

**TASMANIA**

**LAW REFORM**

---

**INSTITUTE**

Faculty of Law, Private Bag 89, Hobart, TAS 7001  
T: (03) 6226 2069, F: (03) 6226 7623

16 November 2023

Attorney-General's Department  
Attn: Protecting the Rights of Older Australians Section  
3 – 5 National Circuit  
CANBERRA ACT 2600

To whom it may concern,

**Submission to Consultation Paper: *Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney***

Thank you for the opportunity to make a submission to the consultation on Financial Enduring Powers of Attorney. This submission was prepared for the Tasmania Law Reform Institute (TLRI) by Dr Nina Hudson, Senior Research Fellow.

The TLRI is currently undertaking a project that examines the legal landscape for safeguarding against the abuse of older Tasmanians and will prepare a Research Paper based on an analysis of the legal position in Tasmania and empirical research, including interviews with stakeholders. The TLRI's project will also compare Tasmania with other Australian jurisdictions, encompassing a review of the approaches taken in other Australian jurisdictions to address identified gaps in detecting, investigating and respond to abuse and barriers to safeguarding the legal rights and interests of older people. The Research Paper will contain the TLRI's findings from this research and proposals for reform to promote the legal rights and interests of older Tasmanians. The TLRI plans to release the Research Paper by August 2024.

As observed in the Consultation Paper, the protection of the legal rights and interests of older people is a growing area for law and policy reform, nationally and in Tasmania. This has been prompted by increasing awareness of and concerns regarding the prevalence of abuse in a range of settings, including institutions and personal and family relationships. Abuse of older persons, as noted, can take many forms including financial abuse. It is also well recognised that the abuse of older people often goes unnoticed or unreported or is deliberately hidden, meaning we do not have a clear picture of its true prevalence. Left unaddressed, this is likely to increase

given the ageing population, globally and in Australia. In Tasmania, the aging population presents significant risk factors for abuse of its older community members.<sup>1</sup> The number of older people in Tasmania has increased over the past 10 years.<sup>2</sup> In 2019, Tasmania had the highest median rate age and the fastest ageing population structure of all Australian states and territories.<sup>3</sup> This was similarly observed in 2022 and this trend is expected to continue. At the end of 2022, of the 571,540 Tasmanians, 20.8 per cent were aged more than 65 years and 40.6 percent were aged more than 50 years.<sup>4</sup>

The TLRI's research aims to address the need for further research on issues specific to the Tasmanian context, in particular the effectiveness of different intersecting legal frameworks to safeguard against and support help-seeking for abuse. Relevant to the AG's consultation paper, the law in relation to powers of attorneys has been identified as an area of concern in the preliminary scoping research for the TLRI project, and the TLRI will examine the operation of the *Powers of Attorney Act 2000* (Tas). It has been noted that, currently, there is no adequate complaint mechanism or oversight body for the protection of older Tasmanians considering the limited powers of existing agencies and bodies, such as Tasmania Police, the Public Guardian, the Public Trustee, the Tasmanian Civil and Administrative Tribunal (TASCAT), the Ombudsman and the criminal and civil courts.<sup>5</sup> This observation is potentially applicable to financial abuse arising from the misuse of powers of attorney, as well as the abuse of older people more generally.

At this time, the findings from the TLRI project are not available. However, once completed, the research may usefully inform future analyses of powers of attorney, including those conducted by the Standing Council of Attorney-General.

Kind regards



Prof. Jeremy Prichard

Director

---

<sup>1</sup> Suanne Lawrence, Susan Banks and Terese Henning, *Service Driven Approaches to Preventing and Responding to Elder Abuse in Tasmania (SAPEA)* (Summary of Factors and Responses from SAPEA\_South and SAPEA\_North Reports) (2021).

<sup>2</sup> Department of Premier and Cabinet, Tasmanian Government, *Lifelong Respect: Tasmania's Strategy to End the Abuse of Older People (Elder Abuse) 2023–2029* (2023) 4.

<sup>3</sup> Australian Bureau of Statistics, *National, State and Territory Population, December 2019* (Catalogue No 3101, 18 June 2020).

<sup>4</sup> Australian Bureau of Statistics, *National, State and Territory Population, December 2022* (Catalogue No 3101, 15 June 2023).

<sup>5</sup> Coroner Olivia McTaggart, 'FINDINGS and RECOMMENDATIONS of Coroner Olivia McTaggart Following the Holding of an Inquest under the *Coroners Act* 1995 into the Death of: Janet Lois Mackozdi' (2018) [194]–[195].