



The Honourable Nick Goiran MLC
Chairman of the Select Committee into Elder Abuse
Legislative Council of Western Australia
Legislative Council Committee Office
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Mr Goiran

STATE ADMINISTRATIVE TRIBUNAL SUBMISSION - INQUIRY INTO ELDER ABUSE

Thank you for your letter of 18 September 2017 inviting the State Administrative Tribunal to provide a submission to the Select Committee in respect of its inquiry into elder abuse.

As you may be aware, the Tribunal has jurisdiction to determine matters pursuant to the *Guardianship and Administration Act 1990 (WA)* (GA Act) and it is within this jurisdiction where examples of elder abuse arise from time to time. Therefore the Tribunal's experience and involvement in the area of elder abuse is somewhat limited to elderly persons with a diagnosed mental disability. I acknowledge, however, that the prevalence of elder abuse extends beyond that category of individuals.

Our submission is therefore directed at briefly identifying the current legislative mechanisms which exist in the GA Act which, in our view, assist in the protection of the elderly from various forms of abuse, particularly financial abuse, but also abuse in the forms of physical abuse, neglect, and psychological/emotional abuse. In this regard we would like to draw your attention to the following:

- Section 41 of the GA Act requires notice of any hearing to be provided to those parties identified in the section which includes near relatives, the Public Advocate, and any person with a "proper interest" at least 14 days before the hearing. The person in respect of whom the application has been made (often referred to as the proposed represented person or represented person) is personally served with notice of the hearing. Notice of the hearing must provide specified information including particulars of the application.
- Applications within this jurisdiction do not require payment. This is to encourage applications to be made where the underlying purpose is to protect vulnerable persons. Applications are heard expeditiously – most are finalised within 8-10 weeks. The jurisdiction is a "best interests" jurisdiction

and decisions are made primarily focussing on the best interests of the proposed represented person/represented person (s 4(2) of the GA Act).

- The Tribunal actively encourages the attendance of the proposed represented person/represented person at any hearing and this is emphasised in the initiating application itself and during any contact which staff may have with parties prior to a hearing. It is mandatory in this jurisdiction for the Tribunal to obtain the wishes and views of the proposed represented/represented person as far as possible (s 4(7) of the GA Act). If the proposed represented person/represented person cannot attend a hearing the Tribunal has the ability to request the Office of the Public Advocate to visit the person to directly obtain their wishes and views and to provide that information to the Tribunal either prior to the hearing and/or at the hearing.
- The Tribunal is focused on inclusion of the proposed represented person/represented person at a hearing and in this regard can arrange for telephone attendance and video conferencing for those who are unable to physically attend. If a person requires an interpreter then the Tribunal provides an independent service at the Tribunal's cost. We also have hearing loops available at the hearings for those with hearing impairments. If the proposed represented person/represented person is intimidated by the process and uncomfortable speaking at a hearing in front of other parties, Members of the Tribunal can ask others to leave the hearing room so that they can obtain the wishes and views from the person in a more comfortable and less inhibiting setting.
- Tribunal Members are also mindful of whether it is appropriate that the proposed represented person/represented person is legally represented. If necessary, they can be represented by lawyers from the Mental Health Law Centre. The Tribunal can also, pursuant to the GA Act, refer them to Legal Aid and Members can also refer parties to Law Access or to the Tribunal's own Pro Bono Scheme for representation.
- If concerns of abuse are raised at any stage of a proceeding the Tribunal is able to refer particular issues for investigation by the Office of the Public Advocate (s 97 of the GA Act). The Tribunal can also, on an emergency basis, appoint the Public Trustee as plenary or limited administrator of the estate of the person in order to protect/preserve the estate prior to the final hearing taking place (s 65 of the GA Act).
- The Tribunal can appoint a substitute decision-maker for the proposed represented person/represented person by way of appointing an administrator to manage the person's estate (s 64 of the GA Act) and/or a guardian to make personal decisions (s 43 of the GA Act). The Tribunal must assess the suitability of any person proposing themselves to be appointed as administrator and/or guardian for another person (s 44 and s 68 of the GA Act). At the time that the Tribunal appoints an administrator the

Tribunal can also give specific directions to the administrator (s 72 of the GA Act) particularly in circumstances where questionable transactions have occurred which require investigation and possible legal action.

- There is a high level of oversight of administrators in their duties by the Public Trustee (s 80 of the GA Act).
- The Tribunal also has authority in respect of Enduring Powers of Attorney and Enduring Powers of Guardianship. We note in particular that elder abuse can often occur through the misuse of an Enduring Power of Attorney. The Tribunal has a number of authorities including the ability to revoke or amend these instruments, require production of documents and so forth (Part 9/9A of the GA Act).
- Particularly urgent matters can be heard on the same day that the Tribunal receives an application. In addition the Tribunal conducts out of hours hearings for urgent matters during the evening and over the weekends.
- The proposed represented person/represented person has automatic rights to seek review of any orders made in respect of them. Any administrator or guardian appointed also has an automatic right to review the orders. Other parties can seek review but must show a change in circumstances (s 86 and s 87 of the GA Act). Importantly, all orders of the Tribunal must be periodically reviewed (s 84 of the GA Act).
- All hearings at the present time at the Tribunal are oral hearings which allow the opportunity for all interested parties to attend and to be heard.
- I also draw your attention to a recent published decision of the Tribunal which may be of interest in relation to the enquiry into elder abuse: **KRM** [2017] WASAT 135.

I hope that the information provided above assists in respect of the inquiry into elder abuse. If you require any further information from the Tribunal please let me know.

Yours sincerely

A handwritten signature in dark ink, appearing to be 'J. Curthoys', written in a cursive style.

Justice Jeremy Curthoys
PRESIDENT

8 November 2017