

Submission
No 69

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

Name: Name Suppressed

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Partially Confidential

Inquiry into Elder Abuse NSW Submissions.

Submission for Family.

From the outset, as a State we should be ashamed that these laws are not already in place. Given that NSW was once considered a leading light around the world as a forward thinking State we have failed our Elder folk.

With that in mind I trust that these laws are put in place as soon as possible to protect the ever increasing numbers of Elder folk who are abused everyday by people, who in most cases should be deemed, forever; unfit.

Justice Windeyer believes that only in exceptional circumstances should the Executor be removed. However, by the time it gets to Court, the abuse has already happened; has already diminished the quality and respect we owe and who as peoples are obliged to care and respect our older folks. It's horrible to think we are obliged when we should be doing it anyway.

It may be a claim but most people who speak of these things claim that the one who abuses the Elders are sociopaths and in most cases rightly so. Some turn violent and try to run people over, but because the Police are so very wary of getting involved, invariably they do not investigate the matters fully; which in our case they have not interviewed all the witnesses.

What His Honour suggests is that once the abuse has happened; the emotional and often physical abuse that dogged a person's life must continue onto the Estate by default, transferred from the parent to the siblings who actually care as the only reasons that a person can be removed are generally on cases of real frauds et al. Very rarely does a person make a contested application to the Probate Court without a true held belief that someone has abused an Elder. Yet current laws strongly favour the guilty, in this instance the POA. The old maxim. Why should a person who abuses children, Elder folk etc EVER be allowed to hold a business Directorship or such? Is there a lessor standard to be a Board member? Inforce this and Elder abuse will be instantly cut in half.

It is an unjust analogy but a valid one; as His Honour believes the right of the testator is paramount. In contested matters there should be a compulsory nominated person option to avoid incredible expense to the Estate. Currently, the person who is usually the Executor, who is the one who has acted so heinously can sit back and say "No, Dad made me the Executor" can further rely on the Estate to meet his already sociopathic behaviour with expenses; or as in our case 's fourth solicitor, that we are aware of he has spoken too about the matter, wanted Indemnity Costs even before we got to Court, in a form of blackmail to appoint a Sep Rep for the Estate.

Our father, passed 93 was a frugal, honest caring wonderful man. He worked all his life, to fall ill in 2004, to allow his son as POA to govern things, as he did for our mother, who passed away in 2007.

In about 2010 had family conversations about selling the family home, meaning Dads other brother, who worked for the Police for 43 years could have been left homeless. Our brother was gifted but challenged. Dad changed the Will to make sure he could stay there. Even then Dad was frightened of .

By sheer luck, and with incredible sadness we later discovered in 2011 that as POA for Mum and Dad, has stolen upwards of ~\$357,537.00. As he holds the accounts and never shared we rightly assume there is more. We estimate that that he has caused a loss to Dads estate of ~\$500,000.00 by his failure to maintain the family home. Not a big Estate but it was Dads Castle.

We say stolen, that since we discovered the money was "taken", Dad has stated to everyone, except and his shadow of course, that he never ever loaned or agreed to give the money. When we tried to do something about this Dad was frightened. Saying things like "no it will cause too much trouble"

In 2012 informed the rest of the family that Dad was technically bankrupt as there was no money left and that he could not help Dad out of this situation. He stole his money, then just walked away.

Nearer the end of Dads life, we sisters three, took control with an ePOA; which never contested, until discovered that after our gifted brother passed away he had left about \$680,000 to Dad. Then challenged our ePOA.

So being responsible we went to NCAT. asked that NCAT delay their hearing to ensure that Dad had passed away leaving in control. Yes, you guessed it he's the Executor. He couldn't wait for Dad to die. While Dad was still warm, rather than go to the hospital to pay his last respects, went straight to the solicitor to collect the Will.

According to current law, subject to the Judge of course, because has not done anything wrong as the Executor there is an argument that he may retain this position. Regardless that he has admitted that he said to the family that he intends to waste the Estate, he has intermingled and covered up his actions.

This advice was afforded to us by a very senior solicitor in Probate Law that as they are separate roles, they must be viewed under current legislation as separate. Regardless that, there is prima facie evidence of fraud, coercion, conspiracy and other such matters. And then there is the evidence that stole money from our then dead mothers bank accounts.

The current obligations under law place the duty to prove a criminal conviction, such like being declared as an unfit person or of a criminal charge such as s192E and 193E of the Crimes Act to have an Executor declared unfit. Yes, the legislation and some judgments of Justices who consider people who abuse their fiduciary positions as POA is not sufficient to claim they are not incompetent to stand. A joke yes! Or do the beneficiaries actually come first after the solicitor fees?

The law for Elder Folk must mirror society, moral and legal obligations as it is to children. Elder abuses, Paedophiles, rapists, people who cause wanton grievous bodily harm, harm their victims for life, are the lowest of society and respectfully should not have rights to claim they are suitable to remain in society.

Without reservation Dad died ashamed from what did to him. All any parent wants is that any benefit they can afford their children is given them, to the maximum that is possible, as soon as possible. Currently the law says that solicitors, the ambulance chasers who just push and push are allowed their costs from the Estate. So in effect every person who leaves anything to their children, will know that solicitors may bleed the Estate dry. So we still fight.

Solomon wanted to cut a child in half. Elder law must reflect this obligation to minimise costs, to stop the waste of Court time. Justices are by experience, extremely capable people and as such the greater public interests demand that Justices must uphold the moral equitable expectations that "reign over all the law" and "from which flow all civil laws".

Justices in Probate Matters must be able to wear multiple hats, decide that someone is not a fit and proper person to stand as a POA or Executor, or as a Director of a company. This could be done by consultation with a respected Senior Registrar or the like; round table so that 'if it quacks like a duck, looks like a duck..' then they make their recommendations. In our case refused all offers to settle; no genuine offer he made. If one doesn't agree let them go to court but costs must flow. Not from the Estate. Vary rarely one would suggest the heinous amongst us make applications to Court.

Those who do not uphold their fiduciary obligations as POA must never be allowed to represent the Estate without proper accounts provided or by default; they pay for everything. This must be unequivocal. There must be a compulsory criminal review under law of people who abuse our Elder folk. For children, we have to have a compulsory check before we care for kids.

Why not a compulsory check for our Elder Folk; that is in Probate the appropriate Registrar would say "Are there any allegations of fraud theft abuse et al; show your evidence or forever hold your tongue" Judges in Probate deal with the scum of the earth generally who target weak, defenceless infirmed people; mostly THEIR own blood.

Allow mediation without solicitors as a first must, before that Registrar. If an allegation is made of fraud, theft etc the law is quite clear, if you raise these claims and are found to be totally unfounded you must suffer the consequences. Enforce it; let's stop being half cocked about these things. Send the bloody message. Beam it on the Opera House. Elder Abuse will not be tolerated.

If a registrar believes there is a prima facie case it should immediately be sent before a Justice who should read the report and set conditions to review the allegations. A Justice in Probate Court must be able to refer a person to the DPP to save time, fine or impose sentence recommendations as it is referred to the DPP. To hear any matter, regardless be it criminal or civil, under any legislation to expedite the matter: An honest judge would see his duty to the People of NSW and all complete. Equally so with the burgeoning ambulance chasers conduct must be reviewed against each case and the Justice, in the context of that case (why only Probate?) should admonish said solicitor and report him to the Law Society.

One thing that must happen is that solicitors must not be paid out of the Estate. Too many solicitors are abusing this 'cash cow'. Mediation must happen without solicitors inside. AVO's are increasingly useless as it doesn't matter if there is an assault as most times its one word against the others.

Our current system only bogs down Courts and ambulance chasers richer, Estates poorer, the devastated parent who had worked hard all their lives to give the best they can are treated like the next holiday instalment. To be an Executor is a privilege, not respectfully as Justice Windeyer suggests set in stone. The moment any allegation is made of criminal conduct, make not least s327 mandatory and please please see it through to the full extent of the law compulsorily.

If required I would be happy to attend any hearing, any Court stand on any street and say the above.