



THE UNIVERSITY
of ADELAIDE

South Australian Law Reform Institute

Powers of Attorney

Summary List of Discussion Questions

The use of Powers of Attorney in South Australia and Guiding Law (Factsheet 2)

1. How widely are POAs used?
2. How can the use of POAs be promoted?
3. What are the barriers to making POAs?
4. How does the *POA Act* compare to other Powers of Attorneys laws in Australia? What are its benefits/disadvantages?
5. Should guiding principles be introduced in the *POA Act*?
6. How can the *POA Act* be simplified?
7. What are the issues with POA forms?
8. Should it be mandatory to use the standard POA forms?
9. Are the formal requirements for creating POAs suitable?
10. How many witnesses should be required to witness a POA document?
11. Should witnesses have to explicitly attest to the principal's capacity?
12. What qualifications (if any) should a witness hold?
13. Who should be disqualified from being a witness?
14. How can witnesses be supported in their role?

The Principal's Legal Capacity (Factsheet 3)

1. How should capacity be defined?
2. Should the test in the 1870 case of *Banks v Goodfellow* continue to be the relevant test for assessing capacity?
3. Who should be making the capacity assessment for the creation and activation of a POA?
4. How can the principal's rights be protected when assessing capacity?
5. Should there be principles to guide capacity assessment?
6. What evidence should be required to create or activate an enduring Power of Attorney?
7. Is there sufficient guidance and support for those making the assessment?

The role of the attorney in South Australia (Factsheet 4)

1. Who is an appropriate attorney?
2. How many attorneys should a principal be able to appoint?
3. What are the issues arising with multiple and alternative attorneys?
4. What are the powers and duties of attorneys and are they understood by the public?

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5. How can attorneys' understanding of their role, powers and duties be increased?
 6. Should there be requisite competencies that an attorney should demonstrate prior to appointment?
 7. Should it be mandatory to appoint two attorneys - one of whom is a professional (allied health)?
 8. Should any of the following become statutory limitations of an attorney's power?
 - a. the principal and/or another nominated individual, receive copies of account statements on a regular basis;
 - b. prior to certain transactions, such as sale of property, the attorney consult with nominated persons;
 - c. that the principal's finances be audited annually, with a report sent to nominated persons;
 - d. that the principal undertake a capacity assessment, once deemed legally incapacitated; or
 - e. other?

Abuse of Powers of Attorney - Current Legal and Practical Remedies (Factsheet 5)

1. What is the level of abuse of POAs?
2. How are POAs abused?
3. Who are the victims?
4. Who are the perpetrators?
5. How can abuses of POAs be better detected, reported and investigated?
 - a. Should a referral system as outlined in the *ACD Act* be applied in the context of POAs?
6. What mechanisms can be implemented to provide oversight of an attorney's conduct, to identify and address abuse?
7. What measures should be implemented to prevent abuses?
8. How can data collection processes be improved to obtain accurate figures of abuse?
9. What measures can be adopted to better protect vulnerable populations, specifically CALD individuals and Indigenous and Torres Strait Islander individuals?
10. Are the current legal remedies adequate?
11. How might the existing legal remedies be improved/reformed in order to prevent abuse?
12. Are the practical remedies being used?
13. How useful are the practical remedies in preventing abuse?
14. Should any of the practical remedies become a legal remedy?

Register of Powers of Attorney in South Australia (Factsheet 6)

1. Should South Australia introduce a compulsory register of POAs?
2. Should registration be national or state-based?
3. What are the benefits and risks of introducing a register?
4. Should registration be compulsory upon initial creation or when the principal loses decision-making capacity?
5. Should there be a notification scheme as in England / Wales where designated persons are notified once the attorney attempts to first exercise their powers?
6. What information should be included in the register?
7. Who should have access to the register?

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8. Where should the register be located?
 9. Will the costs of registration deter principals from creating POAs?
 10. Should registration be online and/ or in person?
 11. Should the registration body take on the role of ensuring POAs are correctly executed?
 12. Will the register help to detect fraud?

Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice we encourage you to speak to a lawyer and/or contact a community legal service.

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