

More work needed to assist people requiring a financial decision-maker and to help protect Australians from the possibility of being financially abused

Sydney, 17 July 2015: Nationally-consistent power of attorney laws and a national register is needed to protect the interests of vulnerable and older Australians, a new report shows.

The report, [*Policies and practices of financial institutions around substitute decision making*](#), by the University of Western Sydney (UWS), Cognitive Decline Partnership Centre (CDPC) and Council on the Ageing NSW (COTA NSW) looks at the arrangements in place when someone appoints another person to make financial decisions on their behalf. It highlights the problems that occur with legislation differing between states and territories and how this impacts on consumer awareness and interaction with financial institutions.

ABA Chief Executive Steven Münchenberg said: “Banks have a role in ensuring there are appropriate safeguards in relation to customers’ financial decision making. To help prevent financial abuse, customers need to be aware of their options when they need support to make financial decisions.

“Powers of attorney are important to help protect customers. In addition to this substitute decision making tool, banks have other decision making options, such as two-to-sign accounts, for customers who want to retain their financial independence but need a bit of help.”

CDPC Director and Chief Investigator Professor Susan Kurrle said: “Planning for the possibility of cognitive decline, and the financial consequences of this, is not common practice. Consequently, only a small proportion of people have in place a formal substitute decision making tool.

“One of the many problems associated with powers of attorney is that in NSW they are not required to be registered, unless the attorney wishes to engage in property dealings. Therefore, no-one knows how many are in existence, or if the document is the most recent, or even if it is actually a valid document,” she said.

UWS Adjunct Fellow in Elder Law Sue Field said: “The report shows the need for changes to existing laws and wider community education on the use of power of attorneys.

“Laws related to substitute decision making tools for consumers should be harmonised across states and territories to make it easier to understand for Australians.

“A national register would also help banks, financial institutions and other service providers verify the authority of a power of attorney or court appointed administrator,” she said.

Chief Executive of COTA NSW Ian Day said: “We know the number of Australians aged 65 and over will more than double by 2055. These consumers need to have their needs met, and initiatives like this are very welcome.”

Mr Münchenberg said a shared effort was required from governments, business and the community to protect the financial interests of older Australians, particularly those with cognitive impairment or other decision making challenges.

The banking industry has information to help bank staff be aware of the risks of financial abuse in their dealings with customers, including a guideline on responding to requests from a power of attorney or court-appointed administrator. A fact sheet for customers is also available on setting up power of attorney arrangements to manage their banking needs. For more details, visit the ABA [website](#).

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Notes to editors: A power of attorney is a legal document that gives someone the right to make financial and/or legal decisions on behalf of another person.

A **general power of attorney** operates for a particular period of time or for a particular purpose. This is useful if a customer wants to put a temporary formal arrangement for a specific purpose in place, or an arrangement for a defined period of time.

An **enduring power of attorney** is designed to commence once the attorney has accepted his/her appointment or at a later time specified. Unlike a general power of attorney, this type of authority remains valid even when the customer may no longer be capable of making their own decisions.

Guardianship involves making *personal, medical and lifestyle decisions*. A court or tribunal authorises a guardian to make decisions about a person's work, living arrangements or medical care and treatment.

There are differences between formal substitute decision making legislation in the various states and territories in Australia, as outlined below:

	Power of attorney (general or enduring)	Registration of enduring power of attorney	Recognition of enduring powers of attorney made elsewhere in Australia
Australian Capital Territory	Enduring power of attorney can also be set up to make lifestyle and/or medical decisions	Not required	Recognised
New South Wales	Limited to financial and legal decisions	Not required	Recognised
Northern Territory	Limited to financial and legal decisions	Must be registered before they can carry out their duties	Recognised
Queensland	Enduring power of attorney can also be set up to make lifestyle and/or medical decisions	Not required	Recognised
South Australia	Limited to financial and legal decisions	Not required	Recognised
Tasmania	Limited to financial and legal decisions	Must be registered before they can carry out their duties	Recognised
Victoria	The <i>Power of Attorney Act 2014</i> ¹ will consolidate an enduring power of attorney and an enduring power of guardianship into a single enduring power of attorney with powers for either financial and/or personal matters	Not required	Recognised
Western Australia	Limited to financial and legal decisions	Not required	Recognised

¹ The Act will commence on or before 1 September 2015.

Australian Bankers' Association (ABA): With the active participation of 24 national, regional and multinational member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. We work with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australian banking customers continue to benefit from a healthy, stable and competitive banking industry.

Cognitive Decline Partnership Centre (CDPC): The CDPC is a \$25 million partnership between academics, industry partners and Alzheimer's Australia with the aim to change policy, systems and practice, improving the lives of people living with dementia and cognitive decline. For more details on CDPC activities visit the CDPC website – www.sydney.edu.au/medicine/cdpc/.

COTA NSW: Council on the Ageing NSW is the peak body representing people over 50 in NSW. It is an independent, non-government organisation that works with government, policy makers, service providers and the media to promote the interests of older people. It also delivers adult education programs. Further information can be found at www.cotansw.com.au.