

Submission
No 92

**INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW
SOUTH WALES**

Name: Name suppressed

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Partially Confidential

Inquiry into elder abuse

A personal story of financial elder abuse

Introduction

This submission provides a first hand account of elder abuse.

Financial elder abuse involves taking or misusing an older person's money, property or assets. It also includes persuading an older person to change their will through deception or undue influence.

Financial elder abuse may begin with the best intentions - with adult children acting as their mother's financial power of attorney thereby managing her finances. This can quickly progress to a sense of entitlement, particularly when adult children have mortgages or debts.

Studies confirm that financial abuse is the most common, and fastest-growing, type of abuse of older people. The most vulnerable include older people with diminished capacity due to dementia and depression, and those who rely on others to manage their finances.

Financial elder abuse is on a continuum of violence towards women. Like all violence perpetrated mostly on women – such as intimate partner violence and sexual assault – it is often a silent crime, unreported and unacknowledged.

There is little reliable data on the extent of financial elder abuse. State Trustees Victoria found that women over the age of 80 are most at risk of financial elder abuse (King et al., 2011). They found men were the most common perpetrators, particularly sons.

Currently, the opportunities for children to act inappropriately in regard to their parent's financial situation are enormous. In my family, it was easy for my elderly mother to be declared legally incapable, thereby enabling her son, as her financial power of attorney, to take complete control of Mum's financial affairs. He had the power to give my siblings money from Mum's bank account, curtail her expenses and to refuse to pay her bills.

Husbands may also commit financial elder abuse. In my family, Dad was the 'breadwinner' and in control of the family finances. Like many men of Dad's generation, Dad had sexist views about women's rights. For example, he did not believe that Mum had the right to make her own Will.

Financial elder abuse is currently not a criminal offence. It should be.

My story

Dad died in 2012; Mum died in 2015. They were married for 64 years. Dad was a successful businessman; Mum a gregarious, popular and generous homemaker. They had five children: four sons and a daughter.

The following table provides examples of financial elder abuse within my family.

1. Dad pressured Mum to change her Will when she was cognitively impaired.
2. Mum was declared legally incapable immediately after Dad's death when she was in an acute state of grief/depression.
3. Mum was absent from family meetings in which decisions about her finances were made.
4. Mum's financial power of attorney proposed that Mum give her children a substantial sum of money, despite Mum being alive and well.
5. Mum's financial power of attorney did not give Mum any cash to spend in the aged care home and refused to pay her private carers.
6. Attempts were made to curtail Mum's expenses because they were considered to be excessive.
7. Mum's financial power of attorney refused to pay Mum's private carers.
8. Mum's access to her beach house was restricted.
9. A proposal to sell Mum's beach house was made without her knowledge.

1. Changing the Will

In 2004, Mum made her own Will. Dad wanted Mutual Wills and was therefore unhappy that Mum had made her own Will. In 2007, Mum was admitted to hospital. Ten days after Mum was discharged from hospital (i.e. when Mum was in a vulnerable state due to her poor health/cognitive impairment), Dad pressured Mum to sign a document (codicil) to change her Will. A lawyer was not present when the codicil was signed. Two of Dad's employees witnessed Mum's signature. Given the power relations, these men were not in a position to question what they had been asked to do.

The manner in which the codicil was procured raised the following questions about current laws:

- Should husbands be able to issue lawyers with instructions on behalf of their wives?
- Should lawyers be present when an elderly person signs a codicil to change their Will?
- How can lawyers ascertain that clients are legally capable when making changes to a Will? Should they seek medical advice?

2. Legally incapable

My then 88-year-old mother was declared legally incapable a few days after Dad's funeral. Mum's youngest son was appointed financial power of attorney. The speed in which Mum was declared legally incapable after Dad died raises the following questions:

- Should there be a period of time after a spouse's death before a widow or widower can be declared legally incapable?
- If an older person is depressed, should the depression be treated before their legal capacity is assessed?

There are no definitive, scientific tests for assessing whether a person meets a particular capacity standard. GPs often make the assessment of legal capacity. However, it is best practice for a GP to provide a referral to an appropriate specialist for an assessment of capacity.

Unfortunately, Mum's GP did not refer Mum to a specialist for a neurological or mental health assessment. The GP completed the required paperwork himself. Six months later, Mum was assessed by a psychogeriatrician who diagnosed Mum with depression and mild cognitive impairment. He was not however asked to reverse the GP's assessment of Mum's capacity.

It is noteworthy that my brothers did not request the GP to declare Dad legally incapable despite his significant cognitive decline towards the end of his life. When Dad's cognitive abilities declined, his youngest son assisted Dad to manage his financial affairs. This was done respectfully so that Dad felt empowered and retained his dignity. In contrast, Mum was disempowered.

According to the Office of the Public Advocate (2011), older women are more likely to be declared legally incapable than older men. This may be due to the fact that women live longer than men. It may also suggest that older men are revered whilst older women are infantilised.

Main points

- A rigorous assessment of an older person's cognitive status and mental health should be undertaken before an older person is declared legally incapable.
- Psychogeriatricians and neuropsychologists are better qualified than GPs to competently assess a patient's legal capacity.
- Attempts should be made to empower older people so they retain their dignity.

3. Family meetings and spreadsheets

My brothers met frequently to discuss Mum's finances. On some occasions, their wives also attended these meetings. It was not appropriate for Mum's daughters-in-laws to attend meetings pertaining to Mum's estate.

In addition, Mum's financial power of attorney regularly sent his siblings spreadsheets describing Mum's assets. I doubt a financial spreadsheet with 'Dad's assets' would have been shared in the same way if Mum had died before Dad.

Main Points

- Children are not entitled to receive regular updates about their parents' expenses.
- Information about an older person's expenses is private and should not be shared with all family members unless the older person requests it to be shared.
- The financial powers of attorney should manage an older person's accounts privately with the assistance of an accountant.
- According to the Office of Public Advocate, Council of The Ageing (COTA) and Senior Rights Victoria, older people should attend family meetings themselves or an independent advocate whose sole responsibility is to act in their best interest should attend on their behalf.

4. Early inheritance syndrome

Adele Horin (2013) coined the term 'early inheritance syndrome' to describe those children who are not willing to wait for their inheritance until after their parents dies. These impatient children seek ways for their parents to "gift" them money, or interfere in the management of their parents' assets to protect what they see as their entitlement. Children with early inheritance syndrome justify their actions by saying: "Mum doesn't need money now, and it's going to be mine anyway."

Soon after Dad died, Mum's financial power of attorney proposed that Mum give her children a substantial amount of money. My brother claimed that Mum having large amounts of money in the bank did not necessarily improve Mum's quality of life. He also claimed that this money would benefit those of us with mortgages/debts.

I disagreed with the proposal for Mum to give her children money while she was alive and well. I argued that Mum being declared legally incapable did not give us any entitlement to her assets while she is alive.

One brother also disagreed with this proposal. He argued that Mum may at some point need the money that was currently in the bank.

Main points

- Financial powers of attorney require education and guidelines.
- Banks should be alerted when an older person appoints a financial power of attorney.
- Banks need to provide mechanisms to safeguard an older person's deposits, particularly those older people who have been declared legally incapable.
- Older people should be consulted about any proposal to give away their money, even if the older person has been declared legally incapable.

5. Financial independence

Mum had no purchasing power in her daily life at the aged care home because her financial power of attorney refused to give her any cash. He was concerned cash would be stolen from Mum's handbag at the aged care home.

Without any cash, Mum was unable to:

- Purchase items such as shoes and clothes when 'pop up stalls' come to the aged care facility.
- Make independent decisions about accessing services at the aged care facility (e.g. hairdressing).
- Participate in excursions with other residents such as bus trips to a café.

Main points

- Having access to spending money empowers older people to make choices about their social life and to continue to enjoy it.
- Elderly people without purchasing power are disempowered.
- Assessment of risk should be balanced with an elderly person's self respect and dignity.

6. Daily expenses

In 2014, three brothers and their wives met to discuss Mum's finances. They expressed concerns that Mum's expenses were "excessive". I was asked to spend less money when I took Mum for outings (coffees, lunches and visits to her beach house). Concerns were also expressed about the cost of Mum's 90th birthday party that was held at my house. The party cost \$50 per head.

Main points

- Older people can spend *their money* on whatever they like, irrespective of whether or not their children approve.
- Older people are entitled to a birthday party.

7. Payment of Mum's carers

Mum's financial power of attorney refused to pay Mum's private carers. He claimed that Mum did not need to employ private carers at the aged care home.

Main points

1. Older people are entitled to employ companions/carers without the cost of this care being questioned by their children.
2. Financial powers of attorney should pay all bills in a timely manner.

Mum's beach house

Each month, I took Mum for a 5-day holiday at her beach house. I was told that these short holidays were "too expensive". The objection was based on "us" paying for Mum to have meals at her beach house when "we" already pay for her meals at the aged care home. I explained that "we" do not pay for anything – Mum pays both her fees at the aged care home and for her holidays at her beach house.

On some occasions, my brothers and their wives objected to Mum visiting her beach house because they or their children had booked to use her house. On these occasions, I explained that it was *Mum's beach house*. As such, she was entitled to use her it whenever she liked.

I also explained that Mum would have been delighted for her children and grandchildren to stay with her at her beach house. They however wanted to use Mum's beach house without Mum being there. This caused Mum great sadness.

In 2014, my brothers proposed to sell Mum's beach house to me without first discussing this idea with Mum. When Mum was asked about selling her beach house, Mum explained that she wanted to remain the owner of her beach house. Mum reiterated that she wanted me to own the beach house *after she died*.

Main points

- It is a privilege, not an entitlement, for children to have access to their mother's beach house.
- Older people are entitled to use their beach houses whenever they like.
- Older people should be consulted prior to the sale of their properties, even if the older person is declared legally incapable.

Conclusion

Financial elder abuse is currently not a criminal offence. It should be.

Fifty years ago, intimate partner violence was a domestic, not public or criminal offence. Prior to 1980s, it was not possible for a man to be charged with, and prosecuted for, raping his wife. Similarly, in 2015, financial elder abuse is a private issue, often unreported and unacknowledged. For financial elder abuse to become a criminal offense, attitudes towards older people need to change.

Children who are appointed financial powers of attorney are required to act in their parents' best interest, not their own best interests. There are currently no formal mechanisms to ensure that financial powers of attorney act in an older person's best interest. Legal mechanisms need to be implemented to ensure older people are not victims of financial elder abuse. Not every family has children who are prepared to advocate for their parents' rights.

I am proud to have questioned my father and brothers' behaviour. It was sexist for Dad to deny Mum's right to make her own Will. In addition, my brothers made the following sexist and ageist assumptions:

1. They assumed that Mum, who had not been our family's breadwinner, found discussions about financial issues complex and stressful. This assumption was patronizing. It also disempowered her.
2. They assumed that having a large amount of money in the bank did not improve Mum's quality of life. Most of us take comfort in the security of having savings. Why would older people be any different? Mum, as part of the generation that experienced the Depression, may have taken even more comfort from having a safety net than her children.
3. They assumed Mum would be no worse off after gifting money to her children. This was absurd. The less money Mum had, the less able she was to make decisions about how her money was spent.
4. They assumed that they should minimise the fees Mum paid to the aged care home¹. However, Mum appreciated the care she received from staff at the aged care home. She may have felt that the aged care home that provided her with daily care deserved her money more than her sons who were all wealthy professionals who visited her infrequently.

By speaking about our family's experience of financial elder abuse, I have raised the gendered aspect of financial elder abuse. I believe my father and his sons' perspectives of power, entitlement and gender roles led to Mum's financial abuse.

¹ Reducing Mum's income reduced her fees at the aged care home

Unfortunately, my advocacy for Mum's rights has damaged my relationships with my brothers. I believe their behaviour has been dishonourable (though currently not illegal) whereas they continue to justify their behaviour.

It is important to note that not all cases of financial elder abuse can be attributed to gender inequality. In some cases, greed contributes to financial elder abuse.

Financial elder abuse within families is often unacknowledged. I am proud to have questioned the manner in which Dad procured the codicil on Mum's Will. I am also proud to have stood up for Mum's right to spend her money as she chose, to have the care she wanted and to regularly visit her beach house, a place she loved for over 80 years.

References

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