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Received by

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Law Reform for Elder Abuse

We refer to our Submission to the Elder Abuse Enquiry of the Legislative Council. In our submission we make a number of recommendations. I take this opportunity to highlight some important recommendations to you.

Domestic Violence and Physical and Verbal Abuse

Elder abuse in the home may be perpetrated in a domestic environment in a number of different ways.

An adult child may return home to live with an older person rent free. The adult child may have alcohol, drug or gambling or dependency issues and the older person is vulnerable and unable to evict their child.

An older person may receive threats from spouses. We had one call where the spouse had said to the older person "I will put a knife right through you".

We get calls from carers of partners with diagnosis of dementia and the partners are exhibiting aggressive behaviors. The older person / carer needs support in managing solutions for these behaviors and to find appropriate aged care.

Older people also live in department of housing complexes and are abused by neighboring tenants who have complex mental health issues. The Tenants Union does not have resources to assist with all these cases and SRS assists where it can.

Recommendation

We recommend that the Police Force would have vulnerable persons officers present within each area of command who are familiar with considerations which relate to domestic violence and abuse of the elderly. These officers should be aware of Elder Abuse Protocols and capacity of victim (are they able to give evidence? If not what other protections can be afforded to the older person?). Clients may be intimidated by their abuser to not make complaints, and care and consideration should be provided by fully trained officers specializing in this area, to deal with these issues.

Granny Flats

There is a systemic problem where an older person commits a contribution to a child's property in return for the right to reside there for life. This contribution might be a monetary contribution towards the child's mortgage or building extensions to the property or a separate granny flat. The older person is often not on the legal title. The relationship breaks down and the older person is asked to leave. The only legal remedy in NSW to get their contribution back is to commence proceedings in Supreme Court in equity to establish a resulting trust, constructive trust or equitable estoppel, protected by a caveat on the property, which can sometimes result in expensive and lengthy proceedings.

Recommendation

It is submitted legislation be prepared setting out model provisions for preparation of family agreements.

We also recommend new legislation setting up jurisdiction in the NSW Civil and Administrative Tribunal to dissolve agreements that are not working and make compensation payments to older persons similar to the Victorian Civil and Administrative Tribunal.

Enduring Power of Attorney

We receive a lot of calls at our service about attorney's acting outside the scope of their powers. Attorneys are not permitted to spend the older persons funds on themselves unless expressly authorized in the prescribed form of Power of Attorney under Schedule 2 of the Power of Attorney Regulation 2011. The obligations of the attorney to the older person are also set out in the prescribed form in Schedule 2 of the Power of Attorney Regulation 2011.

Recommendation

We recommend that there be a system of registration of enduring power of attorney and revocation of enduring power of attorney.

We recommend attorney's be required to submit accounts every 6 to 12 months to account for an older person's assets.

We recommend offences be introduced into the Powers of Attorney Act 2003 (NSW) as a deterrent to any abuse. This could involve reinstating section 169 of the Criminal Code that created an offence for fraudulent misappropriation by an attorney of a person's property which was repealed by the *Crimes Amendment (Fraud Identity and Forgery Offences) Act 2009 NSW No 99 Sch 2* or similar provisions to that incorporated in the *Power of Attorney Act 1988 (Qld) (s66, 71, 73 and 74)*.