

INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Name: Name suppressed

Date received: 13/11/2015

Partially Confidential

12th November 2015

The Chairman

General Purpose Standing Committee No. 2

Inquiry into elder abuse in NSW

I am writing to the inquiry to outline the history of an unfortunate family matter involving a person with dementia being exploited by a daughter and other third parties and the failings of the Tribunal system and laws that are in place to resolve these matters satisfactorily.

It is my hope to give oral submissions to the Inquiry so that a better understanding of the issues and failings can be gained by the Committee members and ultimately some legislative changes be recommended to better protect the frail and vulnerable from abuse.

The matter involves my

Up until the events outlined the 2 daughters had a close and loving relationship for over 40 years and there was no hint of any disagreement or conflict.

In was involved in a serious pedestrian accident whilst walking our baby daughter. Soon after she was suspected of having dementia by the medical staff and it became apparent that she had walked in front of a car against the traffic lights.

Plans were made between the daughters to have visit the necessary specialists to undertake the tests and plan for the future. During this time, daughter was able to

organise for [redacted] to give her \$400K towards purchasing a property. This was later matched to give my wife [redacted], a similar amount to give the impression that it was an early inheritance.

Despite repeated requests by [redacted] to return all the money and finalise the medical assessments so as to understand the outlook for [redacted] refused.

Soon afterwards, [redacted] organised for [redacted] to alter all her legal instruments including revoking a long standing POA in favour of the 2 daughters, an Enduring Guardianship in favour of [redacted] and creating a new Will. She also organised and created a new POA with the Accountant as the Attorney and a new Enduring Guardianship with herself as the Guardian as well as a new Will with the Accountant as the executor and Trustee.

[redacted] was forced to take the matter to the Guardianship Tribunal.

The appeal to the GT initially failed however over the course of the following 3 years we successfully appealed the POA and Enduring Guardianship appointments based on the Tribunal accepting that [redacted] lacked capacity to make these appointments based on the uncontested gold plated medical evidence that we were able to provide. By default, this evidences the fact that others orchestrated the illegal arrangements.

Unfortunately this probably involved around 15 hearings and wasted an enormous amount of State resources. The events surrounding the illegal changes to the POA, Will and Enduring Guardianship were fraudulent and well orchestrated.

Unfortunately the Guardianship Tribunal does not have a mandate to make findings of fact or illegality but is supposed to act in the best interests of the victim according to a listing of prioritised principles.

These principles include best interest of victim, free decisions of victim and to preserve family relationships etc. The fallout from these structures more or less guarantees that any party that does the wrong thing by the victim is unlikely to suffer any consequences through the GT process for their actions.

It also often leads, as it did in our case to the GT appointing the NSW Trustee as Financial Manager and the Public Guardian as Guardian because of a perceived conflict between the daughters. The appointment was made in the mistaken belief that this would somehow improve the relations.

It is particularly inappropriate in our case because it was proven that lacked the capacity to make the changes to her legal instruments and therefore it must have been illegally organised by the accountant and the lawyer.

In our particular case we requested that the GT deal with the revocations of the POA and Enduring Guardianship because if we were able to prove that the Revocations were invalid, that would be restored to her former position before she was manipulated.

Clause 6h2 of the Guardianship Act states that a revocation does not operate if the Protected Person lacks the legal capacity to execute the Revocation. The GT was persuaded that she lacked the Legal Capacity to execute the Revocation however refused to deal with the Revocation. Instead they decided the Public Guardian

ought to be appointed. Similarly the POA was not legally revoked and therefore it should have been dealt with before anything else.

The normal situation when any crime or illegality is proven is for the victim to be restored to their former position as quickly as possible. So for example if a child is kidnapped by a relative and then recovered, the child is returned to the parent and is not made a ward of the State. In our case, the victim was made a ward of the State because it involved a family member doing the wrong thing causing the conflict.

In both instances the GT held that [redacted] lacked capacity to make the new appointments and therefore should have declared that the revocations were invalid.

Had the GT held that the Revocations were invalid, the NSW Trustee and Public Guardian would not have been appointed. Furthermore [redacted] would not have been effectively held in isolation [redacted] by [redacted] for around 2 years without allowing DR to have visitation by her [redacted] grandchildren and daughter [redacted].

[redacted] was placed into a nursing home, 6 hours round trip from [redacted] within 6 weeks of [redacted] losing access to money via the appointment of the NSW Trustee.

The consequences of the appointment of the NSW Trustee as [redacted]'s financial manager has been nothing short of a disaster. Had we not used all the means of appeal available to us, the NSW Trustee would have sold all of [redacted]'s personal and Superannuation real property assets.

The Trustee initially wanted to sell the family home to pay for a refundable deposit at the nursing home despite

having business assets with free cash available to pay the deposit.

We fought against this and were able to delay the sale by 12 months however in the end they sold the house. To make matters worse, the Trustee sold the waterfront property to the tenant of the house without going to market, let alone auction. This is totally inappropriate and not in the best interests of

Secondly they wanted to sell all of her property assets in her Super fund because of a minor compliance matter. Again we fought the ridiculous concept and finally after lawyers and the ATO were engaged, they decided to leave the Super assets intact.

I have significant and irrefutable evidence that conspired with the Accountant and Lawyer to effect these changes. There is considerable written and oral evidence given by the 3 parties to the Tribunals over the course of 5 years that would prove beyond any doubt that they have lied and deceived the Tribunal on numerous occasions in order to cover up their actions. Unfortunately the GT has no mandate to make findings of Fraud or other illegalities and therefore the perpetrators are not held to account.

Attempts to bring the matter before the police have failed because they do not have the time or resources to investigate what they see as essentially family matters.

We complained to Chartered Accountants who effectively gave us the flick by saying that as the Guardianship Tribunal did make findings of fraud against the accountant, then they would not investigate the matter.

This is a ridiculous position because the GT DOES NOT HAVE A MANDATE TO MAKE FINDINGS OF FRAUD OR OTHER ILLEGALITIES NOR DEAL WITH WILLS!

Furthermore we provided them with clear written proof of the Accountants wrong doing in respect of the Will and his contradictory testimony to the GT however they totally ignored the issue and closed the complaint. It is a complete farce to have the effective UNION of the Accountants be the body that investigates Accountant's professional misconduct.

Likewise when we complained to the Office of the Legal Services Commissioner, they defended the actions of the lawyer as if they were his legal team in a trial and were not open to the possibility of his wrongdoing.

Again we have significant written evidence and his own oral testimony to prove his guilt however these were largely discounted.

Unfortunately we are not legally trained and therefore are at a significant disadvantage when dealing with legally trained persons.

To be clear, the illegalities involved included use of revoked POA, full knowledge of incapacity by persons involved in the changes to legal documents, giving false evidence to Tribunals in writing and orally, accountant giving false advice to in relation to the Will. I have full and irrefutable evidence of all these allegations.

So there are a number of key issues that need to be addressed in order to better protect the frail and elderly from abuse.

Firstly whilst the legal system is there for people to pursue actions when they feel aggrieved, in matters of Capacity involving Wills, Powers of Attorney and Enduring Guardianship we should consider making changes to the present "Presumption of Capacity" and legislate to require persons over the age of 65 to undertake a capacity test by an independent specialist within a 30 day period prior to creating, revoking or altering a Will, POA or Enduring Guardianship.

By doing this, we can take away the question of capacity surrounding the person making such changes. As it currently stands, if there is any doubt held by family members or others about the capacity of the person at the time of executing legal documents, then a significant and costly process through the Tribunal system and or Courts will follow. The overall cost of this current arrangement is a huge burden on society and leaves the protection of the vulnerable as an after thought.

As we experienced in our case, was effectively taken away from the family that she spent over 20 years with to live in an isolated farm hours away from her previous home and afterwards when lost access to s funds was placed in a nursing home in which is a 5 hour round trip from her daughter This had a devastating effect on but she was unable to change things because of her lack of capacity and the controlling influence of

Furthermore her home was sold and had we not pursued the NSW Trustee for their incompetence, they would have liquidated all her real property assets for no good reason. (By the way, there is no recourse against the NSW Trustee for their poor decisions)

As it stands, we would estimate the cost to the estate from all of these events at around \$400,000 and would probably have been \$1m had we not successfully appealed the poor decisions.

Furthermore if we had not had the POA overturned, then the Accountant would have had carte blanche from 2010 to manage the companies as he saw fit and later after manage the estate and charge an unlimited amount for his pain and suffering for acting as Trustee in addition to charging his regular fees. This could have resulted in a further \$X million in potential losses as the Accountant had the authority to buy and sell properties as he pleased and was not accountable to anyone, other than [redacted] who lacked capacity.

If on the other hand [redacted] was required to obtain a capacity certificate prior to altering her legal arrangements, none of the documents would have been altered because she would have failed the test.

The simple imposition of a requirement to obtain a capacity certificate will significantly reduce the huge amount of abuse perpetrated on the elderly which many reports have found is carried out by family and other persons known to the victim. That is usually by trusted persons.

The other changes that ought to be made to the Guardianship Act are that the GT be made to deal with any Revocations of POA or Enduring Guardianship before dealing with any new appointments of these instruments so that a person can be restored to their original position.

This does not prevent any party from seeking to apply for any alternate order however what it does is start with first

things first. In any situation where a vulnerable person has been involved, the aim should be to do things in the most efficient way and with least impact on the victim. By dealing with Revocations first, we avoid or minimise the potential for further negative outcomes.

Whilst not all arrangements involve revocations, it would be a major improvement to the current in terms of victim outcomes and it would lead to a significant reduction in GT hearings and appeals that would hopefully lead to higher quality outcomes as the caseload numbers fall.

I would welcome the opportunity of giving a personal account of our experience as I believe I have seen some the worst the system has to offer in it's present form which is supposedly aimed at optimising the outcomes for the frail but clearly falls very short.

I believe a few legislative changes could go a long way towards avoiding many potential instances of abuse and improve the outcomes for the frail involved in abuse and fraud.

Naturally there is a huge ecosystem of medical, legal, nursing homes and other professions that make a good living out of the present arrangements and will fight any meaningful changes that could limit their incomes into the future but it is my firm hope that the government is more interested in protecting the vulnerable than in protecting the stakeholders.

We have many legislative precedents of enforcing certain laws to protect a minority that involve potential red tape or other administrative requirement. There is no shortage of examples so it cannot be sensibly argued that it impinges

on a person's freedom or other such complaint for a person to be required to get a capacity certificate.

Whilst I do not expect any of our own case specific outcomes to be addressed, I have enough material that I can share with the Committee to show that the travesty of justice was allowed to occur by failings in the system rather than any lack of evidence in our case.

I look forward to hearing from you and the opportunity of being involved in future hearings

Yours Sincerely