224. D Hannigan

Full name: D Hannigan

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**Submission on Elder Abuse**

**Wills.**

There are a multitude of methods elder abuse can occur in wills.

Industries have evolved and now operate through this abuse. Charities pay commissions to work the market; lawyers collect executorships, members of families, carers and acquaintances have all been identified as manipulators of a persons will.

The regulators who are responsible for preventing the abuse of wills do not do their jobs. The ACCC does not recognise there is a problem, the various state run consumer regulators do not have any resources to investigate matters relating to will fraud. The legal regulators have only recently recognised that lawyers who act as executors come under their domain and since they are a self-regulated body have a bias towards the legal profession and offer zero consumer protection to the families of the deceased. When a crime is committed and reported to the police they are under resourced and are directed by the department of prosecutions not to progress particularly if they are investigating a member of the legal profession.

At least eighty billion dollars a year passes from the living to dead to the living in Australia each year and the only mechanism for resolving this abuse is through the supreme courts, a very expensive time consuming and indeterminate process that can only guarantee a great deal of value will be wasted on lawyers’ fees.

A will is a document that is written by a person who has died that transfers their assets from the dead to the living, the administration of this process and the laws governing this process date back to the beginnings of human civilisation.

The laws currently in use within Australia originate from the 13th century in Great Briton after the Norman Conquest.

These laws have evolved over time and are currently formed, administered and interpreted by the legal profession.

Wills are frequently written by lawyers, they are processed by lawyers and frequently lawyers are nominated as executors of deceased estates by the testator.

A lawyer who becomes an executor can claim legal client privilege of the notes relating to the construct of the will, does not have to release the legal file to the beneficiaries of the estate and can defend their actions by using funds from the estate and only if an action is bought against them in the supreme court by the beneficiaries of the estate and the lawyer  loses  and the Judge orders costs against the lawyer is there a possibility that the beneficiaries will discover the true wishes of their mother`s or father’s,  if the will nominates a crooked lawyer as an executor.  Total costs of this simple action for beneficiaries and the lawyer executor could easily exceed $80,000 in the Supreme Court all of which will be paid for from the estate.

The majority of people assume the process is simple and the professionals administering the process can be relied upon to be are trustworthy. They also assume that these professionals are accountable under law to work in the interests of the beneficiaries who in the majority of cases are the family of the deceased.

The transfer of wealth from the dead to the living should be a very simple, low cost process but unfortunately within Australia there are multitude of issues that can occur that will throw a deceased estate to the mercy of the legal fraternity.

The laws relating to Inheritance are akin to a maze of cart tracks built in the interests of highwaymen and bushrangers rather than a simple and safe motorway.

People will normally approach a lawyer to write their will. The lawyer will ask the person who will be the executor? The normal response will be. What is an executor? The answer will be the person who administers the estate, the person who carries out your final wishes and administers the estate.

The testator will then go ahead and tell the lawyer who gets what and who will be the executor or executors.

The will be written the testator will sign in the presence of two witnesses and that is the end of the story until the person dies.

Many wills are secret documents, they are not discussed between family members, the executor if they are a family member may have a copy of the will then again they may not have a copy. There is no central registry for wills and there is no requirement to register a will.

There are no checks or balances in place to inform the testator of the implications of what is contained in their will and whether or not the will can be attacked. There is no culture of prevention being better than the cure. This philosophical inadequacy with regards to wills can favour the financial interests of the lawyer who writes a will if the lawyer is an unscrupulous person. The lawyer knows that if the will is flawed there will be no repercussions or penalties for their performance and there are absolutely zero checks or balances involved in the will writing process. Hence a lawyer an bias a will towards dispute at the outset as there is no requirement for the lawyer to inform the testator of the likely hood of a dispute, let alone the financial and emotional consequences of such a dispute.

There is no requirement for the lawyer writing the will to explain the powers an executor holds with regards to a deceased estate or if there is more than one executor ways on how to resolve a disagreement.  If there are instruments created such as testamentary trusts there is no requirement for the lawyer to write into the will the duties of the trusties or even the terms and conditions of an administered trust or even why the testator decided upon a testamentary trust.

There are no statutory provisions to force lawyers who write wills or who become executors of deceased estates to share information they have in relation to the constructing of a will openly with the beneficiaries (family members) of a deceased person.

This places a great deal of power in the lawyers` hands particularly if they have a role to play as executor, as a lawyer who is an executor can.

* Write a will with the knowledge that a dispute will occur.
* Manipulate a dispute by claiming legal privilege over certain documents that prove the true wishes of a deceased person to family members with the full knowledge that the estate will pay for any legal costs incurred in defending the lawyers` decisions.
* Is fully aware of the fact that the only avenue for redress is within the confines of the various state run Supreme Courts.
* Is familiar with time consuming process the expense and the indeterminate nature of the law which favours non resolution of issues because the estate is paying for the legal dispute that the initial lawyer set up.

A will dispute in the hands of the process of the supreme court will cost a deceased estate in the vicinity of $100,000 if it does not go to trail and upward of $200,000 if it progresses.

The problem is not the dispute it is the process.

The profession responsible for managing the assets of those who have died are the legal profession. This profession have no quality standards, are not bound by Australian Consumer Law and have a vested interest in maintaining the current inefficient, costly and painful process of the maize of cart tracks instead of setting up a tribunal manned by trained professionals (not lawyers) who write wills and process deceased estates with integrity for the benefit of the family of the deceased and if there are disagreements over the will assist in getting to a resolution instead of utilising the services of wig wearing gown covered bandits that have the ability to take the families of the deceased to the road to nowhere which will lead to the disintegration of the family structure, severely diminish the assets of the estate and a group of lawyers with a fist full of dollars.

I have sited three separate examples where the law reform process has indicated the need for improved Consumer Protection with regards to the provision of legal services where the recommendations have not been implemented into law. Examples two and three directly relate to Inheritance law.

Example 1.

The Productivity Commission carried out an investigation into Access to Justice within Australia.  The Access to Justice Report released in 2014, dedicated Chapter Six, to the interaction of consumers of legal services, with the legal profession. The report revealed concerns over the protection of consumers of legal services by legal complaint bodies**.**   <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>

 **RECOMMENDATION 6.8 State and Territory Governments should ensure greater consumer focus by legal complaint bodies. The legislated objectives of complaint bodies need to explicitly state that protecting consumers of legal services is their primary purpose. In order to support these objectives:                                                                                                                                                                         • complaint bodies should report publicly on outcomes achieved for consumers, including              aggregated figures of all disciplinary actions.                                                                                                         • State and Territory Governments should amend enabling legislation to require the involvement of at least two lay representatives in complaint bodies                                                                                                        • there should be a national review of the effectiveness of these complaint regimes in three years, including their interaction with the Australian Consumer Law.**

I have enclosed a link to a letter from George Brandis which shows which recommendations the Federal Attorney Office has implemented from this report ref .

<https://www.ag.gov.au/LegalSystem/Documents/Government-response-to-Productivity-Commissions-report.pdf>

There is absolutely no mention of the phrase consumer focus or any resources that have been allocated to this new way of viewing the legal profession, as a service provider that acknowledges the consumer rights of its customers, by not engaging in misleading and deceptive conduct, unconscionable conduct of unfair empowerment in a contract when providing services.

**Example 2 and 3.**

In years gone by when government served our community through a fiducial relationship, prior to the erosive jurisprudence of financial self-interest, the Standing Committee of Attorney Generals (SCAG) realised that Australia`s Inheritance laws required a much needed and well overdue over-hall. In 1993 SCAG approved the formation of a committee headed by the Queensland Law Reform Commission to review our Succession laws with the view to unification across the nation, as the separate state jurisdictions were considered inefficient, costly and inappropriate for our modern society.

Much to the dismay of the naive citizens of Australia the committee comprised of lawyers spent the next sixteen years comprising a five volume report. With the passing of time the jurisprudence of the fiducial commitment by government and its agencies has been all but dissolved through the pursuit of the mighty dollar and with it the vested interests of the legal fraternity have again been upheld.

A simple exercise that could easily have been completed in twelve months was drawn out for a period of sixteen years without producing many changes to the damaging, costly and inefficient mechanisms currently operated by the various state run Supreme Courts within Australia.

The simplest and most obvious solution, although not entirely a cure; would have been to place succession law into the jurisdiction of the Federal Court of Australia.

Along the way there would need to be many changes made to the way legal practitioners are required to behave in this area of the law.  (It is called a quality control system)

This legal orgy of succession law reform continued into each separate state after the five volumes were released by the national committee.

Within this clog mire of legal diatribe there were two recommendations that actually helped the families of deceased persons in preventing some of the plunder of the dead by our legal fraternity.

The first recommendation made by the National Committee was that beneficiaries of a deceased estate, that is in the majority of instances, the children of the parent and the close relatives and friends, have a statutory right to gain access to the legal file, provided that all of the legal fees have been paid. This right has been ignored and is still not law within Australia.

The second recommendation, made by the Victorian Law Reform Commission came in two parts: Part one required, lawyers who act as executors to now deemed to be lawyers and complaints against them by beneficiaries can be investigated by the Victorian Legal Services Commission, Part two required The Law Institute of Victoria to write rules for how lawyers who are acting as executors are required to behave. Whether or not lawyers who act as executors are now regarded as lawyers has become part of the “how long is a piece of string argument” which is a very old lawyers trick for making money. The rules have not been written.

The Australian public remain unprotected from financial abuse by a lawyer acting as an executor of a deceased estate. Since there are no rules on how these people should behave, they are capable of lying and hiding crucial information to deliberately create fictitious disputes within families in order to satisfy their unquenchable thirst for money at the expense of family unity.

It is common practice within our migrant community for older people who barely speak English to consult with a lawyer of their own ethnicity with regards to their will. In many instances these lawyers write the will, with a view to ensuring a dispute within the family will eventuate after the death of the testator and also write themselves into the will as executor without the testators knowledge or without advising the testator of the significance and importance this role has on events relating to the estate after their death.

I realise that there are eight separate Supreme Courts within Australia that all manage deceased estate disagreements. I realise that this work contributes about 20% of the revenue base of these courts which feeds the pockets of the legal elite. I realise that most of this work is not rocket science and could be managed by one trained professional instead of a pack of wig wearing, gown cloaked and soulless predators. I realise the pain it would cause these archaic structures if they no longer managed the financial affairs of the dead. I also realise that if this work were taken away from the supreme courts and transferred to a modern venue, housed within the Federal Court, underpinned by an inquisitorial method of process, the amount of money wasted on legal contests would be reduced and would remain within the confines of the family unit. Years of disputation within family groups would be avoided resulting in improved family cohesion.

All three pieces of proposed legislation were recommended after extensive investigation, the ascendancy, succession law recommendations, have been formed by two committees of lawyers, who have raised their concerns regarding the abuse of power by some members of the legal fraternity who act as executors of deceased estates and two commissioners from the Productivity Commission, non-lawyers who have raised concerns in regards to the obligations of the legal industry towards Australian Consumer Law when providing their services. All of the proposed legislation strengthens the rights of consumers of legal services and throws the onus of accountability towards the legal profession and yet after 22 years and many millions of dollars in costs of conducting these enquires, all three recommendations have been omitted from legislation.

I always knew that lawyers formed the laws, interpreted the laws and practiced the laws, but I did not realise that they also corrupt the reform processes, by ensuring that any proposed laws that will make them transparent, truthful; so as to engender trust and make them accountable, are removed from the platter of legislation, so as they disappear.

From the perspective of a contributor to the process of Australian Legal Reform and a devote member of the church of truth trust and transparency, I had this belief, as do nearly all of us, that the law reform process works towards the overall benefit of our nation and that the recommendations proposed by a committee of our best minds, would proceed into law without much fuss, but my beliefs have been shattered and as a believer of the trilogy, I call for the government to expose our legal industry and declare an apostasy upon them and demand that they be exiled from our society, until they can incorporate the basic principles of Australian Consumer Law into their culture and stop misleading and deceiving the Australian Community into believing they are the good guys who can be trusted.

When the committee into the abuse of the aged makes its recommendations please do not become another toothless tiger and wash your hands of your fidelity duty to the aged to ensure the recommendations are implemented into law. Do not allow the legislation thieves who are paid by the vested interest to hide and destroy the recommendations.

Thank you for reading my submission and I trust you are now aware that the legal industry needs to wake up to itself, remove the cloak of hubris that blinds it and hurts the community, by returning to the fold and embracing Australian Consumer law and the principals of Truth Trust and Transparency that makes our society strong and healthy by binding us all together.

I have included a letter I have received from The Victorian Attorney Generals Department in response to my concerns. This letter illustrates the lack of concern and the way the recommendations that can protect people from abuse are being manipulated by vested interest.

Yours Sincerely

Diarmuid Hannigan.

For more information please refer to [www.lawyersorgraverobbers.com](http://www.lawyersorgraverobbers.com)

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