


Inquiry into Elder Abuse in Queensland

Submission No:	78
Submitted by:	
Publication:	Making the submission public but withholding your name
Attachments:	See attachment
Submitter Comments:	

Submission to Elder Abuse inquiry

The reason for this submission is to highlight the exclusive and pivotal role QCAT (Queensland Civil and Administrative Tribunal) plays in the situation where a rogue EPOA is accused of abusing their responsibilities to the elderly Adult. (This abuse is categorized as mainly financial and psychological, usually involving non-violent coercive control.) Given this central position, it is surprising and disappointing that QCAT has not appeared to present to this Inquiry.

What follows is an outline of our interaction with QCAT over the last three years. In summary it was an extremely frustrating and eventually pointless exercise as we tried to rectify the harm being done to the Adult by the EPOA who remains untouchable to this day.

In our family, we discovered about 3.5 years ago that the Adult's youngest daughter had persuaded her elderly mother to appoint her as the Enduring Power of Attorney (EPOA) for both financial and personal matters – effective immediately – even though the mental capacity of the Adult had not been tested at that stage. There had been no consultation with the other family members and they were not notified of the change until much later.

Over the next six months we became aware of the extent of the EPOA's abuse comprising theft, threats, gaslighting, false accusations against other family members, fraud, ill-advised decisions that cost the Adult half of her financial assets, and eventually the blocking of the Adult from seeing her other daughters. During this time we became aware that the Adult's mental health was deteriorating.

We approached a number of organisations seeking help trying to combat the negative and destructive influence of the EPOA. We had discussions with Queensland Police, Relationships Australia, the Elder Abuse Helpline, the Office of Public Guardian and QCAT. A number of these organisations were sympathetic but none agreed to investigate our complaints, even though we had proof of malfeasance on the part of the EPOA.

We were advised that the only potential avenue to review the actions of the EPOA was QCAT but we were informed that unless the Adult was declared to have limited mental capacity there was nothing that could be done. As the EPOA tightly controlled access to the Adult no medical evaluation could be arranged.

In 2022 the Adult fell ill and was admitted as an inpatient for a week at a local public hospital. During her stay various assessments and tests were carried out resulting in a diagnosis of reduced mental capacity. The conclusion was that the Adult could understand simple matters but not complex matters (this included personal, lifestyle and financial situations). She scored a result of 18 out of 30 on the MOCA test administered in the hospital.

The hospital's medical report meant that we could now request a hearing from QCAT. We gathered evidence to submit to the hearing including relevant financial documents and signed witness statements. We agreed not to seek legal representation at the hearing as we were led to believe that the other side was also representing themselves. A last minute request by the EPOA was made to bring her solicitor to the hearing. We refused this request as we had no time to arrange for our own legal representation given that this was occurring the day before the hearing. On the day of the hearing the EPOA brought both a solicitor and a barrister to support her position. In spite of our stated concern that this legal representation was unjust as we had none, the Member overruled this and allowed the solicitor and the barrister to stay and

participate. During the hearing the Member discussed her intention for making decisions at length with the barrister and basically sought his concurrence.

After a brief opening statement to the hearing, the Member then declared that this case before her was obviously “a family squabble” and refused to allow any of the witness statements as evidence, stating that it was “all hearsay”. Given that six of the people who submitted the core evidence were present at the hearing it is inconceivable that the statements were deemed to be hearsay given that many of the witnesses were actually present at the hearing and therefore available to testify and to be asked questions about their written evidence. The Member then quickly moved to confirm that the EPOA should continue in her position and the EPOA was asked to submit a financial management plan in four months time as to how she would manage the assets of the Adult. In spite of the various QCAT statements on their website as to how guardianship hearings are to be conducted, we were not allowed by the Member at any stage to ask any questions of the EPOA or the Adult.

Over the next three years of engagement with QCAT and three subsequent hearings on the matter we found:

- That QCAT does not carry out any investigations – they refused to ask for documents from the EPOA that would have disclosed financial irregularities.
- Following the first hearing, we submitted evidence of fraudulent documents submitted to QCAT by the EPOA. Although it is a stated offence to submit false information to QCAT they refused to pursue the matter.
- They displayed no understanding of non-violent coercive control and how to evaluate the situation to really understand what is influencing and impacting the Adult.
- Their administrative systems are archaic – in regard to Guardianship cases they are paper based and they have difficulty in managing the case material.
- They do not require annual financial reporting with detailed accounts from EPOAs – yet they do with appointed financial administrators. They do not validate any information supplied to them by the EPOA and ignored our requests for the disclosure of relevant financial information under the control of the EPOA. This leaves a rogue EPOA with no checks and balances on them – they are clear to continue abusing the position with no oversight.
- They burn through case managers – over the three years of engaging with QCAT we had ten case managers.
- They are swamped with guardianship issues – when submitting an application form it can take six months before you hear anything. Hearings are scheduled many months in the future leaving the situation in limbo.

QCAT has been appointed by the government to be the only organization to deal with these guardianship issues. They also handle many other civil matters such as residential tenancy disputes, minor debt disputes, dividing fence disputes, tree disputes, consumer and trader

disputes and at least ten other dispute areas. They are totally unsympathetic to guardianship issues and do not recognize or acknowledge human rights.

After three frustrating and non-productive years we have now exhausted all available avenues with QCAT to try to halt the EPOA from acting with total impunity and entitlement in regard to the elderly Adult (now 87 years of age). This outcome has had a huge negative impact on our family in our attempts to rectify the situation. The Adult continues to be totally controlled by the EPOA and the two other daughters are unable any longer to talk or see their mother. The EPOA has banned all contact and has blocked all telephone calls.

There has to be a better way forward for cases such as ours – it is too traumatic, demoralising and frustrating to engage in the QCAT process with little to no chance of rectification of the situation.

We have read in detail the paper by the Office of the Public Advocate outlining the case for an Adult Safeguarding Agency in Queensland that can move quickly to investigate cases of elder abuse including taking action against rogue EPOAs. It is also worth noting that it is proposed that this Agency could still take initial action regardless of the Adult's mental capacity. This is necessary as there are many elderly vulnerable people who still reason clearly – but can still be abused by EPOAs who have decided to act for their own benefit and not the Adult to whom they have committed to protecting according to the Power of Attorney document/agreement that they signed when accepting the role of EPOA.

In brief, the stated aims of this proposed Agency would be:

“This agency will be able to receive and investigate reports of suspected abuse, neglect and exploitation of at-risk adults and take a ‘supportive intervention’ approach in its response. Importantly, the creation of this agency would also enable a shift in paradigm to occur from a solely reactive approach to adult safeguarding that often relies on emergency responses and use of the guardianship system, to one which emphasises prevention and supportive interventions, while promoting the at-risk adult's right to live a life of maximum autonomy.”

Page 8, Adult Safeguarding in Queensland Volume 2 Reform Recommendations November 2022

Given our dismal encounter with QCAT over the last few years we fervently request that this proposed Agency be legislated for and brought into action.

It is too late for us, but it would potentially be so helpful for others who follow on this pathway. Human rights are too important to leave to organisations like QCAT who are unsympathetic, chaotic, overburdened with other civil matters and do not allow positive outcomes in matters of justice.