

Answers to questions on notice - Dr Sue Field - Adjunct fellow of Law - Western Sydney University - received 18 December 2015

Trim: D16/14170

General Purpose Standing Committee No. 2

Inquiry into Elder Abuse in New South Wales

Questions on Notice

Answers are to be returned to the Committee secretariat by 18 December 2015.

Ms Sue Field

1. Do you support the establishment of a Working with Vulnerable People Check? Or some other increased assessment of workers / carers? Or are there other options or examples from other jurisdictions?

In theory yes I do support the establishment of a Working with Vulnerable People Check as a means of hopefully minimising elder abuse. Keeping in mind that workers in aged care are already required to undertake a police check prior to employment. However, it raises the following questions and/or issues:-

- how one defines vulnerability?;
- what age does the vulnerable person have to be before a worker/carer is required to provide evidence of undergoing the proposed check?;
- would anyone who was to be appointed as an attorney (pursuant to an power of attorney instrument) be required to have a criminal check prior to appointment? (I would actually support such a move);
- while it is acknowledged that there are advantages to such a check for workers/carers, this would not encompass family members/friends who care for vulnerable persons and so perhaps a large percentage of those perpetrators of elder abuse would still go undetected.

2. Do you support increased powers for NCAT for the resolution of disputes?

Yes.

3. Do you support increased powers for NCAT for the resolution of disputes? And are there other areas of potential abuse or dispute that could be avoided by extending NCATs powers?

At the moment the powers of the Guardianship Division of NCAT are restricted to dealing with those persons who do not possess mental capacity (which isn't clearly defined in the *Guardianship Act 1987* (NSW)). This goes back to my first point, *supra*, as to a definition of vulnerability and the tension between a person's right to make a foolish decision (whilst they possess mental capacity) and the need to protect those persons who have been deemed incapable of making decisions (be they good or bad decisions). Once again it raises the issues of

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who assesses mental capacity and the value judgments of some “professionals” who deem a person vulnerable or mentally incapable of making the “correct” decision.

The requirement of an attorney, pursuant to an enduring power of attorney, and where the principal has been deemed to lack mental capacity, to provide audited accounts on an annual basis, would, I believe, assist in minimising financial abuse in some situations.

4. Do you support the criminalisation of Power of Attorney breaches?

Absolutely.

5. Do you support the expansion of Health Justice Partnerships (as per Justice Connects Seniors Law Recommendation 5)

Absolutely. At the moment there is very little in the way of formal communication channels/partnerships between the health professionals and lawyers working in this area. A more structured approach such as the integrated model in practice between Justice Connect and co-health is an excellent example of what can be achieved.