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| ADJ Consultancy Services | |
| To: | The Australian Law Reform Commission |
| From: | Adam Johnston, Proprietor, ADJ Consultancy Services |
| CC: |  |
| Date: | 21 February 2017 |
| Re: | Elder Abuse Inquiry – Discussion Paper: Submission |

As someone with a disability who is ageing, who has a carer who is also ageing and, in a situation where both of us have found initiatives like the NDIS (National Disability Insurance Scheme) to have been a distinct disappointment, I come to the Elder Abuse Inquiry with an equal sense of being underwhelmed. Here again, we have recommendations for a National Plan or Strategy and research to pull together various datasets.

While this might be a standard policy response, I fail to see how such actions will be of practical assistance to my mother and me as we age, *here and now*. It seems that from information provided to the ALRC, we have a reasonable idea of what is going on now from advice lines and advocacy services (though admittedly, this may well be the ‘tip of an iceberg’). Nonetheless, the litany of prior reports,[[1]](#footnote-1) and the advice collected in this Paper,[[2]](#footnote-2) says to me that we already have a fair idea of the scope of the problem.

What I do disagree with is this perception that we lack power to act.[[3]](#footnote-3) If someone has a reasonable appreciation that another is in the danger or that a crime is being committed, a report to police in good faith, can be made. Indeed, if you believe that a serious indictable offence has or is being committed, then there is a positive duty. Under such circumstances, advice and referral services can (and possibly should) put aside their assurances of anonymity and confidentiality.[[4]](#footnote-4) After all, no such assurances are absolute.[[5]](#footnote-5)

If a person of sound mind then declines assistance or intervention, then that is a matter of their choice. However, much commentary in the Paper goes to inheritance and power of attorney. If those who held legal decision-making power were unable to inherit, this would remove a clear conflict of interest and potential point for abuse. From my point of view, one acknowledges that the recommendation I have made (if implemented) will almost certainly cause problems for me and my mother, as we have few blood relatives beyond each other who could act as attorney, should either one of us lose capacity. Equally, we would not want to burden friends. With some reservations about leaving matters to a Public Guardian, where you are just one of many unremarkable case files, we are fortunate to have a family solicitor; others will not be fortunate enough to be able to access such services.

I say all of this, because in the past, people with disabilities and their ageing carers have been offered everything from Special Disability Trusts, to guaranteed lifetime care under schemes like NDIS,[[6]](#footnote-6) to guaranteed access to “housing choice”. My family and I examined the trusts scheme only to find it too complex and too restrictive; the caps on money transfers just about equated to the legal fees to set it up, as I recall. The NDIS is proving to be an initiative with a very dubious funding stream, [[7]](#footnote-7) and it is a burden for both me and my mother administratively.[[8]](#footnote-8) Finally, when we were considering moving into a retirement village and “downsizing” Mum and I soon found that despite significant bond and body corporate fees, we:

1. Were not assured of staged, increased care, as our needs changed; we would have to independently arrange these things;
2. Were not particularly welcome as mother and son; I was too young and Mum was not part of a couple;[[9]](#footnote-9)
3. Were not necessarily guaranteed an accessible, one level residence. Mum could apply independently, but she and I would not be taken together.[[10]](#footnote-10)

In these circumstances, Mum and I have decided to stay in the family home. We do get annoyed at commentators, politicians and others who like to self-righteously tell “baby-boomers” to abandon their homes, so that “young families” have a chance in the housing market.

Then, we are also rather rueful at disability advocates and governments, who have virtually promised that care, support, and assistive technology would fall like “manor from Heaven” under the NDIS. Well, it didn’t and it hasn’t and, it is all very likely that the NDIS carriage will turn into a fiscal pumpkin on Budget night. The stress and distress these changes and the budgetary uncertainty cause are doing terrible things to ageing parents and carers. I have been to public meetings and consultations where people openly complain about how much they hate the NDIS, struggle to access information and worry, more than they ever did, about the future of group homes in which their children live.[[11]](#footnote-11) In my mind, what these people (and their children) are being put through by State and Federal Governments, as well as NGOs, has gone beyond temporary or transient distress and, is real, sustained abuse; emotionally, physiological and possibly financial, particularly as NGOs start levying fees to people with disabilities, given that the NDIS is supposedly “market-orientated”

Yours faithfully,

Adam Johnston



1. See ALRC Discussion Paper, Elder Abuse, p.57-60 [↑](#footnote-ref-1)
2. See ibid., p.17-20 [↑](#footnote-ref-2)
3. See ibid., p.62-63 [↑](#footnote-ref-3)
4. As a former Ombudsman’s official, one knew that nine times out of ten the rule that investigations would be carried out in the absence of the public. However, there was always that ten case where people were making clear threats to themselves or others and, you could seek urgent approval to make, for instance, a police report. This was not regular, but over approximately 7 years, I took a handful of such actions. [↑](#footnote-ref-4)
5. From personal experience, NGOs who care for the elderly and disabled often have very questionable governance practices. For instance, I was truly appalled in 2011, as a board member of a major disability charity, it was founded clients had been defrauded. The staffer responsible was sacked and, monies recouped, but no formal report was made “because families wanted no further action taken”. Wouldn’t the same staffer just turn up on another agency’s books and do the same again?

   Certainly, that was my belief, but the Board was not persuaded. See Appendix 1, pp. 14-15; footnote 46. This was not the first time I had seen the NGO sector “look the other way” and government do likewise. The best example of this is that the Parliamentary Committee I sent Appendix 1 to as a submission, declined to publish or question me about its contents. [↑](#footnote-ref-5)
6. As demonstrated by Appendix 2, governments have been trying (and failing) to put together support schemes for years. The NDIS we have today I approach with foreboding, signing up only because the NSW Baird Liberal Government closed the State-run Department of Ageing, Disability and Homecare. Therefore, signing up to the NDIS was not a matter of choice, but rather a situation where *there was no other choice.* To me, this is government engineered abuse of both me and my mother. And it is not as if we haven’t been subject to the abusive wrath of NGOs (with the full force of public money) before. See generally, my first submission to the Disability Care Inquiry at <http://www.pc.gov.au/inquiries/completed/disability-support/submissions/sub0055.rtf> as at 21 February 2017. [↑](#footnote-ref-6)
7. See Amy Remeikis, *National Disability Insurance Scheme becomes latest victim of partisan politics,* Sydney Morning Herald,February 15 2017, <http://www.smh.com.au/federal-politics/political-news/national-disability-insurance-scheme-becomes-latest-victim-of-partisan-politics-20170215-gudf6s.html> as at 21 February 2017 [↑](#footnote-ref-7)
8. See for example, my submission to the Productivity Commission regarding introducing competition in the charitable sector, where I reflect on the NDIS, the amount of paperwork and its reliance on the NGO sector, at: <http://www.pc.gov.au/__data/assets/pdf_file/0003/209748/subpfr356-human-services-identifying-reform.pdf> as at 21 February 2017. [↑](#footnote-ref-8)
9. My dad passed away several years ago [↑](#footnote-ref-9)
10. I also raised these issues in an integrated care submission at <https://engage.dss.gov.au/wp-content/uploads/2016/06/Submission-Designing-the-new-integrated-carer-support-service-1.pdf> as at 21 February 2017. Refer to Section 5 - Needs Identification and Planning - To what extent should self-assessment form part of the future model? My response was:

    As stated above, you can do as many self-assessments or other reviews as you like, but will any of it be seriously considered? In my case, Mum and I decided to (briefly) look into downsizing and retirement living. We were quickly told that as we were not a married couple and as I was not over 55, local providers would not support us. Equally, to our surprise, while there were communal common, dining and library spaces, on site nursing/personal care was not offered; we would have to arrange (and fund) that ourselves. And, in any event, Mum would be the only one accepted, so we reworked all our plans around staying in the family home indefinitely.

    It is to be wondered why retirement villages were given a range of development/planning dispensations and were sold as “housing choice”. In my experience, the large NGOs who run many of these villages are happy to give you a sales pitch until you raise complex health needs, or make any non-standard requests. While the villages are also legally required to make a percentage of their villas physically accessible to those with disabilities, that appears to be the limit of their interest in exploring markets beyond the atypical over 55’s.

    [↑](#footnote-ref-10)
11. The NSW Government is transferring the operation of groups homes from State control to NGO control, under the NDIS. [↑](#footnote-ref-11)