

## **Inquiry into Elder Abuse in Queensland**

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Submission to the Parliamentary Education, Arts and Communities Committees' inquiry into Elder Abuse in Queensland.

## **INTRODUCTION**

The focus of my submission is financial elder abuse and misuse of enduring powers of attorney (EPA). I am coming from the perspective of having been a former Deputy President of the former Queensland Guardianship and Administration Tribunal (GAAT) and an inaugural member of the Queensland Civil and Administration Tribunal (QCAT). I have over 20 years of experience hearing applications for the appointment of financial administrators for elderly people with impaired decision making capacity as well as hearings in relation to enduring powers of attorney where the appointed attorney was alleged to be financially abusing the elderly person.

## **SOME ISSUES**

The Guardianship and Administration Act 2000 provides for the appointment by QCAT of administrators for up to 5 years and for a periodic review of their appointments. Powers of Attorney are not subject to review of the Tribunal unless the Tribunal, on hearing of an application regarding EPAs, orders a review of the actions of the appointed attorney(s).

In my experience the occasional financial elder abuse by administrators pales into insignificance compared to the abuse by attorneys exercising an EPA. By this I mean that administrators who abused their powers generally used far less of the adult's funds for their own benefit than attorneys exercising an EPA. I strongly believe this was because the administrators had to provide a report on the use of the adult's funds in a time frame decided by the Tribunal at a hearing. These reports were scrutinized by Tribunal staff and reviewed by Tribunal members. For the most part administrators acted in the adult's best interests. The Tribunal and the interested parties for the adult e.g. family and friends knew what the Tribunal had ordered in terms of who the administrator(s) was and what powers the Tribunal had given the administrator(s).

In relation to attorneys there is no such oversight by the Tribunal or other person unless the adult specifies this in the EPA accepted by the attorney. Whilst most attorneys are likely to be acting appropriately, there are many who are not.

Examples of the type of abuse occurring include:-

- Transferring the adult's assets e.g. real estate into their name or joint names with the adult without any authority
- Accessing the adult's bank account for their own purposes e.g. paying their own bills, gambling, taking their inheritance early.
- Not paying the adult's bills, including nursing home fees, putting the adults accommodation and care at serious risk.
- Gifting money to other family members without authority.
- Not maintaining the adult's home
- Not keeping records of the adult's financial affairs and therefore not accounting for the spending of the adult's money.

### **How can these abuses be minimized?**

- The EPA form now has provision for adults to specify who, if anybody, they want notified by the attorney, that the powers under the EPA are about to begin, what information is subsequently to be provided to those specified people and when the information is to be provided. Most EPAs are prepared by legal practitioners. I recommend that a comprehensive and regular education program be provided to legal practitioners to reinforce that it is very important for this provision to be activated in the documents. This education should also be extended to Justices of the Peace who often witness EPAs. Whilst an additional safeguard, it may however, not be used by the adult or followed by the attorney.
- Alternatively, or in addition, consideration should be given to mandating by legislation registration of EPA's when an attorney is about to commence acting as attorney, when the adult loses capacity. Other jurisdictions do this, including England and Tasmania.
- The Public Trustee (PT) should receive funding from the government to engage in community education about EPAs, especially targeted at appointed attorneys about their responsibilities. If EPAs are registered, the PT will be able to contact attorneys to invite them to information sessions about their responsibilities as attorneys.
- There needs to be more deterrents for potential abusers who more often than not are not prosecuted. I suggest the Criminal law be amended to make financial elder abuse by an administrator or attorney a specific offence with its own penalties, rather than relying on the current legal provisions.