

Submission  
No 56

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

Name: J Walker  
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Partially Confidential

## **Inquiry into Elder Abuse in New South Wales.**

Submission of J. Walker

Dear Committee Secretary,

1. The 'hidden' financial abuse/exploitation of older people with or without disabilities.
2. The 'hidden' misuse of the NSW Guardianship Tribunal by 'hidden' or other financial predators.
3. Reporting suspected prior financial exploitation to the NSW Guardianship Tribunal.
4. Proof of the financial exploitation/abuse of an older person.
5. Responses to complaints of (a) the improper practices by NSW Guardianship Tribunal decision makers and (b) the misuse of these Tribunals by financial predators.
6. **The appropriateness of unmonitored, unaccountable taxpayer funded Guardianship Tribunals** whose purpose is to protect vulnerable people, most of whom are older people with cognitive or intellectual disabilities, from **abuse, neglect and exploitation and give their welfare and interest's paramount consideration**, when with complete impunity, the decision makers conduct a mock/quasi legal process which devalues the rights and protection of the vulnerable, involuntary subjects of applications, make a mockery of the principles guiding the Tribunal and the principles of natural justice, facilitates misuse by financial predators and results in the decision makers breaching the basic human rights of the people they are mandated to protect.
7. **The UNCRPD** - Monitoring freedom from exploitation, violence and abuse:
8. Safeguards.
9. NSW Equity Court misuse.

Elder abuse, neglect and exploitation and the misuse of Guardianship Tribunals has been occurring in Australia for decades and as my late father was a 'hidden victim' of prior financial exploitation via 'interference with his wills' when he became an involuntary subject of 'urgent' applications for urgent 'financial management orders' to the NSW Guardianship Tribunal (then Board) in 1994 and the 'legal process' resulted in him still being a 'hidden victim' and the 'hidden perpetrator' being placed as his 'private financial manager' where he was protected from scrutiny by the Office of the Protective Commissioner (now Trustee/Guardian) and as I was robbed of the opportunity to investigate his past financial and legal dealings with my father until after he died in 2002, irrefutable evidence of the financial exploitation and the perpetrators covert involvement the late 1994 Guardianship action was exposed when the perpetrator initiated a NSW Equity Court 'will dispute' to challenge a 'new will' my father drew up without his knowledge, shortly after the 1994 Guardianship action was covertly triggered by the perpetrator and prior the hearing, which took place in February 1995.

2.

As I now have a good awareness of elder financial exploitation and can describe the perplexing 'legal process' which contributed to the unacceptable and shameful outcome of my father's case, I welcome the opportunity to provide a submission to this inquiry.

The information I am providing in this submission shows the irresponsible and unacceptable nature of service provided by the NSW Guardianship Tribunal that facilitated the outcome described on the previous page. It also shows:

- Decision makers taking advice from an older person with or without an intellectual disability, **without rigorously testing their claims** is not in the best interest of the person concerned.
- Decision makers automatically presuming that all professionals are reliable and credible witnesses **without rigorously testing their claims**, is not in the best interest of the person concerned.
- As the quasi/mock legal process described on pages 21 and 22 negates the decision maker's ability of ensuring that legal decisions they make are paramount to their involuntary clients' welfare and interests and not paramount to the financial interests of others involved, they are as vulnerable as their involuntary clients to being manipulated and conned by skilled perpetrators.
- How a hidden financial perpetrator covertly influenced professionals and formerly estranged family members who were blind sighted by their concern for their 'inheritance'.
- How a hidden perpetrator of the financial exploitation of an older person, was able to provide **verifiable false and misleading information in sworn affidavits**, used the '**NSW Equity Court legal process**' to gain financial advantage via deception, without facing any penalty.

Over the last two decades, there have been various NSW or Federal Government inquiry's, or reviews that 'looked into' the rights of older people i.e.

- The 2006-2007 **House of Representatives Standing Committee on Legal and Constitutional Affairs (LACA) inquiry into Older People and the Law**, which looked into the adequacy of then current Government regimes in addressing the legal needs of older Australians in specific areas, three of which were Powers of Attorney, **Fraud and Financial exploitation**.
- **The Australian Law Reform Commissions (ALRC) review of the Equal Recognition before the Law and Legal Capacity for People with Disability**.

Other inquiry's included **Substitute Decision Making for people lacking capacity**, etc. however, regardless of me and many others, some of whom have since died) providing submissions that raised serious concerns regarding the financial abuse of older people with or without disabilities and improper practices of Guardianship regimes to these inquiries, these submissions have not been published and **nothing has changed**.

3.

It has been and still is evident that protecting these unmonitored and unaccountable regimes has been more important to both sides of Government than the rights and protection of the most vulnerable people in the community who are the reason these Tribunals, Public Trustees and Guardians exist and many others are hoping that this current inquiry will reverse this shameful long standing insupportable situation by placing 'importance' where it belongs, which is on the vulnerable people who are unable to defend or protect themselves.

In regard to points 1 and 2 of the Terms of Reference:

As Elder Abuse is a 'hidden' crime that is underreported, regardless of their expertise in this area, nobody could give you a clear picture of the extent of this crime however, to assist you in regard to the above points, I have attached an American report titled '**Undue Influence and Financial Exploitation**' which was an exhibit during the 2006-2007 LACA inquiry into Older People and the Law. This report mirrors Australian reports and it concisely describes:

- How financial abuse occurs.
- Who is likely to be a victim?
- Who is likely to be a perpetrator?
- What are some signs of undue influence and financial exploitation?
- Victim behavior (B) perpetrator behavior (C) financial implications.
- Behaviors demonstrated by the perpetrator.
- Financial issues that should raise red flags to the possibility of undue influence and financial exploitation.
- How does one deal with suspected undue influence and financial exploitation?
- **A Case Summary.** Please read this example as there are lessons to be learnt from it.

An **Australian Institute of Criminology (AIC)** titled '**Fraud and Financial Abuse of Older Persons**' which among other matters, describes the nature and extent of the problem at that time, as shown below:

- As is the case with domestic violence, reliance upon official crime statistics is problematic where older persons are concerned as many offences may not be reported to the police, particularly those which have been perpetrated by relatives or carers.
- This may be due to the close personal involvement of the older person and the offender, or to the fear of reprisal if the matter is reported to the authorities. There is also the concern that, if a carer is convicted and imprisoned, there will be no one left to care for the older person.

During the LACA inquiry into Older People and the Law, as Guardianship Tribunals in Australia are Government Legal regimes and the principles guiding them include **protecting people with disabilities from abuse, neglect and exploitation**, the Australian Guardianship and Administration Committee (AGAC) Chair Ms. Anita Smith provided examples of financial exploitation of older people with or without disabilities, the following of which coincides with the financial exploitation of my late father.

4.

#### **Interference with wills:**

Undue pressure to make new wills or gifts:

- Elderly people can fall prey to relatives or strangers who will suddenly befriend them after the onset of dementia.
- Playing upon the paranoid aspects of the symptoms of dementia, they can encourage negative attitudes ["they are only interested in your money"] about the members of the person's traditional support network in favor of themselves, usually to their own financial advantage either by gift, testamentary gift or appointment under an EPA.

As per the attached 'case summary', I will refer to the perpetrator in my father's case as **Mr. X.** to his secretary/companion as **Mrs. T.** and to Mr. X's own solicitor friend, as **solicitor S.**

#### **1. The 'hidden' financial abuse/exploitation of older people with or without disabilities.**

##### **Example of the hidden Financial Abuse/exploitation of an older person via interference with wills:**

My reclusive late father M. (the victim) matched the description of a person who was a high risk candidate for financial abuse/exploitation because of the following situation:

- The victim was elderly and lived alone.
- He was a former UK RAF Pilot, RAAF Pilot, RAAF Flying Instructor, and Qantas Empire Airways Pilot.
- As a result of an air crash in 1940, he suffered from a severe mental disorder.
- In the mid 1970's he was described by his DVA psychiatrist as being narcissistic, schizoid and an odd eccentric isolate with **very little hold on reality.**
- His only income was a full Department of Veteran Affairs (DVA) totally and permanently incapacitated pension (TPI).
- He was divorced in 1976.
- His local family ceased contact with him from that time.
- Although I maintained contact with him from a distance, he told most people he had no family contact.
- He ran a native animal orphanage on his property from around 1960 until around 1992.
- In around the mid 1980's he refused medical assistance from DVA.
- **In the mid to late 1980's he became dependent on others to pay his bills and it appears Mr. X. took over this role and control of him at this time.**
- As the animals had access to his house, by 1994 the floors were covered in animal excreta which was over a foot deep, his house was infested with white ants and vermin and it was unfit for human or animal habitation.
- In 1994 the 8½ acres of land the house sat on was valued at around **\$2 Million dollars.**
- He was in the early very stages of dementia in late 1994.

5.

Mr. X's involvement with the victim.

- He claimed that he and a colleague provided the victim with 'free professional services' in relation to the native animals the victim cared for, for over 30 years.
- They also provided 'free professional services' to others caring for native animals.
- He became more of a 'friend' to the victim the late 1980's.
- He interfered with the victim's wills in the late 1980's.
- The 'will interference' involved solicitor S. becoming the victim's solicitor for the purpose of drawing up a 'new will'.
- This action resulted in the downfall of the victim's existing will, which left no financial or other benefit to the perpetrator or to his associates.
- The 'new will' resulted in Mr. X. and his associates standing to gain varying shares of the victim's estate which at that time, would have amounted to between **\$800.000 and \$1 Million dollars.**
- **He gained access to the victim's accounts and held books of pre-signed blank cheques.**

When I first met Mr. X. in early September late 1994, he initially advised me that he didn't know who the victim's solicitor was however, in mid-September 1994, when this information and bank account details were required by an Aged Care Facility to enable the victim to be placed there, had he not '**slipped up**' by revealing that his own solicitor was also the victim's solicitor, **I would never had known of the association between him and solicitor S. and neither would anyone else, including the NSW Guardianship Tribunal had these two people approached them at this time.**

Mr. X. was later to claim that he **did not know who the victim's solicitor was** at the time of his placement in the Aged Care Facility in September 1994 and that he only provided me with the victim's bank account details at that time.

As I was aware that the victim had many heated arguments with Mr. X. over the years, I recall thinking that this sudden 'new friendship' was very strange however, as he had suffered from a mental disability since around 1940, doing strange things was part of 'normality' in his life over that period of time.

**Note:**

After the my father's death, as I arranged his funeral, I was contacted by the Funeral Directors who advised me that **the cheque they received for payment had bounced at the bank, because it had been signed by my father.**

As the 'private financial manager' was responsible for this payment, I provided the Funeral directors with his name contact details.

On contacting the Funeral Directors a week later, they advised me that the 'private financial manager' had instructed them not to provide me with any further information and that he had **threatened them with the 'Privacy Act'.**

6.

## **2. The hidden misuse of Guardianship Tribunals by hidden or other financial predators.**

The following article was published in an American newspaper in 2007 and I am bringing it to your attention as this unacceptable situation has been occurring in Australia for over 2 decades if not longer.

### **Guardianship Abuse:**

- Senior adults have been targeted as easy victims in a number of different scams for the last two decades now and it's only getting worse.
- Instead of just stealing money from them or ripping them off, con artists are now actually stealing Guardianship of many senior adults.
- Some criminals have figured out that they can assume Guardianship of elderly individuals just by telling a judge they are no longer mentally stable.
- When approaching a judge, these crooks don't have to do anything to prove that they are related to the individual they are trying to assume Guardianship of.
- Courts are so busy and over-packed with cases they just don't have the time or resources to make sure that the person making the claim is on the up and up.
- There is no easy way to find out when this occurs, so family members often have no idea that someone is stealing Guardianship of their parents and simply have no recourse in the event that it happens.
- Usually the ruling happens quickly and the victims have no idea when it happens.

### **After the victim's February 1995 Guardianship hearing, I was advised by a member of the NSW Police and two separate NSW solicitors:**

- Anyone in the know can use the Guardianship Tribunal for their own purposes.
- The more lies you tell them, the more likely they are to believe you.
- They give preferential treatment to professionals involved.
- They judge applicants based on the presentation of their applications, like going for a job interview.

### **During the 2006-2007 LACA inquiry into Older People and the Law a witness advised the Committee:**

- Anybody can front up to the NSW Guardianship Tribunal and make any allegation they wish and then the Guardianship Tribunal basically rolls on that and makes orders as it sees fit, not in the way it should discern according to law.
- That is a basic problem that we have, we have no transparency and no accountability in these processes and this is the main reason we have so much difficulty with this.

### **During a Canberra public hearing the LACA Committee Chairman stated:**

- The Committee has received numerous complaints regarding the NSW Guardianship Tribunal, **which if true, would make your hair stand on end.**

7.

Prior to providing a submission to a **Victorian Law Reform Commission inquiry regarding Guardianship Consultation**, I asked a Victorian Guardianship Tribunal inquiry officer the following questions:

Do you have the jurisdiction to determine whether wrongdoing occurred prior to hearing taking place?

**Answer: No we don't.**

How would you know if a subject of an application was a hidden victim of prior financial exploitation or if an applicant was a hidden perpetrator of this crime?

**Answer: We wouldn't know, because we don't have a crystal ball.**

- Are all professionals involved seen as reliable and credible witnesses?

**Answer: Yes, it's called hierarchy credibility. You can look that up under on the internet under Howard S. Becker 1967"**

An Internet search for Howard S. Backer 1967 revealed the following:

- For Becker, those at the top (of an organization or a society) are seen to be more credible, those at the bottom less so.
- Indeed, the 'underdogs' may be completely discredited and pathologized, and often do not have a voice at all.

**The hidden strategy used by Mr. X. to secure the will of the 14<sup>th</sup> December 1989.**

- He influenced '**the very easily influenced victim**', who was the sole occupier of a hostel room in an Aged Care Facility, to place his property on the market for less than its value.
- He then approached the victim's '**very easily influenced GP**' and a '**very easily influenced**' formerly estranged daughter of 18 years Mrs. C. to approach the NSW Guardianship Tribunal for an urgent 'financial management order'.
- **To draw attention away from himself and prevent me from being placed as the 'private financial manager'**, he directed attention towards me by advising the GP and Mrs. C. that **large amounts of money had gone from the victim's accounts since I gained power of Attorney via a 'new solicitor'**.
- During this action, solicitor S. contacted the GP and requested his written opinion of the victim's capacity to manage his own financial affairs and as the victim's medical expenses were billed to the Department of Veteran Affairs (DVA), the GP wouldn't have had any knowledge of the victim's ability to manage his other financial dealings, **his opinion would have been contaminated by Mr. X's 'expert opinion.**

At this time Mr. X. had joint Power of Attorney with me and as I was in Melbourne and in the process of moving to Central Victoria, I had no knowledge of the actions **Mr. X.** or of the GP's involvement.



8.

### **How the GP and daughter Mrs. C. blindly assisted Mr. X. and solicitor S.**

The GP took over the local Medical Practice in late 1989. Other than his medical records, he had no prior knowledge of the victim, the will interference or of Mr. X's 'real interest' in the victim.

The GP and daughter Mrs. C. were aware of the victim's inhumane living conditions prior to being influenced to approach the Tribunal for Financial Management Orders by Mr. X. (See DVD) yet they both **falsely described Mr. X. in their applications as:**

- The person who had a **genuine concern** for the victim, **without payment**.

### **The GP also placed Mr. X's name under the heading of:**

- The Tribunal will need one or more doctors or other reports about the person's ability to manage their personal or financial affairs.

### **What Mr. X. and solicitor S. achieved by influencing the GP and Mrs. C. to approach the Tribunal.**

Past NSW Guardianship Presidents have stated 'once an 'order' has been placed over a person; **'it is very difficult to prove capacity'** therefore, Mr. X. and solicitor S. attained the following advantage:

- A written report of the 'GP's opinion' of the victim's ability to handle his own affairs and this report would have been contaminated by Mr. X's opinion.
- The fact that family member Mrs. C. applied for a 'financial management order' in late November 1994, would show that she doubted the victim's 'capacity' in November 1994 therefore, this would strengthen any future claim Mr. X. made regarding the victim's 'capacity' to instruct a solicitor, should he draw up a further will or other legal documents, after or around or after this time.
- The GP and Mrs. C. did not have access to the victim's bank accounts at any time therefore, they wouldn't have known whether or not Mr. X. had received monies from the victim however, as they were automatically seen as 'credible and reliable witnesses' and not placed under scrutiny regarding what **indicated to them that Mr. X. had a 'genuine concern' for the victim, without payment**, their false claims were automatically accepted by the decision makers as being true.

### **The GP further assisted Mr. X. by involving others and after lodging an urgent 'financial management order application' he wrote to Mr. X. and advised him:**

- Under the direction of the **local ACAT team** including a **prominent Geriatrician** who was responsible for his care in hospital and two of his daughters Mrs. C. and J , he had approached the Guardianship Board. (The GP was confusing me with my sister Mrs. K. at this time)
- In view of your power of attorney and as the executor of his will in this case and also your close friendship, **I am sure that the Guardianship Board would contact you in the near future.**

9.

**After loading the gun and influencing the GP and Mrs. C. to fire the bullets, all Mr. X. had to do was sit back and wait for the Tribunal/Board to contact him.**

As shown in the 'case summary', when he was contacted by the Tribunal Investigation officer prior to the hearing taking place, among other matters, he advised her:

- Owing to the fact that is **'very easily influenced by whoever spoke to him' and the conflict within the family, it would be preferable for an 'independent person' to manage his affairs.**

To strengthen his claim of the victim lacking capacity in December 1994 during the Equity Court will dispute, Mr. X. claimed that **the victim didn't know what was going on during the Guardianship hearing in February 1995....** therefore, as Mr. X. was the only person at the Guardianship hearing who did know **what was really going on** at the Guardianship hearing, the ACAT Team and the prominent Geriatrician who is a world renowned expert on Elder Abuse and was then a member of the Guardianship Tribunal, would have had no idea what was actually 'going on' in relation to this case.

It has become common knowledge among financial predators, be they family members, friends, neighbors, paid carers, solicitors, accountants, financial advisors, bank managers, taxi drivers etc., that they can misuse these Tribunals to gain control over a vulnerable person who has valuable assets and if they haven't financially abused them prior to taking Guardianship action to secure the proceeds of a hidden crime, they do so after being placed as a guardian and or private financial manager, without any fear of being exposed or penalized.

Medical professionals also misuse these Tribunals to disempower family members or carers who complain about the treatment their loved ones are receiving in hospitals or Aged Care Facilities etc. This issue has also been raised in submissions to various Inquiries by Carers Organizations and others.

Many taxpayer funded organizations involved with people with disabilities are aware of the improper practices of Guardianship Regimes and of the misuse of these tribunals however, as they are fearful of having their funding withdrawn or losing their jobs, **they do not pursue these issues.**

10.

### **3. Reporting suspected financial abuse/exploitation to the NSW Guardianship Tribunal.**

As I had strong suspicions in late 1994 that Mr. X., Mrs. T. and solicitor S. were involved in wrongdoing in connection with my father and his wills, one of which was 'missing', to describe the circumstances which raised my concerns, I provided the Tribunal with the following information in writing:

- Over the years my father had discussed his wills with me.
- I was unable to locate his last will. (the missing will)
- Mr. X initially advised me that he didn't know who my father's solicitor was.
- He later advised me that his own solicitor S. was also my father's solicitor.
- Mr. X and Mrs. T had gained access to my father's bank accounts.
- They also held books of blank cheques which my father had pre-signed.
- They were evasive when questioned regarding their access to the bank accounts.
- During conversations with Mr. X. he frequently mentioned my father's will.
- He questioned me to ascertain if I was aware of the contents of my father's will.
- He told me that there was a 'trust' in the will and that my father had provided for his family.
- He is or was a beneficiary in my father's will, and is or was a trustee of a trust which he claimed was still valid, although my father insisted it wasn't. (A missing will)
- It appeared strange to me that Mr. X. appeared to know more about the contents of my father's will than my father did.
- Mr. X and objected to me having joint power of attorney with him.
- On receipt of the P of A, I organized for a local solicitor to contact solicitor S. to have my father's will sent to him to keep with the original power of attorney for safekeeping. I intended taking a copy of this will to my father to ensure that what he thought was in it, was correct.
- I fully expected there would be a problem obtaining this will and I was correct.
- When I went to collect it from the local solicitor, a letter from solicitor S. was there stating that my father had instructed him not to release the will to me.
- I told my father I felt solicitor S. had something to hide as he did not want me or him to see what was in the will.
- My father rang solicitor S. and I then collected a copy of the will without further problems.
- On returning to my father's room with this will, I found it to be the will with the trust in it which, unknown to Mr. X. and solicitor S., I already had a copy of.
- My father once again said that this was an old will and he had done a much easier one.
- During my father's hospitalization, in Mr. X's presence, Mrs. T was overheard instructing him: "If you go to see your solicitor, you go alone and don't take J".
- My father was happy to have me around while he was in hospital; however, he became different after visits from Mr. X and Mrs. T.
- All of these things going on have done nothing to alleviate my concerns and with my father telling me that he would sign anything Mr. X. put in front of him without reading it, I feel I have reason to be concerned.
- **Mr. X has too much control over my father and as much as he insists he only has his best interest at heart and is not doing anything for financial gain, I don't believe him.**

11.

I was not familiar with Elder Financial Abuse or the signs of it in late 1994 and I wasn't aware that the concerns I raised were well know signs of possible financial abuse/exploitation that should have raised a **RED FLAG** to the possibility of this crime by Mr. X. to the expert Tribunal decision makers however, regardless of the allegations of 'missing monies' directed at me proving to be unfounded, **Mr. X's covert tactic worked very well**, as I was automatically seen as an unreliable witness, my concerns were not tested as they were considered to be 'lacking credibility' and 'not being relevant' to 'legal decisions' that had to be made.

**The 'expert decision maker's conclusion:**

- **Mrs. Walker has expressed some distrust in her correspondence to the Board as to the actions and motivations of Mr. X, but he seemed to this Board to be open, forthright and a most suitable person to be appointed because of his long term relationship with Mr. M. and Mr. M's obvious reliance and trust in him.**
- **Mr. X has indicated his willingness to act. The Board accepted that he could interact with Mr. M. so that Mr. M. within the limits of his dementia disability which has led to this management order may be able to influence the broad directions of the management of the estate.**
- **The Board thought that Mr. X could bring to the task of management an ingredient of affection and friendship which can add to the task of management.**
- **A long knowledge of the person and his interests may contribute to the task of management.**
- **The Board is confident that it has given 'due weight' to all of the evidence before it when exercising its power to appoint a manager for Mr. M's estate and throughout the Board has been concerned to achieve the best interests of Mr. M. himself.**

**In response to the 'expert decision makers' false conclusion, I am confident:**

- **By failing to abide by the rules of natural justice and be fair to all parties to the proceedings, the Board members made legal decisions with reckless disregard for the victim's basic human rights.**
- **By failing to rigorously or otherwise test the allegations made by all parties to the proceedings including the hidden victim who had little hold on reality, the Board members facilitated misuse by Mr. X. and Mrs. C. who were playing them for fools.**
- **The Board members failed to give 'due weight' to all of the 'evidence' before it.**

As I was the last person to notified of the 'Guardianship action' I was treated like an interruption to the decision maker's day and I firmly believe the decision to place Mr. X. as my father's 'private financial manager' was made prior to the hearing taking place.

12.

I also advised the Tribunal in writing of the financially predatory actions of Mrs. C. and Mrs. K. after such a long absence from our father's life however; once again my concerns were seen as lacking credibility and were ignored.

At the conclusion of the hearing the Tribunal legal member congratulated Mrs. C. on her '**well-presented application**' and told the allegedly suicidal Mrs. K. that **he hoped she felt better soon.**

In contrast, I was glared at for daring to suggest that Mr. X. and solicitor S. were involved in wrongdoing in connection with the victim's wills.

As shown in the 'case summary' after securing their separate financial interests, Mr. X. Mrs. C. and Mrs. K, all ceased visiting the victim and they failed to provide for his ongoing personal needs.

**In regard to section 7 of the Terms of Reference:**

I have shown that the NSW Guardianship Tribunal Laws, policies, services and strategies are shameful and a total waste of taxpayer money as:

- There are no safeguards in place to protect people with disabilities.
- There are no strategies in place to identify hidden victims of prior financial exploitation.
- There are no strategies in place to identify hidden or other financial predators.
- The decision makers would not know if a 'hidden victim' or perpetrator was sitting in front of them.

Further to the above, until these Tribunals are effectively monitored by independent authorities as per the UNCRPD and they are held accountable for their actions to ensure that people with disabilities are provided with 'real justice and real protection' when they stand to lose their basic human rights, applicants and the decision makers who are riding the taxpayer funded 'disability gravy train will continue to be the real protected people in these matters and no justice or protection will be provided to older or other people with disabilities who are unable to defend themselves who, like others involved including professionals, are unable to comprehend the unintelligible legal process they are involuntarily subjected to.

See the 'legal process' as interpreted by the NSW Guardianship Tribunal on pages 21 and 22.

13.

#### **4. Proof of the financial exploitation/abuse of an older person.**

In regard to the above, the attached **Australian Institute of Criminology (AIC)** report titled **Fraud and Financial Exploitation of Older Persons** states:

- In some cases, older persons who suffer from dementia and are unable to communicate effectively may not be aware that they have been defrauded and **may die without the crime ever being discovered or investigated.**

Other reports state:

- Often the exploitation is not discovered until after the victim dies and by then evidence may have been destroyed or disposed of.

Had my father not advised me during our telephone conversations in the late 1980's, that his 'new friend Mr. X.' was 'looking after him' and that he assisted him to draw a 'new will' and a subsequent will in the early 1990's; **Mr. X. would have succeeded in committing the perfect 'hidden crime'.**

Further to the above, had the Police found my father deceased in his home in mid-July 1994 (see details in Case Summary), although I would have known there was a 'missing will' of around, I would never have been able to prove that the 'will interference' had occurred.

Mr. X. and solicitor S. could have approached the Guardianship Tribunal prior to the victim being hospitalized and coming to the attention of others. Had they done this, my father would have said he had no family, his claim would have been accepted without question and Mr. X. would have been automatically seen as having a 'genuine concern' for the victim however, I firmly believe they didn't take this option because the preferred scenario was for the victim to be found deceased in his home before he came to the attention of others.

During the LACA Inquiry into Older People and the Law the AGAC Chair Anita Smith made the following comments regarding proof of financial abuse/exploitation:

- A major concern is that elder abuse is so rarely addressed in the criminal justice system because proof of crimes is so difficult when the principal witness/victim's memory is significantly impaired by dementia....
- The Guardianship and administration system can respond by preventing further abuse, but frequently applications for the appointment of a guardian or administrator occur after the abuse has been perpetrated and all that is left to be protected is the elderly person's future entitlement to Commonwealth benefits.
- An administrator or financial manager might report financial abuse to the Police or attempt civil proceedings for recovery, but success of such actions is rare.

14.

**Note:** Once an 'order' has been placed over a person and a 'private financial manager' has been put in place, the Guardianship system **cannot prevent further abuse from occurring** as they **do not have the resources to monitor the welfare of the 'person concerned' or to monitor the actions of 'private financial managers'**.

My response to Ms. Smith's comments:

It is also difficult to prove that a crime has been committed when Guardianship Tribunal expert decision makers who are meant to abide by the laws of natural justice and protect their vulnerable, involuntary clients from this crime, discriminate between parties to proceedings and ignore concerns raised by the only family member who maintained contact with the 'person concerned' and then place a suspected perpetrator as the suspected victim's 'private financial manager', where:

- The suspected perpetrator was 'protected' from scrutiny by being placed as the suspected victim's 'private financial manager' by the 'expert' Guardianship Tribunal decision makers.
- A family member, who suspected wrongdoing had occurred, was discriminated against and robbed of the opportunity to investigate the suspected perpetrators past financial and legal dealings with a suspected victim, until after the suspected victim died seven years after the hearing.
- The suspected victim was being 'controlled' by the suspected perpetrator.
- The suspected victim's legal documents were held by a suspected perpetrator's solicitor friend, who vigorously blocked the suspicious family member's attempts to investigate matters.
- The suspected victim's GP, who was influenced to become an 'applicant' in the Guardianship matter by the 'suspected perpetrator, refused to provide the family member with information that may incriminate the suspected perpetrator or him.
- Two family members, who until six weeks prior to lodging a 'financial management order' application had not contacted the suspected victim (their father) for over 18 years, like the victim's GP and the expert Guardianship members, were 'blind sighted' by the automatically perceived superior 'integrity and credibility' of the suspected perpetrator.

The Office of the Protective Commissioner's attitude: (OPC now Trustee/Guardian)

When the victim's property was placed 'on the market' in around 2000, I advised the former NSW Office of the Protective Commissioner (OPC) now NSW Trustee/Guardian, that I did not want solicitor S . to be involved in the sale process.

As my request was ignored by both the OPC and Mr. X, I rang the OPC and asked them what supervision Mr. X. was under during the sale process and I was **very tersely and condescendingly advised:**

- **We don't supervise 'private financial managers', we trust their integrity.**

As I was shut out of any decisions made involving the property sale by Mr. X. and solicitor S. **I don't know whether or not they obtained financial advantage by deception in relation to this sale.**

15.

**5. Responses to complaints of the improper practices by NSW Guardianship Tribunal decision makers and the misuse of these Tribunals by financial predators.**

As I was extremely traumatized and negatively affected by the unjustified and unfair treatment I received from the expert decisions makers, for some years after the hearing I raised concerns with the then NSW Guardianship Tribunal President regarding the misuse of this Tribunal and the improper practices of the three expert Guardianship members who presided over my father's case.

My concerns included the following:

- The failure to give due weight to evidence I provided which should have raised a 'red flag' to the possibility of prior financial exploitation by the person they placed as a my father's private financial manager.
- The denial of my right to natural justice by discriminating between parties to the proceedings.
- The failure or the decision makers to rigorously or otherwise test the evidence/allegations made by all parties to the proceedings.
- The failure to abide by sections 105 and 106 of the NSW Guardianship ACT of 1987 which state:  
It is an offence to provide false or misleading information in an application. Penalty up to \$500.00.
- The decision makers fabricating an excuse that had no bearing on the truth, on behalf of a GP who provided false and misleading information in an application and did not attend the hearing..

I was initially advised: **"You have no right to question the Tribunal's reasons for decision"**.

A further complaint regarding the points listed above resulted in a former NSW Guardianship Tribunal President advising me in writing:

Thank you for your letter of the 18th May 1999 in which you complain of the conduct of the hearing of the Guardianship Board (as it was then) which was convened on the 17<sup>th</sup> February 1995.

Your concerns seem to relate, among other things, to:

- **Your inability to refute allegations made about you in the course of hearing the application in relation to your father, Mr. M, and**
- Your dissatisfaction of the management of your father's affairs.
- I have read the correspondence sent to you in answer to your letter of the 6<sup>th</sup> April 1999.
- I confirm the information provided to you on that occasion that the Tribunal is required to satisfy itself as to whether a person is incapable of managing their affairs, and if not, who should be appointed manager if there is a need for a formal order.



16.

- I appreciate you are distressed that allegations have been made against you in the context of determining an application before the Tribunal.
- Evidence before the Tribunal is exempt from proceedings under the Defamation Act **so as to ensure the interests of vulnerable people are protected.**
- **It is not the role of the Tribunal to determine the truth or otherwise of allegations made before it,** but rather to consider whether a person is incapable of managing their finances and whether there is a need for a formal order.
- I do not propose to initiate action with regard to the provision of 'false and misleading Information' against parties to the application involving your father.
- With regards to the actions of the appointed financial manager, a private financial manager is supervised by the Office of the Protective Commissioner. If you do not consider the manager is acting in the best interests of your father, you can seek a review of their appointment.
- I note the appropriate application was previously forwarded to you. I enclose another copy for your information.

My response to the comments of the former Tribunal President:

As the only allegation 'tested' at the hearing was the GP's allegation of "over \$20,000 has gone from the accounts..." proved to be unfounded, I wrote to the former Tribunal President asking him to explain:

- Why I needed to refute allegations made against me, when the only allegation tested at the hearing was the GP's claim of 'over \$20,000 having gone from the accounts since I gained Power of Attorney via a new solicitor' and this allegation proved to be false and misleading?
- As it is an offence to provide false or misleading information in an application, why wasn't the person responsible for providing false and misleading allegations against me, contacted and placed under scrutiny?
- Why didn't the applicants I directed allegations against, need to refute the allegations I made?
- Was it legal for the Tribunal members to fabricate excuses on behalf of an applicant who provided false and misleading information in an application and didn't attend the hearing?

The former President failed to respond.

17.

### **Complaints to the then Office of the Protective Commissioner (OPC now Trustee/Guardian)**

My complaints to the above regarding the 'private financial manager' resulted in them very condescendingly advising me to **'take it up with the private financial manager'** which proved to be futile as he failed to respond to my phone calls or to my letters.

As shown in the 'case summary', the letter Mrs. C. wrote to the GP after guardianship hearing shows that any attempt I made to have Mr. X. removed from his position as the 'private financial manager' would have been futile and I didn't have the necessary funds to take Supreme Court action which was the only option available at that time, I was unable to take this action.

As the former NSW Guardianship Tribunal President's statement of **'It not being the role of the Tribunal to determine the truth or otherwise of allegations made before it' opposes the Tribunal's role of protecting their clients and making legal decisions that are in their best interest**, a further complaint from me resulted in the former President, providing me with the following explanation of his previous comment:

Your letter stresses the comment made in my previous letter concerning the establishment of the truth or otherwise of allegations made to the Tribunal. However, perhaps some further explanation is warranted given your interpretation of what was previously stated.

- In a number of cases before the Tribunal, a range of **allegations get made that are not directly relevant to the role of the Tribunal.**
- **The role of the Tribunal**, as has been pointed out before, **is to determine whether a person is able to manage their own affairs or make their own life decisions and if not, whether there are decisions that need to be made on their behalf and if a substitute decision-maker should be appointed for them.** The Tribunal then needs to determine who should be appointed to make decisions on their behalf.
- Where allegations are made that are not directly relevant to the Tribunal determining those legal questions of disability, incapacity and need, **it is not the role of the Tribunal to determine the truth or otherwise of those allegations.**
- **The Tribunal does take account of allegations that have been made that are relevant decisions it has to make.**
- **Whilst it does not have the jurisdiction to determine whether wrongdoing occurred, the Tribunal takes evidence in relation to those allegations to the extent appropriate for it to determine who should be placed as the substitute decision make.**
- Whilst I appreciate you still have ongoing and unresolved concerns, the Tribunal will not be pursuing the concerns that you have raised in your letter.

18.

**Responses from former NSW Ministers for Ageing and Disabilities:**

I raised the issues described previously with the then NSW Attorney General and Ministers for Ageing and Disabilities and **at no time did I ask them to 'interfere' with decisions made by the then Board.**

Prior to responding, all of these Ministers conferred with the NSW Guardianship Tribunal President and simply repeated the rhetoric previously provided to me by the then Tribunal President.

**1997: The Hon Ron Dyer MLC Minister for Community Services, Minister for Ageing, and Minister for Disability Services NSW wrote.**

I refer to your letter to the Attorney General's Department dated 14<sup>th</sup> August 1997 concerning the Guardianship Boards involvement with your father Mr. M.

- As the Guardianship Board is part of my portfolio your letter has been referred to me.
- The Guardianship Board is an independent legal Tribunal. It is therefore neither possible nor appropriate for me to comment on or seek to influence decisions made by the Board in carrying out its judicial functions. I am therefore not able to respond to the many issues raised in your letter.
- As you would be aware many applications received by the Board deal with complex and distressing dilemmas where there is often conflict over what is in the best interest of the person with the disability.
- The principles which underpin the responsibilities of the Board clearly dictate that the welfare and interests of the person with a disability are given paramount consideration by the Board.
- Unfortunately, this sometimes means that family members do not agree with the Boards decision.
- Should the OPC believe that Mr. X. is not managing your father's affairs appropriately; an application can be made to the Board to have him replaced.

**1999: The Hon Faye Lo Po MP, Minister for Community Services, Minister for Aged Services, Minister for Disabilities, Minister for Women NSW.**

- It is not the role of the Tribunal to test every allegation made at a hearing. Rather, as a fact finding body, it addresses itself to questions of whether a person is incapable of managing their finances and whether there is need for a formal order.
- As Minister for Disability Services the Guardianship Tribunal falls within my portfolio responsibilities. However, it is an independent legal Tribunal and it is not appropriate for me to comment on or to attempt to influence decisions made by the Tribunal.

19.

- I'm afraid I cannot support your call for an inquiry. Courts and Tribunals like the Guardianship Tribunal form part of a judicial arm of Government.
- Their independence has developed historically **as a safeguard against the possible misuse of influence by Members of Parliament.**
- To preserve this independence appeals must progress through the courts, rather than through parliamentary means. In the case of the Guardianship Tribunal, the relevant legislation states that appeals are to be to the Supreme Court of NSW.

I hope this information is of assistance to you.

See attached NSW Parliament Hansard document containing statements made by the above Minister regarding **Senior Citizen Exploitation** in June 1999. **Nothing has changed.**

**2004: The Hon Carmel Tebbut MLC, Minister for Community Services, Minister for Ageing, Minister for Disability Services, Minister for Women NSW.**

- In your letter you give your views on the procedures that the Guardianship Tribunal should follow in conducting its hearings
- The Guardianship Tribunal is required, as a matter of law, to operate in a way that is procedurally fair.
- I am aware that the Tribunal is committed to conducting its proceedings accordingly.
- Nevertheless, the legislation establishing the Guardianship Tribunal provides that the Tribunal is not bound by the rules of evidence and may inform itself on any matter in such manner it thinks fit.
- Also the legislation provides that proceedings before the Tribunal shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.
- I am satisfied that the Tribunal meets its obligation to be procedurally fair while at the same time complying with its statutory direction to operate with as little formality and legal technicality as the case permit.
- I hope this information is of assistance to you.

These responses show an unashamed lack of interest in the issues I am raising in this submission by a former President of the Tribunal and the total lack of interest or support from Politicians who, while they were responsible for people with disabilities; they were more interested in protecting the Guardianship Tribunal.

20.

**In 2013**, I was contacted by an extremely distressed woman who had been involved in a NSW Guardianship Tribunal matter which was financially motivated by relatives who had no contact with the subject of an application for over 60 years, and the outcome of this case mirrored the unacceptable outcome of my 1995 father's case.

On providing her with a copy of correspondence I received in relation to my complaints, she was shocked to see that the responses she received so many years later were the same 'standard responses' that I had received years earlier.

**6. The appropriateness of unmonitored, unaccountable Guardianship Tribunals, whose purpose is to protect vulnerable people with cognitive or intellectual disabilities from abuse, neglect and exploitation and give their welfare and interest's paramount consideration**, when with complete impunity, the decision makers are free to conduct a mock legal process which devalues the rights and vulnerability of the involuntary subjects of applications, makes a mockery of the principles guiding them, facilitates misuse by financial predators and results in the expert decision makers breaching the basic human rights of the people they are mandated to protect.

The Principles guiding Guardianship Tribunals (NSW) state:

The Tribunal must observe the principles set out in Section 4 of the NSW Guardianship Act 1987. These principles state everyone dealing with a person with a disability under the Act has a duty to:

- Give the person's welfare and interest's paramount consideration.
- Restrict the person's freedom of decision and freedom of action as little as possible.
- Encourage the person, as far as possible, to live a normal life in the community.
- Take the person's views into consideration.
- Recognize the importance of preserving family relationships and cultural and linguistic environments.
- Encourage the person, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs.
- Protect the person from neglect, abuse and exploitation, and
- Encourage the community to apply and promote these principles.
- Staff and Tribunal members must act in accordance with the purpose of the Guardianship Tribunal which is to keep paramount the interests and welfare of people with disabilities through facilitating decision making on their behalf.
- The Guardianship Tribunal may obtain information on any matter as it thinks fit and **is not bound by the rules of evidence. The Guardianship Tribunal is, however, bound by the principles of natural justice.**

21.

Prior to becoming involved in my father's matter, like most of the public, I had never heard of this Tribunal and being the last person advised of the impending action and seeing that the two applicants, being my father's GP and my sister Mrs. C., neither of whom had access to my father's bank accounts, had accused me of misappropriating amounts totaling over \$36,000 from these accounts therefore, as I suffer from embarrassing and frightening anxiety and panic attacks in stressful situations, I advised the tribunal Investigation Officer that I wished to be represented by a solicitor at the hearing.

My request was denied and as I was assured that anyone who lied in an application would be placed under scrutiny and as the documentation I was provided with indicated the decision makers were bound to give the person's welfare and interest's paramount consideration, protect the subjects of applications from abuse, neglect and exploitation, it was an offence to provide false or misleading information in an application and they were bound to be fair to all parties to proceedings, I naively expected that all of the above would be adhered to however, as my description of the mock legal process described below and the treatment I was subjected to shows, none of my expectations were met.

The quasi/mock 'legal process':

- When making legal decisions which resulted in my father losing his basic human rights and those rights are given to Mr. X., the expert decision makers:
- Were not bound by the rules of evidence.
- Did not have the jurisdiction to determine whether or not wrongdoing occurred prior to a hearing.
- It was not their role to determine the 'truth' or otherwise of all allegations or evidence before them.
- Saw the provision of false or misleading information as not being relevant to decisions they had to make.
- Failed to rigorously or otherwise test all of the evidence/allegations before them.
- Saw Mr. X. Mrs. C. and Mrs. K. as credible and reliable witnesses who had a 'genuine concern' for the 'person concerned'.
- Saw other professionals involved who also didn't know what was really going on, as credible and reliable witnesses.
- Saw me as a possible financial predator regardless of the fact the allegations of 'missing monies' directed at me by both applicants (courtesy of Mr. X.) proved to be unfounded.
- Totally ignored allegations I made which should have raised a RED FLAG to the possibility of prior financial exploitation by Mr. X. and solicitor S.
- Failed to abide by the laws of natural justice.

22.

Further to the points on the previous page, the decision makers:

Failed to place the solicitor who represented the victim under scrutiny as to who was present when changes were made to father's executors of a 'new will' of 2/12/1994 and a Power of Attorney which removed family members from these duties and placed Mr. X. in both positions and subsequently, the decision makers simply concluded:

- **The victim was acting irrationally when these changes were made' when evidence provided after my father's death revealed that Mr. X. and Mrs. T. were in his room when these changes were made and Mrs. T. had witnessed and signed the codicil added to the will of 2/12/1994.**

When the GP's allegation courtesy of Mr. X. of 'It has been reported to me that over \$20,000 has gone from the accounts... proved to be unfounded (this was the only allegation tested), instead of contacting the GP to determine the name of the person responsible for reporting this to him, the decision makers simply fabricated the following excuse on his behalf:

- **'We are satisfied the GP was under a misapprehension regarding the missing \$20,000 or so from the accounts. He may have confused by the amount of money withdrawn to pay for Mr. M's admission to the Retirement Village'.**

In past NSW Annual Reports former Tribunal Presidents have stated: **We must remain 'vigilant' while getting through our increasing workload in a 'timely manner'.**

What part of the above mock legal process I have described shows that there is any vigilance, care or protection involved in this reckless and unintelligible legal process?

During the LACA Inquiry into Older People and the Law, the AGAC Chair Ms. Anita Smith made the following comment regarding the Tribunal's role of removing a person's basic human rights and giving those rights to another person or Trustee/Guardian:

- **If done incorrectly, it has the potential to be a fundamental breach of human rights .....**

What part of the mock legal process, indicates that the removal of a vulnerable person's basic human rights is being done correctly?

23.

#### **7. The UNCRPD - Monitoring freedom from exploitation, violence and abuse:**

Given the abuse that persons with disabilities have suffered in institutions and through services which nominally should serve them, such as health institutions, article 16 on “freedom from exploitation, violence and abuse” specifically requires States to monitor facilities and programmes:

- In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
- States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.
- Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body.

During the 2013 Australian Law Reform Commissions (ALRC) review of the **Equal Recognition before the Law and Legal Capacity for People with Disability**, the Federal Attorney General provided **Australia’s initial Report under the Convention on the Rights of People with Disabilities** and in regard to safeguards this report states:

- In Australia, substituted decision-making will only be used as a measure of last resort where such arrangements are considered necessary, and **are subject to safeguards** in accordance with article 12(4).
- Australia’s interpretive declaration in relation to article 12 of the Convention sets out **the Government understands of our obligations under this article.**
- **Australia’s guardianship laws and the safeguards contained in them aim to ensure abuse, exploitation and neglect does not occur**, consistent with article 16 of the Convention.



24.

## 8. Safeguards:

In 2009 The NSW Standing Committee on Social Issues conducted an inquiry into Substitute decision-making for people lacking capacity and at a public hearing held in Sydney a former NSW Guardianship Tribunal President was asked the following question regarding safeguards:

- **What safeguards are in place during tribunal hearings to minimize the opportunity for people to exploit persons lacking capacity by having themselves appointed in the substitute decision-making role?**
- **Answer:** I guess the safeguards come from the fact that we are undertaking a legal process. We are making the decision about the suitability of a person for appointment based on evidence presented, and we are rigorously testing that evidence.

The remainder of the former President's response to this and other questions would be available is available via the Social Issues Committee's records or via the Internet.

I have shown you that evidence or allegations made are not all rigorously tested and while Guardianship hierarchy will adamantly claim that there are '**safeguards**' in place to protect their involuntary clients, **they are never able to describe what these safeguards actually are.**

### **What safeguards are in place to protect the involuntary subjects of applications?**

Apart from trusting the decision makers to abide by the principles guiding them and the laws of natural justice, there are **no visible safeguards in place to protect older or other people with disabilities**, apart from sections 105 and 106 of this ACT which state:

- **Section 105: It is an offence to provide false or misleading information in an application.**
- **Section 106: Penalty up to \$500.00.**

As it is not the role of this Legal Tribunal to determine the 'truth' or otherwise of all allegations made before it, negates this weak safeguard and a **\$500.00** penalty is not only an insult to people with disabilities, these sections of the ACT are no deterrent to unscrupulous financial predators who stand to gain thousands if not millions of dollars.

25.

### **What safeguards are in place to protect applicants?**

As these Tribunals need applicants to justify their own existence, applicants are 'protected' from defamation proceedings **to ensure the interests of vulnerable people are protected.**

Considering the inexcusable 'mock legal process' described on pages 21 and 22, what part of 'protecting' applicants from defamation proceedings, actually ensures that the interests of vulnerable people are protected when?

- Subjects of applications with intellectual disabilities may be hidden victims of financial exploitation and not be aware of it.
- Subjections of applications will claim someone is 'looking after them' when this is not the case.
- Applicants may be hidden or other financially interested parties.
- Applicants or others involved lie in applications without any penalty.
- The mock legal process contravenes the protection of the subjects of applications and facilitates misuse by financial predators.

### **What safeguards are in place to protect the Tribunal, its members and staff?**

#### **Section 73 of the NSW Guardianship ACT of 1987 states:**

No proceedings shall lie against the Tribunal or any of its members or members of staff for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member or member of staff, and purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, **if the Tribunal, member or member of staff has acted in good faith and with reasonable care.**

- Considering the vulnerability of the subjects of applications who stand to lose their basic human rights and considering the deceptiveness of financial predators, is acting in 'good faith' appropriate when life changing legal decisions are being made?
- Does the mock legal process show that when making legal decisions, the decision makers are acting with reasonable care or acting with a blatant lack of care?

It is obvious that the 'real protected people' involved in NSW Guardianship matters are the applicants, Tribunal, members and staff therefore, there is clearly a need to reverse this long-standing inequitable and indefensible situation by removing the unwarranted protection of these regimes and applicants and instead, ensuring that taxpayers' money is spent on the protection of vulnerable people who stand to lose their basic human rights, **as they should be the only people involved who need to be protected.**

26.

### 9. NSW Equity Court misuse:

I am providing the following information to show you:

- The need to change the NSW Laws that enable unscrupulous financial predators to provide false and misleading information in sworn affidavits pre-hearings to gain financial advantage by deception without any penalty.
- The need to change NSW Laws that permit 'expert witnesses' to provide 'expert reports' on a deceased person's capacity, without sighting the evidence of both sides of the argument.
- The determination of Mr. X. to uphold the will of 14/12/1989.

#### **The provision of false and misleading information in sworn affidavits in NSW Equity Court matters:**

As the sole executor of the will of the 2/12/1994 which left the estate equally divided between my two sisters and me, Mr. X. (the plaintiff) contested this will in favor of the will of the 14/12/1989 under which he and others known to him stood to gain shares of around **\$1 Million dollars**.

#### **The grounds for this were:**

- **The victim did not have the capacity to instruct a solicitor on the 2<sup>nd</sup> December 1994.**
- **The victim did not know or approve of the contents of the will of the 2<sup>nd</sup> December 1994.**

To support this claim he stated:

- **He didn't think that the victim knew what was going on at the Guardianship hearing on in February 1995, he seemed to understand some of it, but not all of it.**

Mr. X. was correct in regard to the above statement however, he omitted to state that other than himself, **nobody at the hearing, including the expert decision makers, knew what was 'really going on' as he had very ingeniously controlled the whole Guardianship process.**

#### **To promote his 'trustworthiness' he stated:**

- The Guardianship Tribunal had placed him as the victim's 'private financial manager'.

Mr. X. and others involved at the Guardianship hearing in February 1995, all had the opportunity to object to the victim being 'legally represented' however, as it suited Mr. X. for expert decision makers to believe the victim's false claim that 'he was looking after him', **he did not object at that time.**

Solicitor S. was also allegedly taking advice from the victim in September/October 1994, when he advised another solicitor that the victim had instructed him he was not to release a will he was holding on the victim's behalf, to me.

27.

I have referred to further verifiable false claims Mr. X. made in his sworn affidavits in the 'attached case summary' however, as I don't have the time to review the 'case summary', to give you an insight into Mr. X's determination to secure the will of the 14/12/1989, I will mention a few of the claims at this point,

Although he was at the Guardianship hearing when the solicitor representing the victim announced that he had drawn up a 'new will' for the victim on the 2/12/1994 and he revealed the contents of that will, X. claimed:

- He didn't know of the existence or contents of the will of the 2<sup>nd</sup> December 1994 until after the victim died in 2002.
- He didn't know the contents that will or any other wills the victim made.
- He didn't know who had his will or where it was.
- He knew solicitor S. had done a will for the victim, but he didn't think he was the victim's usual solicitor.

As mentioned in the information I provided to the Tribunal, in September 1994, which was 3 months prior to the will of 2/12/1994 being drawn up, Mr. X. had angrily advised me:

- The will of the 14<sup>th</sup> December 1989 was still valid and you girls are well provided for."

#### **The provision of false and misleading information pre-hearings in sworn affidavits in NSW Equity Court matters:**

As I believed it was an '**offence**' to provide false or misleading information in a **sworn affidavit** and Mr. X. and Mrs. T. and others involved committed this verifiable '**offence**' on more than one occasion, I raised this issue with the solicitor who represented me and my two sisters and I was advised verbally:

- **The judge won't be interested in the fact that people lie in sworn affidavits.**
- **We expect people to lie in these matters.**
- **The judge will only be interested in whether or not your father had the capacity to instruct a solicitor on the 2<sup>nd</sup> of December 1994.**
- **It's not the person telling the 'truth' who wins, it's the person who plays 'the game' best who wins.**

This perplexing part of the 'legal process' enabled Mr. X. to play 'the will game' for almost three years at the expense of the victim's estate.

28.

### **Reporting suspected Elder Financial Exploitation to the NSW Equity Court.**

As a defendant in the proceedings I advised the solicitor representing me that I wanted to state in a sworn affidavit that I believed Mr. X. and solicitor S. had financially exploited my father in connection with his will of 1989 and I was advised:

- **I could not state this in an affidavit because Mr. X. and solicitor S. could sue me.**
- **The judge would only be interested in whether or not my father had the capacity to instruct a solicitor on the 2/12/1994.**

I contact the police during this dispute however, the solicitor representing me (who I believe spoke to the Police officer concerned) advised me not to bring the matter to the attention of the Police after the matter was settled.

I attempted to do this after the matter was settled however; I was advised by the Police that as I had agreed to settle out of Court, **they could not take any action against Mr. X.**

After almost three years of 'will game playing' Mr. X. eventually offered to 'settle' out of court and as we lacked the funds to pay a 'senior counsel' in advance and were advised that taking the matter to court would cost the estate more than Mr. X's financial demands, **we were basically blackmailed into rewarding Mr. X. by accepting his offer.**

I did not initially agree to settle however, as I was advised that if I didn't agree with my sisters to settle, I would more than likely have to pay the costs of both parties involved therefore, **I reluctantly agreed to settle.**

**The matter was settled at a cost to the estate of around \$500.000.**

Sometime after the will dispute I came across a report by former NSW Public Trustee Peter Whitehead, which is titled:

- **A review of the response of the Courts and NSW Guardianship Tribunal to cases of financial abuse.**

Information in this report appears to oppose the advice I was given during and after the 'will dispute'.

I have attached a copy of the above document for your interest.

29.

**Regarding the victim's capacity or lack of capacity on the 2<sup>nd</sup> December 1994.**

During his hospitalization in mid-July 1994, while he was in the early stage of dementia at this time, the results of a mini mental test conducted on him after his admission were **23/30** which I have been advised is a pass and he could still identify me and my adult children by name six months prior to his death.

In relation to Mr. X's claim that my father didn't understand what was going on during the Guardianship hearing in February 1995, during a past NSW Inquiry into Substitute Decision Making a former NSW Guardianship Tribunal President stated:

- This is a legal process we are putting people through and many people are distressed by it, understandably a lot of people with disabilities, when they come to any court or tribunal, they think they have done something wrong. They think they are in strife.

As people, including professionals who are not old and don't have intellectual disabilities are at a complete loss to describe or comprehend the incomprehensible Guardianship Tribunal legal process, how would a person who is disadvantaged as a result of having a cognitive or intellectual disability, be expected to comprehend this process?

Example:

The victim believed my sister Mrs. C. was the only person responsible for the Guardianship action against him and he was extremely angry and upset that she was telling people he was '**Non Compos Mentos**'. These were his words, not mine.

- **He was not informed at any time that Mr. X. and his GP also wanted a 'financial management order' placed over him.**

At the conclusion of the hearing, the arrogant and intimidating male legal presiding member asked him the leading question of:

- **"Would you like you friend Mr. X. (he mentioned his prominent position in the community) to manage your affairs?"**

The victim, who was shaking with fear and had wet himself answered:

- **"Yes dear"**

Had the victim known of Mr. X's covert actions prior to the hearing, he would have been extremely hostile towards him and he would not have wanted him placed in that position.

30.

### **Obtaining favorable reports from 'expert witnesses' in NSW Equity Court matters:**

Based on information we (the defendants) provided to one expert witness who had never met the victim:

- We obtained a report supporting our claim that the victim **had capacity on the 2/12/1994.**

Based on possible false information Mr. X. (the plaintiff) provided to:

- An expert forensic witness who had never met the victim.
- A hospital geriatrician who saw the victim for approximately 10 minutes twice a week during his 7 week hospital stay in 1994 and this geriatrician had conversations with Mr. X. and the victim's GP's during that time.
- The victim's GP

He obtained three reports supporting his claim that the victim **lacked capacity on the 2/12/1994.**

While this is a good money earner for the 'expert witnesses' who make decisions without sighting the evidence of both sides of the argument, it is a ludicrous situation as it not only wastes money from the estate, it reverts the situation back to where it was prior to these 'expert witnesses' becoming involved.

### **The actions of the victim's GP after the victim's death.**

A short time after the Guardianship hearing in February 1995, I spoke to the GP at the hostel the victim resided in and I asked him for the name of the person who was responsible for reporting the alleged 'missing over \$20,000 to him and he advised me that Mr. X. was the person responsible.

I subsequently wrote to the GP and **asked him to provide me with this information in writing** however, regardless of my many requests, he failed to reply.

I then wrote to the AMA and advised them of the GP's failure to respond to my request and they contacted the GP who provided them with the following information in a letter **dated 21 July 1999:**

- "As you are aware, she (J Walker) wrote me a letter which **essentially asked me to please explain, why I stated that \$20,000 was missing from her father's accounts.**
- I have discussed this with the Guardianship Board who apparently have had extensive communications with her regarding this matter. **They left it open with me as to what I should do.**
- I have discussed this with in a very general sense and **he has directed me not to communicate with his daughters as to his affairs.**
- I do have concern about his cognitive ability to make such a decision, **but he was adamant about this.**

31.

As I already was aware of **'why'** the GP made the false allegation of missing monies and who reported it to him, I would hardly be asking him that question therefore, **his evasive answer clearly shows how determined he was to protect himself and Mr. X.**

Further to this my father was totally unaware of the GP's and Mr. X's involvement in the Guardianship action therefore; **my request had nothing to do with my father or with his affairs.**

As indicated on the previous page, this GP provided Mr. X. with a supporting report stating that the victim lacked capacity on the **2/12/1994**, yet rather than provide me with the information I requested in writing, he was prepared to allegedly 'take advice' from the victim **4½ years after he declared that the victim lacked capacity.**

**This GP was seen as a credible and reliable witness by the NSW Guardianship Tribunal decision makers.**

Conclusion:

Guardianship justice has been described as Mickey Mouse justice, quasi justice, mock justice, sham justice. The hierarchy and decision makers have been described as bullies, gestapo and dictators etc. Many members of the community with or without disabilities, who have had the misfortune to experience the mock legal process, would rather commit suicide than have their lives and the lives of their families destroyed and controlled by these regimes.

The hierarchy of these 'protected regimes' are experts at promoting their achievements, their initiatives, the number of cases they get through in a year, how the expertise of their members includes the protection of people with disabilities, ensures that all parties are accorded procedural fairness and how they play a part in people with disabilities enjoying legal capacity on an equal basis with others in all aspects of life as per Article 12(2) of the UN Convention on the Rights of Persons with Disabilities etc.,

Self-promotion is no recommendation and while the claims made are all very impressive and I am sure that applicants who have misused these Tribunals for their own financial gain or for other devious purposes would support these claims however, if a survey was conducted of the hundreds if not thousands of complaints made by family members, carers and people with disabilities whose lives have been profoundly damaged by the mock legal process over the last two decades, you would discover the reality of the demoralizing personal and financial consequences of a person with a disability becoming an involuntary 'Ward of the State'.

Fraudsters (con artists) are also masters of self-promotion and as you would be aware, people from all walks of life and professions who don't have disabilities, become victims of these 'hidden' fraudsters therefore, people with mental, cognitive or intellectual disability's would not stand a chance should they encounter these people.



As all types of abuse and neglect of people with or without disabilities are 'hidden crimes' that occur behind closed doors, there is no way the Government, Guardianship Regimes, Elder Abuse Prevention Units etc., can prevent this from occurring, particularly when people who are on the 'disability gravy train' are so intent on protecting them-selves and their jobs that none of them will listen or act on concerns raised by people with genuine concerns, who are described as 'whistleblowers'.

I have shown you that Guardianship Tribunal laws as interpreted by the protected and unaccountable who administer these laws, are a barrier to justice for older people with or without disabilities and that Guardianship Laws in Australia do not meet Australia's International obligations to the rights of people with disabilities.

**Recommendations:**

- The Government needs to fully implement the recommendations of article 16 of the UNCRPD.
- To ensure the rights of older people with or without disabilities and all others involved are respected and protected by Guardianship Tribunal decision makers; remove the protection of Guardianship Regimes by ensuring they are effectively monitored and accountable to independent authorities.
- As the ineffective legal process facilitates misuse rather than providing protection to the involuntary clients, unless these Tribunals are bound by the rules of evidence and have the jurisdiction to determine whether wrongdoing has occurred prior to their involvement, they will not be able to ensure decisions they make are paramount to the welfare of the subjects of applications as opposed to the best financial interest of others involved.
- Visible and strong safeguards need to be put in place to protect the vulnerable subjects of applications.
  1. Safeguards protecting applicants from defamation under the guise of ensuring the interests of vulnerable people are protected need to be removed.
  2. All applicants and should be placed on oath.
  3. Non family members should declare any financial interests in the assets of the person concerned.
  4. All direct family members should be made aware of applications prior to hearings taking place.
  5. Once and an order is placed over a person, Banks etc., should be notified and instructed to retain records of the previous seven years to enable detection of prior exploitation.
  6. The welfare of people who are under Guardianship orders and the actions of private financial managers should be monitored at regular intervals.

34.

7. I suggest that when a non-family member approaches the Tribunal for an 'order' the Government should have a special Police unit to investigate the relationships of non-family members and the older people, similar to the **Australian Cyber Online Reporting Network (ACORN)** which investigates dating and other scams involving people of all ages who don't have disabilities, sending thousands of dollars overseas to scammers who falsely claim to be in love with them etc.
8. I also suggest that when a non-family member contests a will, to avoid rightful beneficiaries being forced (blackmailed) to settle out of Court, the money should not come out of the estate and instead, the plaintiff should pay all of the costs involved until the matter is settled.

It has taken me a lot of time and effort over the years to get my head around the web of lies and intrigue that surrounded my late father in late 1994 early 1995. I am not a professional as you will probably tell from the presentation of this submission. I am an older person myself and this saga has caused me a lot of unnecessary stress and sleepless nights. **All because no-one would listen.**

Like the victims of pedophile priests who were ignored by the hierarchy of various religious organizations who practiced willful blindness for decades to protect the perpetrators and the reputation of their organizations and many other people who have suffered at the hands of the NSW Guardianship Tribunal and Trustee/Guardians, I have not been able to get the treatment I was subjected to in early 1995 out of my mind since that time therefore, I hope the NSW Government does not continue to practice willful blindness in regard to the unacceptable issues I have raised.

I trust this submission results in real changes being implemented to 'better protect' people with disabilities, sooner rather than later.

If you require further information I would be happy to provide it.

Yours Sincerely,

J Walker.

Attachments to follow.....