240. S Brown

Submitted values are:

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Proposal 2–1

I concur totally.  Having looked out for two generations of elderly both in the UK and Australia I have seen various forms of elder abuse that need to be addressed.

Proposal 2–2

I would welcome a prevalence study of elder abuse. However I have first hand experience of the different ways in which an elderly person has been abused but the lies and cover stories of the abusers have led me to believe that there may not be a clear picture emerging.  Consider situations were an elderly person is cared for in their own home but kept alive as a walking skeleton as the carer was drawing carer benefits.  Consider also that a gerontologist in Bowral exaggerated the level of dementia so that someone could be moved out of their home for the convenience of her guardian.  I therefore wonder what information could be trusted or whether a realistic picture would emerge.

Proposal 3–1

While this is an excellent concept I have concerns that this proposal would require considerably more staffing within the state organisations than are available.  Having had to approach the NSWT&G over financial abuse of my mother in law, there was a three month delay in reaching a hearing date suggesting that they already have an overwhelming workload.  Any move to implement this would need to address staffing levels, perhaps even setting up separate units within the public advocates or guardian structure.

Proposal 3–2

From my experience with the NSWT&G this is an area where I have found that there is a yawning gap between what the older person wants and what the public guardian allows.  This is because one controlling voice can sway carers and medical practitioners that abuse is not being suffered.  As an example, my mother in law who was sufferening from the onset of dementia was assessed as having full dementia by a Bowral gerontologist so that she could be moved out of her home of over 30 years and into a care facility some distance from all that is familiar to her.  Her guardians, neither of who has had experience of dealting with the aged, then decided that she should not be taken out.  When we sought to address this the guardians had persuaded the staff at the care facility and the medical practitioner that this was appropriate.  Yet she had loved being taken to the local restaurant where she was greeted as an old friend. She actually asked us what she had done to be put in prison and not be allowed out.   What I am trying to say here is that there is a need for reality checks to be in place - or the question to be asked as to whether information can be taken at face value.

Proposal 3–3

This is a very necessary step in avoiding any type of abuse of the elderly.  I would again comment that there will be a need to greatly increase the size of the public advocate/guardian agencies for this to be effective.  In all cases of elder abuse timeliness is essential to reduce the impact on the older person.  My husband - a total cynic - has said that delays may be part of clearing the decks of cases when the older person is reaching the end of their life., although this may be a subliminal action by the tribunal.

Proposal 3–4

A reasonable list of outcomes that could be followed.

Proposal 3–5

I totally agree with this proposal.  However I would make comment that despite these safeguards there may be subtle ways that the reporter in good faith may be subject to negative actions. Consideration should be given to how to protect a shift worker who may have their shifts reduced and futher reduced as a consequence of their actions.  I am aware of incidents of this occuring in other working environments, hence raising it here.  It is a very subtle form of discrimination that has major impacts on the reporter. There would need to be some checks and balances that could be brought to bear to ensure there were no negative consequences.

Proposal 5–1

This is long overdue and should be implemented as soon as possible.  My husband and I have only recently discovered that there are two enduring powers of attorney in place for my mother in law, with my sister in law relying on whichever suits her in her illegal financial activities.

Proposal 5–2

My response refers to the comment I made above.  The automatic revocation of previous documents of the same type would avoid dubious reliance on prior documents.  In discussions with a solicitor over my mother in law's enduring documents I learned that there may be reasons for a person to have several enduring powers of attorney with specific puposes.  I trust that this would be clarified if/when automatic revocation is put in place.

Proposal 5–3

Sensible transition arrangements are endorsed

Question 5–1

This is a very difficult area.  Forward planning of older people often includes creating enduring documents well ahead of when they are needed.  I assume that the phrase "without restriction" infers that the online register would be open enough for people such as estate agents, bank managers, health professionals to at least identify that an enduring document existed.  Checks and balances would have to apply on further access.  Perhaps a request link could be part of the registry website that would require provision of the reason to go further into the information.

Question 5–2

This is an issue I feel strongly about as I am working with my husband in addressing the depredations of his mother's assets by his sister who is hold two EPOAs and EG.  Althought my husband provided proof positive by way of a cheque for $10,000 to the NSWT&G as well as a copy of the EPOA, that we believe was the only one in place, in October last year, the NSWT&G still have not conducted any check on the management of my mother in law's affairs.  I have been providing my mother in law with clothing as she reduces in size so financial neglect is also in the mix.  As previously stated I have concerns that the public guardians are already swamped with issues and any more would require a considerable staffing increase which is always at a cost.  My husband has actually considered that seeking police intervention might be a more speedy  and appropriate action given the delays that have occurred with the NSWT&G.

Proposal 5–4

I agree with this proposal.

Proposal 5–5

This is a very sensible proposal that would provide a safeguard in family conflicts if an attorney was aware that they were personally liable.  Over the years I have been told of many instances where one family member has abused the trust placed in them and made free with the funds of the parent.  On a personal level I  would also support this as my sister in law has been making free use of my mother-in-law's not inconsiderable assets while my husband is the only one giving her love and support.  On her last, infrequent, visit to my mother in law  my sister in law had told her mother that she had "hidden the money so that my husband wouldn't get it".  Neither my husband nor I are hungry for a share in her estate, but nor have we wished to see my mother in law suffer the denial of life comforts that are evident.

Proposal 5–6

From what I have gleaned in dealing with my mother in laws affairs and reading case law, there would seem to be some controls already in place.  Issues arise where the EPOA beleives he/she has the power to act and does so.  From friends I gather that a tribunal may already be able to authorise a transaction before it is entered into. (Friend needed to sell her mother's house to gain funds to place her mother in a dementia unit). That said this proposal also safeguards attorneys in what could be difficult situations.

Proposal 5–7

I believe that this is already in place in NSW.   There may, however, be times when a caring care workerm will be a better enduring attorney, given that this usually requires that they not benefit in their role.

Proposal 5–8

Agree.

Proposal 5–9

Agree.  It should be common sense for this to occur, particularly  where the principal has sufficient assets for this to be necessary but even with "pocket money" transactions there should be an auditable trail for transactions.

Proposal 5–10

This would be beneficial as older retirees often migrate to another state to enjoy their retirement.  Consistency would ensure that they were legally covered wherever they settled down.

Proposal 5–11

Language is always evolving but sometimes the old phrases have more gravitas and thus more impact.  A resprentative agreement sounds more like a contract between a car dealer and its salesmen.

Proposal 5–12

Comment above applies.  This is a legal document irrespective of what it is called.

Proposal 5–13

This is one issue that however frequently stated will still be subject to the person with the stronger will being the one in control.  With an older person that will often be the representative rather than the principal.  I would like to find some way of ensuring that there are checks and balances in what happens to the principal when a representative has decided that it is that way or else!  For example my husband and I took my mother in law to see a different lawyer as she did not want to move into the care facility where she had been placed for "respite care".  The "representatives" in conjunction with [REDACTED] Lawyers at Bowral used the exaggerated diagnosis of the gerontologist that stated my mother in law had 100% dementia while she was in fact still competent to make decisions to deny my mother in law her will, preference and rights.  They called a meeting with less than 24 hours notice which they expected my husband (living in Bathurst) to attend at 9:30am .  He could not attend as he had prior commitments but it is of note that my mother in law was totally excluded from this meeting and her will, preferences and rights were totally denied her. She is now in her fourth year of what she sees as imprisonment in a facility that does not suit her.

Proposal 6–1

This is much needed.  A check list style document of what can/cannot be done would be a start.

Question 6–1

a) compulsory training can now be provided by flexible delivery which would work for those except the computer illiterate who may still be appointed guardians. b)  training ordered at the discretion of the tribunal may be a case of too little too late, although would work for those already appointed in need of instruction.  As already suggested the minimum of a check list of what can/cannot be done would be a minimum information set.

Proposal 6–2

I agree with this as it is akin to a contract to comply with the laws governing appointments of this nature.

Question 6–2

This is outside my field of expertise

Question 6–3

When dementia is in the mix it can be very difficult to ensure that the subject is included in the process. It may be more necessary for someone else to be the 'voice' of the person when the need arises.

Proposal 7–1

As a former banker both in the UK and in Australia, I have been in the position of identifying financial abuse of older customers and lacking any power to address what was occuring. Privacy laws in Australia add to the difficulties;  When my mother in law, still living in her own home, wanted to find out her financial status she was denied even this on the basis of the activiation of the EPOA, although there were hints from the bank that they were concerned at what was occuring.  When we recently advied the bank that we believed transactions were illegal under the EPOA, they quickly put a flag on the account. As I have a background in developing user reporting in large computer packages, I believe that a bank would be able to allocate a field to be switched on when accounts were subject to an EPOA.  This flag could also be a reporting tool run at branch level. When so may transactions are performed  electronically, an across the board tool might be more beneficial than specific training of branch staff.

Proposal 7–2

Good safeguards.

Question 7–1

Any safeguard is worthwhile.

Question 7–2

Proposal 8–1

As always this comes down to the size of the agency and the capacity for resolving issues in a manner that is timely and appropriate.

Question 8–1

With the complexity of living arrangements that now exist, the definition should be broad enough to encompass all variations.

Proposal 9–1

Very sensible but harder to handle when dementia is in the mix.  Even with guidelines there may still be undue influence in play.  I know that this occurred when my mother in law tried to amend her EPOA and the law firm were clearly involved in allowing undue influence to prevail to my mother in laws detriment.

Proposal 9–2

Cannot comment

Proposal 9–3

Cannot comment

Proposal 10–1

I wonder how this would work when someone in receipt of carer allowances keeps an older person alive by medical intervention when the person would prefer to be allowed to die.  I came across this when my father (in the UK) was constantly being hospitalised with pneumonia. The consultant recommended letting him go (at the age of 95 and a walking skeleton on oxygen 24/7).  My sister (carer) insisted he be kept alive.

Proposal 10–2

Agree

Proposal 10–3

Agree

Proposal 10–4

Agree

Proposal 11–1

Agree.

Proposal 11–2

Agree.

Proposal 11–3

Agree

Proposal 11–4

Agree

Proposal 11–5

Agree

Question 11–1

Question 11–2

Question 11–3

Proposal 11–6

Proposal 11–7

Proposal 11–8

Proposal 11–9

Proposal 11–10

Proposal 11–11

File