

**Supplementary  
Submission  
No 11a**

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

**Name:** Mr Richard McCullagh

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# **Richard McCullagh**

## Retirement village lawyer

27 January 2016

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

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### **Inquiry into elder abuse** *Furthering the deterring of errant attorneys*

RECOMMENCED CHANGES to the *Powers of Attorneys Act 2003* (NSW) (Act)

I refer to my submissions to the Committee dated 11 November 2015, specifically proposed section 36(4)(e)(v).

To be consistent with other related provisions of the Act, this subsection should be expressed to have effect 'subject to the terms of the instrument creating the power of attorney' (see sections 21(3), 31(2)(b) and 50(2)).

On this basis, the proposed subsection would now read as follows:

(v) that an attorney, subject to the terms of the instrument creating the power of attorney and to section 85 of the *Trustee Act 1925*, pay to the principal or the principal's estate compensation for loss (including loss of profits or capital gain) to the principal or the principal's estate attributable to the attorney's failure to use reasonable diligence in exercising powers under the power of attorney to protect the interests of the principal'.

Yours faithfully

Richard McCullagh  
BA LLB (Macq)