

Submission
No 94

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

Name: Name suppressed

Date received: 9/02/2016

Partially Confidential

The Hon Greg Donnelly MLC
Chair, General Purpose Standing Committee No 2
Legislative Council, Parliament of NSW
Parliament House
Macquarie St
Sydney, NSW. 1 2000

Dear Mr Donnelly,

Firstly, I would like to thank those involved who brought about this important inquiry and thank you for allowing me to make this submission.

In my submission, I will focus on the misuse of Powers of Attorney and Enduring Guardians and how people with dementia can be easily financially abused by their P.O.A.s, and as a result of this is the psychological impact on the victim.

As you would be aware dementia is the second leading cause of death in Australia and the number of cases of people being diagnosed with dementia continues to grow in both the young and the elderly.

My mother was 67 years old when she was diagnosed with dementia in 2002 and my partner of 32 years was diagnosed with dementia when he was 54 years old in 2009. After meeting many other carers, since the time of my mother's diagnosis, I can assure you that abuse by a POA remains a hidden crime. Many people who are aware of the abuse, and those discovering the abuse including the victims themselves are often too frightened to come forward and report the abuse.

My submission is based on personal experience as I () was the applicant who applied on our mother's () behalf, via the Guardianship Tribunal, to have our mother's case heard. As a result, our mother was placed into the care of the Public Guardian and NSW Trustees after it was discovered that our

mother () was being financially abused by her eldest daughter () who was our mother's POA and Enduring Guardian, appointed twice - in 2009 and again in 2010. **Note:** and signed their documents on the same day.

(Enclosed are copies of both POAs and also our mother's Credit Union statements, dating from 2010 until 2012, in which approx. \$300,000.00 was withdrawn from our mother's Credit Union account during this time by . Please read and compare 's evidence to the Tribunal, which is also enclosed.)

In spite of our mother's dementia and that she was residing in an Aged Care Facility, it was our mother () who first alerted us to the fact that she was being financially abused by her eldest daughter . refused to show our mother any bank statements.

Enclosed is a copy of 's Enduring Guardian, dated 1st June 2010. The directions given on this document clearly demonstrate that . failed to inform the solicitor that (a) our mother had been diagnosed with dementia in 2002, and (b) was already living in an Aged Care Facility when these documents were prepared.

NOTE: and shared the same solicitor (*enclosed is letter from this solicitor, dated 8th January 2013*)

Once realised that we had discovered the abuse, our mother was subjected to further abuse, in the form of verbal and physical threats of violence. The Police were called to the Aged Care Facility to interview our mother. Thankfully, via the Guardianship Tribunal process, the Public Guardian was able to protect our mother due to the access order. (*See enclosed Guardianship Tribunal document*)

The approach of The Office of the Public Guardian was outstanding in the way in which they handled our mother's situation. Someone from the Public Guardian's office actually visited our mother in the Aged Care Facility and no family members were involved in this interview process between the Public Guardian's office and our mother. As a result of this interview, our mother did not wish to see her daughter , nor was permitted to see her mother.

Sadly, only several weeks after being placed into the care of the Public Guardian and NSW Trustees, I was with our mother when it was discovered that she had a massive aneurysm and she was then given a week to a few months to live. On our long 2 hour drive back from the specialist's appointment, our mother's concern was not about dying, it was that she had no money in the bank to pay for her funeral. Although I realise that she had a large aneurysm, I honestly believe that she died of a broken heart as our mother had lost everything including her own daughter

As I stated earlier, my partner of 32 years has been diagnosed with Younger Onset Dementia and if I was to pass away before him, I now know that in spite of having legal documents in place someone could come along in the future and easily abuse him, just like our mother was abused. Our mother even had legal documents put in place at the time of her diagnosis in 2002.

Changes have to be made so that the very vulnerable in our society are protected. Powers of Attorney are such powerful documents and yet there are no consequences when they are misused to inflict pain and anguish on their victims and to steal everything from them.

As the applicant, who reported the abuse to the Guardianship Tribunal on our mother's behalf, I discovered many flaws within the current system when reporting abuse.

I will address some of the major challenges that I faced, in the hope that more adequate systems will be put into place to help both the victims of abuse and those reporting the abuse.

Thankfully, the Guardianship Tribunal processed our mother's case rapidly in order to protect her from any more abuse. However, in The Guardianship Tribunal's rush to do so, it appears important documents were not read properly. (I do wonder if the Guardianship Tribunal is overwhelmed by the number of cases that have to be heard.)

We faced three separate hearings, via the Guardianship Tribunal, yet there was no continuity of the people who heard the case. When the case was adjourned, different people then presided over the hearings. As a result, vital evidence was overlooked, such as the fact that _____ was appointed our mother's POA twice = in both 2009 and again in 2010. (Both POAs were presented to the Tribunal with my application.)

Our mother's Credit Union statement clearly demonstrates that _____ (POA) had withdrawn approximately \$300, 000.00 from our mother's Credit Union account between 2010 and 2012. Yet when our mother mentioned in the third Tribunal Hearing about the money withdrawn from her Credit Union account in 2010, we were all informed that particular money was too long ago. Please read evidence to the Tribunal - it appears at first that the only money withdrawn from our mother's account by _____ was at the time of the sale of our mother's home. Yet, _____ was withdrawing large amounts of money from her mother's account in 2010 using the **2009** Power of Attorney.

The Guardianship Tribunal, in spite of having medical documents presented to them, were unable to determine when our mother was originally diagnosed with dementia. The Guardianship documents state that " _____ was diagnosed with dementia in 2010 or sometime before that." Our mother was diagnosed with

dementia in **2002** and this fact was vitally important in establishing capacity issues when our mother's legal documents were prepared in 2009 and again in 2010.

It appears that the Guardianship Tribunal failed to understand that our mother was already residing in an Aged Care Facility permanently, due to her dementia, when our mother's legal documents were prepared in 2010. (See enclosed *Enduring Guardian of 2010*, and the letter from the Commonwealth Government re the entry date)

blatantly disobeyed the Adjournment Orders and Directions of the Guardianship Tribunal.

demonstrated a total disregard for the Guardianship Tribunal's Orders and Directions and also gave false evidence to the Tribunal, but there appears to be no consequences in place for her actions.

When our mother was placed into the hands of the NSW Trustees and a financial management order was made, we were confident that the NSW Trustees would investigate all of the accounts that had transferred and placed our mother's money into. As well as this, we had hoped that the Trustees would investigate 's own accounts into which our mother's money had been placed.

We were also confident that the NSW Trustees would investigate the cash withdrawals made by , and also investigate just when accounts were opened and closed by .

The Trustees also needed to collect information from the Insurance Company re: **Direct Debit (Life Insurance) Sept 2012** (See 's Credit Union Statement of Sept 2012)

We still do not whether the NSW trustees investigated 's own Credit Union account in 2010. Approximately \$40, 000.00 of 's money was transferred into this account in 2010, and by July 2011 – before the sale of 's home – none of this money remained in 's account.

We do not know what happened to the proceeds of our mother's home, except that states that she placed the \$86, 000.00 cheque into a NAB bank account. banked this \$86, 000.00 cheque after the sale of our mother's home. Who was the cheque made out to, as it came from 's account = was it made out to or to ' = and whose name was on the NAB account in 2011?

It appears that _____ **did not** register the Power of Attorney document with the Lands Department as per current requirements when selling real estate as a POA. We do not know if the Trustees investigated this matter.

_____ died, never being allowed to see the accounts that _____ had placed her money into, as the accounts were in _____'s name. This is a major failing in the system.

We assumed, wrongly, that when our mother's plundered "estate" was placed into the hands of the NSW Trustees, under the Financial Management Order, that this meant the NSW Trustees would handle our mother's "estate", even in the event of her death.

Instead, the NSW Trustees are handing our mother's "estate" straight back to _____ and to the solicitor (_____), - the very same solicitor that _____ and _____ shared, and who had **declared a conflict of interest** in relation to _____'s financial matters. (*See enclosed conflict of interest letter, dated 8th January 2013*)

Do the NSW Trustees honestly believe that _____ will continue to investigate herself? (*See letter from NSW Trustees, dated 11th Dec 2014*)

_____ has made a complete mockery of the current systems in place, and her actions and behaviours demonstrate a complete lack of respect for all those involved, including the victim - her own mother.

Recommendations

Recommendation 1

As we discovered, solicitors are poor judges of medical issues in relation to capacity, so surely when a Power of Attorney is being prepared then if a Medical Certificate formed part of the POA documents then this may help to stop some of the abuse. This Medical Certificate must be completed by the person's treating GP, listing any medical conditions (such as dementia), treating specialists, medications prescribed, a brief medical history and, importantly, how long the GP has been seeing this patient. This would help to stop any diagnosis being hidden from the solicitor when the POA is being prepared and also help in relation to any future matters that may arise.

Recommendation 2

All POAs and Enduring Guardians need to be registered and put into a central data system. To fund the cost of this system, all POAs and Enduring Guardians have to pay a registration fee. If a POA is revoked, then that would also incur a registration fee and the revoked POA would also stay on the database.

To help pay for and maintain the central data system, solicitors, financial institutions, doctors and even real estate agents (houses are sold fraudulently) would have to pay a fee to access the central system to check: (a) if the POA is current, or (b) if the person has had numerous POAs or (c) if a POA has been revoked or ordered by the Tribunal not to be used.

Under the current system there is no way that anyone knows if a Power of Attorney has been revoked.

For example, in our mother's case, the Adjudgment Orders and Directions given to _____ by the Guardianship Tribunal were disobeyed. _____ opened a Westpac Bank account in our mother's name on 14th February 2013, using the POA document. The Tribunal had no way of notifying all of the financial institutions that _____ was not to use the POA document. Nor did the bank in this case know that when _____ opened this Westpac account in her mother's name that the Guardianship Tribunal had already made their Orders and Directions.

If a central data system had been in place, _____ could not have opened the new account in her mother's name. The bank could have used the central data system and realised that the Guardianship Tribunal had placed a restriction on the POA document used by _____. Then the Tribunal could have been alerted.

Currently, without a central data system, Powers of Attorney who act in a criminal manner will continue to do so to defraud the system. If a central data system existed, then solicitors would also have to pay a fee when preparing a POA or Enduring Guardian document to

- (a) ensure that there are no previous POAs,
- (b) to check if a POA has been revoked,
- (c) to check whether the person is continually changing their POA.

All new accounts being operated by Powers of Attorney would attract a fee and the financial institution must pay a fee to check whether the POA is current and not revoked.

All large withdrawals being made by a POA attract a fee and that amount must be registered on the central data system.

If a financial institution is concerned about money being misappropriated by a POA, they could register their concerns via the central data system and pay a fee to do so, thus protecting themselves and their customers.

When a person's home is being sold and a POA is handling that sale, then this should also be registered on the central data base and attract a fee. Make it a criminal offence if there is a failure by a Power of Attorney to register the POA document and sale of the home.

Currently, POA documents should be registered with the Lands Department if they are handling the sale of the property. Our mother's Power of Attorney, _____, appears not to have registered the POA document when she handled the sale of our mother's home, yet it appears no action can be taken against _____ for breaching this regulation.

NOTE: 2010 ACAT document _____ signed on our mother's behalf.

If the Government sets up a central system such as this for POAs to be registered, then the costs could be met by a variety of fees being paid. **Surely that would save in other areas, such as the Government not having to cover extra costs of Tribunal Hearings, and also the Government having to pay extra in for Aged Care Costs due to the fact the POA has stolen the person's assets and income.**

Recommendation 3

Our mother (_____) and her appointed POA (_____) shared the same solicitor (_____). When it was brought to his attention that large sums of money were being withdrawn from our mother's account by her POA, this solicitor then declared a conflict of interest. This solicitor took copies of _____'s Credit Union statements.

However, the moment our mother passed away, this very same solicitor is again representing her POA (_____) – this time in her role as our mother's executor in relation to our mother's will, dated 1st June, 2010. **The solicitor in question was made aware before _____ died that she had been placed into the care of the Public Guardian and NSW Trustees.**

When Powers of Attorney are made, surely the person making the POA and also the person being appointed should not share the same solicitor, unless they are husband and wife or partners. This would put more protection in place for the victim and everyone would be reassured that the solicitor was only working and looking out for their client who was having the documents prepared. There would be no question of who the solicitor was protecting.

Recommendation 4

When a Power of Attorney is appointed there needs to be an attached Statutory Declaration for the appointed POA to complete, stating that they do not have a criminal record. Anyone can be appointed as a POA and, with no police check, *someone with a history of violence can intimidate a vulnerable person into appointing them as their POA.*

Having a Statutory Declaration in place may help to stop some criminals trying to obtain a Power of Attorney in the first instance. If any abuse does occur then at least by having the Statutory Declaration in place it would be a criminal offence by making a false statement.

Recommendation 5

We went to the Police in relation to the financial abuse situation, as well as reporting 's threatening behaviour. We were given an event number by the Police.

When verbally abused our mother at the her Aged Care Facility on the telephone , and threatened her with violence, the Police were called. The Police instructed the Aged Care Facility not to allow into the Facility. When the Public Guardian was appointed they reinforced the Police instructions, as per our mother's request not to see her daughter . again via the Guardianship Tribunal placing an Access Order.

However, the Police were unable to act in relation the financial abuse situation. We were informed by the Police that, due to the fact that there was a Power of Attorney in place, it was a civil matter and not a Police matter.

Surely, when our mother herself had alerted us to the fact that she was being financially abused and we then visited her Credit Union to obtain her Credit Union statements (which showed large withdrawals made by of approx. \$300, 000.00) then this must be fraud. However, as was our mother's POA, this is **currently** not a criminal offence.

, in her evidence to the Tribunal, lied to cover up some of the money she had withdrawn from her mother's account. Yet no criminal charges can be brought against as she was the POA. This type of fraud involving a POA should be made a criminal offence, otherwise the Police can not act. Until changes are made, this crime will continue to remain the hidden crime and the most vulnerable in our society will remain unprotected. Our mother's missing money will never be recovered. Apparently no action can be taken against , and the only consequence that she faced was that she had her POA and Enduring Guardian revoked by the Tribunal.

Thank you for reading my submission. The best we can hope for is that this inquiry is able to bring about appropriate changes that will not only protect our elderly, but any other vulnerable people in our society.

Please allow our mother's death and her case to stand as an example for us all, that *our current laws and regulations are failing to protect people in vulnerable situations.*

Our mother died, knowing that she had lost everything, especially her pride and dignity of not having enough money in her bank account to pay for her funeral costs. She was subjected to extreme abuse for being brave enough to speak up, the psychological impact was enormous and she had to endure so much toward the end of her life – including losing her eldest daughter

The day we visited the Credit Union and they produced all of our mother's Credit Union statements which showed that she had no money in her account will always be a vivid memory for me. In the Credit Union Mum just put her head on the desk and she cried and cried. Please help to protect other people, just like our mother, who are placed in this difficult situation and prevent this hidden crime from being continually repeated.

All I can do now is to continue to speak up for my mother and if you need a witness to be called in relation to this enquiry, I am prepared to speak out so that others do not suffer the same fate as our mother did.

Yours Sincerely

NOTE - I have included some documents for you to read. All the statements I have made in my submission are supported by documents.