

Inquiry into Elder Abuse in Queensland

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Submitted by: [REDACTED]
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[REDACTED]

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[REDACTED]

In my practice I unfortunately see elder abuse. I have some comments in relation to the Qld Parliament's inquiry into elder abuse.

EXAMPLE 1

Man (A) with no spouse, no children. Ex-spouse (ES) lives on the same property as A and has done for 10 years after their relationship ended. They have looked out for each other for some time. They are both older people. These are not people with financial means.

Carer (C) of A chooses to do extra work outside of the aged package, some chores for cash, some not. ES is the authorised person for the aged care funding package. ES has concerns about the amount of money C is charging and some comments made by A to ES about cash being paid to C. C takes A to his appointments in A's car.

ES lodged a complaint with the care agency and C is eventually removed from both care of A and from the care agency.

C continues to visit A. C continues to do work for A around the yard and house. C takes A to his house and C and C's wife tell A that he needs to get a new Will, a new EPOA, revocation of the current EPOA, a new AHD, have ES evicted and states that A has current capacity to make decisions. To my knowledge these people are not qualified in capacity assessments. C gives A a note from the wife of C.

C takes A to a lawyer. During this time, ES is still administering A's medication and other than just after C has been visiting, there are no problems and no animosity between A and ES. A has some mental health diagnoses. A is confused about what is happening but knows he has been to a lawyer. He states that there will be a letter.

On the upside to this sorry saga, people are concerned for A. The downside is that because A does not have a certificate to say that he does not have capacity, the agencies such as the Office of the Public Guardian can't assist in an investigation. One of the criteria for their assistance is that the adult must not have capacity. The Elder Australians Prevention Unit is not funded to investigate whether a person is subject to undue influence or coercion.

POSSIBLE SOLUTIONS

1. an EPOA register created so that lawyers can search for current EPOA and dates that they were made.
2. a body funded to investigate situations where people have capacity but there is a concern that they are subject to undue influence or coercion. This could also be an extension of the QCAT powers. It could be that the tribunal could make a ruling on whether the adult is at risk of being

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coerced or being subject to undue influence and the tribunal could make an order as to who is best placed to be the adult's attorney. It would be much better to have an order from a tribunal prior to adverse situations coming into effect. This would have to be limited to adults who do not have full capacity.

EXAMPLE 2

Lady (A) with no children but with 1 nephew and 3 nieces. A lives in her own home on her property and her sister (S), who has a son and 3 daughters, lives in her own home on the same property. Son (and nephew of A), approx. 50 years old, lives with S. A completes an EPOA appointing the 3 nieces as her attorneys. Nephew sees the form and takes A into a law firm, gets the EPOA changed to be he and 1 of his sisters. He then takes her to a doctor and gets a certificate to say that she does not have capacity. Then pops her into hospital, then a home. The son and nephew now lives in A's house.

This could have all been avoided, and that is always the better solution – avoid the issue in the first place – if there was an EPOA register in Qld.

POSSIBLE SOLUTIONS

1. an EPOA register created so that lawyers can search for current EPOA and dates that they were made.

EXAMPLE 3

Lady (E) has 2 daughters. Daughters do not get along and have not spoken for a few years. E lived near daughter 1 (D1) but D1 wasn't giving E enough support and daughter 2 (D2) said that E would be better placed living nearer to D2. E moved and purchased a place on the river. D2 convinced E that it would be better for management of her property for D2 to be a joint owner of the asset (not a simple house with fee simple ownership). E agreed to the logic.

D2 is not around enough to give support and E now lives out of any town and away from medical care with support workers more difficult and expensive (due to travel) to retain.

The asset has increased substantially in value. D1 came to visit and E wants to be fair in the distribution of her estate. Too late. The asset cannot be held as tenants in common. E now has to convince D2 to transfer the asset back to her as sole owner, or sell the asset, or transfer the shares to E, D1 and D2 as joint tenants, requiring D2's consent.

E is a quiet mild mannered lady and D2 is strong, physically close and manages her package.

PROBLEMS

Some people live with or rely on the people who are abusing them, or doing things for their own purposes instead of the best interests of the older person.

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EPOAs

In my practice I deal with Enduring Powers of Attorney (EPOAs) regularly. Unfortunately I spend a bit of time re-doing EPOAs that people have done themselves because they see the form available from the Qld Government and do not see value in getting advice, because they see it as just a form.

Obviously an EPOA is the most powerful document you can complete in your life, because you have to live with the decisions your attorneys make for you. More emphasis should be put on this point so that people realise the dangers that they can get themselves into.

In my experience, the current EPOA form is leading, and in my view misleading, with the start time for financial matters.

The printed options are:

I authorise my attorney(s) to exercise power for financial matters:

(Tick one box only)

when I do not have capacity to make decisions for financial matters

OR

immediately

OR

at this time, or in this circumstance, or on this occasion:
(You must specify the time, circumstance of occasion)

When people see a box that they can tick, a lot do not go any further. This document is accessible by everyone from the Government website.

The downside to option 1 above, ie "when I do not have capacity to make decisions for financial matters" is that if the Principal gets a physically debilitating disease, such as cancer, they still have mental capacity but just do not have the strength to apply their minds to paying their bills.

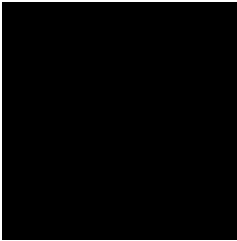
If there must be a tick box as the first option, it should be "when I do not have capacity to make decisions for financial matters or on my written authorisation".

It is a very difficult time for people when someone has a condition or disease that requires longer term treatment and they think they have everything in place to then find out that their attorneys cannot pay their bills for them because they still have mental capacity and they have elected to start the power using 1 of the available tick boxes.

I know there is the 3rd option where people can write their own circumstances, but from the EPOAs that I have seen and people I have helped rectify (re-do) their EPOAs, people just do not choose anything other than the available pre-filled options.

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The 28 page explanatory guide is not read by a lot of people. People see Government forms and complete them. That is what people do. The Government can make the forms too easy, too hard, or appropriate.

AHDs and EPOAs conflicting and confusing

Please consider taking the ability to appoint a health attorney out of the AHDs

I am finding a number of clients get very confused with the ability to appoint a health attorney in their AHDs. They then erroneously think that they have also completed an Enduring Power of Attorney.

This leaves them at risk in having no financial attorney when they believe that they have.

Is there any reason for having 2 different forms where the same appointment can be made?

It would seem much more sensible from the lay person's perspective to have a section in the AHD where the Principal can merely write who they have appointed as a health attorney in their EPOA, but not complete any appointments. This also means that attorneys do not sign both AHDs and EPOAs. In my view, this would be much less confusing for people.

Regards

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