

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

**Name:** Mr Richard McCullagh

**Date received:** 11/11/2015

---

**Richard McCullagh**  
**Retirement village lawyer**

BA LLB  
ABN 44 084 360 022  
[www.retirementvillagelawyer.com.au](http://www.retirementvillagelawyer.com.au)

[richard@retirementvillagelawyer.com.au](mailto:richard@retirementvillagelawyer.com.au)

11 November 2015

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

By email: [gpsnco2@parliament.nsw.gov.au](mailto:gpsnco2@parliament.nsw.gov.au)

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

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

*Compensation to principals*

1. Statutory liability on the part of attorneys to compensate principals for loss attributable to their erring from their fiduciary duties.

*Certificate of advice for attorneys*

2. Mandatory certificate of advice to attorneys as a condition of acceptance, as currently applies to enduring guardians in NSW.

*Mandatory registration expanded*

3. Mandatory registration of all powers of attorney granted by natural persons, as applies now to any power of attorney used to execute a dealing affecting land.

## SUMMARY

In this submission I argue<sup>1</sup> that NSW should now align itself with other Australian jurisdictions by introducing a specific statutory liability upon attorneys to have to compensate a principal in respect of loss attributable to manifestly improvident and self-benefitting transactions. A 'reasonable person' test should suffice, as it has done in the realm of negligence for nearly a century. This remedy should be available and enforceable at the tribunal level, subject to rights of appeals to superior courts. The formality and cost of the latter at first instance is a deterrent to the aggrieved principal rather than the errant attorney.

Powers conferred under a general and enduring power of attorney are so broad and reliant upon trust I submit that an attorney in signing their acceptance should be subject to the same requirement as currently applies to the appointment of enduring guardians in NSW. Namely, a certificate of advice from a solicitor or other qualified person to the effect that the attorney at the time of signing appeared to understand the responsibilities set out in the prescribed form.<sup>2</sup>

Finally, older principals over a long period of time may have granted multiple powers of attorney, relocated several times, used different solicitors and 'lost track' of their grants without necessarily revoking prior grants.<sup>3</sup> Mandatory registration of all grants and revocations of powers of attorney by natural persons would provide an inexpensive extra step to facilitate easy tracking of this. It would involve no more than is already the case with powers of attorney being used to execute dealings affecting land.

It should be apparent that none of these proposals are in the least novel in content, but seek to extend their application in the area of enduring powers of attorney.

## RECOMMENDED AMENDMENTS

This submission recommends the following amendments to the *Powers of Attorney Act 2003* (NSW):

<sup>1</sup> I have been a legal practitioner since 1985, an Adjunct Lecturer in elder law at the College of Law since 2013, regularly present MCLE seminars on retirement village and aged care law and powers of attorney, author of 'Retirement Village in NSW' published by Thomson Reuters 2013 and author of occasional articles in the NSW Law Society Journal. I am a legal director of Patrick McHugh & Co Pty Ltd in Kincumber on the Central Coast of NSW

<sup>2</sup> Powers of Attorney Regulation 2011 (NSW) Schedule 2, Form 2, paragraph 7 'Acceptance by attorney'

<sup>3</sup> *Ranclaud v Cabban* [1987] NSWSC unreported BC8802222, where 6 powers of attorney came to the attention of the court

- A new s 36(4)(e)(v) be inserted so that the Supreme Court or, importantly, the NSW Civil and Administrative Tribunal may make an order,

'(v) that an attorney, subject 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'.

- A new s 20(5) be inserted as follows:

'(5) An enduring power of attorney does not operate to appoint a person as an attorney unless and until:

- (a) it is endorsed with the attorney's acceptance of the appointment, and
- (b) the execution of the instrument by the attorney is witnessed by one or more eligible witnesses, and
- (e) each witness certifies that the person or persons whose execution of the power of attorney by the attorney is witnessed executed the instrument voluntarily in the presence of the witness and appeared to understand the effect of the instrument.'

Consequential amendments to the prescribed form are set out in Schedule 1 to this submission.

- A new Section 51A be inserted as follows:

(1) Any instrument executed after the commencement of this section that creates a power of attorney granted by a natural person must be registered by the Registrar-General in the General Register of Deeds kept under the *Conveyancing Act 1919*.

(2) Any instrument revoking such a power of attorney must also be registered by the Registrar-General in that Register.

Consequential amendments are suggested to Schedules 4 and 6 of the *Civil and Administrative Tribunal Act 2013* (NSW) to appropriately confer jurisdiction for compensation orders.

The above amendments are set out in full in **Schedule 1** to this submission.

## BACKGROUND

Various recent reports to the Commonwealth government affirm that it is now widely accepted that the senior cohorts of the population of Australia exhibit a

burgeoning confluence of increasing longevity, asset accumulation and mental incapacity.<sup>4</sup>

This creates 'perfect storm' conditions for opportunistic attorneys purporting to act under general and enduring powers of attorney (EPOA's). Reported decisions of the Equity Division of the Supreme Court of NSW (Court) and the Guardianship Division of the NSW Civil and Administrative Tribunal<sup>5</sup> (Tribunal) are replete with examples of such opportunism, typically a child of an elderly parent. Some are listed in Schedule 2 to this submission.

The problem is not that there is the absence of redress for an aggrieved principal. It is, rather, that pursuit of redress is currently confined to filing a summons with the Court which for many ordinary families is too daunting, protracted and expensive to pursue.

Whilst it is often the child attorney of a parent that is the defendant or respondent in such cases<sup>6</sup> it may also be a more distant relative such as a niece<sup>7</sup> or grandchild,<sup>8</sup> friend<sup>9</sup> or neighbour of an elder. Sometimes the estates of deceased attorneys are left to retrieve funds misspent by an errant attorney.<sup>10</sup>

#### *Bronkhorst v Lloyd*

For example, while drafting this submission the Court published a decision dealing with an application by a 94 year old principal, by her tutor the NSW Trustee and Guardian as she had become incapable. This alleged that her daughter as her enduring attorney had expended over \$900,000 of her money between 2009 and 2011 using two bank accounts.<sup>11</sup>

No explanation was forthcoming at all, let alone as to how the expenditure was in her mother's best interests. The daughter repeatedly changed lawyers and sought adjournments. An order was eventually granted requiring the daughter to provide accounts within a stated time as to how the money was expended.

The point of this recent example is that years had passed by the time the alleged misuse of a very substantial amount of the elder's money was discovered and legally acted upon. As I outline below, this is a typical case where 'the horse has bolted' and seeking redress is currently likely to be a long and expensive process.

The thrust of this submission is to make the pursuit of redress simpler and cheaper both as a deterrent to an errant attorney and to better achieve

<sup>4</sup> The Commonwealth Treasury, *The 2015 Intergenerational Report*, The Productivity Commission, *Caring for Older Australians*, Report No.53, Final Inquiry Report,

<sup>5</sup> Replacing the former Guardianship Tribunal as of 1 January 2014

<sup>6</sup> PGB [2014] NSWCATGD 32 (19 September 2014) (a son who was a solicitor); BCG v NSW Trustee and Guardian [2015] NSWCATAD 61 (a son)

<sup>7</sup> SKC [2014] NSWCATGD 39; Perochinsky v Kirschner [2013] NSWSC 400

<sup>8</sup> Angliss v Urquhart NSWCA 256

<sup>9</sup> BPY v BZQ [2015] NSWCATAP 33; P v NSW Trustee and Guardian [2015] NSWSC 579

<sup>10</sup> Perpetual Trustee Company Ltd v Gibson [2013] NSWSC 276 (a son EPOA)

<sup>11</sup> Bronkhorst v Lloyd [2015] NSWSC 1618 (30 October 2015) per Slattery J

restitution to a principal, while balancing this against reasonable protection to an attorney acting honestly and reasonably.

## BEYOND THIS SUBMISSION

The focus of this submission is elder law in a domestic setting so no consideration is given to powers of attorney granted in commercial contexts.

Equitable remedies flowing from unconscionable conduct, undue influence, estoppel by encouragement and constructive trusts are highly relevant to elder law generally and sometimes even to powers of attorney in particular.<sup>12</sup> This submission, however, has a narrower compass by focusing upon a proposed statutory codification of fiduciary duties arising under EPOA's in a domestic context and two related matters of 'good housekeeping'.

## STATUTORY COMPENSATION

### CURRENT MEASURES IN NSW

The relationship of principal and attorney is a recognized class of fiduciary relationship.<sup>13</sup> The Act preserves the application of common law and equity not otherwise displaced by the Act.<sup>14</sup>

By 'errant attorney' I mean one who acts under the EPOA in a manner that breaches common law fiduciary duties. These duties are an integral equitable constraint upon an attorney in exercising the powers entrusted to and conferred upon him or her under an EPOA.

The duty of a fiduciary, in the present context an attorney, boils down to this: when faced with a situation where on the exercise of a power under the EPOA (a) the attorney could benefit while (b) the principal may or may not benefit, then the attorney is bound to recognize that potential conflict and to avoid it by according to the principal's interests priority over the attorney's interests.<sup>15</sup> An example is the attorney mortgaging the principal's home and using the loan monies for the attorney's business, or selling the home and retaining some of the proceeds.

<sup>12</sup> *Matouk v Matouk* (No.2) [2015] NSWSC 748 (29 May 2015)

<sup>13</sup> *Ward v Ward* (No.2) [2011] NSWSC 1292 (18 October 2011) per Brereton J at 3 citing *Hospital Products Ltd v United States Surgical Corporation* [1984] HCA 64

<sup>14</sup> Act s7; *Halani v Halani* [2013] NSWSC 91 (14 February 2013) per Lindsay J at 103

<sup>15</sup> *Watson v Watson* [2002] NSWSC 919 (4 October 2002) per Acting Master Berecny at 48



'The point is that a fiduciary is not entitled to make a profit out of, or by reason of, a fiduciary position without the knowledge and assent of the person to whom the fiduciary duty is owed.'<sup>16</sup>

Currently in NSW, if a child attorney is found to have acted in breach of fiduciary duties to his or her parent principal, the parent - or any other person who can show they have a genuine interest in the welfare of the principal<sup>17</sup> - may apply to the Court or Tribunal for a review of the EPOA.

If the case against the child attorney is made out the results may include:

- Suspension or termination of the child's appointment under the EPOA,
- Appointment of a replacement attorney, or a financial manager,<sup>18</sup> and
- An order requiring the child to provide records and accounts of his or her use of the parent's money and property under the EPOA.<sup>19</sup>

## SHORTCOMINGS OF CURRENT MEASURES IN NSW

At worst, an errant attorney might no longer 'get away with it'. Having got away with it to date, if assets have been dissipated then from the point of view of the parent, and the rest of the family, 'the horse has bolted'.

Of course, at general law an errant attorney is liable to account to the principal for breach. Expensive proceedings bound by the rules of evidence may be commenced in the Court, invariably requiring the engagement of counsel, but the formality, stress and risk of adverse costs orders are powerful disincentives to anyone pursuing this strategy, and moreso for an elderly parent. Such considerations may equally act as something of an incentive to an attorney's prospective errant conduct.

An attorney's exposure to an inexpensive and readily accessible right to compensation for loss on the part of the parent principal would provide a just and proportionate disincentive to the child attorney to breach fiduciary duties. The Tribunal provides a procedurally well-tested forum for the 'just, cheap and quick resolution' of disputes in its Consumer and Commercial Division.

## REASONS FOR THE SHORTCOMINGS

Both the Court<sup>20</sup> and the Tribunal<sup>21</sup> have held that, subject to very limited exceptions not presently relevant, the Tribunal lacks the power to grant

<sup>16</sup> *Warman International Ltd v Dwyer* [1995] HCA 18 (23 March 1995) at 36

<sup>17</sup> NSW ss 35 and 36; *BTD v NSW Trustee and Guardian* [2015] NSWCATAP 87 (8 May 2015) at 16

<sup>18</sup> NSW s 37

<sup>19</sup> *PGB* [2014] NSWCATGD 32 (19 September 2014) where all 3 of these orders were made

equitable remedies. The Court is invested with inherent jurisdiction to do this while the Tribunal is a creature of statute. The Tribunal can only adjudicate and make orders where specific jurisdiction to do so is conferred upon it.<sup>22</sup> This does not extend to equitable remedies for breach of fiduciary duties.

In one case, the Tribunal recommended that a financial manager liaise with police to investigate the dissipation of a principal's funds,<sup>23</sup> and in another held that an attorney may still be liable to account even after the death of the principal.<sup>24</sup> But that is about as far as the Tribunal can go in facilitating compensation.

More specifically, the Court has held that the Guardianship Division of the Tribunal in particular is informed by the 'protective jurisdiction'. This holds that the welfare of the protected person is the primary focus.<sup>25</sup> It is therefore more inquisitorial than adversarial, legal representation is only by leave, filing fees are easily affordable and costs orders are rare.<sup>26</sup>

The Consumer and Commercial Division of NCAT is more adversarial in nature and suited to claims for compensation while still retaining the relative informality and cheapness of that jurisdiction compared to the Court.

## COMPENSATION IN OTHER JURISDICTIONS

All jurisdictions in Australia apart from NSW now have some form of statutory liability for an errant attorney to compensate a principal for loss caused by acting outside the authority conferred by the relevant statute to which the operation of the EPOA is subject.<sup>27</sup>

This is broadly expressed as compensation due for loss caused by the attorney's failure to use the EPOA in compliance with the relevant Act,<sup>28</sup> or to use reasonable diligence to protect the interests of the principal.<sup>29</sup> It is the latter that I have suggested be adopted in a new section 36(4)(e)(v) to be inserted in the NSW Act.

<sup>20</sup> *Steak Plains Olive Farm Pty Ltd v Australian Executor Trustees Limited* [2015] NSWSC 289 per White J at 67 and 76; *Maryska v Mason* [2006] NSWSC 913 (14 September 2006) AsJ Malpass at 21 in relation to the former Consumer Trader and Tenancy Tribunal in general

<sup>21</sup> *Hammond v Richardson & Wrench Lindfield* [2002] NSWCTTT 674

<sup>22</sup> Civil and Administrative Tribunal Act 2013 s 28; *P v NSW Trustee and Guardian* [2015] NSWSC (18 May 2015) per Lindsay J at 121

<sup>23</sup> SKC [2014] NSWCATGD (29 October 2014) at 18

<sup>24</sup> UQH [2014] NSWCATGD 37 (2 October 2014) at 49

<sup>25</sup> *IR v AR* [2015] NSWSC 1187 (14 August 2015) per Lindsay J at 47 and 48; *P v NSW Trustee and Guardian* [2015] NSWSC (18 May 2015) per Lindsay J at 122

<sup>26</sup> OLL [2014] NSWCATGD 40

<sup>27</sup> Dal Pont GE, *Powers of Attorney*, LexisNexis 2015 at paragraphs 8.8 - 8.10

<sup>28</sup> Powers of Attorney Act 2006 (ACT) s 50(1); Advance Personal Planning Act (NT) ss 21, 22, 78 & 83(2); Powers of Attorney Act 1998 (QLD) s 106(1); Powers of Attorney Act 2014 (VIC) s 77

<sup>29</sup> Powers of Attorney and Agency Act 1984 (SA) s 7; Powers of Attorney Act 2000 (TAS) s 32; Guardianship and Administration Act 1990 (WA) s 107(1)(a)



In some jurisdictions application for compensation can be made to the domestic tribunal or court,<sup>30</sup> and in others only to the Supreme Court.<sup>31</sup>

For the reasons outlined above I submit that the Consumer and Commercial Division of the Tribunal would be an appropriate forum for compensation claims to be pursued as an alternative to the Equity Division of the Supreme Court.

All the current appeal procedures to the Supreme Court from NCAT decisions would apply.<sup>32</sup>

In a Queensland case, attorneys sold their principal mother's house and each retained \$115,000 from the proceeds. No satisfactory explanation was given of how these self-gifts were in the interests of their mother. They were ordered to repay these amounts, now being to the deceased principal's estate, under the compensation provision, section 106.<sup>33</sup>

## PROTECTIONS TO ATTORNEYS

A trustee, including an attorney, found to have acted in breach of fiduciary duties may apply to the court for exoneration,<sup>34</sup> on the basis that they acted honestly and reasonably.<sup>35</sup> This current protection should not be disturbed but act as a balance to claims against attorneys. This might be most easily achieved by an express proviso in the proposed new subsection with a view to carrying it over to the Consumer and Commercial Division of the Tribunal.

In other jurisdictions this protection is provided for in the power of attorney statute itself.<sup>36</sup>

## MANDATORY CERTIFICATE OF ADVICE

Currently an EPOA must firstly be signed by the principal and witnessed by a solicitor or other qualified person who certifies that the effect of the document was first explained to the principal and he or she appeared to understand it.

Second, the attorney must sign his or her acceptance below the following statement:

---

<sup>30</sup> QLD, VIC and WA

<sup>31</sup> ACT, SA and TAS

<sup>32</sup> Civil and Administrative Tribunal Act 2013 (NSW) Part 6 and Schedule 6, Part 6

<sup>33</sup> *Moylan v Rickard* [2010] QSC 327 (6 September 2010).

<sup>34</sup> Trustee Act 1925 (NSW) s 85

<sup>35</sup> *Halani v Halani* (No.2) [2013] NSWSC 790 (6 June 2013) per Lindsay J

<sup>36</sup> Powers of Attorney Act 1998 (QLD) s 105

**7 Acceptance by attorney**

- (a) I accept that I must always act in the principal's best interests.
- (b) I accept that as attorney I must keep my own money and property separate from the principal's money and property.
- (c) I accept that I should keep reasonable accounts and records of the principal's money and property.
- (d) I accept that, unless expressly authorised, I cannot gain a benefit from being an attorney.
- (e) I accept that I must act honestly in all matters concerning the principal's legal and financial affairs.

Failure to do any of the above may incur civil and/or criminal penalties.<sup>37</sup>

I submit that the requirement already applying to the principal for a certificate of advice should also apply to each attorney. This would reinforce the gravity of the responsibilities of and constraints upon an attorney to the principal. It would constitute a more robust record of that assumption than simply signing the document as is now the case.

It is arguable that an independent solicitor for the attorney should complete the new certificate as there is potential for conflict with respect to the principal. I doubt this is necessary if the attorney appears to simply understand and accept the responsibilities and constraints. If, on the other hand, the attorney asks probing questions about what they might or might not be able to do or indicates a lack of insight into recognizing and avoiding a conflict of interests, then he or she should be sent to an independent solicitor for the explanation and certificate of advice.

This involves no more onerous a burden on the solicitor than already applies in relation to the certificate for the principal.

This simple and inexpensive measure could act as a 'gate keeper' to reduce the incidence of granting of powers of attorney to a child or other person who, though completely trusted by the principal, is nonetheless not appropriate to assume that responsibility.

## MANDATORY REGISTRATION

As a subsidiary 'good housekeeping' measure I submit that there should be an unqualified requirement for the registration of the grant and revocation of powers of attorney by natural persons. In NSW this need only be done currently in the case of executing a dealing with respect to land which is to be registered.<sup>38</sup>

<sup>37</sup> Powers of Attorney Regulation 2011 (NSW) Schedule 2, Form 2, paragraph 7 'Acceptance by attorney'

<sup>38</sup> NSW s 52

This would avoid the potential 'multi-headed hydra' of several EPOA's being granted, perhaps over long periods of time and forgotten about.<sup>39</sup> If incapacity supervenes, those old EPOA's which may now be quite contrary to the wishes of the elder can no longer be revoked without application to the Tribunal.<sup>40</sup>

A new section 51A would supplement the current requirements by applying only to those grants and revocations made after the commencement of that section. The residual discretion to register under section 51 can remain for other powers of attorney (eg by corporate principals).

The phrase 'natural person' is not unfamiliar to other NSW legislation and probably does not need a separate definition in the Act.<sup>41</sup>

In some jurisdictions, all powers of attorney must be registered to be effective at all.<sup>42</sup>

## CRIMINAL SANCTIONS

By way of endnote, some jurisdictions provide for specific criminal sanctions for errant attorneys.<sup>43</sup> As noted above the 'Attorney's responsibilities' in the prescribed EPOA form for NSW concludes with reference to 'civil and/or criminal penalties' for breach. Relevantly, the *Crimes Act 1900* (NSW) provides for the offences of 'obtaining financial advantage or causing financial disadvantage'<sup>44</sup> and fraud.<sup>45</sup>

It is submitted that the higher evidential onus of 'beyond reasonable doubt' and the greater odium for the family in dealing with an errant attorney via criminal sanctions does not make these provisions very effective as a deterrent. While a readily obtainable order for payment of compensation may satisfy a principal and deter a would-be errant attorney, a gaol sentence probably well exceeds what a principal would want to feel responsible for.

Another factor is that police tend to regard financial elder abuse as a civil rather than criminal matter and are discouraged by the prospect of relying on lead

<sup>39</sup> ALC & SDC & ALP [2011] NSWGT (25 August 2011) where 9 months elapsed by separate grants of EPOA by 89 year old Maltese mother to daughter and son respectively; solicitor for son did a search of the register to find daughter's EPOA but it could not be found: at 28; in *Angliss v Urquhard* [2002] NSWCA 256 (9 August 2002) 3 EPOA's were granted over period of 7 years to the same attorneys followed by a purported revocation and grant of attorney to a different grantee a year later (at 9 – 11)

<sup>40</sup> KMC [2014] NSWCATGD 43 (27 October 2014) at 74 and 77

<sup>41</sup> Eg Uniform Civil Procedure Rules 2005 (NSW) s 7.1

<sup>42</sup> NT s 13(c) and TAS s16(a)

<sup>43</sup> NT s 78 and SA s 8

<sup>44</sup> Crimes Act 1900 s 192D

<sup>45</sup> Crimes Act 1900 s 192E

witnesses who are elderly and unlikely to want to subject themselves to, let alone withstand, cross-examination.<sup>46</sup>

## CONCLUSIONS

I have endeavoured to show how relatively minor amendments to the *Powers of Attorney Act 2003* and the *Civil and Administrative Tribunal Act 2013* could substantially enhance protection for elderly principals and boost deterrence for attorneys to avoid conflicts of interests in the context of elder law.

None of the amendments are novel in content but only in their proposed application to the specific area of enduring powers of attorney.

Yours faithfully

Richard McCullagh  
BA LLB (Macq)

11/11/2015

---

<sup>46</sup> Alzheimer's Australia NSW, Discussion Paper No.10, June 2014, 'Preventing financial abuse of people with dementia' at pages 20 and 26

## SCHEDULE 1 to the submission on elder abuse

### Proposed legislative amendments

#### Powers of Attorney Act 2003 (NSW)

- A new s 36(4)(e)(v) be inserted so that the Court or, more importantly, the Tribunal may make an order,

‘(v) that an attorney, subject 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’.

*‘Note: an order for compensation may be granted by the Court or made by the Consumer and Commercial Division of the Tribunal.’*

- A new s 20(5) be inserted as follows:

‘(5) An enduring power of attorney does not operate to appoint a person an attorney unless and until:

(a) it is endorsed with the attorney’s acceptance of the appointment, and  
(b) the execution of the instrument by the attorney is witnessed by one or more eligible witnesses, and  
(e) each witness certifies that the person or persons whose execution of the power of attorney by the attorney is witnessed executed the instrument voluntarily in the presence of the witness and appeared to understand the effect of the instrument.’

Consequential amendments to the prescribed are set out in Schedule 1.

- A new Section 51A be inserted as follows:

(1) Any instrument executed after the commencement of this section that creates a power of attorney granted by a natural person must be registered by the Registrar-General in the General Register of Deeds kept under the *Conveyancing Act 1919*.

(2) Any instrument revoking such a power of attorney must also be registered by the Registrar-General in that Register.

Power of Attorney Regulation 2011

- A new certificate of advice be insert In Form 2 of Schedule 2 below paragraph 7(e)

I [insert full name and address of qualified witness] certify the following:

(a) I explained the effect of this power of attorney and the responsibilities of the attorney before it was signed by the attorney.

(b) The attorney appeared to understand the effect of this power of attorney and the responsibilities set out above

(c) I am a prescribed witness.

(d) I am not an attorney under this power of attorney.

(e) I have witnessed the signature of this power of attorney by the attorney.

Signature:

Civil and Administrative Tribunal Act 2013 (NSW)

- Insert in Part 3(1) of Schedule 4 in alphabetical order,

*'Powers of Attorney Act 2003 (but only in relation to section 36(4)(e)(v) of that Act)'*

- Insert in Part 5 of Schedule 4 new subclause 8A

*'(8A) Subclause 3 does not apply with respect to proceedings in this Division for compensation under section 36(4)(e)(v) of the Powers of Attorney Act 2003 contemporaneously with or following proceedings in the Guardianship Division of the Tribunal relating to the same principal under the same enduring power of attorney.'*

- Insert in Part 3(1) of Schedule 6 after *'Powers of Attorney Act 2003*

*'(except in relation to section 36(4)(e)(v) of that Act)'*

*Ar*



## SCHEDULE 2 to the submission on elder abuse

### Sample of recent reported decisions in NSW regarding allegedly errant attorneys of elderly principals, listed chronologically

#### **NSW Court of Appeal**

Dimitrovski v Australian Executor Trustee Ltd [2014] NSWCA 68 (18 March 2014)

Siahos v JP Morgan Trust Australia Ltd [2009] NSWCA 20 (5 March 2009)

Angliss v Urquhart [2002] NSWCA 256 (9 August 2002)

#### **Supreme Court of NSW**

Bronkhorst v Lloyd [2015] NSWSC 1618 (30 October 2015)

P v NSW Trustee and Guardian [2015] NSWSC 579 (18 May 2015)

Hay v Aynsley [2013] NSWSC 1869 (15 November 2013)

Halani v Halani (No.2) [2013] NSWSC 790 (6 June 2013)

Perochinsky v Kirschner [2013] NSWSC 400 (24 April 2013)

Perpetual Trustee Company Ltd v Gibson [2013] NSWSC 276 (22 March 2013)

Halani v Halani [2013] NSWSC 91 (14 February 2013)

Parker v Higgins [2012] NSWSC 1516 (30 October 2012)

Bird v Bird (No.4) [2012] NSWSC 648 (5 June 2012)

Rayner v N] Sheafee Pty Ltd [2010] NSWSC 810 (27 July 2010)

Spina v Conran Associates P/L [2008] NSWSC 326 (14 April 2008)

Dynaski v Grant [2004] NSWSC 1187 (16 December 2004)

Watson v Watson [2002] NSWSC 919 (4 October 2002)

Vickery v JJP Custodians [2002] NSWSC 782 (30 August 2002)

Ranclaud v Cabban [1987] NSWSC (9 February 1988) (BC8802222)

#### **Appeals Panel of NCAT**

BTD v NSW Trustee and Guardian [2015] NSWCATAP 87 (8 May 2015)

BPY v BZQ [2015] NSWCATAP 33 (5 March 2015)

UQH [2014] NSWCATAP 37 (2 October 2014)

#### **Guardianship Division of NCAT**

KMC [2014] NSWCATGD 43 (4 December 2014)

SKC [2014] NSWCATGD 39 (29 October 2014)

PGB [2014] NSWCATGD 32 (19 September 2014)

MCQ [2014] NSWCATGD 29 (13 August 2014)

IEI [2014] NSWCATGD 12 (19 June 2014)

BDN [2014] NSWCATGD (27 May 2014)

FFJ [2014] NSWCATGD 22 (11 April 2014)

#### **Guardianship Tribunal of NSW**

ALC v SDC v ALP [2011] NSWGT (25 August 2011)