired decision-making capacity.

ownership of funds and financial assets in First Nations' families and communities. This type of functional interdependence between family and community members is not catered for.

All participants in the Queensland research revealed that substitute decision making schemes are inherently complex for all people but are even more complex when allowing for cultural differences. Another example of these cultural differences is the First Nations' cultural concept of 'shame', particularly about telling your business to someone else, and particularly a non-Indigenous person:

"There is a stigma for Indigenous people about having other people making their decision, particularly white people. The process can be extremely damaging, they feel shame and humiliation".

In addition, there is an understandable lack of trust by First Nations' people in protectionist policies and programs implemented by government agencies, due to past injustices such as Stolen Wages and the Stolen Generation.

The process around appointing a financial power of attorney needs to acknowledge the importance of culture, including the role of Elders in Aboriginal and Torres Strait Islander communities, gender and connection to community as potential factors that might influence decision making for Aboriginal and Torres Strait Islander people.

5. What's Missing

5.1 Conflict Resolution

There is no clear process as to how conflicts between EPOAs and principals will be addressed. Disagreements should be resolved as per the principal's wishes and could include:

- Facilitated conflict resolution/mediation between the parties with the principal supported by an independent advocate.
- Establishing an independent oversight body that complaints can be taken to and addressed.
- Going to the Administrative Appeals Tribunal.

5.2 Appointment

There needs to be clear obligations on attorneys to ensure they know the principal's 'wishes and preferences'. Such obligations must ensure the attorney makes efforts to get to know the older person, their life experiences, needs, cultural requirements, and language. This is particularly important where a

person may not have a person in their life they can appoint, or someone they trust in their life enough to appoint, and an attorney or guardian is publicly appointed.

Too often we hear of EPOAs being appointed who never, or rarely, meet with the principal to ensure that they are acting under the person's wishes and preferences. Being aware of such preferences necessitates ongoing and regular contact with the older person and being able to communicate with them in their language or in a way that the older person understands.

5.3 National Register

"Readily accessible information as to whether there is a someone appointed would assist families, those making decisions about long term care, institutions, and health professionals. It would assist and reassure those considering appointing an Enduring power of attorney and would provide some reassurance for those who have appointed a substitute decision maker of some kind. Such a register would help protect the rights of older people, especially those in need of care and support, and could even help reduce elder abuse."

(Survey Respondent)

As noted above in "Context" the call for a national register for EPOAs has been consistent and ongoing. Both OPAN and COTA recognise the importance of a national register in reducing the abuse of older people and the misuse of EPOAs.

COTA and OPAN recently released a survey to inform our response to this inquiry. We received over 1000 responses from older people and of those:

- 79% supported a national register.
- 9% supported a state or territory-based register, and
- 12% believed a national register was unnecessary.

Those not supportive of a register cited concerns about privacy, cost and security of information as their main reasons for not supporting a register. There were also fears that it would add another level of bureaucracy and be intrusive.

Those supporting either a national register or a state/territory based register, considered that a register would provide an additional level of security. In particular, knowing that an EPOA has been signed, that an EPOA exists or that an EPOA has been revoked. It was also suggested that there needs to be nationally consistent training and resources linked with the implementation of a national register.

We also asked older people if it would be beneficial to include revoked EPOAs in the national register:

- 65% said yes.
- 8% said yes, but at a state/territory level.
- 9% said no.
- 18% were not sure.

Recommendation 3: Ensure that there is a national register of EPOAs and revoked EPOAs to enable greater protection of principals.

6. Witnessing

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

    - *require at least one authorised witness to an EPOA, and to retain jurisdiction-specific approaches to the number of witnesses required.*
    - *retain jurisdiction-specific qualifications requirements for the required authorised witness?*
    - *Alternatively, if you consider it appropriate that there is a consistent approach across jurisdictions in relation to the prescribed class of persons who may act as authorised witnesses, what qualifications should that class of witness be required to hold?*

We would argue that there should be a requirement for all jurisdictions to adopt a model provision of a minimum of two witnesses rather than retaining jurisdiction-specific approaches to the number of witnesses required. Technology can be used to reduce difficulties in rural and remote areas where it may be difficult to have two witnesses together. For example, in New South Wales section 14G of the Electronic Transactions Act 2000 provides for the witnessing of document by audio visual link. In addition, the witnesses should be able to speak to the principal independently to ascertain that they are comfortable the principal is not being coerced.

In remote witnessing circumstances, provision should be made to provide safeguards against misuse. Witnesses could be required to certify that the principal is signing voluntarily.

For revocations, the process should be simplified requiring only one authorised witness. This is particularly relevant for older people in care facilities.

We can see some benefit in maintaining jurisdiction specific qualifications where jurisdictions combine personal, medical and lifestyle enduring documents with financial EPOAs, and so require a consistent approach to witnessing across these different types of instruments. However, this could lead to some difficulties where, for example, the principal may live in one state, their EPOA in another and their legal representative in another state. Which state legislation takes priority in witnessing requirements and how will this impact on the principal and their EPOA? This can happen when people move interstate but maintain connection to a 'trusted' family legal representative and have family in another state. Reciprocal recognition of witnesses would need to be included to ensure consistency.

Recommendation 4: To improve security and support consistency, two authorised witnesses should be required to approve an EPOA. The model provision should:

- Develop digital identity processes to ensure witnessing is efficient and easy to understand and complete i.e., not need to be in-person. The provisions could be similar to those in the New South Wales Electronic Transactions Act 2000 which enables signatories and witnesses not to be physically present together or both present in New South Wales at the time of witnessing.
- Implement safeguards such as mandatory certification by witnesses that the principal is signing voluntarily to prevent abuse, with a mandatory requirement that certification occurs if a remote witnessing is occurring.
- Accept digital (non-wet) signatures on POA documents to help streamline the process.

Recommendation 5: Provide nationally consistent and clear advice on witnessing. It should be clear that neither the attorney, nor principal, nor person signing at the direction of the principal (if applicable), or any relative of any of these parties to the EPOA can be an authorised witness.

2. *Feedback is sought on whether your experience of the witnessing requirements for financial EPOAs, as they apply in your jurisdiction, appropriately balance factors such as accessibility, with providing appropriate protection and assistance to principals.*

In New South Wales, the witnessing requirements are adequate, however there are limited options for an EPOA to be witnessed that are at no or low cost to the principal. Largely this is left to the NSW Trustee and Guardian, or government funded legal services such as community legal centres. This disproportionally

affects clients on statutory income that cannot afford the services of a private Australian legal practitioner. This results in fewer EPOA being made than would otherwise be the case if there were a greater number of affordable services available to witness EPOAs and increases the number of Financial Management and Guardianship orders that are required to be made by a decision-making authority, such as the NSW Civil and Administrative Tribunal

3. *Feedback is sought on the proposed establishment of prescribed information resources, which witnesses would draw to the attention of a principal. What matters do you consider should be addressed in the proposed prescribed information?*

We agree with COTA Victoria / Seniors Rights Victoria in their statement where they state "*EPOAs should not be activated until the principal has lost capacity unless immediate application is indicated on the document. This stipulation regarding responsibilities should be clearly mentioned in the documents and understood by the attorney and the principal*."

We support the proposed prescribed information with some additions and amendments:

- plain language document, or a document in the person's language or other format appropriate to the person's needs, addressing matters such as:
    - what an EPOA is and its significance as a formal legal document (with examples of the sorts of decisions an attorney can be permitted to make under a financial EPOA)
    - the obligations that an attorney owes the principal.
    - how to revoke an EPOA
    - where to take concerns or complaints about the attorney
- confirmation that the principal appeared to have decision-making capacity. (Witnesses should be informed of best practice behaviour that a full assessment for capacity should be undertaken by two appropriate medical professionals before any principal is determined not to have capacity. Promotion of resources providing material such as has been published in Queensland: Queensland Capacity Assessment Guidelines (publications.qld.gov.au) and in New South Wales: Capacity Toolkit (tag.nsw.gov.au) should be made available.)

- contact details where a principal could seek further expert assistance, including how to access an independent advocate or support person.

The prescribed resources should also incorporate information that directs individuals to avenues where they can report misuse or elder abuse.

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

We strongly support the inclusion of the enhanced witnessing obligations as a way of providing additional protections for principals. We support the response by OPAN's Queensland based SDO, ADA Australia in their submission to this Inquiry:

"Reforms in this space should have regard to the 'enhanced witnessing' characteristics described in the Australian Law Reform Commission's report 'Elder Abuse – A National Legal Response', (the 2017 ALRC Report) which describes the positive duties that a witness has in carrying out the safeguarding benefit for both principals and attorneys.

A program of credentialling could made available to expanded classes of witnesses and would ensure that a witness is appropriately qualified to support the completion or revocation of an EPOA. This might take the form of a specialised training module, that could be open to completion by a wider cohort of persons to broaden accessibility of potential witnesses available to a principal, whilst providing an increased understanding and capacity of a witness to apply the safeguards and compliance requirements set out in the legislation. Though this expands the cohort of potential witnesses, the targeted education and upskilling would align with the recommendations for 'tightening' witnessing requirements as set out in the 2017 ALRC Report."

However, the approach to implementing such obligations must be supported through professionally developed adult education materials that can be played (e.g. video) or given to the principals (e.g. pamphlet) to meet the witness obligations in regard to explaining the effect of the EPOA. A national video and or pamphlet that outlines this information succinctly, will assist in this obligation. If such material were developed, then the requirement on legal professionals to say "they explained the effect of the EPOA to the principal before it was signed" may also be expanded to other types of authorised witnesses.

We particularly note the use of the word "appeared" in relation to decision-making capacity and freely and voluntarily signed the EPOA. We welcome that the model provision does not include a higher bar of "assessment". This is consistent

with the principle of ensuring that low-cost avenues remain available to all people to access EPOAs, without relying on and needing to have the funds for a legal practitioner.

7. Acceptance

"More plain English explanation of various items /some easier simpler language/The actual FORM is intimidating. The use of simple language and reference to examples, perhaps on an accompanying guide, would clarify the meaning of various phrases and words".

(Survey Respondent)

1. *Feedback is sought on the benefits and feasibility of establishing a single national attorney acceptance form.*

Research by the Australian Law Reform Commission indicates that attorneys often lack a comprehensive understanding of their roles, obligations, and the potential risks associated with EPOA misuse.

Having a nationally consistent form to appoint and revoke an EPOA will make it easier for the principal and attorney and for those that may have to call on, or view, the EPOA, especially if there is a need across state and territory boundaries. Consistent / standardised terminology should be used on the national form to enable ease of education. As noted above where an attorney may be in one state and the principal in another a single national form will enable ease for understanding what template should be used and recognised across jurisdictions. The document should be in plain language, available in multiple languages and accessible audio and video formats.

The single national form should ensure that Interstate recognition is automatic.

We agree that only one witness should be required to witness the acceptance by the attorney.

Recommendation 6: Implement a single national form to appoint and revoke an Enduring Power of Attorney by 1 January 2025. State and territory jurisdictions should align laws or requirements to meet this.

2. *Would the proposed role(s) for the authorised witness provide an appropriate degree of assurance that the attorney understands the obligations of their appointment?*

This would provide some degree of assurance that the attorney understood their role. However, this is at a point in time when the information had been recently provided, reviewed and explained. Experience has shown that over time attorneys forget, or mis-remember their responsibilities and/or intentionally or unintentionally expand what their role entails. Without ongoing monitoring and a requirement for at least a yearly review to ensure that attorneys understand their role and responsibilities the upfront assurance is time limited.

EPOAs should not be activated until the principal has lost capacity unless immediate application is indicated on the document. This stipulation regarding responsibilities should be clearly mentioned in the documents and understood by the attorney and the principal.

Recommendation 7: Activate EPOAs only after the principal's capacity loss, barring immediate application cases, with clear communication of these terms to both attorney and principal.

Recommendation 8: There is a requirement for ongoing monitoring and review of EPOAs and for, at a minimum, yearly reviews to ensure that attorneys understand their role and responsibilities.

Recommendation 9: Develop consistent tools and videos to advise or guide the acceptance of appointment of an attorney, including their obligations and responsibilities.

3. What matters do you consider should be addressed in the proposed prescribed information?

As above regarding the education of principals, the production of a nationally consistent video and pamphlet outlining the attorneys' obligations will ensure a consistent education and awareness message is available whether the witnessing occurs by a legal practitioner or other class of authorised witness.

As discussed in the ALRC report, the test for attorney's should be the wishes and preferences of the principal, not the attorney's view of what is in the best interests of the principal. This necessitates a level of regular engagement with the principal by the attorney to understand their will/wishes and preferences.

Recommendation 10: The attorney duties should include a requirement to act in accordance with the will/wishes and preferences of the principal.

4. Does the proposed approach sufficiently account for situations where:

a. an EPOA needs to be put in place urgently and/or

b. for attorneys to accept their appointment, where the attorney may be overseas or interstate?

The proposed approach would not negatively impact on either a) or b) above. While it will take additional time for the acceptance to be witnessed, this is outweighed by the benefit of such a requirement in that the attorney will also have the benefit of receiving advice on their requirements and obligations as an attorney.

With the enhancement of a single national form, a consistent approach to the number and qualifications of witnesses, a nationally consistent education package and the ability of remote witnessing, we believe that the approach is achievable for attorneys to accept their appointment placed overseas or interstate.

8. Revocation

"Not me, but clients. Usually, the older person needs to go through QCAT as they are deemed not to have capacity. The current process often traps seniors experiencing abuse as the EPOA will interfere and refuse a second opinion on cognitive capacity assessments."

(Survey Respondent)

In the COTA/OPAN survey 85% of respondents were aware that an EPOA could be revoked but only 12% of respondents said they had needed to do so. There was a strong call for more information about revocations.

The biggest hurdle to revocations was the capacity of the person seeking the revocation. It was also suggested that fear of abuse may also impact the older person's willingness to seek a revocation. As one respondent noted "*[The] challenge is if they have been assessed as having lost capacity. [It is] Expensive and time consuming to get [an] updated capacity assessment. If [they are] not found to have full capacity regained then [they] can't revoke, [and] must go through time consuming process of Tribunal – which [they] can only access if another party is willing to submit an application on their behalf".* Another noted that "*I don't think many people would know or would be brave enough to revoke an EPOA. Revoking may lead to physical abuse of [the] principal, in certain circumstances*."

A recommendation was made that there should be a revocation form that is made available to the attorney and principal along with the EPOA form, and information on how to use it.

1. *A risk identified above is that a principal may wish to revoke an EPOA when they are considered (by family members, witnesses or others), not to have decision-making capacity to do so. What qualifications or training requirements (if any) do you recommend are necessary to ensure a witness is able to make a considered determination as to the principal's decision-making capacity in the case of a revocation?*

Decision-making ability is complex, fluctuating and difficult to assess. Decision-making ability depends on many factors, including but not limited to:

a. the quality of information provided and the suitability of the format it is provided in,
b. available supports to make a decision,
c. the person's confidence and/or knowledge relating to the decision topic,
d. the person's communication modes and preferred language,
e. cultural differences in expressions and values,
f. the type of decision made, and
g. fluctuating abilities with time.

The presumption of decision-making ability should only be diverged from when the complex nature of decision-making ability has been fully considered and all possible options to support a person to make their own decisions have been exhausted or are impossible.

We note our view that in order to determine a loss of decision-making capacity, the written view of two health professionals should be the minimum starting point. Ideally such an approach will have a certification form that includes the medical professional identifying the loss of capacity against different categories of decisions. For example, they may be able to express a view on revocation, as they no longer have a relationship with the individual previously appointed and they do not trust them to act as their attorney but may have diminished executive functioning that might prevent them assessing the value of say, a home sale.

In cases of revocation, a single witness should only be necessary. This is particularly important where the principal may be in care and access to witnesses at the same time can be challenging. Many of these situations may be urgent and require swift action.

Recommendation 11: That a supported decision-making framework is embedded into the legislation based on the will and preferences of the older person.

Recommendation 12: Ensure that EPOA provisions include information and requirements about evidence of capacity being lost. We would suggest a

minimum of two medical professionals independently reporting would be required for the attorney to demonstrate capacity is lost. A series of types of decisions should be included to demonstrate that the EPOA may only be activated for some decisions and not all. This should be wider than just financial matters.

These assessments should be avoided/postponed if a person is in hospital being treated for, or recovering from, an illness known to affect their capacity – UTI's, delirium, general anaesthetic etc.

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

    a. The extent of obligation placed upon the authorised witness, regardless of the qualifications or positions they hold.

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

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

No response

3. *Are there other suggested elements which would be beneficial to incorporate in a model provision*?

We would argue that access to an independent advocate, for the principal, is an essential aspect of a model provision. For example, Advocare was previously involved in supporting older people at SAT hearings where the principal was experiencing abuse from the attorney.

Recommendation 13: A right to access an independent advocate is enshrined within the model provisions including that this right cannot be over-ruled by an attorney.

Recommendation 14: Enable greater flexibility to revoke an EPOA including the provision of a letter or agreement after a video conference.

4. *What do you consider the prescribed information about the revocation of an EPOA should include*?

A standardised list of people and organisations to notify that the EPOA has been revoked that would include, but not be limited to the former attorney, health and

medical practitioners, residential age care facilities, banks, utility providers and government agencies.

Information should also be provided to the principal on the practical effect of revoking an EPOA, especially when no new EPOA is being appointed, which includes the principals existing obligation to manage their own affairs independently.

9. Automatic Revocation

1. Feedback is sought on whether the range of proposed automatic revocation events are sufficiently clear and identifiable, so as not to create uncertainty about whether an EPOA is revoked.

COTA and OPAN are supportive of the automatic revocation events, noting the proposal that two medical practitioners' advice is required to assess capacity of the attorney.

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

We note that EPOA language is used in some jurisdictions to include matters other than financial. This will need to be addressed in the model provisions.

Recommendation 15: Automatic revocation should apply to all EPOAs not just those related to financial matters. Unless expressly stated that former EPOAs are to remain in force.

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

a. an attorney Is convicted or found guilty of an offence Involving dishonesty.

b. an attorney is convicted of an offence involving violence occurring within the principal's family or domestic context.

c. an attorney is a person against whom an interim or final family violence intervention or protection order has been made, where the order is relevant to the principal's family or domestic context.

d. an attorney becomes bankrupt or personally insolvent.

Inappropriate behaviour in relation to matters such as choice of care, refusing to make payment for health or aged care, use of financial resources so that there are no funds available for care, are unfortunately not uncommon. These types of behaviours should also form part of a framework for automatic revocation.

There also needs to be greater clarity around what will be considered a personal vs a financial decision in a context where a decision has the potential to impact on both financial and personal wellbeing.

We also support automatic revocation of EPOAs in cases involving safe contact intervention orders and prioritise the principal's safety in scenarios where the attorney becomes bankrupt or insolvent.

10. Eligibility

1. Does the proposed range of attorney duties to be made more nationally consistent give appropriate coverage of safeguards, or should additional duties be incorporated?

The proposed duties provide adequate safeguards.

We note that our goal is to achieve nationally consistent laws. While some states may have additional elements beyond that, a set of nationally consistent requirements is needed to provide an operational framework across the country.

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

a. has been convicted of an offence involving dishonesty.

b. has been convicted of an offence involving violence occurring within the principal's family or domestic context.

c. has been the subject of an interim or final family or domestic violence intervention order, where it relates to the principal's domestic or family context.

d. is a person who is bankrupt or personally insolvent, or who has been bankrupt or personally insolvent in the last five years prior to the execution of the EPOA.

We support the proposed attorney eligibility requirements including the 5-year ineligibility period. To support such a period, greater resources will need to be allocated to public trustees, to create a safety net for principals who do not have another attorney that could be appointed to assist them. Without such additional resources, any ineligibility period will create greater strain on a support system that is already dealing with yearly increased numbers, which in turn will have a detrimental impact on the principal. Such detriment will remove the benefit of any ineligibility period.

3. Feedback is sought on whether the proposed disclose and approve approach is appropriate in each of the following cases:

    a. a person who has been convicted of an offence involving dishonesty.

    b. a person who is bankrupt or personally insolvent, or who has been bankrupt or personally insolvent in the last five years prior to the execution of the EPOA.

A Disclose and approve approach is supported as this retains the rights of the principal to appoint a person of their choosing to manage their affairs. This model enables the principal to make an informed decision as to whether they consider the person to be an appropriate attorney or not. If such an approach was not adopted, the principles underpinning the proposed reforms relating to greater respect of choice and decision-making capability are undermined.

For this reason, we agree with ADA in their submission, which proposes the 'disclose and approve' approach in the Victorian legislation should be considered for a national framework. ADA note, and we agree, "*The legislation may include exceptions where a disclose and approve application seeking to override a statutory exclusion period would not be permitted, such as when there are domestic and family violence proceedings in train or where the proposed attorney has been convicted of a domestic and family violence or dishonesty-related offences against the principal*".

4. Are there circumstances where it would be appropriate for a 'disclose and approach' to apply without a period of time?

Yes, specifically where the eligibility event (for example: bankruptcy) was out of the control of the prospective attorney. Such circumstances would include victim-survivors of domestic and family financial abuse, who, through the actions or another has resulted in them becoming bankrupt. To preclude a prospective attorney on this basis, has the potential to further victimise a victim-survivor of domestic and family violence, while also removing informed choice of the principal.

5. Are there other types of offences, intervention or protection orders or criteria, which should make a person:

    a. entirely ineligible for appointment under a financial EPOA, or

    b. ineligible for a five year or other period

Ineligibility based on an intervention or protections order should be limited to the duration of the intervention or protection order itself.

In addition to the financial matters (bankruptcy, insolvency, dishonest behaviour) included above breaches of safe contact intervention orders or other forms of abusive or coercive behaviour should also be included in this framework.

11. Duties

"Most of the time should use Supported DM. When person can understand the material when it has been broken down for them. When they can communicate what they want and why, or if unable to communicate, the decision aligns with their known wishes. Need to provide all the opportunity [so they] can do Supported DM each and every time a decision needs to be made - not just assume [they] can't make any decisions for themselves."

(Survey Respondent)

1. Noting the increasing implementation of supported decision-making across different contexts in Australia, in what circumstances, if any, may substitute decision-making be appropriate under a financial EPOA?

"I am scared to death of making an EpoA as I have seen how badly well-intentioned people behave with systemic paternalism and a lack of respect for the human rights of older people reinforcing attorneys in making substitute decisions that support institutional structures not the person who made the EpoA."

(Survey Respondent)

We support the implementation of obligations under the Convention on the Rights of Persons with Disabilities (CRPD) in relation to supported decision-making, and particularly, Article 12: Equal Recognition before the law. The right to equality before the law is a civil and political right, and as such, the rights provided for in Article 12 applied at the moment of ratification and are subject to immediate realisation.[2]

Under Article 12, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.[3] Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.

While we agree with the need to cease the current use of substitute decision-makers in Australia to reduce the abuse of older people, we recognise that substitute decision-making may still be required in rare and exceptional cases where all possible options to support an older person to make their own decisions have been exhausted or are impossible.

We also note that people with very advanced dementia will also likely need a substitute decision maker, who ideally would be someone who knows the person well, has been the supported decision maker and is able to make decisions on behalf of the person informed by the person's previous decisions and their will and preferences. Special guidance/education is needed for persons making these decisions to ensure they align with the best interpretation of the principal's previous will and preferences, including any current indications of current will and preferences.

Substitute decision-making is generally not supported unless in extreme circumstances where there's no indication of will or preference and no context or history that might indicate what the principal's wishes are.

Recommendation 16: Reserve substitute decision-making for situations where the principal's will or preferences are currently unknown, and they lack, appropriately assessed, capacity to make that specific decision. However, a supported decision-making approach, in line with human rights and their previously known preferences must still be followed. (See Recommendation 11)

[2] UN General Assembly (2007). Convention on the Rights of Persons with Disabilities: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106.
[3] Ibid.

2. In what circumstances may it be appropriate for a principal's views, wishes and preferences to be given less weight by an attorney acting under a financial EPOA (such as undue influence, coercion or risk of significant harm)?
    - Should an attorney be required, in all instances, to follow the views, wishes and preferences of the principal (even if there is a high risk of significant harm to the principal's health or wellbeing)?

"Significant harm is very subjective and can be physical, emotional and spiritual. Humiliation, frustration and similar emotional damage can be inflicted because an individual does not believe they are listened to, or their preferences considered. Pure physical harm – quick death by jumping out of a plane without a parachute should be stopped, but slow suicide through smoking or over-imbibing in alcohol should be allowed as long as they are legal and affordable. An individual needs to be protected from going into debt or being unable to meet their financial obligations (housing/ food etc), but any discretionary money should be spent on their preferences, - e.g. smokes, pokies, matchbox cars – rather than things considered "appropriate" like extra clothing or WWII music when they want ACDC."

(Survey Respondent)

Qualitative reports from OPAN members indicate there was particular concern relating to the misuse of substitute decision-making powers. It was noted that individuals engaged as substitute decision-makers were often not aware of the responsibilities associated with their role, with many making decisions based on their own interests, or what they considered to be the best interest of the older person. We note the key to being a good substitute decision maker is adopting a human rights focus, keeping the older person informed and supporting them to participate in decision-making according to their wishes and preferences.

The term 'significant harm' Is very subjective and Is often Interpreted through the lens of what the "attorney" would consider significant harm as opposed to what the principal would consider 'significant harm'. The attorney must be required to investigate ways and means for them to continue to meet the wishes and preferences of the principal rather than automatically invoking decisions 'in the best interests.'

For example, someone who has never smoked could consider smoking significant harm and would prevent the purchase of cigarettes. To the principal, who has smoked their whole life and never indicated that they wanted to quit, smoking is

the continuation of something they want to do, despite any negative health consequences.

The principal may also have spent their whole life making donations to charity and want to continue this even though they may not have much money. The attorney will need to look at how they continue to uphold the person's wishes and preferences, while ensuring that there is enough money available to support the person. For example, reducing the number and amount of donations.

Recommendation 17: There are strict guidelines, obligations, checks and balances in place to ensure that when an attorney invokes making a decision to protect the principal from "significant harm", that it is indeed being made to protect the person rather than to align with the attorney's beliefs.

3. Should all types of attorneys (family members/friends, public trustees and private trustee companies) be subject to the same obligations, regardless of their relationship with and access to the principal?

Yes. For consistency and to give effect to the will and preference of the principal, all types of attorneys, whether family members, friends, public trustees, or private trustee companies, should be held to the same standards and obligations. This is especially important when considering that an overwhelming majority of perpetrators of elder abuse are sons and daughters of the victim.

Recommendation 18: Apply uniform obligations and standards to all types of attorneys, in light of the high incidence of elder abuse by family members, particularly adult children.

4. Is there a particular model law, an approach implemented in a jurisdiction, or an approach recommended in a particular inquiry which you consider provides the best framework to adopt for financial EPOAs?

In our view, the model should encompass the relationship between EPOAs and guardianship legislation. The Queensland framework is an example wherein the legislation governing powers of attorney and guardianship laws have been amended with regard to the other instrument. This allows for a more complete understanding of the alternative decision-makers who may be engaged in relation to a person who experiences a loss in decision-making capability.

Cultural Considerations

The proposed changes make no mention of how cultural considerations will be addressed. An example of this type of safeguard is section 11b of the Guardianship and Administration Act 2000 (Qld), which requires consideration of culture:

5 Maintenance of an adult's cultural and linguistic environment and values

(1) The importance of maintaining an adult's cultural and linguistic environment and set of values, including religious beliefs, must be considered.

(2) Without limiting subsection (1), for an adult who is an Aboriginal person or a Torres Strait Islander, the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment and set of values, including Aboriginal tradition or Island custom, must be considered.[4]

Supported Decision Making

IRELAND

The Republic of Ireland's supported decision-making legislation (namely the Assisted Decision-Making (Capacity) Act 2015), legislates how supported-decision making is to be enacted. Key aspects of the Ireland legislation that are relevant to EPOAs are:

- A presumption of capacity to make decisions and a functional test for assessment of decision-making capacity based on the decision that has to be made at that time.
- A new range of decision support arrangements:
    - Decision-making assistance agreement where the person requiring support making some of their own decisions nominates someone to support them in making decisions for themselves through gathering information and helping them understand it.
    - Co-decision-making agreement where a person who finds it difficult to make certain decisions on their own, or may shortly be unable to do so, chooses someone to make decisions jointly with them.
    - Decision-making representation order where a person can't make certain decisions on their own or with somebody else's support, the Circuit Court may appoint a decision-making representative.

The establishment of a Decision Support Service that will:

- regulate and register decision support arrangements,
- supervise the actions of decision supporters,
- maintain a panel of experts who will act as decision-making, representatives, special and general visitors,
- review and investigate complaints made under the Act,

[4] Queensland Government, Queensland Legislation, Guardianship and Administration Act 2000, https://www.legislation.qld.gov.au/view/html/inforce/current/act-2000-008

- promote awareness and provide information about the Act,

The introduction of specific criminal offences relating to decision support arrangements, enduring powers of attorney and advance healthcare directives.[5]

NEW YORK

Included in the New York legislation relating to supported decision making, are mandated requirements for Supported Decision-Making Agreements. The benefit of mandating requirements for such an agreement in legislation, is that the law imposes a legal obligation on third parties to accept decisions made pursuant to an agreement and, in return, grant corresponding immunity from liability for good faith acceptance. Under the New York legislation, if an agreement made by a decision-maker meets the statutory requirements, then third parties are obligated to accept the capacity of the decision-maker and give full legal effect to their decisions made pursuant to that agreement, unless the third party has reasonable cause to believe that the decision is the product of exploitation or abuse. A person who in good faith relies on a decision made pursuant to an agreement will not be subject to civil or criminal liability, or to discipline for unprofessional conduct."[6] [7]

12. Jurisdiction, Compensation and Penalties

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

This is a challenge in all states and territories with the volume of guardianship and attorney related applications leading to access to justice issues. We recommend that commonwealth government continue to explore the introduction of nationally consistent tribunal practices in relation to these issues. In addition, the government could consider implementation of a national guardianship/attorney tribunal, which would overcome jurisdictional inconsistencies.

---

[5] Citizens Information, Assisted Decision Making (Capacity) Act 2015, https://www.citizensinformation.ie/en/health/legal-matters-and-health/assisted-decision-making-act/

[6] Supported Decision-Making New York (SDMNY) (2021). Principles for an Initial Supported Decision-Making Agreement (SDMA) Law. https://sdmny.org/supported-decision-making-legislation/principles-for-supported-decision-making-agreements-in-new-york/principles-for-a-supported-decision-making-agreement-sdma-law-long/

[7] 2022 New York Laws, MHY - Mental Hygiene, Title E - General Provisions, Article 82 - Supported Decision-Making https://law.justia.com/codes/new-york/2022/mhy/title-e/article-82/

Low-cost channels of dispute resolution, as a precursor to court processes, would help reduce the cost and complexity of addressing potential breaches of attorney duties. We would welcome the exploration of what options can be delivered to enhance access to justice.

In New South Wales, principals and their legal representative need to bring an action in the Equity Division of the Supreme Court of NSW for compensation for breach of an attorney's fiduciary obligations. This often takes several years and is a stressful process.

It would be beneficial to principals for the quick and just resolution of disputes if the respective State and Territory Tribunals have the authority to make awards of compensation against attorneys who breached their obligations. This would be in addition to their current authority to remove an attorney who had breached their obligations and appoint a new Financial Manager.

Recommendation 19: Access to Justice provisions need referencing in the obligations of the attorney, and they need to be aware of it when they sign their acceptance.

2. Feedback is sought on whether the proposed approach to compensation and offences is sufficient or requires further elements, to address particular trends for either principals or attorneys which you are aware of

The proposed approach is sufficient, provided that the key focus of determining disputes rests with State and Territory tribunals, rather than requiring claimants to file in superior courts.

13. Information, Training and Resources

"More information needs to be given to the principal as to what constitutes abuse and what rights the principal has, and this must be given at the time of creating an EPOA, prior to signing."

(Survey Respondent)

1. Feedback is sought on the resources, assistance and guidance which should be made available to assist witnesses, attorneys and principles to undertake their roles under financial EPOAs.

"A thorough and sustained public education program should be developed and named as part of the scheme. This education program should be targeted not only at potential principles and attorney's but also a targeted more widely at the general community."

(COTA South Australia)

The government needs to launch a national public awareness campaign to promote understanding of what an EPOA is and the roles and responsibilities of the principal and attorney. This includes resources and information in a range of formats and languages and addressing any specific cultural considerations.

In addition, one set of national, person-centred, education materials including accessible videos and fact sheets should be developed and provided to principals, attorneys, and witnesses.

it is essential that attorneys are educated and skilled in using supported decision making.

Recommendation 20: Provide one set of national education materials including accessible videos and fact sheets. This material should be provided for principals, attorneys and witnesses. For example, a simple 3-minute video should be able to capture information for principals prior to them entering an EPOA (like listening to a contract disclosure

Recommendation 21: Provide nationally consistent and clear advice and guidelines for people considering giving consent for an EPOA. This can be provided in a range of formats including video and languages (including Aboriginal and Torres Strait Islander languages)

2. Do you consider voluntary online training modules as being a suitable path to explore further, as a way to inform and support principals, attorneys and witnesses?

"(Enduring Powers of Attorney) need to strike a balance between simplicity and ease of access and operation on one hand and adequate protections and safeguards to prevent abuse."

(COTA South Australia submission to draft Powers of Attorney Bill 2021)

Both COTA and OPAN agree there needs to be a degree of mandatory education, endorsed by the witness as having occurred. Voluntary activities tend to be completed by those who are wanting to do the right thing by the principal and are unlikely to be done by those who do not or who do not believe "they need to do the training as they know what is involved".

The witness for acceptance by an attorney or principal must attest to such education being provided, and the attorney or principal must acknowledge they have completed it.

However, there are a range of views about the length, mode and practicality of the format of education to be provided including:

- a short mandatory initial course, with different courses targeted at the different roles and responsibilities, for principals, attorneys and witnesses that must be completed prior to the principal accepting the EPOA.
- A short video outlining key concepts with links to further information.
- A pamphlet describing key responsibilities of the role and how to remove themselves from the role in the future should it be necessary.

Any approach to mandatory education must be able to be conducted in a low/free cost manner, be self-directed and not be reliant on the involvement of a legal practitioner.

3. Feedback is sought on whether you are aware of particularly useful resources for witnesses, attorneys and principles, which you would recommend be considered as a resource across jurisdictions.

In New South Wales, useful resources include:

- Law Society Capacity Guidelines
- Capacity Toolkit (NSW Department of Communities and Justice

In addition, useful resources include:

- ADA Law Decision Making Resources: https://adalaw.com.au/decision-making/
- ACT Disability, Aged and Care Advocacy: https://adacas.org.au/advocacy-support/supported-decision-making/

4. Should there be any monitoring and/or reporting of training for witnesses, attorneys and principals?

There should be yearly ongoing monitoring and reporting of training for attorneys on their obligations and duties as an attorney.

A principal will receive advice at the time of appointing their attorney and as it is their rights that they are entrusting another with, no ongoing training would be required.

Witnesses, due to their qualifications as Australian legal practitioners or other prescribed witnesses, would not need additional ongoing training as this is already required to maintain their ability to practice law or continue in their role as a prescribed witness.

5. How can witnesses, attorney and principals be encouraged to undertake training, including any ongoing/refresher training?

Training should be mandatory for attorneys. Through the creation of a national register of EPOA, yearly reminders to complete the required training could be sent to attorneys with a requirement that they confirm that training has been completed. The consequence for not completing ongoing training, could be the revocation of their ability to continue to act as attorney, until such training is completed, or a new appointment is made by the principal.

14. Conclusion

A nationally consistent framework and process should prioritise convenience for the principal and ensure their will and preferences are respected while strengthening safeguards against potential misuse of EPOAs.

A single nationally consistent EPOA form must be developed to ensure ease of implementation of the model provisions, along with a nationally consistent education package.

There must be nationally consistent and clear advice and guidelines on all elements of the EPOA process including consent, witnessing, appointment, revocation, and eligibility requirements and duties of attorneys. To assist with consistency distinctions and disparities between general and enduring POAs should also be removed.

There is a need to strengthen and improve witnessing requirements including the need for two authorised witnesses to approve an EPOA. Criteria to ensure witnesses are adequately qualified to assess decision-making capacity need to be tightened. In addition, prescribed resources can be improved by including clear information on reporting misuse or elder abuse and outlining the principals' rights and risks.

Revocation of an EPOA needs to be flexible including providing a letter or agreement to revoke after a video conference and requiring only one authorised witness for revocation.

There must be a requirement for attorneys to regularly meet with and demonstrate understanding of the wishes and preferences of the principal. A Supported Decision-Making Framework needs to be embedded in the model provision.

Consideration must be given to developing a consistent form and information resources (including videos, audio formats) in plain language for principals and attorneys guiding the acceptance of appointment of an attorney, including their obligations and responsibilities. This should detail duties, advice-seeking, penalties, communication, record-keeping, and rights, in line with legal requirements. Resources should also be available in multiple community languages.

Finally, a clear process to resolve conflicts between EPOAs and principals including options for mediation and availability and access to an independent advocate is also needed.

Appendix A: Survey

To help inform this submission COTA and OPAN ran a survey seeking the views of older people.

1056 older people completed the survey:

- Mostly aged 60-85
- 17 people Identified as First Nations
- 20% live with disability.
- Over half were carer, family member or friend of an older person.
- 30% lived in regional area.
- 44 from a culturally and linguistically diverse background
- 5% from LGBTQ+ communities

Of respondents 72% identified as 72% female/woman and 27% male/man.

In terms of knowledge and experience of EPOAS:

- 35% have been appointed as an enduring power of attorney for an older person. Of these over 85% identified as women/female
- 12% are considering appointing an EPOA but have not done so yet.
- 44% have appointed an EPOA.
- 10% have witnessed an EPOA.

The full results of the survey will be published on www.cota.org.au