



FINANCIAL
SERVICES
INSTITUTE
of Australasia

27 February 2017

By email
elder_abuse@alrc.gov.au

Dear ALRC Executive Director,

Re: Australian Law Reform Commission Discussion Paper 'Elder Abuse'

Finsia welcomes the release of 'Elder Abuse (DP 83)' and congratulates the ALRC on the comprehensiveness of the proposals for reform. Finsia thanks the ALRC for the opportunity to provide comment on the discussion paper.

In preparing a submission for the commission's August 2016 issues paper Finsia consulted with its members in the financial advice, funds management and retail banking industries.

It was clear from this consultation that the issue of financial elder abuse is one of deep concern to professionals across financial services, and that procedures for reporting and referral were often ad hoc, unclear and overly reliant on the competence and confidence of frontline staff.

Additionally, it was clear that there was little information about the prevalence of financial elder abuse and that this impeded the ability of financial institutions to respond appropriately.

Further, the trend of rising population longevity combined with increasing reliance on the superannuation savings pool to fund healthcare, household and lifestyle expenses in retirement and old age raises significant challenges for the financial services industry.

In this response Finsia comments on the proposals relating to prevalence studies, enduring powers of attorney, and the questions raised by the commission about the self managed superannuation sector.

Finsia welcomes the opportunity to contribute to further policy development in this area.

Please refer any future enquiries to Caroline Falshaw, Head of Industry Affairs and policy: c.falshaw@finsia.com

With kind regards,

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National prevalence study

Finsia supports the commissioning of a prevalence study of elder abuse, particularly financial elder abuse, as this information will assist in future policy development.

Enduring powers of attorney

Finsia supports the development of a national online register of enduring documents as outlined in proposal 5-1.

Financial services professionals such as financial planners who act under enduring power of attorney on behalf of clients should have access to this register to verify the currency of documents (question 5-2).

Enduring documents should not be deemed valid until and unless they are registered. This reform will address concerns in the current system about the currency of enduring documents (proposal 5-2).

Finsia supports transitional arrangements that allow existing enduring documents to be registered, and ensure that unregistered enduring documents remain valid for a prescribed period (proposal 5-3).

While Finsia in principle supports powers for public advocates and guardians to conduct random checks of enduring attorney's management of principals' financial affairs, this must be supported by a robust framework for referring complaints (question 5-2).

Finsia supports the remaining proposals made by the ALRC in chapter 5 of the discussion paper. Proposal 5-10, which calls for the introduction of nationally consistent laws governing enduring powers of attorney, in particular is to be commended.

Banks and superannuation

Code of Banking Practice

Finsia supports the proposals to strengthen the Code of Banking Practice outlined in the discussion paper.

Finsia members agreed that elder abuse should have a similar status under the Code as financial hardship. Under the Code, banks are required to inform customers when the hardship provisions of the Code or National Credit Code may apply to a customer's circumstances. Bank staff are trained in the hardship provisions of both the Code and the National Credit Code.

Finsia agrees that the Code is the appropriate vehicle for enumerating what is required of banks in responding to financial elder abuse and the training of bank staff.

Superannuation

Finsia agrees with the ALRC's approach of expanding protections in relation to enduring powers of attorney as the best means of improving outcomes for elders in APRA-regulated funds.

The self managed superannuation fund (SMSF) sector, however, poses additional challenges to policy makers because of the status of these funds as self-directed.

In its response to the issues paper, Finsia stated that the issues affecting the SMSF sector are a 'silent tsunami'. This is because the SMSF sector's growth is occurring alongside demographic changes in the form of population ageing and increasing longevity.

Cognitive decline — beyond diagnosis of degenerative conditions such as Alzheimer's — is a significant issue in ageing populations, with research starting to uncover the impact of cognitive decline on financial decision making. The challenge for policy-makers is to balance respect for personal autonomy with protections for vulnerable groups. Nowhere is this challenge more visible than in the self managed superannuation sector.

Finsia members that provided feedback on the discussion paper supported the suggestion that the *Superannuation Industry (Supervision) Act* be amended to require that all self managed super funds have a corporate trustee (question 7-1). Further, they suggest that the company be sole purpose.

Finsia agrees with the suggestion that there are prescribed arrangements for the management of an SMSF in the event that a trustee loses capacity (question 7-1). This is particularly important for unadvised persons with SMSFs that are using off-the-shelf products.

Finsia also agrees that additional compliance obligations should be applied to assist with the correct use of SMSF funds.

Further, Finsia members agree that there may be a role for the Superannuation Complaints Tribunal in the areas described by the commission (for example, as a low cost forum for disputes where an SMSF member is no longer a trustee due to a loss of decision-making ability).

In our consultation with Finsia members it was noted that a number of firms do not allow advisers to provide advice to SMSF clients unless they have a SMSF specialist accreditation. This should be the standard industry wide (question 7-2).

It is noted that ASIC's regulatory guide 146 presently requires persons advising on SMSFs to have completed the tier 1 requirements for superannuation. The quality of advice would be improved by mandating specialist education and training of SMSF advisers.

Further thoughts

While it was not in the remit of the ALRC inquiry, Finsia members noted that financial elder abuse also occurs within aged care facilities — for example, in fees and charges for extra services that cannot be utilised by residents. Another example given was of not offering residential respite days as a transition to permanent residential aged care when this would be less costly for elders with limited financial means. A prevalence study of elder abuse potentially could investigate the prevalence of these forms of financial elder abuse.

Finsia members also observed that while reform to protect elders from financial abuse is timely, disabled persons are similarly vulnerable to financial abuse and are a community that deserve protection. Amendments to the Code of Banking Practice suggested by the commission potentially could encompass disabled persons.

Finally, the issues raised by the ALRC inquiry point to the need for fiduciary-bound trustee services trained in third age advice issues such as aged care accommodation to be made available in numbers that are affordable and accessible to all. This should be seen as part and parcel of a holistic response to the financial needs of an ageing population that includes the national register of enduring powers of attorney, changes to the Code of Banking Practice and enhanced protections for the SMSF sector.