

## **Protecting the Rights of Older Australians from Abuse:**

### **2016 ALRC Elder Abuse Inquiry**

I was pleased to recently find out about this inquiry and thank the Australian Law Reform Commission (ALRC) for accepting my late submission. Hopefully more consideration will be given to the findings from this Inquiry than has been afforded to past credible State and Federal Inquiries (which includes the *Older People and the Law* (2007) Inquiry) – hopefully over 11 years, lessons have been learnt and Elder Abuse can somehow be better vaccinated against through enforced safeguards and Laws. For whatever reason turning blind eyes to offenses badly impacts or often destroys lives. I hope my submission will in most be able to be made public and I offer the ALRC my further assistance where possible.

The definition of elder abuse used by the Uniting Care's Elder Abuse Prevention Unit is: "Elder Abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person". I believe also that Laws should not regard an older person differently from any other adult but based more on their vulnerability; especially while it is evident the elderly are mostly valued less and decision makers I have encountered often do factor in that the abused adult may have only a few years left or that the cost to the system may exceed the likely tangible benefit that may come with Justice. Having a diagnosis of Dementia (correct or incorrect) can result in their wishes and opinions being inappropriately devalued or misused.

In 2004 I was advised by the SA Public Advocate's Office that in reality the only factors the legal system considers are the financial and asset impacts from Elder Abuse - this was also evident from my experiences, over 12 years, seeking protection and Justice from legal systems that appears to have more barriers to justice than roads to justice. Those experiences demonstrate the appallingly legal system I encountered that often puts no or little weight on psychological and emotional abuse and provides little means to prosecute other forms of Elder Abuse. I believe all forms of Elder Abuse impacts on the abused person's health and wellbeing. It often changes peoples' lives even before they lose their life savings or assets.

While the existing system often can't even get its incapacity decisions always right, I have little confidence that less obvious forms of Elder Abuse, including Psychological and Emotional Abuse: when individuals are involved and not 'class actions' the reality is that offenders are unlikely to be prosecuted under Law. For the above reasons this submission focusses mostly on financial abuse and how that is ignored.

This Inquiry, to my understanding, includes Federal considerations of means to safeguard and protect older persons from abuse by formal and informal supportive or representative roles. The message society sees, in most cases, is Elder abuse by family, friends or others is a 'safe' form of ill-treatment or theft - unless visible to the public eye (for example; physical mistreatment or systemic neglect) it is in the main, hidden, unless viable to challenge through class action.

Financial abuse: "...*the illegal or improper use of a person's property, finances and other assets without their informed consent or where consent is obtained by fraud, manipulation or duress.*" (Seniors Rights Victoria), generally, unless huge amounts of financial or property theft are involved over short time periods, either goes undetected or the abuser is aware the

means to prosecute this form of abuse is effectively non-existent outside unaffordable Lawyers and Supreme Courts. I strongly believe Elder Abuse should be treated as a criminal act.

My responses will also put a light on a less obvious abuser which is well protected and resourced; their funding is supported by the proceeds of the crime of profiting from the vulnerable. The Federal Government must find a means to intervene.

Time limitations due to my late submission, have meant that my focus primarily on questions of most relevance to my own experiences of Elder Abuse and the barriers to justice that can be supported by evidence.

In the past I naively thought the States and Territories could be trusted to protect their citizens and enforcement of the following was likely not necessary – ‘Section 109 of the Constitution of Australia provides that: When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.’ Having experienced how abuse across borders is protected by legal limitations I now believe Section 109 is justified and necessary when conflicts of interest are evident.

For around 12 years I tried to seek protection and justice through government controlled systems on behalf of [REDACTED]; I was told I needed to wait until her passing. Thus, currently, I am now seeking justice for [REDACTED], yet she will never see it. In doing so, I am experiencing a legal system that corrals and coerces loved ones into passing huge sums of money to lawyers and within the Court system. From my experiences I have found that the legal avenues to address Elder Abuse are extremely prohibitive, free legal advice is less than adequate or non-existent, and that justice truly does have a cost - for most, justice is unaffordable.

**Question 1** To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse:

- harm or distress;
- intention;
- payment for services?

Many legal definitions of Elder Abuse can be googled – criminal acts I understand require intent to be prosecuted. Identifiers of Elder Abuse can include noticeable harm and distress. The legal blur or lines between civil and criminal prosecution needs to be reviewed as civil costs are extremely prohibitive; to the extent that in most cases no actions against an Elder Abuser are taken by the abused or their love ones. Civil or criminal prosecution may, if lucky, recover a small portion of financial loss but the cost of civil actions, I am advised normally around \$50,000, demonstrates Elder Abuse Laws need to be legislated as criminal offences or accompanied by an affordable and simplified means to gain Justice. Justice should be a right, not a service that only comes if paid for (normally from the abused person’s life savings).

Currently, it appears, Governments are more interested in spending money so to appear to be interested in promoting their concern about Elder Abuse, than spending it on being more pro-active stopping it: sending a more effective message to the ethically and morally challenged

through prosecution of abusers. Reducing hidden or unrecognised abuse will come only after setting more effective means to monitor and protect their vulnerable citizens then prosecuting even the less than financially viable offences under law. Presently in civil actions, effectively the abused pay for the abuser to be investigated and brought through the Courts.

Citizens, disadvantaged by disability, vulnerability or those where their rights have been taken over by the Crown are at risk. These people, many who are elderly, are put at the greatest risk of Government abuse and disrespect. State/Territorial Attorney General Department Offices are failing, too often, to exercise proper protection of so-called, Protected Persons, once their rights are taken over by the Crown. Shame on such a society without Rule of Law where exploiting its most vulnerable is an easy and safe way to boost State revenue. Yes Governments have so called independent services, which in reality are more blotters to mop up any spills, unwisely enabled with an opinion option not to investigate its sister State Offices. Removing non-transparency and no accountability is the first step to limiting Elder Abuse resulting from decisions or actions by Tribunals which provide 'client placements' into its State's Public Trustee business units.

While ██████████ was under Administration by SA Public Trustee her file was exempt from Freedom of Information scrutiny. ██████████ expressed to the SA Guardianship Board "*They (SA Public Trustee) are waiting for me to die*". They had to wait a further 6 years then "*The truth was erased. The erasure was lost. The lies became truth*". Except the incriminating evidence I extracted along the way which involved around 30 legal hearings.

For the wronged SA Public Trustee client, even if they have a voice, the well protected Administrator knows it operates without transparency or accountability and that people will give up, and in time the evidence of their abuse is also buried within protected State Records: SA protects its Public Trustee client records from exposure for 60 years. This is exploitation is an appalling abuse of State power. "*Without information there can be no accountability. In an atmosphere of secrecy or inadequate information, corruption flourishes. Wherever secrecy exists there will be people prepared to manipulate it. It is essential that Government is not able to claim that secrecy is necessary when the only thing at risk is the exposure of a blunder or a crime.*" (Fitzgerald, 2001).

All of the elements in question 1, and many more, should be taken into account – in a recent District Court Hearing ██████████ distress and pain was raised then effectively laughed at by a SA Crown Solicitor defending the Public Trustee. My experiences have been that harm and distress are treated in Appeals as irrelevant. The way in which the Law is administered also often retires most past psychological and emotional factors as 'historical events' that will no longer be considered. When I eventually succeeded in forcing SA Public Trustee to reimburse money back to ██████████ from its bad or unlawful decisions there was never any consideration shown to the impacts on ██████████ health and wellbeing. Non-financial forms of Elder Abuse appear to have no bearing on legal decisions – try and explain that to the abused person whose latter life was ruined and has suffered from abuses over many years.

**Question 2**      What are the key elements of best practice legal responses to elder abuse?

The United Nations UNESCAP explains: '*Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is*

*minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.*

Question 1 provided some views. I would appreciate this Federal Inquiry to consider how mitigation is, or remedies for abuse are, likely when the abuser is also the investigator, and can, and does, control the prosecution of its Laws? The message that I have repeatedly witnessed is that although Contempt of Court, Perjury, Forgery, and Theft are violations of existing State Laws they are ignored when self-protection is required to preserve non-transparency and non-accountability. As French Statesman Frederic Bastiat said of pre-revolutionary France 170 years ago: *“The law is guilty of the things it is supposed to punish”* and: *“When plunder becomes a way of life for a group of men living together in society, they create for themselves, in the course of time, a legal system that authorizes it and a moral code that glorifies it.”*

I and many others around Australia have recognised that self-review cannot be relied on within the States while many examples of legal irregularities, conflicts of interest and non-compliance to Rule of Law remain. No matter who the abuser is, an underlying factor in Elder Abuse is often financial exploitation for gain and often those who are vulnerable and unable to defend themselves are the targets; the current 'System' to address these abuses either doesn't care, is too difficult to access or is out of the reach of those needing it. I liken this to having road speed limit laws but no police or prosecutions – abuse of the vulnerable is occurring in the shadows and destroys lives.

While State Tribunals are being reshaped, the Courts have for years been facing State Office abuses. Nothing appears to be changing while conflicts of interest and misuse of power has no demonstrated ramifications.

I see great cost advantage in Tribunal roles increasing but also great risks for Justice: Contempt of the appeal process is not uncommon and continued in my 2012 and 2014 experiences. Case Law: ... Ref: *S, P v Guardianship Board [2006] SADC 38 (5 April 2006)*. In the Court's Words: History shows the SA Attorney-General's Department Guardianship Board Office's avoidance of accountability and transparency is common practice - in the SA District Court's words – *‘We express our deep unease respecting cases coming on appeal to this Court from the Guardianship Board, which on too many unacceptable occasions, cannot be determined on their merits because transcripts of proceedings before the Board have been lost, or the reasons of the Board are not made available to the Court, until after the detention period the subject of the appeal, has expired.’ ... The fall of events in these circumstances run contrary to the clear policy of the Act, ... Perhaps all we can do is to bring these problems to the attention of the Government, the practical difficulties concerning the effective means of review under the Act, ... as there is no extant subject matter over which the Court is any longer capable of making an operative order’.*

Even when evidence hasn't been destroyed or corrupted that same Higher Court's explanation to me, as to why nothing was being done when all 5 of its District Court Orders were ignored/violated by the SA Attorney-General's Department's own Tribunal was, *‘The Court hears appeals on decisions of the Board and the court is unable to enforce of its own volition.’* The Court did not identify who can, and neither could SA Legal services. So where

can concerned/abused citizens go – to the unaffordable Supreme Court? Equity and Fairness within the Justice System can only be afforded by a few and the pockets of defensive State Governments are deep.

**Question 3** The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning: ...

Elder Abusers, in defence of accusation, can reliably insinuate an elderly person is confused, is forgetful, has dementia, etc. or an abuser when challenged by claims of mistreatment or theft etc. – in other forms of criminal offences the Law seems to place more weight on outcomes or impacts on the victim. Elder Abuse may be better treated like some offences against children – such as mandatory reporting and more reliance on evidence and less reliance on the victims statement (particularly if dementia is involved or intimidation against the victim is suspected). A common factor for investigators to look for is often intent which usually can be seen to benefit for one party more than the other. Illustrative case studies to assist answering Question 3 can be found throughout this submission and its confidential attachment.

It was reported that *‘Australia has no Bill of Rights to protect human rights in a single document.’ ... ‘Rather rights may be found in the Constitution, common law and legislation - Acts passed by the Commonwealth Parliament or State or Territory Parliaments.’* (Australian Human Rights Commission, Current).

My opinion in relation to Human Rights for the elderly in over seven years nothing noticeable has improved and in [REDACTED] case no-one or Office was properly investigated nor justice served. [REDACTED] the last 12 years experiencing abuse and denial of her rights and liberties which unless witnessed is likely beyond most people’s belief or acceptance.

Since I wrote the 2009 submission below, more damning supporting evidence has surfaced demonstrating even greater systemic abuses within cultures that specialise in cover-up and believe they are untouchable. (I include most of this earlier submission to demonstrate how helpless I felt and how to demonstrate how little has to date changed in the fight against Elder Abuse.)

[‘2009 Submission for the National Human Rights Consultation; State Governments that place their own self-protection before the protection of residents and use public funded Crown resources to limit peoples’ rights under law identify the urgent need for a well prepared, supported and enforced National Human Rights law to better protect Australians.

This submission is from an Australian who cares about the abuse of the vulnerable, particularly one elderly woman, 88 years of age who had her liberties and rights snatched from her just as her house, car and belongings were the day her 96 year old husband died. Today, nearly 5 years later as her short term memories fade, she has little to remind her of a good past life, some memories were immediately sold off unlawfully using a \$3.95 do-it-yourself financial only Enduring Power of Attorney, some belongings are used by others who realised a lazy or incompetent system means they needn’t wait until someone dies, while the few items surrendered ‘sit in storage’ at the SA Public Trustee (the argument given for not transporting them to [REDACTED] over a year ago is that it would cost more than they are worth). When the elderly or vulnerable are no longer considered of value, the impact from extended

depression, stress, poly-pharmacy and denial of freedom and memories has an irreversible impact on their health, wellbeing and quality of life. Most will give up fighting and living. People who have not been involved in the loss of their or a loved one's rights may not be able to imagine how important one's human rights are but try to imagine this example: You spend a horrible night cradling your dying husband knowing his death, after a short illness, is imminent. Following his death in the early hours of the morning, in shock and grieving, you soon find those who should care taking belongings. You are then removed from your home and existing life against your wishes. You are forced into an alien restrictive environment with only a few clothes as leftovers of life long belongings. Medications are used to calm you but what you really need is love, understanding and support. Although you are a pensioner who owned your own home, car and savings, you now no longer know what is happening (nor are all close family and friends being informed) – you no longer have a say in your own life about anything; you don't know what your rights are, who to turn to for help or what can be done. You have the legal right and ability to make decisions but are not being listened to. You don't know what will become of your life. Nor are you aware of a 'do-it-yourself' Enduring Power of Attorney news agency document, that unbeknown to you and family is being used illegally to take away even your medical and lifestyle decisions, although it is not legally active and is for financial power only. (The State government, to protect errors they have made, turns its back on you as it does today nearly five years later). The combinations of unnecessary drugs are now adversely impacting on your health and wellbeing – your concerns go unheard although you have required three near death emergency ambulance trips to hospital. One drug you had identified as adversely impacting on your health about 1 year earlier, but was forced to continue taking, was eventually dropped under hospital instruction. (It was 3 years later, when protected interstate, before a proper review of medication is allowed - all medication has ceased but one). You use to live in a two storey house near the beach (over an hour away) where you spent much of your life and where cherished elderly friends and your close sister lives. No phone is allowed in your room and unlike you most of the people you now live with have serious dementia or communication difficulties. Morning or afternoon 5 kilometre walks are no longer possible unless you go around and around a small courtyard or smelly water catchment pond. Since your life was turned upside down you now feel anxious, despair and talk about not expecting to live much longer. In a short period your weight has increased from clothing size 10 to 16 - to ensure a basic need of clothing, you have to adapt your now too small clothing by cutting and pinning items together so they 'fit' you. Your forced relocation restricts your contact with friends and family, even the freedom to go on an outing outside the secure environment with family requires permission. You are denied a key to your room and for the first times in your life you have been physically assaulted. All bridges to your past have been burnt; the government provides no support to address the legal misuse of documents you knew nothing about that were used to take your rights and liberties away.

Surely this shouldn't be happening in Australia, after all we assume we are protected by laws and governments – we have rights and liberties. Don't we? No lives need to be destroyed if the laws are strengthened and properly enforced: Elder Abuse goes unchallenged even when reported; families or the greedy should not be able to easily arrange the sale/settlement of someone else's home /assets, nor should the vulnerable be able to be displaced or locked-up without proper medical testing. The elderly and vulnerable should not be forgotten and each individual case should be considered worthwhile and addressed.

Although ██████ now lives in Queensland and is now protected from poly-pharmacy it is very clear to us how the system fails. Why nothing is being done is also well documented and

clear. The SA Government have allowed rights and liberties to be abused and should be accountable. [REDACTED] will not be protected from further financial disadvantage until administration can be transferred outside of SA They should be made to explain why [REDACTED] simple requests to have her own few remaining belongings returned to her after being denied them for almost five years. A 2007 written request by [REDACTED] initiated some property recovery mid 2008 however these items currently remain in SA Public Trustee storage - at what costs?

Valid argument exists as to why states should not be entrusted with Human Right controls particularly when a conflict of interest could exist. In brief, the very long story of abuse started with elder abuse and continues today because a State government finds it advantageous to ignore fraud, corrupt conduct and maladministration: legally the SA Government appears under its own Acts and Laws to be accountable yet acts otherwise. When required reporting is not followed and a culture and system supports non-transparent maladministration, mistakes will add unnecessary abuse and hidden costs in many forms to a client. If a conflict of interest exists due to legal accountability resulting from government maladministration or corrupt conduct: can we predict transparency and accountability will be enforced when the only accessible investigatory avenues are the Offices or 'independent' people appointed by the government accountable? The only truly independent avenue for appeal in SA outside the Supreme Court is the SA District Court: while able to subpoena information and make Orders to a SA Attorney-General's Department Office to clarify the legality of binding decisions made by that Office. The SA Government SA Attorney-General's Department Offices, unlike normal Australians appear to be able to simply ignore legal process, Orders and responsibilities. Not surprising the State of SA does not have a Bill/Charter of Rights and the Government opposes creation of an Independent Crime and Corruption Commission. Laws and Acts are supposed to protect rights but are seen to be ineffective, just as legislation is when ignored. Our Constitution prevents the Federal Government and other State Parliamentarians from intervening across borders [*sic* borders].

Australians have no rights if their rights can be made as useless as evidence is that will not be looked at by those with the power to act: particularly if acting on that evidence would be self-incriminating. When governments operate outside their own Laws and Acts to the detriment of the liberties and rights of ordinary Australians then this is abuse. If a State government cannot be trusted to use its extensive public funded resources for the benefit and protection of residents, then an overriding independent body is required to protect all Australians even if outside the State where the offence was committed. The legal system can only be afforded by a few and the pockets of defensive governments are deep.

I can relate to the practical importance of other recommendations including, Items – 14. 45. 50. 53. 149. 150. 358. 360. 361. and certainly 416. 429. If Australia had a functional National Human Right Law in 2004 the irreversible impact of human right could have been reduced and [REDACTED] life as she knew it could have been better protected. This would also have required appropriate independent support services to enforce laws. The Committee's Terms of Reference are beyond my ability and expertise to answer but I have presented above one State situation that I find hard to accept can be permitted to exist in Australia.

- Human Rights should include independent protection of liberties and offer genuine rights of review. I question how it is then if the Crown is accountable for corrupt conduct and maladministration under SA Acts why the Crown is heavily or fully involved with decisions of validity of such abuses of roles and responsibilities. An Office abusing its role may enjoy a monopoly in a service area and provide a good

source of revenue to the State, but the States' main obligations should be to protect their Laws and Acts. An ordinary piece of legislation passed by Parliament "human rights act" or "charter of human rights" would most likely be under the control of the State Attorney-General's Department and I believe would serve no purpose in situations of State abuse.

- My brief introduction alleges serious systemic and cultural problems do exist. It is clear human rights are currently not sufficiently protected and promoted in at least SA. Provisions within existing SA Laws and Acts to protect the vulnerable from abuse are ineffective. Unfortunately in some areas they are vague enough to allow easy abuse, in other areas while 'clear' they have no value when those empowered to enforce them won't. A well prepared, supported and enforced National Human Rights law could better protect Australians and promote human rights. A key element following introduction of these laws would be inclusion of a means to enforce the laws, which is accessible by all Australians at no cost. Today Human Rights go unaddressed because there is no avenue in Australia for the support needed to stop the abuse.
- Our experiences of systemic abuse of the vulnerable shows that without proper governance, errors within other services such as legal, medical and support areas will continue unchallenged – delaying the long overdue changes to Federal laws needed is in my opinion facilitating the abuse that is happening today to Australians that family and friends care about and to those alone who no-one cares about. Shame should be felt by all those with the powers to act but do nothing.']

**Question 4** The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?

Access to cogent evidence and means for its proper consideration are key fundamentals when seeking Justice – no matter if the Elder Abuse is by an individual or a Government Office/Tribunal. Hence obtaining access to all the evidence should be affordable and not restricted by those with self-interests, alleged accountable or those accused of Elder Abuse. If evidence has been changed or destroyed then appropriate penalties need to apply. If gaps in evidence result from processes where opinion allows evidence of a critical nature to be ignored, then the Acts involved may be either inadequate or the process corrupted.

Major decisions which significantly impact on a person's normal life need greater scrutiny and check and balances in place – Elder Abuse as defined does not only occur by a family member, close relative, friend or carer. Please look into the many reported (and not-reported) cases – [REDACTED] the SA System. The key factor allowing much of what I experienced in SA was the abusers non-transparency and hence no accountability.

Wrongful or premature placement of an elderly or disabled person under a State's Public Trustee administration by a Tribunal is a common complaint throughout Australia. Self-review after the event is repeatedly proven inappropriate and inadequate; abuse of a person's rights and liberties is a life changing decision (similar rules of evidence should apply as apply to Criminal Law judgements). I'm not aware if anyone has challenged this as a case of Elder Abuse but the outcome can result in a form of forced imprisonment against the person's best interests and financial abuse of their life savings.

Existing legislation has expectations that evidential material must be accurate and retained by an Administrator or EPA; however my experience demonstrates that if evidence is alleged lost or has been destroyed, little or no ramifications result (please let me know if the ALRC seeks detailed examples of evidence being withheld or mistreated within the State Tribunal and District Court levels). Access to and the legal opportunity to test what is left requires a Supreme Court Order/Affidavit which often means the abused person's funds pay for the associated costs to seek justice for them.

Gaps in evidence could also be associated with the provision of false evidence to decision makers. My experience is that, when what I associate as Contempt of Court or Perjury occurs at tribunal and District Court levels, no prosecution results. Gaps in seeking justice can include time limitations after which proceeding can't commence.

As a further gap in evidence argument; SA Public Trustee legislation provides the following example: access to a client's Administration file is denied to anyone even under Freedom of Information and after that file is closed it goes into State Records with restricted access for 60 years. This effectively prevents Administration transparency and non-accountability and nullifies the usefulness of part 26 of its Act '—Public Trustee to keep accounts in respect of estates etc.' It goes on to say '(1) The Public Trustee must cause proper accounts to be kept of all estates under the Public Trustee's control, and of all dealings and transactions in relation to the estates.' Evidence confirming violations by SA Public Trustee was/is not acted on – what I hold demonstrates systemic errors the SA Crown has not acted on which is argued effects large numbers of its citizens and likely \$Millions.

If Elder Abuse in all its forms was treated as a criminal act then time limitations and access to evidence would be likely less restrictive or costly.

**Question 6** What changes should be made to laws and legal frameworks relating to social security correspondence or payment nominees to improve safeguards against elder abuse?

It is deemed appropriate in remote areas that pension recipients can have safeguards in place to protect that a person's benefit is used for what it was intended for – can the same apply to people with disability that requires others to handle their pensions but have regular costs (i.e. accommodation)? Aged Care fees are generally regular costs with minor pharmacy variants – an automatic deduction of the base accommodation bond amount from their pension would be an appreciated service which, as shown below, could save Centrelink recipients unnecessary fees and direct the largest portion of their Federal pension to where it was intended to go.

Conflicts of interest can be argued when those who handle social security payments impose an unnecessary fee which is in the nominee's interest and against the recipient's interest. Centrelink responsibly offer reoccurring bill payment options to its clients; such as for Aged Care Facilities. When Public Trustee Administration denies its clients that lower cost option is that abuse, exploitation or considered good business while managing the financial affairs of a Protected Person who is given no choice – SA Public Trustee fees include 'Income commission charged at 5.5% on all income received by the estate or trust except on monies received for rent.' In estimating fortnightly pensions for say 8000 clients the unnecessary Public Trustee fee could by providing SA Revenue around \$4 Million of Federal money annually that never reaches the recipients it was intended to reach. SA Public Trustee's

business claim is that ‘the decisions we make are in the person’s best interests and take into account what the wishes of the protected person’. My evidence repeatedly demonstrates SA Public Trustee failed to consider [REDACTED] best interests or wishes.

I suggest SA Legislation be amended to remove the 5.5% fee on pensions or Centrelink itself take account of regular fee recipients and automate partial regular payments so that the pensions paid to its citizens, where possible, reach those citizens and does not get swallowed up by back door fee grabs.

**Question 13** What changes should be made to aged care laws and legal frameworks to improve safeguards against elder abuse arising from decisions made on behalf of a care recipient?

The first safeguard needed would be better common laws and testing to ensure decisions are not prematurely or wrongly taken away from a person of any age no matter where they live in Australia. South Australian Guardianship legislation treats a person as having incapacity until proven otherwise while Queensland judges people as having Capacity unless proven otherwise. How this is initiated and how this is judged also needs standardising.

Stronger safeguards need to be imposed to ensure that conflicts of interest are recognised and that testing of the legality of claims by substitute decision makers is carried out. In the past that was not what I encountered, which resulted in decisions not in the best interests of the care recipient and overriding the care recipient’s wants and legal rights. Greater understanding and crosschecking is definitely necessary for checking the validity of alleged legal powers, particularly during the preparation of, and before, an Enduring Power of Attorney document is accepted as having the powers to make life changing or financially binding legal arrangements involving the alleged donor.

Greater transparency and the ability for people to be aware of major changes to a vulnerable person’s legal rights and decision making would allow ‘red flags’ to be raised. I do not know how this could be implemented but feel a central registry for Australian citizens past a certain age, or those considered at risk, could be provided where the lodgement of and authorisation for activation of all Wills, EPA, and Guardianship and Health care directives decisions occurs. This registry may reduce home owners from being forced to relocate against their wishes or before the elderly person’s familiar bridges are burnt leaving them even more vulnerable. This requirement may provide some awareness protection against Elder Abuse and may, through Centrelink, be structured to notify noted family or beneficiaries before any of the above are activated (excluding times of emergency).

Standardise all Enduring Power of Attorney documents and mandate they are created only by a subsidised lawyer, Private Trustee company or Public Trustee. Health Care directives should be made a mandatory component of any Administration, EPA or Guardianship appointment. The current Health Care directive which identifies in advance a person’s wishes, likes and dislikes, needs to be redesigned to be far simpler than the form currently used and offer simpler directive options. It should be recognised that once Guardianship is in place it is often too late to obtain those directives.

**Question 17** What changes to the requirements for reporting assaults in aged care settings should be made to improve responses to elder abuse?

Appropriate placement and monitoring is a key factor – CCTV in appropriate places, with recordings being retained for 12 months or more may help improve the likelihood of assault being reported, and reported in a timely manner.

██████████ should never have been put at risk or forced from her own home. Her early experiences in secure Aged Care Accommodation in Adelaide included being assaulted which did not result in any external formal notification other than a written entry in Progress Notes - 12 Oct 2004 “Resident was very upset and repeated numerous times that another resident was found in her room stealing her shoes. Resident complained that another Resident “Head Butted” her and left her with a terrible headache. Resident was not checked by a Doctor but took 2 Asprins she had from her room.” 14 Oct 2004 ██████████ report of headaches continued and was given 2 Panamax. 18 Oct 2004 when attended by the home’s Dr. more Panamax were prescribed. We ourselves in 2005 during a visit from Qld to SA witnessed the same accused large resident attacking another resident. 19 Oct 2004 ██████████ approached a RN requesting a key to lock her room – the EPA rejected paying the \$20 fee. When aware I offered to pay for a key and was informed that it was the decision of the EPA – it took a further 3 months making it around 5 months from entry to arrange ██████████ to have a key for her room. A 2005 facility newsletter later raised awareness of thefts from residents’ rooms and encouraged rooms being kept locked when not in attendance.

While these things can and do happen, I can only hope today that violent residents are better monitored when around other residents and if instances are raised they should be investigated/acted upon. If head trauma is raised/seen or serious injury occurs then prompt/appropriate medical review/attention/action/reporting procedures must be put in place. The same should apply to alleged falls, significant bruising or changes likely from stroke. In most cases these events do not result in the Aged Care facility transferring residents to hospital review or treatment.

Visiting family and doctors have the best opportunity to report assault. For injuries to be recognised all causes need to be identified/differentiated; Guardian, family or Next of Kin should be notified of any occurrences and actions taken.

**Question 20** What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification of and responses to elder abuse?

Any private or government, advocacy service statement carries significant legal weight – a common weakness is the failure for ‘proper investigation/crosschecking’ of facts/evidence with family before such agencies write a rushed report, which if incompetent may further abuse the elderly/aged/disabled person and inadvertently protect the abuser. In SA it took me around 3 years before the Public Advocate properly investigated and put restrictions on the use and reliance of his Office’s earlier 2006 mostly incorrect report which had been heavily relied on. Unfortunately that was too late to stop the contamination it caused to decision making.

Better awareness of and increased education in elder abuse is required for any services dealing with people who are vulnerable to abuse. Most advocacy services have limited legal support from Lawyers familiar with the areas of concern. Better protection for the vulnerable could occur with timelier legal or police investigation being initiated when red flags are

recognised. Considering my experiences this would have been cost effective while also preventing years of Elder Abuse and anguish.

A SA Aged Care Advocacy Service once explained to me that its funding prevented that service providing any form of representation for a person during an appeal against the SA Tribunal's decision to take away that person's rights or liberties. I was also told at that time only 2% of people facing a Guardianship Board tribunal had any form of representation to protect their interests – of that 2%, around 75% took actions to challenge the decision of the Tribunal (the funding and resulting Court appointed token legal representation is in most a travesty – ██████████ appointed legal representative to the District Court said to me out of Court, that she didn't know much about Guardianship matters, then in Court argued she would remain silent because she hadn't been briefed by her client. ██████████ had previously had a severe paralysing stroke, could not talk and lived in another State).

## Financial institutions

**Question 25**      What evidence is there of elder abuse in banking or financial systems?

In 2004 inactive Enduring Power of Attorney documents were accepted by Banks and other financial institutions without that EPA being made to provide medical validation of activation.

Financial systems generally have to protect their financial licences. State Public Trustee's like the SA PT operate under the SA Crowns licence, are not monitored by any truly independent body. Other than SA Public Trustee, what other financial business, with around \$1 Billion of peoples' money, don't keep the daily unit prices of its self-managed Common Funds (confirmed after being sought under Freedom of Information)? Below snapshots may explain why.

Currently the records that I have exposed include massive SA PT reporting deviations and would not be acceptable from any other Financial Institution nor arguably any financial regulator. The SA Government has been made aware of serious inconsistencies and reporting maladministration since 2009.

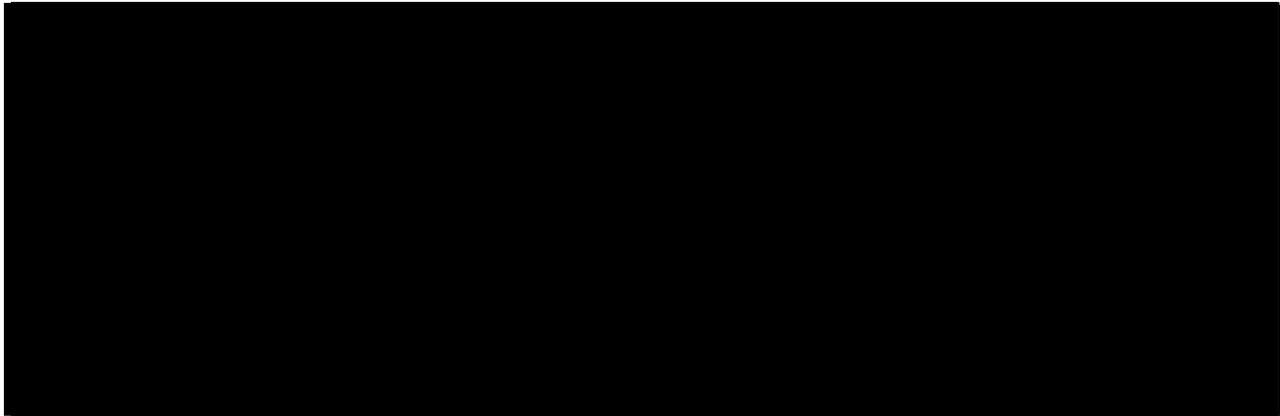
The AGD and SA authorities appear to have ignored these significant indications of serious maladministration within the SA PT over a long period. I have repeatedly asked without reply for the likely impact from its hidden, but admitted, systemic problems to be audited and all SA PT's settlements during the problem years tested to ensure SA Public Trustee has not defaulted on its clients or their beneficiaries. The extent over many years of cover-up is astonishing and needs proper Federal scrutiny (unfortunately there appears no Federal agency that can investigate a State entity).

SA PT's individual Client Estates appear were not being monitored or audited though each client incurred a compulsory non-refundable 'audit' charge each year. (Clients pay \$158 for an audit that SA PT admitted in a hearing were not done. (Say \$158 x 8000 clients = around \$1.2 Million per year).

The comparison below presents some of SA Public Trustee's systemic problems over many years – I have not included those where the SA Public Trustee reconstructed/changed earlier

Statements; client records re-constructed for a Public Funded audit – changes are evident that hid systemic errors believed to impact on hundreds or thousands of its clients over many years?

Snapshot below is taken from SA PT's own Common Fund (CF) client financial Portfolio Valuation Report (PVR) statements.



The following link identifies the broader brief overview of what I discovered – <http://www.todaytonightadelaide.com.au/stories/sa-public-trustee>

A \$3000 variation in Total Assets in the presented November statements did not account for one Statement including around \$30,000 in shares and the other having no record of those shares existing.

Stopping financial abuse first requires monitoring transaction and records. How can SA PT clients and the public be kept in the dark about what arguably may have resulted in SA Public Trustee's settlement default over many years? Why do I keep encountering a culture so committed to bury instead of rectify these systemic financial issues that would have a domino effect? Is this abuse acceptable to our Federal Government as it does affect many Australian citizens and people's life savings? Financial regulation and monitoring of State Public Trustee's is clearly warranted and overdue.

Please contact me if the Original documents are wanted.

**Question 26** What changes should be made to the laws and legal frameworks relating to financial institutions to identify, improve safeguards against and respond to elder abuse? For example, should reporting requirements be imposed?

As shown in Question 25 State Public Trustee financial reporting requirements to ASIC or similar should be imposed.

To safeguard Elder Abuse abuse by individuals I wonder if monitoring be achieved in a similar way credit card transactions; where repeated or unusual financial deduction transactions from a person's financial account or when large transactions occur raise a red flag - verify if this withdrawal is legal or approved would start with the trying to speak with the Account holder then if unviable seeking the person doing the transaction to confirm their authority to act for the account holder. Fraud is then less likely to occur if people are aware

transactions are monitored (signatures can be easily copied and presented with little checking).

Also then the validity of any EPA claims, especially if recorded on a registry could also be sought/confirmed.

## Family agreements

**Question 27** What evidence is there that older people face difficulty in protecting their interests when family agreements break down?

Wider awareness and required/supported transparency is again a key component. Older people often back away from stressful situations and without their access to, or understanding of technology and the internet, will find access to justice difficult or impossible to cope with. Migrants and people born around 1920 without much education face further challenges. It's not just family agreements that adversely impact on their interests – older people are vulnerable especially in today's technology based society.

Without help from ██████████'s situation would have gone unnoticed. ██████████ had no knowledge of where to go for help and no access to seek help nor viable means to protect her own interests. Unfortunately our help was not enough, and her wish to have her rights and life returned in SA after revoking an EPA she said she never signed was just ignored, then after the Crown took over her rights they failed to exercise proper protection of the then so-called SA Protected Person status she was given. The SA District Court's rulings were also ignored.

Later after moving to Queensland she gained Protected Person status in two States. Her interests were challenged for the third time in a Qld tribunal by actions brought against her by the SA Public Trustee and Crown Solicitor; action to remove their own Administration liabilities and her SA Protected Person status and entity under SA Law. While a SA Crown Solicitor argued their unsupported application ██████████ was denied her own funds (withheld by the Applicant SA Public Trustee) for her own legal representation required to challenge their (SA PT) Application. Co-operation between States rather than legal protection of its resident reigned as a Queensland Protected Person was given no representation. Her health and medical condition following earlier strokes meant she had no voice or representation.

Again access to justice denied through a flawed process with a predetermined outcome and where key evidence would not be considered. Appalling process and decision making by people in a Tribunal who demonstrated a lack of knowledge of the laws they operated under or financial accounting principles. Self-review ensured that decision would not be appealed outside the unaffordable Supreme Court. (The same request from SA had been denied twice in Qld previously for just reasons and those had not changed, just the decision maker).

**Question 28** What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?

Provide easy alternatives to family agreements or provide legal safeguards as with other contracts so that the consequences of exploitation or Elder Abuse have appropriate penalties

attached. Also ensure such matters can be fast tracked to meet the situation's dynamics and needs. Free access to proper/decent family Law legal opinion/mediation would offer a less costly and more cost effective alternative to actions in the Supreme Courts. Evidence of Elder Abuse may then be identified and could be it made mandatory for the lawyers involved to act on in a proper manner.

## Appointed decision-makers

**Question 29** What evidence is there of elder abuse committed by people acting as appointed decision-makers under instruments such as powers of attorney? How might this type of abuse be prevented and redressed?

Included in submissions for other Questions.

**Question 30** Should powers of attorney and other decision-making instruments be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?

Yes as previously suggested and proposed in other Inquiries.

I believe again what is required is a Federal Government role possibly through Centrelink or a similar established structure.

**Question 31** Should the statutory duties of attorneys and other appointed decision-makers be expanded to give them a greater role in protecting older people from abuse by others?

For reasons expressed elsewhere, no not until proper safeguards against Elder Abuse are in place and tested. Currently laws exist that are being ignored – please start by standardising and enforcing the laws we have so that everyone, no matter where they live in Australia, is afforded the same protection. That again requires Federal Laws.

**Question 32** What evidence is there of elder abuse by guardians and administrators? How might this type of abuse be prevented and redressed?

- Scope of Reference includes: protect against misuse or advantage taken of informal and formal supporter or representative roles, including:
  - formal appointment of supporters or representatives

SA Parliaments SARC 51<sup>st</sup> Report *'Inquiry into the Office of the Public Trustee'*; Summary speech p8 *'complaints range from the annoying inconveniences and disruption to people's life [sic] in relation to poor administration of people's finances to the much more serious allegation of mismanagement and possible abuse of public office and authority'*.

That SRC Inquiry was damning of mismanagement issues that my records confirm continued well after its findings and accepted recommendations. SRC noted SA Public Trustee treats clients as 'inconveniences', inquiry hears | The Advertiser (2008 misappropriation of clients' \$) <http://www.adelaidenow.com.au/news/public-trustee-squandering-money/story-e6freol3-1111118060617> *'John Oliver, who joined the Public Trustee in 1998 after more*

*than 20 years with Westpac, revealed during a parliamentary committee hearing today "significant errors" in managing people's money.... "I was appalled by the lack of accountability and the lack of checking of work being undertaken,"... Mr Oliver, a team leader in the personal estates branch and then a project officer until 2006, said the management "culture" was to accept documents from staff at "face value". "It was considered totally inappropriate to question anything presented by a subordinate for your signature," Mr Oliver said. "I became more and more concerned at the significant errors that I was finding, which put both the client at risk of financial disadvantage and Public Trustee at risk of liability for imprudent management of those funds."*

Had SA Public Trustee been included under the 'Amendment Bill 2010' most of [REDACTED] issues could have been resolved through ASIC. I believe all SA citizens and Public Trustee's clients would be far better protected under a common Federal Trustee Act. (Austlii, Trustee Bill 2010). The option exists today for pro-active Members of Parliament to re-introduce and that Bill to provide greater Equity under laws and more achievable procedural fairness. State Public Trustees should be placed under the same Federal Act all Australian Private Trustee Companies were in around 2010. Currently, ASIC has to my understanding, no means to address financial irregularities and abuses by Public Trustees (often operating under their State Crown's financial licences).

## Public advocates

**Question 33**      What role should public advocates play in investigating and responding to elder abuse?

Their role should extend beyond existing roles or being limited to the bigger picture and allowed to investigate without inhibitive barriers resulting from conflicts of interest. Individual cases often provide the clearest pictures of where legislation can be improved and where systemic problems have gone unnoticed.

Differences between States and the less than arm's length relationships under Attorney-General Departments cause inconsistencies and likely conflicts of interest barriers to investigating Elder Abuse when reported against sister Offices; such as a Tribunal or Public Trustee appointed Administration.

The previous SA Public Advocate was supportive but as expressed was denied the attendance he wanted to an Appeal I initiated on [REDACTED] behalf (SA Protected Person). This letter was sent by him in his place but was not considered or accepted by that SA District Court Magistrate. The abuse and protection of wrong doing continued and AGD Offices were further protected. SA PA Letter text is scanned below in full (Original pdf available on request):

30th March 2012  
The Registrar  
District Court of South Australia  
GPO Box 2465  
ADELAIDE SA 5001  
Dear Registrar  
**Re: Appeal Hearing** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Question 34** Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?

Yes but this needs to be Federal legislation which the States/Territories are bound to abide by.

Assume similar to this Canadian ADULT PROTECTION ACT  
<http://assembly.nl.ca/Legislation/sr/statutes/a04-01.htm#1>

Unfortunately I haven't had the time to look for the effects following the introduction of this form of Legislation – if it is genuine and standardised so all Australians are protected then it may afford Federal resources more ability to protect those abused by State entities. Any strengthening of Federal legislation to identify with means to responding to Elder Abuse is better than having no viable or affordable options.

## Health services

**Question 35** How can the role that health professionals play in identifying and responding to elder abuse be improved?

More accountability for General practitioners, particularly those with conflicts of interests in Aged Care facilities when making unqualified incapacity determinations or without proper patient cognitive testing. This happened to ██████████ the day the Aged Care Facility's doctor was requested 15 Sept 2004 by the inactive EPA donee (alleged Elder Abuser) seeking that she: 'Needs a certificate to certify her dementia as her daughter needs to sell the house'. (Full records are available) The Dr complied to the request with 'this clint ... she suffers from dementia and is incapable of making financial decision. The power of attorney if her daughter ...' 14 Sept 2004 the day earlier the inactive EPA was accepted and used to signed the facility's permanent placement contract. The next day 16 Sept 2004 the EPA sold ██████████ ██████████ home of 23 years. The homes own assessment reports 8 Sept 2004 state Cognitive Impairment – NO, Neurological Disorders – NO. Independent medical assessment 01 Sept 2005 – cognitive capacity 'Normal'. 20 June 2007 the same Doctor who ██████████ aw in the Aged Care Facility, who around two years earlier took her rights away, in response to a Tribunal question 'Do you believe that this person' ticked the box that states 'does not have a mental incapacity'.

It is essential that people are afforded more than one independent assessment before incapacity is used as a means to take away a person's rights and liberties. To overturn a tribunal's wrong decision is to my understanding very rare and the stigma associated with dementia or incapacity remains and influences decision makers for life. Examples why are found elsewhere within this submission.

Again a central registry may provide at least the perception of more accountability when medical diagnosis has been sought or influenced by the elder abuser creating a document without founding but with significant legal influence. In ██████████ case such a 2 line statement was misused and instrumental in taking away her rights and liberties. A paper trail of repeated incorrect/misdiagnosis of the elderly person may lead to identification of offenders whatever their role is in the abuse.

## Forums for redress

**Question 39** Should civil and administrative tribunals have greater jurisdiction to hear and determine matters related to elder abuse?

This comes to the truth that 'Justice comes at a price'. Truthfully; 'Money buys justice'.

Tribunals are affordable, Courts are not. Somewhere in between may be the answer.

From my experiences, in short, I have to say No to the States existing CAT structures having full jurisdiction for Elder Abuse (which may involve criminal matters); what you may get from a non-judicial Tribunal varies too greatly without further safeguards and reliable evidence to act on. I would only be comfortable with that option if the powers and duties of State police/police prosecution included reporting on cases of Elder Abuse and serious matters would be addressed where they belong; in the criminal system.

Doing little or nothing about known Elder Abuse reinforces the fact that if someone wanted to steal assets or money then the elderly, or vulnerable, in our society provide a safe bet that the abusers will likely never be challenged in Court or prosecuted.

To the decision makers that draw bench marks/ lines in the sand where their effort or \$value must be exceeded for them not to turn a blind eye to individual Elder Abuse offences; indifference or conflicts of interests have allowed peoples' latter lives to be destroyed and by not acting on abuse is itself a form of Elder Abuse.

Free legal aid is mostly not funded to address Will related issues. Legal representation for \$300 – \$500 per hour fills the gap even if justice is not viable or cost ineffective to pursue. The first question I was asked as an Executor of [REDACTED] Will was – has the Estate enough money to pursue legal action against Elder Abuse – before we start a \$10,000 budget to get to the Supreme Court, then I was told that the Supreme Court wouldn't look at cases where less than a \$100,000 financial loss was to be challenged. Therefore, a large percentage of Elder Abusers, unless completely incompetent or extremely greedy, will likely never be investigated hence be prosecuted. The costs of the legal \$\$\$ merry go round in a civil system are, in most cases, being paid from the abused person's Estate, hence from their own life savings. That is appalling – reason again why I argue Elder Abuse should be treated as a criminal offence.

**Question 40** How can the physical design and procedural requirements of courts and tribunals be improved to provide better access to forums to respond to elder abuse?

I have little faith in the competency and ethics within some of the 30+ hearings I attended to support [REDACTED] – some have been fair while other's just Kangaroo Courts where members appeared to get 'a high' from their unwarranted abuse of power and ability to bully. If the selection of tribunal members required demonstrated competence and panel appointments based on the experience and skills necessary for the responsibilities given to members, then there is a place for the States/Territories CAT's. I say this with reservations and because of the prohibitive and unaffordable cost of seeking Justice within the safer alternative, our Supreme Courts. There may be argument for accountability of all attending a Tribunal or lesser Courts, including the judge/the panel to swear, affirm or attest to compliance by the Acts they operate under and to seek only the truth (the French Judicial System may provide some accountability guidelines).

Informal mediation with access to affidavit/sworn evidence at an affordable costs is a first step needed. Then for the likelihood of Justice being served I would choose the Supreme Court over lesser alternatives; that currently requires the financial resources to afford the high Court costs and the representation needed, especially if a challenge is to a State Crown with deep pockets.

It was suggested to me from a Federal Government source that I raise concerns through a Federal Inquiry: for broad justice concerns please refer to my DR264 submission.

<http://www.pc.gov.au/inquiries/completed/access-justice/submissions>

My wife and I also provided a further verbal submission to the Commission in Brisbane: Verbal Submission Transcripts Christopher Jenkinson and Deborah Jenkinson 18 June 2014 Brisbane.

<https://nswtgexposed.files.wordpress.com/2014/10/productivity-commission--inquiry-into-access-to-justice-arrangements-christopher-and-deborah-jenkinson.pdf>

**Question 41** What alternative dispute resolution mechanisms are available to respond to elder abuse? How should they be improved? Is there a need for additional services, and where should they be located?

I have included some suggestions within responses to other questions. Access to denied evidence is a key requirement for proper and reliable investigation – that will only occur when provision of false information has a penalty. Mediation is only then likely.

There also needs to be some independent body that will act/investigate quickly, once aware of concerns, that has the powers to halt Elder abuse immediately. The elderly person needs to be protected as soon as practical from further abuse and risk while the abuser is properly investigated/prosecuted – some new or restructured Policing department with representation at major stations throughout Australia may be an option? In future centralization may be possible using video conferencing to local police stations.

Imagine the case of theft involving a purse containing \$100 grabbed from a handbag where in the struggle the elderly person incurs a small bruising injury and shock. Society rightly shows concern/outrage and provides means and interest to prosecute the offender if caught. However, for the vulnerable, including the elderly, being subjected to theft and inheritance impatience cruelly and repeatedly by a family member, even when large sums are involved and the distress causes serious ill-health nothing is done: it appears society accepts elder abuse. It took very little time for Elder abuse to destroy [REDACTED] later life – I discovered quite soon that those who care can do virtually nothing and the message the system sends to abusers is ‘we have better things to do, are not interested, will not prosecute Elder Abusers unless easily proven that theft of over \$100,000 occurred. Best you wait until the Elderly person has died then the Supreme Court may be interested and if the Estate has enough money left, then the lawyers will become involved; you may need to use the abused person’s money but be aware very little, if any, may be left after costs and you can’t be sure the abuser will be made to pay costs.

The message to Elder Abusers currently is clear: that society has little interest or respect for the elderly – Government Offices turn a blind eye rather than spend the time necessary to stamp out Elder Abuse by sending clear messages to the abusers. In my experience when a State Public Trustee took over administration from an abuser wielding a dubious newsagent EPA document; the Administrator turned a blind eye to Elder Abuse and itself later abused [REDACTED] financially and emotionally. Self review by State Offices is ineffective even when systemic problems indicate likely hundreds of thousands of people and millions of dollars may be involved. If Elder Abuse becomes a criminal offence then no one will be exempt from police investigation or denied prosecution due to unrealistic time limitations.

I see localised Policing as a key option however it will require proper funding, better on the ground resources and access to central legal direction. Prosecutions would send proactive strong messages to abusers. Often Elder Abuse can be first identified through financial gain or property theft at the expense of the vulnerable person – theft is theft and often fraud tags along.

I, like most honest and caring people, want to see Elder Abuse nipped in the bud before any more peoples' lives are ruined.

## **Criminal law**

**Question 42** In what ways should criminal laws be improved to respond to elder abuse? For example, should there be offences specifically concerning elder abuse?

Many criminal laws apply to actions where Elder Abuse occurs; more needs to be done so that criminal actions provide options outside the complexity and cost barriers existing within civil action. Expressed often in this submission: the problem remains getting the offences associated with laws investigated then prosecuted.

If Elder Abuse had criminal offences specifically linked to its abuses then I believe Elder Abuse may be taken more seriously and more realistic consequences would help to be an effective deterrent.

**Question 43** Do state and territory criminal laws regarding neglect offer an appropriate response to elder abuse? How might this response be improved?

I strongly believe the States/Territories have, in many cases, failed to demonstrate an appropriate response to Elder Abuse and should not be entrusted with Human Right controls particularly when a conflict of interest could exist.

My experiences of neglect is that currently in the State systems I have encountered, it is afforded little value when challenging the actions of an abuser – I was advised forget about the emotional or subjective components and focus only on the financial evidence. The legal system appears to consider evidence of past neglect is irrelevant, it can't be undone so we must move on from those historical events.

Criminal legislation needs to encompass means to investigate and address whoever the Elder Abuser happens to be. While limited legislation for Elder Abuses currently resides within State legislation making the States/Territories more accountable for their Offices' abuses is assumed unlikely through the Federal Legislation without State agreement. On the other hand when the Law makers abuse their own laws and fail to demonstrate Rule of Law then the Federal Government has a responsibility to ensure any Australian, no matter where they reside, is given the same protection from the Elder Abuse of exploitation.

The Australian Constitution does expect its citizens to have the same protection no matter where they reside: State/Territory Laws do not offer that protection. Case Law histories demonstrate the abuses that can result from State errs has destroyed peoples' lives as can be demonstrated from my cogent evidence and experiences within an alleged corrupt and unjust justice system. When governments operate outside their own Laws and Acts to the detriment of the liberties and rights of ordinary Australians then this is abuse. If a State/Territorial Government cannot be trusted to use its extensive public funded resources for the benefit and protection of residents, then an overriding truly independent body is required to protect all Australians even those living outside the State/Territory where the offences were/are being committed. Improvement will come when Rule of Law within the States/Territories can be

enforced – how that can occur I assume will come from someone who understands constitutional Law.

**Question 45** Who should be required to report suspected elder abuse, in what circumstances, and to whom?

Anyone or any Government Office with evidence of any action with intent to cause significant injury to another in some tangible form. If a blind eye is turned to Elder Abuse then that must also be acted on as if an accessory after the fact. Legislation exists for Complicity and/or alleged offences under SA Statute including in SA Part 7 – ‘238 Acting Improperly’, ‘241 Impeding Investigation of Offences or Assisting Offenders’, ‘242 Perjury and Subornation’, ‘243 Fabricating, Altering or Concealing Evidence’, ‘251 Abuse of Public Office’, ‘256 Attempt to Obstruct or Pervert Course of Justice or due Administration of Law’ and ‘267 Aiding and Abetting’ – unfortunately self-review has proven more than ‘just inadequate’ so I strongly continue to argue for Federal Laws and means to enforce Rule of Law within the States/Territories..

As referred to in my response to Question 1 *“Without information there can be no accountability. In an atmosphere of secrecy or inadequate information, corruption flourishes. Wherever secrecy exists there will be people prepared to manipulate it. It is essential that Government is not able to claim that secrecy is necessary when the only thing at risk is the exposure of a blunder or a crime.”*(Fitzgerald, 2001).

**Question 46** How should the police and prosecution responses to reports of elder abuse be improved? What are best practice police and prosecution responses to elder abuse?

The overlap between civil and criminal crime causes police role interpretation problems – earlier consideration of more specific offences for Elder Abuse would help resolve that. Making Elder Abuse a criminal act will reduce the existing confusion limiting police investigation and prosecution.

**Question 47** How should victims’ services and court processes be improved to support victims of elder abuse?

In response to this question I have attached a comprehensive confidential submission; it details specific access to justice barriers impacting on those often most effected by Elder Abuse. I have not made that submission public for reasons that will be obvious to the ALRC – it was also provided to the SA Government and buried. The comprehensive ‘Confidential’ submission attached provides names and includes evidential detail about real problems and experienced barriers to Justice.

**Question 48** How should sentencing laws and practices relating to elder abuse be improved?

Elder Abuse seriously impacts on peoples’ lives and life savings but unlike criminal offences many offences and means to address these abuses have unreasonable short time limitations before recourse can no longer be initiated. An example is SA EPA legislation limits action against offences by an attorney (arguably fits the category of Elder Abuse) to start within 6 months following Probate. As an Executor settling ██████████’s Estate issues, considering the

many issues and weighing of the costs, a 6 month time limitation for arguably criminal acts only protects the abuser. Our Constitution and where the Offences occurred means Supreme Court action is required in both Queensland, the State where Probate was granted, and in SA where many Offences occurred and the EPA legislation has effect. That effectively doubles the cost of seeking justice and consumes much of the estate's assets – if I ignore what I know then I breach my requirements as an Executor.

Please treat Elder abuse as a criminal act.

**Question 49**      What role might restorative justice processes play in responding to elder abuse?

Restorative Justice is defined as a theory of justice that emphasizes repairing the harm caused by criminal behaviour – many of the impacts of Elder Abuse are not restorable however others are. Currently in SA an EPA can 'lose' all their records of financial abuse while an EPA and face a penalty of up to only \$1000. If evidence does not exist then prosecution is difficult and often impossible – Restorative Justice certainly sounds a great idea but needs to cater for the dishonest and focus on how recovery of assets would be possible in some cases. Assets from proceeds of a crime can be confiscated following conviction of drug trafficking – drugs cause harm and has some similarities to Elder Abuse.

Restorative Justice would send a stronger message to Abusers than is currently sent.

**Question 50**      What role might civil penalties play in responding to elder abuse?

I was advised by Lawyers that civil monetary decisions are an uncertainty and while the cost to pursue civil actions is prohibitive Elder Abuse will continue to flourish.

Yours truly,

Chris Jenkinson

Brisbane, Qld.

Additional information received 14 September

Dear Tina,

If possible please attach this to my submission file.

Today I realised that real life answers to many of the ALRC's questions, particularly within the areas of 'Forums for redress' and 'Criminal law' can easily be identified from my current ongoing barriers to justice experiences; [REDACTED] was denied protection and whilst alive she wasn't listened to. Disrespect continues after her death. Effectively, no one will inform me how identified offences relating to her mistreatment seen under many Laws can be policed or affordably prosecuted. Justice comes at a price that is too high or too stressful for most people and consequently Elder Abuse flourishes.

- I strongly believe ALRC Elder Abuse recommendations must include stronger means for policing linked abuses while a person is alive and also address how those offences impact or can be treated through related/affected Laws after a person's death. If unaddressed Elder Abuse of a person expires under law when a person dies then profiting from Elder Abuse is being encouraged.

On 24 May 2016, a Queensland Supreme Court Grant of Probate of [REDACTED] Will (attached 24052016 Probate of AM Will) expected and relied on execution to be carried out under Laws that effectively have no viable means to enforce; is justice likely when identification of offences relies on the public and prosecution depends on the deceased (in this case abused person's) own life savings being sufficient to enforce those Laws. Australia appears to have lots of lawmakers but few, if any, people on the ground policing the Laws impacting on the elderly.

Frustratingly, and disturbingly, I am again experiencing what I have encountered many times over the past 12 years:

- Free legal help providers (phone or face-to-face) can't help nor provide the types of legal advice needed (apparently the Government does not provide funding for these areas of law).
- No one can direct me to where policing of the identified Laws involved occurs, or even if it occurs.
- No free service could advise me if I could even send the attached information to you, even as part of my submission, or to any other Government Office.
- In practice are people and decision makers provided any real investigative or financial support to prosecute Elder Abuse and its offshoots.

I don't want [REDACTED] suffering to have been in vain; I want to help protect other Australians but there is little an individual can do. Bullying and/or intimidation are tools used by many in this world; apathy only helps Elder Abuse continue.

May I please ask if the ALRC lawyers, when making recommendations (after reading the three attachments above showing what I face today), factor in how an abused elderly person or their loved one could, in the present system, challenge a lawyer-protected abuser alone? Also could they please consider how lawmakers can remove the many 'black holes' where no policing occur and where blatant disobedience of State Laws can have no apparent viable or likely means to bring about prosecution?

The Law is being ignored. The current, simple to understand legal correspondence I face is attached; correspondence which was describe to me by a Queensland Lawyer yesterday as 'stonewalling' (trying to force me to cease and desist). The Lawyer's gobbledegook includes ignoring Laws and the impact of his client's theft from [REDACTED] hen from the Estate: 'Our

client will only engage with you on the issue of final administration of the estate to the extent that that is required.’ No real solutions are known other than going to the Supreme Court of SA and also Supreme Court of Qld.

As Joint Executor of [REDACTED] Will - my predicament today is that the legal/justice system is forcing me as an Executor to turn a blind eye to Offences apparently both the Supreme Courts of SA and Qld need to act on individually; acting on identified Elder Abuse and offences under two States Laws will likely come with a cost that depletes half or more of [REDACTED] Estate’s assets (not her wish). Not acting on past Elder Abuse and current breaches of Law means that as a joint Executor of the Estate I fail to meet my current legal expectations and obligations - I don’t know of a viable proper alternative.

A legal representative for the alleged Elder Abuser would be assumed to recognise;

1. Delaying matters until the South Australian 6 month time limitation under SA Law expire would remove any threat to their client (previously alleged EPA) from Supreme Court actions (assuming SA acceptance of a Qld Grant of Probate).

***Powers of Attorney and Agency Act 1984—19.9.2013***

<https://www.legislation.sa.gov.au/LZ/C/A/POWERS%20OF%20ATTORNEY%20AND%20AGENCY%20ACT%201984/CURRENT/1984.25.UN.PDF>

***11 and 11A—Applications by beneficiaries of the will of a deceased donor***

*(4) An application under this section must be made within six months from the date of the grant in this State of probate of the will or letters of administration unless the Supreme Court, after hearing such of the persons affected as the Supreme Court thinks necessary, extends the time for making the application.*

2. If a challenging Executor, is prepared to spend \$50,000+ and a Lawyer’s client is then faced with disclosure Orders from SA’s Supreme Court the following applies as well;

***8—Offence if donee of enduring power fails to keep and preserve accounts of dealings etc***

*The donee of an enduring power of attorney shall, if he fails to keep and preserve accurate records and accounts of all dealings and transactions made in pursuance of the power, be guilty of an offence and liable to a penalty (recoverable summarily) of an amount not exceeding one thousand dollars.*

Who does the above legislation protect and what messages does it send to an EPA stealing more than \$1000?

The Queensland Act I primarily referred to in the attachment is the *Queensland Succession Act 1981*; which both Executors (my sister and I) swore to abide by <https://www.legislation.qld.gov.au/legisln/current/s/successiona81.pdf>

Including *47 Executor of executor represents original testator*

And then importantly re this matter *52 The duties of personal representatives*

*(1) The personal representative of a deceased person shall be under a duty to—*

*(a) collect and get in the real and personal estate of the deceased and administer it according to law;*

while also requiring that an Executor is accountable for waste of the Estates funds *52A Liability of executors for waste* – a ‘catch 22’ situation. Is an Executor by policing offences under States Laws while seeking abidance to the Will and justice for the Donor depleting Estate funds in a wasteful way; (likely requiring spending around \$500/hr on legal advice, then Estate representation and Court costs). Is that waste in the eyes of the Law or would it be waste in the donor’s eyes? - I doubt I am not the first person that has been placed in this position – it appears one is ‘damned if you do, damned if you don’t’ with likely outcomes that both offend some Act.

I recognise that my earlier Elder Abuse submission with its Question 47 complex attachment contains an exhausting amount of information for the ALRC to consider – it is hoped this additional information may complete the picture by demonstrating post death cracks in the justice system that also need to be fixed immediately.

Please also recognise in your final recommendations that Elder Abuse can continue after the elderly person’s death through disrespect of their final wishes.

Yours truly,

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