

Inquiry into Elder Abuse in Queensland

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SUBMISSION TO: PARLIAMENTARY ENQUIRY INTO ELDER ABUSE IN QUEENSLAND

Thank you for the opportunity to present this submission. The financial abuse occasioned to my mother was a concerning matter to me for several years during which time I sought justice for my mother.

I accept that my brother and I were lax to not actively oversee our sister's administration of our mother's financial affairs during the 2.75 years our mother resided with our sister. However, our sister has a very bristly nature and we both sought to maintain a congenial sibling relationship. That may have been a mistake.

At the commencement of my third QCAT hearing I commented to the court that elder abuse can never be considered 'a waste of time' for anyone. This was in answer to a comment in my sister's written submission to QCAT. Hence, my pursuit of the following matter from 2019 to 2024.

In this submission;

The female elder is MS, now aged 99 and suffering with severe dementia. MS is mother to LD, GS and KS. MS has been a resident in the [REDACTED] at [REDACTED] [REDACTED] 4 April 2018. The financial abuse of MS commenced in 2015 when MS was about 89 and continued for almost 3 years whilst residing with my sister LD.

LD is MS' only daughter and was noted as one of three attorneys on MS' Enduring Power of Attorney ("EPA") dated 6/7/2015. The EPA was for MS' health and financial affairs.

GS is MS' eldest surviving son and was noted as one of three attorneys on MS' EPA.

KS is MS' youngest son and noted as one of three attorneys on MS' EPA. KS commenced three actions with QCAT (with GS' support) against LD to (1) remove LD as an attorney under MS' EPA, and (2) recover from LD mis-spent money (\$46,866) belonging to MS.

The 'relevant period' for the misuse of MS' finances is the period MS resided with LD in Mackay being from 29 June 2015 to 1 April 2018 (about 2.75 years).

KS' Statement of Facts to QCAT:

MS held capacity at the date of execution of her EPA. However, by that time she was prone to a degree of memory loss/forgetfulness which had led her to decide that she could no longer safely live on her own. KS' opinion of MS' capacity is based on many telephone conversations with MS in the period from his visit to MS in Rockhampton in December 2014 to 6/7/2015 (EPA signing date).

LD, GS and KS are all equal beneficiaries under MS' will.

Overview:

As at 29/6/2015 MS had \$59,081.14 in her Commonwealth Bank of Australia ("CBA") passbook account. During the relevant period MS received about \$73,415.45 income (war widow pension and interest on term deposit) into her passbook account. On 4/4/18 when MS moved into the aged care home, she had \$19,347.26 in her passbook account. MS' expenditure over the relevant period (2.75 years) when she resided with LD was \$114,113 calculated from bank account withdrawals.

During the relevant period LD was fully responsible for MS' health and financial matters. Following MS' admission to the [REDACTED] facility in April 2018 KS requested LD (email 7/5/2018) to provide a fully detailed explanation for the expenditure of about \$50,000 which KS then considered was over and above the amount which KS believed would be reasonable expenditure for MS during the relevant period.

KS later determined that there was a conservative estimated discrepancy concerning about \$46,000 over the relevant period which should be repaid. This amount was broken down into (i) unauthorised house board increases \$8,800, (ii) unauthorised financial gifts to LD \$6,550 and (iii) MS' unexplained excessive personal expenditure of \$30,650.

By email dated 10 May 2018 LD refused to 'justify anything' concerning the expenditure of MS' money during the relevant period. Subsequently, by email dated 15 June 2018 LD provided a scant breakdown of MS' expenditure which KS believed was severely lacking in detail.

LD's email of 10 July also indicated she refused to provide any further information to KS. LD further advised by email of 18 November 2018 that if KS withdrew his application to QCAT then she would reconsider her decision concerning her refusal to agree to the sale of MS' Cooee Bay property. KS and GS were seeking the sale of MS' Cooee Bay property as the sale was considered necessary to ensure MS had sufficient finance to fund her future aged care.

Background:

1. MS' husband EMS passed away in July 2009 aged 88.
2. MS mostly lived by herself in her then North Rockhampton home from July 2009 until about April 2015. LD resided with MS in Rockhampton for about 12 months mostly free of cost during that whole period. Subsequently LD moved to Mackay.
3. About April 2015 MS (then aged 89) decided she could no longer continue living on her own in Rockhampton (she was becoming forgetful) and decided to move to Mackay to live with LD.

4. From 29 June to December 2015 MS resided with LD and her partner in the inner northern Mackay suburb of Mt Pleasant. From December 2015 to 1 April 2018 MS resided with [REDACTED] in an outer residential subdivision (Rural View) well removed from any forms of shops. At all times during the relevant period MS' only opportunity to shop, attend the bank or go out was if LD took her.
5. LD initially charged MS \$200/week for full board from the moment she moved in with her. This was decided by LD prior to the EPA commencing but without input from either GS or KS.
6. On 7 January 2016 LD increased MS' board from \$200/week to \$250/week without the knowledge nor authority of GS or KS. This represented a 25% increase after only 6 months.
7. On 9 January 2017 LD increased the MS' board from \$250/week to \$300/week without the knowledge nor authority of GS or KS. This represented a further 20% increase over 12 months, totalling 50% over 1.5 years.
8. During the relevant period MS' mental and physical condition (in the applicant's opinion) appeared to deteriorate slightly to March 2016 then more appreciably from March 2016 onwards. KS was living in Tasmania (Hobart) for most of the relevant period. During the relevant period KS visited MS on four (4) occasions (March 2016, September 2016, and April 2017 flying from Hobart to Cooee Bay (Yeppoon) on each occasion and in October 2017 by driving from Nambour to Mackay. KS' previous visit was for Christmas in December 2014 in Rockhampton, just 4 months prior to MS moving to Mackay.
9. During KS' two 2016 visits to Cooee Bay MS commented to KS during our walks that she was always very careful in what she said and did at LD's house. MS said this was because she did not want to upset LD in any way and risk having to leave LD's house. My mother appreciated the fact that LD was housing her but was fearful of ever being placed in an aged care home.
10. On several occasions (during KS' visits and over phone conversations) MS asked KS if KS would be able to assume looking after her in the future. On two or three occasions I recall MS telling me she was not happy living with LD, but she would never explain why.
11. About October 2017 LD phoned KS to advise she was having problems looking after MS and that she was looking at having her placed in an aged care home.
12. MS was placed in a secure aged care home in Emu Park on 4 April 2018. As from that date, and with agreement from KS and LD, MS' financial affairs were taken over by GS, who lived nearby at Cooee Bay.
13. By this time MS did not recognise who KS was unless I told her that I was her son.
14. Neither GS nor KS maintained any oversight over MS' financial affairs during the relevant period. KS knew that LD would strongly bristle if either KS or GS gave any form of instruction to LD concerning oversight of our mother's finances; such is LD's nature.

15. MS' finances were held in 1 operating account (a CBA passbook account) and 2 CBA term deposits. LD was wholly responsible for the management of these 3 accounts during the relevant period.
16. Shortly after 4 April 2018 LD sent to GS the latest CBA passbook (11/12/17 to 4/4/18) and information concerning the two term deposits. LD also advised GS that she had lost all other bank passbooks for the period June 2015 to 11/12/17. This supposed loss of MS' bank passbooks caused KS considerable concern and led KS and GS to approach the Commonwealth Bank (CBA) in Yeppoon.
17. On 9 April 2018 the CBA provided a full statement for the passbook account from 2/4/2015 to 7/12/2017, despite initially advising it was not technically possible to do so for such passbook accounts. The bank only agreed to produce the statement after KS and GS advised their concerns about our mother's degree of expenditure during the relevant period.
18. Our elderly and progressively dementia afflicted mother had 'spent' \$114,113 in 2.75 years. This appeared overly excessive to KS and GS.
19. For the whole of the relevant period LD would have to have been present when MS spent any money. However, despite repeated requests, LD consistently failed to provide an account for how MS supposedly spent such an excessive amount.
20. By email dated 7 May 2018 KS again requested LD provide an explanation of their mother's expenditure over the relevant period. KS believes that LD had been given ample opportunity to provide a full and proper financial accounting with relevant explanations and supporting documents, but she failed to do so.
21. Following LD's failure over several months to provide a full and proper accounting, KS referred the matter to the Office of the Public Guardian (the OPG) on 20 November 2018 for consideration.
22. The Public Guardian's subsequent report is dated 31 July 2019.
23. The crux of the OPG's report was;
 - That conflict transactions had occurred because of LD's actions and that LD failed to keep accurate records and receipts/other financial documents.
 - LD did not consult with KS or GS when making financial decisions on MS' behalf.
 - That LD had not acted with reasonable diligence to ensure she made an informed and appropriate decision pertaining to the possible sale of MS' Cooe Bay property.
24. When KS queried the OPG as to how they would proceed against LD, the OPG's response was that they had no power to do anything further. At that time, I was left wondering what the purpose was for the OPG.
25. In June 2020 KS commenced the first of three QCAT actions to (1) remove LD as an attorney under MS' EPA, and (2) recoup the mis-spent money from LD.
26. On 5 November 2020 QCAT determined the removal of the power for LD, GS and KS to make decisions about financial matters under the EPA and appointed GS and KS as joint administrators for MS' financial matters but made no reference to the misuse of MS' finances (Client No [REDACTED]).
27. Following KS' second application, QCAT determined on 14 March 2023 that LD was to compensate MS for \$33,973 for LD's failure as an attorney.

28. Following KS' third application, QCAT determined on 8 October 2024 that LD was to compensate MS for a further \$12,893 for LD's failure as an attorney.
29. To date LD has repaid just \$12,893 to MS.

KS' Statement of Claim to QCAT:

- a) That LD failed to exercise the duty of care, diligence and requisite skill required from a prudent person who has agreed to accept the responsibility both as an attorney under MS' EPA and as MS' primary carer.
- b) The two (2) increases in MS' board on 7/1/2016 and 9/1/2017 were significant, unreasonably excessive, not known nor authorised by the two other attorneys and represented a conflict-of-interest transaction totalling \$8,800.
- c) LD advised (email 15/6/2018) that she purchased a second-hand spa tub for herself for \$2,000 using MS' money. I can state categorically that my mother would have had no interest in either wanting or using a spa tub. This transaction was not known nor authorised by the two other attorneys and represented a conflict-of-interest transaction for \$2,000.
- d) LD advised she spent \$3,000 of the adult's money to purchase a gemstone for a ring which was for Lindsey's own use. This transaction was not known nor authorised by the two other attorneys and represented a conflict-of-interest transaction for \$3,000.
- e) As advised in the OPG report there are two payments totalling \$1,550 to LD that LD advised she put towards the payment of her own property rates. These transactions were not known nor authorised by the two other attorneys and represented conflict-of-interest transactions totalling \$1,550.
- f) There are several bank withdrawals which LD was specifically asked to explain to KS but initially refused to do so. Subsequently, LD provided an explanation for these amounts to the OPG which appeared in the OPG's report.

These amounts include;

\$4,000 (10/9/15) – LD claims MS kept \$3,200 for herself as she hadn't withdrawn much up to this time, despite 3 withdrawals totalling \$9,363 in the preceding 8 weeks.

\$2,000 (14/12/15) – an apparent out of sequence payment (2 weeks following the previous withdrawal for \$2,000 on 27/11/2015). No explanation and not in the OPG report.

\$3,000 (28/4/16) – an apparent out of sequence payment (2.5 weeks following the previous withdrawal for \$2,000 on 11/4/2016). No explanation and not in the OPG report.

\$5,500 (26/5/16) – \$2,000 was given to LD to buy a spa tub and LD claims MS kept the remaining \$3,500 for herself, despite 2 withdrawals totalling \$5,000 in the preceding 6.5 weeks.

\$4,250 (6/10/2016) – LD claims MS took \$3,250 for herself whilst staying with GS in Yeppoon for a few weeks. The problem here is the applicant believes MS stayed with GS in Yeppoon in September 2016, prior to the withdrawal date. In any case MS had no living expenses in Yeppoon so how could she spend \$3,250. Assuming MS took the \$3,250 to Yeppoon, she clearly could not have spent the bulk of the amount in Yeppoon as she was totally reliant on GS, then what happened to that money subsequently? There are regular withdrawals following that date that would amply provide spending money for mum.

\$5,000 (9/3/2017) – LD claims MS kept \$1,700 for herself.

\$6,500 (24/7/2017) – LD took \$4,000 for jewellery and her own property rates.

\$3,000 (15/1/2018) – LD claims MS kept \$1,600 for herself.

\$4,500 (14/3/2018) – LD received \$550 towards her own rates and claims MS kept \$627 for herself yet 2 weeks later there was another withdrawal for \$1,200 to pay for incidentals in connection with MS moving into [REDACTED].

KS did not accept the explanations LD provided regarding the amounts of money that MS kept for herself. Many of the above withdrawal amounts appeared random, didn't coincide with the payment of MS' own property rates, appeared at odds with somewhat regular monthly withdrawals required for the principal's board and general expenditure and could not otherwise have been reasonably required by MS for her own benefit. The questionable expenditure of most of the above withdrawal transactions were not known nor authorised by the two other attorneys and represented conflict-of-interest transactions.

- g) MS' expenditure for personal spending appeared unreasonably excessive given that she was 90+ years old with minimal needs, could not go anywhere on her own, did not have to spend money on food, electricity or house upkeep (included in her board), had no medical expenses (veteran's widow) and was progressively succumbing to dementia during the relevant period.
- h) In 1H 2019 LD provided a digitalized letter dated 18 January 2018 to the OPG which LD alleged was signed by MS. The intent of the letter was to absolve any responsibility for LD's handling of MS' finances during the relevant period. LD never offered this letter to KS prior to the OPG's involvement and KS was only alerted to it after reading the OPG's report in August 2019. Ultimately, QCAT did not recognize this letter and in my opinion the letter was clearly a fraudulent misrepresentation by LD to clear herself following the OPG's involvement.

MY CONCLUSIONS:

I question the purpose of the OPG as it appears to me that it is a toothless tiger.

QCAT admin and members should be more helpful with applicants as to why they will not consider a matter that has been lodged for review.