

STANDING COMMITTEE ON SOCIAL ISSUES
Inquiry into Substitute Decision-Making for People Lacking Capacity

2. An inquiry participant who has for some time operated bank accounts on behalf of his disabled son under an informal arrangement has described recent difficulties as a result of stricter bank policies to combat money laundering and terrorism. In order to modify or close any accounts he is now required to obtain a Guardianship Order from the Guardianship Tribunal.¹

- **Are you aware of similar problems occurring for other informal guardians as a result of stricter bank policies?**

NSWTG is certainly aware of the impact of anti-money laundering and terrorism legislation. At an organisational level such as our own, we have recently concluded an extensive submission along with fellow state trustees around Australia to seek exemption under the legislation. However, I am not aware of individual cases where people in private life have been restricted or required to apply for a financial management order as a result of the new legislation described. I have made enquiries within the organisation and in other venues and the views obtained suggest that it has always been the case that some form of legal document such as an Enduring Power of Attorney (EPOA) or financial management order is required to withdraw funds or otherwise operate a person's bank account if the disabled person is the only signatory on the account and lacks the capacity to give another person their EPOA. The money laundering and terrorism legislation does have an impact on the information required to open a bank account but this would appear to be a separate issue to the question in this case.

- **Is there an alternative to a Guardianship order for parents or other informal guardians who find themselves in this position?**

The question strengthens the importance of pre-planning and the use of EPOA's, wherever possible. In cases where a person's disability prevented them from ever having the capacity to grant an EPOA, it is possible to open an account in trust for the person and Centrelink have criteria that they apply in situations where benefits are to be provided to someone on behalf of another person. The alternative to these options is a Financial Management Order as opposed to a Guardianship Order, which gives the authority to make substitute decisions that are not financial. If this issue persists and becomes a significant impediment I would respectfully suggest that the only way to deal with it is a carefully constructed approach to the Federal Government for either amendment to the legislation or a review of policies associated with the legislation to ensure that entirely innocent individuals are not caught up in a net that has been constructed to curb the behaviour of a minority.

¹ Submission 38, Mr Grahame Thomas and Mrs Denise Thomas, pp 1-3

5. The Auditor-General's Report to Parliament 2003 Volume Two 13, Audit of Fraud Prevention Procedures at the Office of the Protective Commissioner recommended that the Office of the Protective Commissioner continuously monitor and improve controls over high-risk areas and establish its own independent audit committee to oversight its fraud controls strategy. Have any measures been taken to action these recommendations?

The former Office of the Protective Commissioner (OPC) had an operating audit committee which was reviewed in 2007, shortly after my appointment to the position. At that time the committee was enhanced in its membership and an independent chair appointed. From July 2009, onwards all public sector organisations are required to establish independent audit committees within the framework of newly promulgated principles. As the NSWGTG represents a new organisation, bringing together two pre-existing organisations both with independent audit committees, an entirely new committee is being established. The committee will consist of five members, the majority of whom are independent and selected from the pre-approved and qualified list provided by the Department of Premier and Cabinet. In addition to the committee structure and establishment of a new committee, the former Office of the Protective Commissioner had undertaken a rigorous program of audits conducted by Walter Turnbull, the Attorney General's Department's internal auditor and smaller ongoing and random audits conducted via the Audit and Quality Control Branch within OPC. Audits are viewed as an essential opportunity to not only review and ensure the presence of fraud control strategies but an opportunity to review all policies and procedures that relate to both client and corporate activities.

Question from Dr John Kaye taken on notice re: availability of data from trustee organisations to show the financial benefit they receive from the clients they privately manage.

I have contacted my colleagues in the Trustee Corporations Association of Australia who have advised me that data is not collected by them from members on their total income or income earned from a particular area of their business. When I made enquiries about this issue it was suggested that this could be considered commercial in confidence information.

Question from the Hon. Michael Veitch re: searches undertaken by NSWGTG for any unclaimed lottery winnings owed to NSWGTG clients.

NSWGTG conducts a number of searches to establish the extent of a protected person's estate. A search is carried out of banks and other financial institutions to locate investments and superannuation, property searches are made to locate real estate and searches are also done with the Office of State Revenue for any unclaimed monies. Searches for possible unclaimed lottery wins are

only carried out where the office is made aware that a client may be a lottery winner. In response to this question my staff has been in contact with NSW Lotteries who confirm that they are able to do a search for unclaimed lottery wins in situations where a person is registered with NSW Lotteries. If the person is not registered then they would have to be able to produce the winning ticket to claim any monies. NSW TG will include a search for unclaimed Lotteries through NSW Lotteries as part of the Intake procedure for new clients.



Imelda Dodds

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