

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

**Organisation:** Cooma Monaro Legal Services

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Partially Confidential

# COOMA MONARO LEGAL SERVICES

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28 October 2015

The Director  
General Purpose Standing Committee No 2  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

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Dear Sir/Madam,

### Re Inquiry into Elder Abuse

I welcome the opportunity to make a submission to the Inquiry into Elder Abuse.

Having had firsthand experience in dealing with two long term cases of elder abuse over a period of approx. 10 years I believe I am in a position of providing a supported opinion as to how elder abuse may be able to be positively monitored and managed in the future.

My submission will concentrate on the aspects of psychological abuse and in financial abuse supported by two real life cases.

It is accepted by organisations such as Seniors Rights Victoria in their submission to the Royal Commission into Family Violence June 2015 that "Elder Abuse is not widely acknowledged by the public" and that "older people who seek help rarely identify themselves as victims of elder abuse".

That in a nutshell is the problem.

I have attached my submissions for your consideration.

Yours faithfully

**COOMA MONARO LEGAL SERVICES**

Peter Lewis  
Solicitor

## **Submission**

### **Psychological Abuse**

#### **Case 1**

A woman (widow (A)) aged 79 years controlled 60% of the family business. Her son with whom she had a strained business and personal relationship owned the remaining 40% of the business.

During the period of the last 2 to 3 years A entertained the idea of selling her shares in the Company. Her son introduced her to a friend of his who, in conjunction with the son cajoled, threatened and bullied her into:-

- (a) Selling her shares at a value less than 50% of their true market value.
- (b) Convincing her to change solicitors on two separate occasions during the course of the sale negotiations.
- (c) Directed her to a solicitor who was known to the purchaser. This solicitor was provided with a detailed background history of the matter including a history of the son's behaviour toward his mother.

The woman's daughter (B) became aware of the matter at the stage that her mother was due to sign contracts and made contact with the Elder Abuse Help Line. After 2 hours explaining the history of the matter B was advised that whilst they understood her concerns there was nothing they could do as a complaint had to be received from A.

A settled the sale of her shares for \$1,300,000; not \$2,700,000 as per other offer's received.

### **Financial Abuse**

#### **Case 2**

I refer to the following case law.

*Thomas and Anor v Arthur Hughes Pty Ltd and others [2015] NSW SC1027.*

This case involved the inappropriate transfer of assets by a 94 year women and her 64 year old son.

Whilst I do not intend to examine the above named case it is, in my opinion, appropriate that a brief background be provided in order that the committee can garner the shortcomings of the current alleged protectionary legislative processes available in NSW.

## Background

1. I am a member of the family.
2. My late father, who suffered from dementia and was living in a nursing home at all times prior to illness controlled the family company.
3.                   took charge of the accounting records when my father was placed in care.
4.                   over a period of 2 to 3 years then engaged my mother in a never ending stream of horror stories involving unpaid taxes, future tax liabilities and possible investigations by the Australian Taxation Office.
5.                   became aware of       plans to reorganise the family company and in an attempt to prevent my mother's involvement in the re-organisation made application to the then Guardianship Tribunal of NSW for the appointment of a financial manager.
6. This application was unsuccessful as the standard of proof for financial capacity is very low in NSW and my mother was able to satisfy that standard before the tribunal.

My mother was then exposed to later court proceedings.

What has arisen from the two cases?

### Case 1:-

- (a) Failure by professionals such as lawyers and bankers who were made aware of the abuse but continued to advise A. The bank seemed more interested in retaining the incoming purchaser as a client despite knowing the full background of the abuse.
- (b) No recourse for family members when reporting elder abuse as a complaint must be received by the person being abused.

### Case 2:-

- (a) No appropriate legislative framework to protect the elderly from financial abuse.

## Recommendations

1. Providing for greater oversight of attorneys appointed under the Powers of Attorney Act 2003.
2. Further and better training for lawyers to ensure they understand their professional and ethical obligations when acting for an elderly person.
3. Increasing the efforts by the banking industry to intervene early in suspected cases of financial abuse of older people.
4. An Australian wide standard for financial capacity that establishes a high standard of proof enacted within each states legislative framework.
5. The Elder Abuse Help Line be provided with authority to act on complaints raised by members of the family.