

SUBMISSION ON ELDER ABUSE

This is a submission to the West Australian Law Reform Commission into Elder Abuse by Julius Lewin of Charthill Legal.

To reduce the occurrence of elder abuse in Western Australia, I make the following suggestions pursuant to the Commission's terms of reference.

Standards of suitable witnesses

My suggestion relates to the proficiency of witnesses to the enduring power of attorney. At present, an authorised witness for an enduring power of attorney is any person who is listed in schedule 2 of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA). The qualification of authorised witness should reduce so that only people who have some knowledge of what is an enduring power of attorney can sign as a witness. In addition, the witness should be able to ascertain whether in fact the party granting the enduring power of attorney understands what they are signing (by checking their reaction and response and see comments below) and has an appropriate level of competence needed to sign the document .I suggest lawyers/accountants/health professionals/doctors to name a few.

Information prior to signing the EPA form

The Office of the Public Advocate in WA has produced a booklet about enduring power of attorneys in Western Australia, which is a useful and informative document. However, the question needs to be asked of, how many people in fact know what they are signing or have even read the document. I suggest both parties (the grantor and the attorney) be required to read this useful booklet before signing and both obtain independent legal advice. This requirement by the donor and attorney will serve as caveat about the important nature of the document rather than a casual signature of another document. Understanding the document will go a long way to prevent elder abuse.

Improvements to the Enduring Power of Attorney form

My next suggestion concerns the enduring power of attorney form. The current form is very simple and does not limit any of the powers given to the attorney. I have been instructed and have prepared enduring power of attorney forms for clients to use in Queensland and Western Australia. In comparison to the West Australian form, the Queensland form is more detailed. What particularly stands out in the Queensland form is the requirement for both parties (the

attorney and the grantor) to sign declarations relating to the document. My recommendation is that this form in WA be changed to include a provision that shows that the donor and the attorney understand the full effects of assigning someone to act as an attorney. **Please see the form in the bibliography below.**

The termination of pre-prepared enduring power of attorney kits

Enduring power of attorney forms are freely available to purchase at stationery shops. The concept of this is the same as purchasing a homemade will. The dangers of this, is where the purchaser is elderly and does not get proper and relevant legal advice, they leave themselves open to the possibility of abuse. My recommendation is that this practice should cease. Furthermore, there should be a requirement that attorneys are required to obtain independent legal advice to make sure that they understand their legal duties and obligations and confirm they have read and understand the information booklet and their obligations. This should apply to donors as well.

Immovable property

The attorney should be required to apply to the State Administrative Tribunal (SAT) for an order confirming the sale or transfer if it is in the best interests of the donor where immovable property is involved. This will require the attorney to clarify why the property needs to be sold and how the proceeds will be dealt with e.g. donor is going into a home or needs treatment.

The order if granted by SAT should be lodged at Landgate who should requisition and document where an EPA is used under certain circumstances if there is no order. Perhaps a special number can be allocated to the document where the donor is over a certain age to ensure no transaction takes place where there is an enduring power of attorney.

Where a bank holds a power of attorney, and an attorney wishes to transact on money that exceeds a certain amount, the attorney should be required to provide reasons for the transaction or do as suggested above. Banks should be required to have strict guidelines as to dealing of funds where a person is acting as an enduring power of attorney under the same circumstances. A process like this should be simple to adhere to.

Where SAT deems it necessary, the attorney should provide security for the value of the estate so that if there is a transaction that is found not to be in the best interest of the donor, the money can be recovered (similar to the situation with an Application for letters of Administration if required). This will ensure that the abuse of the elderly is prevented and their money is not intentionally handed over to another party unlawfully.

Family arrangements

There should be a standard form prepared and available and the agreement should be approved by SAT and a requirement these agreements are in writing. These are complex and

both parties should be required to obtain independent legal advice as if they are not in writing and are incorrectly drafted can cause stress and hardship

Conclusion

One of the main areas requiring improvement is education and continuing education of all role payers and stakeholders involved. Perhaps a national or state website (like moneywise on ASIC) can be introduced and professional bodies (lawyers/doctors/accountants/allied professionals) can place brochures in their rooms to make people aware of their rights and obligations relating to preventing elder abuse in all its forms. These are simple easy changes that can be made to improve the current system

It is my respectful submission that some of the above suggestions will reduce the incidence of elder abuse. Where it comes to elder abuse, some if not all of these suggestions will improve the current system for vulnerable people.

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