Paper Title: Enduring powers of attorney and guardianship in Japan: why the slow start?

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Abstract
Japan is a rapidly ageing nation, which brings with it multiple challenges at all levels of society. Enduring powers of attorney and guardianship is a major recent addition to Japan’s legal infrastructure for an ageing society. It seeks to blend paternalism with the capacity of private law to maximise autonomy. Based on contract, enduring powers have the capacity to respond to the diverse needs and intentions of individuals suffering light dementia or concerned with future possible dementia. It allows a person to choose a trusted person or corporation to make substituted decisions in the event of mental incapacity. This is appealing to an increasing number of elderly persons without suitable family members for reasons of demography, personal choice, and even fraud and abuse within the family. It is also consistent with broader attempts by the Japanese state to combat fraud against the elderly and secure the assistance of civil society in meeting the welfare needs of an ageing society.

Despite its apparent advantages, the number of registered contracts for enduring powers of attorney and guardianship is low relative to common law jurisdictions. Moreover, some reformers are disappointed with what they regard as the over-representation of family members in such contracts. This paper will explore through a comparative analysis with Australian jurisdictions possible doctrinal, cultural, and structural reasons that might explain why enduring powers of attorney and guardianship have not been enthusiastically embraced by the Japanese public. Doctrinal factors include the vexed question of capacity to enter such contracts and the interaction between enduring powers of attorney and guardianship and traditional statutory adult guardianship. Cultural factors may include the perceived reluctance that Japanese people have of ordering their personal affairs through law. Structural factors include the procedures required to establish enduring powers of attorney and guardianship and the framework for monitoring and regulating the formation and implementation of such agreements.