

**Submission  
No 83**

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

**Name:** Mr Brian Maher OAM

**Date received:** 1/02/2016

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13 January 2016

The Hon Greg Donnelly MLC

Parliament House

Macquarie Street

Sydney NSW 2000

Dear Mr Donnelly

**Re: Inquiry into Elder Abuse**

I enclose my Submission to you in your position of Chair of the General Purpose Standing Committee No.2.

Yours Sincerely

Brian Maher

## SUBMISSION TO INQUIRY INTO ELDER ABUSE BY BRIAN MAHER

### KEY ISSUE: STEPS TO GUARD AGAINST, OR REMEDY FINANCIAL ABUSE OF ELDER

**MY BACKGROUND:** I spent my entire working life with Public Trustee NSW, retiring in 2005 as General Counsel and Deputy Public Trustee (i.e. a Deputy CEO). That organisation, which commenced operation in 1914 by virtue of the Public Trustee Act 1913, was amalgamated in recent years with the Offices of Protective Commissioner and Public Guardian to form the current organisation known as NSW Trustee and Guardian (TAG).

**FINANCIAL ABUSE OF ELDER:** Some of the more significant areas of concern are in relation to Wills, Powers of Attorney and Financial Management.

A quite significant number of older people appoint TAG as their Executor on the basis of their not having sufficient trust in their closest relatives and/or because they feel threatened or intimidated to make their Wills along certain lines. It is true, of course, that should TAG not continue its present high profile (but continue its executorial functions) that testators could make their Wills with the assistance of private Solicitors or write their own Wills (as they do now). However, the vast majority of Wills appointing TAG as Executor are made "in house" using the expertise of TAG staff. To drastically reduce the availability of such "in house" staff – as is currently envisaged by the NSW Government – would be a form of abuse, in that a lot of older people would feel more at the "beck and call" of their closest relatives AND/OR need to pay what might be considerable legal fees to private Solicitors to expertly draft their Wills. Because of the ever-increasing value of assets held by older people, the complexity of relationships and the increasing life expectancy rates, there is often a real need for Wills to be of a complex nature – and hence to cost more if drafted by private Solicitors. On the other hand, Wills drafted by the staff of TAG do not attract a fee.

In respect of Powers of Attorney there is a very real need for some public organisation having expertise in managing financial affairs of older people to exist, and indeed to flourish, bearing in mind those same three aspects mentioned in the last paragraph. There are numerous examples that come to mind of greedy relatives or so-called friends taking advantage of older people by siphoning their assets for their own use rather than for the benefit of the owners of those assets. It is a particularly worrying form of abuse in that it can be done slowly and/or systematically over a number of years, without others close to the people being aware of it until the person being preyed upon is left destitute. Of course, the prevalence of Alzheimer's Disease and other forms of senility are fruitful reasons for this kind of abuse. One solution is for TAG to continue its present high profile of offering itself as another source of Appointee under a Power of Attorney. Apart from the dishonesty "factor" other reasons for appointing TAG as Attorney are the complexity of assets, the expert staff and the Government Guarantee against dishonesty or fraudulent activity. The continuance of such a valued service is presently under threat because of the planned decimation of TAG to a large extent. Such a drastic reduction in services by the Government would constitute a form of financial abuse.

A third "arm" of abuse which would result from drastic cutbacks in staff and reorganisation of TAG – resulting in less availability and expertise and, consequently, of services – is that TAG would be less likely to be appointed as Financial Manager of the assets of those older people unable, because of some non-physical reasons, to effectively manage their own financial affairs. For the same reasons as outlined in the preceding paragraph this would constitute a form of financial abuse – i.e. denying

those people the opportunity - or at least making it less likely – that TAG, an acknowledged expert in this area, would be appointed to manage their financial affairs.

Connected with this last-mentioned form of financial abuse is the fact that the planned drastic reduction in the services offered by TAG will make it less effective in carrying out a most significant function, namely the supervision of private persons appointed as Financial Managers. The assets of those older people subject to such Financial Management Orders would thus be placed at risk – another form of financial abuse.

**To summarise, there is a very real threat that financial abuse of older people will result from the planned, and fairly imminent, drastic reorganisation of TAG.**

**The way for this abuse to be avoided would be for the Government to resile from its present intentions in this regard and to strengthen, rather than reduce, the services currently offered by TAG.**