

14. [REDACTED]

[REDACTED]

20th July, 2016

Professor Rosalind Croucher,
President,
Australian Law Reform Commission,
Level 40, MLC Tower
19 Martin Place
Sydney NSW 2000.
GPO Box 3708
Sydney NSW 2001.

Dear Professor Croucher,

ELDER ABUSE - SUBMISSION

I understand you are calling for submissions that would help throw light on how Commonwealth laws and legal frameworks could be reformed to better protect older Australians from abuse by formal and informal carers, supporters, and representatives. In that regard, I urge you to look at the treatment of my late friend, [REDACTED] and how such serious institutional abuse can be prevented.

[REDACTED] suffered serious abuse and discrimination at the hands of state organs; but those state organs appear to be unaccountable because other state organs - such as the Anti-Discrimination Commission, Anti-Discrimination Tribunal, the Ombudsman Tasmania and the Prosecution Service - will not investigate the misconduct of bodies such as the Public Trustee, the Guardianship and Administration Board (GAB) and the Legal Aid Commission. All too often the board members of these institutions are the very same people or related – a situation which creates obvious conflicts of interest. Unless this changes, it bodes ill for other vulnerable people like [REDACTED]

I submitted complaints under the Anti-Discrimination Act 1998 (Tas) (the Act) about the abuse of [REDACTED], an Australian citizen of Polish origins, who passed away in 2011. During her last years I was extremely concerned about the fear, indignity and dispossession she suffered; but, despite the best efforts of myself and others who were also discriminated against, we were unable to elicit the necessary help for her. Despite the severity of the discrimination, the Anti-Discrimination Commissioner has been able to dismissively reject my complaint on the basis of my standing and my complaint being out of time, and points out that the perpetrators, the GAB and the Public Trustee, are afforded judicial immunity when hearing and determining matters. They are, therefore, protected from civil suits made against them, including claims of unlawful discrimination. This lack of accountability of state bodies that exercise considerable power over the vulnerable elderly must be urgently corrected, particularly in light of the abuse my friend was subjected to and which is detailed below.

When [REDACTED] was subjected to abuse, she was in her late seventies and early eighties. She did not speak fluent English and was partially deaf. Furthermore, as a result of steadily increasing doses of Monoplus, Methyldopa, Diltiazem, Hydopa, Cardizem and Risperdal (an anti-psychotic, behavioural drug) that were prescribed for her, as well as a large dose of "vitamin pills" that she felt obligated to take, she was observed to become erratic, short-tempered, disorientated and lethargic. For these foregoing reasons relating to her age, disability and ethnicity, the Commonwealth's Age Discrimination Act 2004 (ADA), Disability Discrimination Act 1992 (DDA) and Racial Discrimination Act 1975 (RDA), as well as Tasmania's Anti-Discrimination Act 1998, are

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directly applicable to this case.

In February, 2006, the [REDACTED] police investigated several instances of theft from [REDACTED] by [REDACTED] and allegations of attempted murder. In April, 2006, [REDACTED] was charged with a total of 15 counts of stealing under complaint number [REDACTED] and, again, in May, 2006, under complaint number [REDACTED], and committed for trial. However, it is clear from police files that the [REDACTED] of the GAB, [REDACTED]

[REDACTED] highly irregularly, applied considerable influence to the prosecution case by: defending [REDACTED], suggesting [REDACTED] friends and relatives had ulterior motives, and by claiming [REDACTED] was demented (also claimed by [REDACTED] of the Public Trustee). Rather oddly in her defence of [REDACTED] pointed out that the GAB had concluded that, while [REDACTED] was designated as demented at the time of the police investigation, she did, nevertheless, have sufficient capacity to grant [REDACTED] a gift of \$70,000 in 2002, even though the GAB's involvement was not until four years later. For these reasons and because it was considered that [REDACTED] and various witnesses did not speak an acceptable standard of English, the charges against [REDACTED] were dropped by [REDACTED] husband, the then [REDACTED]

[REDACTED] designation by the GAB as demented, rendering her "incapable of making reasoned judgements", was strongly disputed and the GAB's conclusion appears to have been discriminatingly arrived at largely due to [REDACTED] deafness, poor English and the medication she was prescribed (i.e. her disability and ethnicity). This discrimination was compounded by the refusal by the GAB to grant [REDACTED] her right to independent medical examinations of her choice (the GAB was patronising throughout and even cancelled [REDACTED] appointments), and to take into account the opinions of friends, neighbours, acquaintances and family, as well as those of highly reputable experts who found no sign of dementia, even after brain scans were taken. Indeed, [REDACTED] attempts to uphold her human rights and regain her dignity and self-respect, were seriously stifled by the GAB, which treated her friends and family with suspicion and, at times, even ridicule, and did not allow her a fair hearing to defend herself against claims relating to her capacity, or even to appoint a lawyer of her choosing. In fact, [REDACTED] found the GAB hearings oppressive and intimidating, and felt she was being denied rights to her own property or self-determination, which she found degrading and humiliating. The GAB, therefore, demonstrably failed to comply with its code of conduct and also, in exercising its powers improperly, its legal duty to show humanity and: "promote [REDACTED] dignity, ensure [REDACTED] retain[ed] as much freedom of action and decision as is possible, and to consider [REDACTED] wishes before imposing any decisions upon her".

[REDACTED] supposed dementia was not properly determined; but was merely imputed, contrary to the ADA, because of, inter alia, her age. Under Section 14 of the ADA, age discrimination is defined as less favourable treatment because of "a characteristic that is generally imputed to persons of the age of the aggrieved person". The Act defines direct age discrimination as treatment where: the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or not materially different, the discriminator treats or would treat a person of a different age; and the discriminator does so because of:

- (i) the age of the aggrieved person; or
- (ii) a characteristic that appertains generally to persons of the age of the aggrieved person; or
- (iii) a characteristic that is generally imputed to persons of the age of the aggrieved person.

Under Section 15 of the Act, it is provided that, "For the purposes of this Act, a person (the discriminator) [indirectly] discriminates against another person (the aggrieved person) on the ground of age of the aggrieved person if:

- the discriminator imposes, or proposes to impose, a condition, requirement or practice; and
- the condition, requirement or practice is not reasonable in the circumstances; and
- the condition, requirement or practice has, or is likely to have, the effect of disadvantaging

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persons of the same age as the aggrieved person.

The burden of proving that the condition, requirement or practice is reasonable in the circumstances lies with the discriminator. Clearly, the dismissive way in which the GAB treated [REDACTED] as described above, unreasonably excluded her from upholding her human rights and would disadvantage other people of her age group.

Furthermore, Section 5(2) of the Disability Discrimination Act 1992 (DDA) - "direct discrimination can include failure to make reasonable adjustments for a person with a disability, and failure to do so would result in less favourable treatment of that person compared with a person without a disability in those circumstances" - clearly applies and has been violated in this case. 'Disability' under the Act includes both temporary and permanent disabilities, and can include sensory (e.g. partial deafness), disease or illness based disabilities, a medical condition, as well as "imputed" disability (such as, in this case, dementia).

Under Section 6(2) of the DDA, indirect discrimination is defined as where a person:

- requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
- because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and
- the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

Reasonable adjustments are changes made to minimise or eliminate the disadvantage experienced by a person with a disability. This clearly could include such measures as catering for partial deafness, taking into account the adverse effects of medication, etc., none of which was done by the GAB in its dealings with [REDACTED]. Notably, the Act also covers relatives and associates of people with disabilities, who are also protected from discrimination, and prohibits disability harassment such as that shown by the GAB towards [REDACTED] relatives and friends.

Additionally, Section 9 of the Racial Discrimination Act 1975, provides that, "It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life." Because [REDACTED] wishes were ignored as a result of her poor English, and her migrant friends' protestations were treated with disdain and their cultural differences misconstrued, this provision has also been seriously violated and continues to be so.

Despite these extensive anti-discrimination provisions enshrined in law, it is very evident that Tasmania's GAB and Public Trustee failed to properly comply with Australian anti-discrimination legislation and, as a consequence, [REDACTED] came to the end her life fearful, dispossessed and without dignity. It is clear that the apparent absence of redress for this abuse, despite witnesses and a wealth of supporting documentation, is something that needs to be urgently tackled at the Commonwealth level if similar institutional abuse is not to be perpetrated against others and with the same ostensible impunity.

Yours sincerely,

[REDACTED]