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**Protecting the Rights of Older Australians from Abuse???**

**To the Australian Law Reform Commission – Elder Abuse** (Discussion Paper comment).

In Brief:

*Disappointingly, I feel the ALRC have missed another opportunity to address a major area of hidden State manipulated abuse (motive - State revenue gain); abuse which by definition clearly also satisfies as ‘Elder Abuse’.*

*In fact the ALRC suggest giving further powers for State Government abusers to exploit (independent adjudication is only likely outside of State jurisdiction/influence/conflicts of interest).*

*I have had so many people contact me with similar and worse experiences than mine re Guardianship Board/’CAT forced unwarranted/unjustified engagements of Public Trustees, then exploitation, all warranting a silent Federal Government’s urgent intervention.*

*Inquiry after Inquiry but nothing appears being improved in areas where abuse should not be happening if independently monitored (State legislation already exists which can/is being avoided (includes criminal offences)).*

*My own experiences, as explained within my submissions and private attachments raised cogent SA AGD evidence of SA systemic financial problems known to SA Public Trustee (their own secret 2004 report confirms intent (not provided to ALRC)) yet nothing was fixed/corrected – I argue not fixing financial system reporting errors producing financial advantage to SA Public Trustee and disadvantage to their unaware/uninformed clients/victims should be treated as a crime as is any other theft. The Government covered up/denied their known systemic financial errors for years, allowed this to continue and now have actively buried it (likely audit costs/compensation costs to the SA Government alone would be assumed massive) – I, like many others who have witnessed the SA Government abuse/experience abuse have no viable independent avenue to address extensive hidden extortion which impacts allegedly on thousands of the most vulnerable ‘Australians’ and their beneficiaries (my records/evidence confirms at least between around 2004 to 2014 (but it is likely this continues today)).*

*Turning a blind eye to such abuse of power and position by those that can at least try to address/stop this is not Australian and alleged complicity – States should not be able to avoid Rule of Law and all Australians no matter where they happen to live should be protected equally by our Federal Government.*

*The Australian constitution and the public expects more from its politicians and law makers – it should not be misused as an excuse to why ‘the Federal Government can’t intervene in State matters’ (when those matters adversely affect Australian citizens).*

*As always I am happy to discuss any aspect of my submissions and provide clear evidence supporting any claims I have made - should the ALRC be prepared to seek means to better protect all Australians rather than turn a blind eye to State abuses.*

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.*

What is the reason the ALRC chooses in its recommendations to ignore a significant group of offenders and promote recommendations seeking good governance by the States?

After 2 such Inquiries around 10 years apart I rightly wondered if further detailed comment on each recommendations was likely not just a waste of time (hence limited to my general comment below).

The Federal Government when elected stated its supported belief was; *‘In a just and humane society in which the importance of the family and the role of law and justice is maintained.*’ I had hoped the ALRC would in 2017 recommend the necessary pressures to give equal protection under Law for all Australians no matter where they live: State Laws and Acts are not equal in protection for citizens: evidence demonstrates this ideal does not exist within South Australia when even the Courts can be ignored by Attorney-General’s Department Offices which evade or bypass accountability of its own Laws.

Protecting the Rights of Older Australians from Abuse? From all or just some abusers?

**Federal intervention is needed when States fail to meet their obligations to Australian citizens or State Governments act above transparency and accountability without citizen’s having viable/achievable means of legal process/Natural Justice/Fairness outside the inhibitive Supreme Court or High Court of Australia. Doesn’t our aging Constitution expect equity for all Australians no matter where they live?**

What is the point of Elder Abuse Inquiries such as those in 2007 again ten years later when abuse of the vulnerable continues hidden by corruption within State Governments? Once again the Federal Government wrongly just turns a blind eye or claims it is powerless to protect all abused Australians, claiming this is due to our 1900 Australia Constitution restrictions?

As presented in my Submission and attachments, SA Attorney-General’s Department abuse of the Elderly continues and self-review of alleged criminal Acts will never be prosecuted; Elder Abuse should be treated as a criminal act, however as I demonstrated to the ALRC, this is not occurring throughout Australia and the Federal Government continues to allow greedy State Governments with immune Public Trustee business enterprises to extract clients life savings to supplement revenue State revenue operating costs. It is disturbing that our Federal Government appears to prefer to turn a blind eye to these State Government abuses rather than to ensure all Australians are equally protected no matter where they live (under whatever State law variants). Citizens aware are fed-up of such abuses and the public treated like mushrooms. The ALRC recommendations appear to enhance self review protected manipulation approaches already actively misused by State Government abusers for self-protection and will further enable greater State Governments secrecy and non-accountability. I and others had expected more from the ALRC and Australia’s Federal Government.

The Federal Government from around 2010 recognised the need for some better protection to vulnerable Australians: through funding conditions it offered States a TRUSTEE COMPANIES (TRANSFERS) AMENDMENT BILL.

That apparent token attempt for constitutional change provided States the option to place their State Public Trustees under the Federal Act; regulations which all private Trustees are required to operate under. Why is it then that existing inadequate/weaker State Laws continue in 2017 enabling abusers, as demonstrated to the ALRC (like SA Public Trustee), to continue destroying Australians lives with impunity from both State and Federal Governments Laws and prosecution? Why are State Public Trustees allowed to be less accountable and to be immune from truly independent review?

The States obviously prefer operating without transparency and accountability; why then does the Federal Government knowingly continue to accept the legal anomaly/situation where Rule of Law can be avoided by State Governments?

The principle called ***'Rule of Law'*** lies at the heart of individual freedom and liberal democracy *‘The rule of law embodies the simple principle that all state officials, whether elected or non-elected, should act within the law and the constitution, on the basis of powers that are legally circumscribed ... .’*

SA’s Attorney-General, Mr Rau claimed to me that *‘Public servants are subject to the same laws as other citizens in relation to matters such as contempt of court and obstruction of justice’* – I have seen only the opposite covered up by:

‘***Fraud*** is any deceitful or dishonest conduct, involving acts or omissions or the making of false statements, orally or in writing, with the object of obtaining money or other benefit from, or evading a liability. In general terms fraud is the use of deceit to obtain an advantage or avoid an obligation.’

***'Corrupt conduct'*** *means conduct of a person that adversely affects or could adversely affect, directly or indirectly, the honest exercise of an official function by a public officer or public authority.* The definition goes on to include *'dishonest or partial exercise of official functions,'* and *'breach of trust,'* or, *'misuse of information'.*(SA Democrats 2008)

**"*Complicity*** is a legal theory which holds a defendant criminally liable for the same crime and punishment as the principal because the complicitor intentionally aided, abetted, or advised the principal who committed an offense. The doctrine serves to punish individuals who have played a distinct role in the commission of an offense without regard to whether they were or were not actually or constructively present at the time the crimes were committed.... *Complicity* is not a separate and distinct crime or offense. Rather, it is a theory by which a defendant becomes accountable for a criminal offense committed by another. "The intent necessary to be convicted as a complicitor only requires knowledge by the complicitor that the principal is engaging in, or about to engage in, criminal conduct."

I have cogent examples of all the above offences which can’t be ignored if given the chance of credible independent review – evidence of offences under SA Law have been provided to the SA Government, which instead of self-prosecuting chose to destroy/bury evidence and prevent all viable means for prosecutions. The States know the Federal Government can’t intervene in Offences under State Laws; surely then the Criminal Offences suggested by this Inquiry need to be enforceable by the Federal Government.

When the States can’t demonstrate they can be trusted to enforce their own ‘state and territory laws’, then it is time the Federal Government provides citizen’s means for prosecution of Elder Abuses no matter who is the abuser?

Where are ‘penalties for abuse’ or ‘equal protections for all Australians against elder abuse’ likely to be remedied in this ALRC Inquiry suggestions and how do these apply to proposed criminal acts when offended by a State Government office? The Federal Government Attorney-General’s Department suggests: *‘The rule of law underpins the way Australian society is governed. Everyone—including citizens and the government—is bound by and entitled to the benefit of laws. ... laws are publicly adjudicated in courts that are independent from the executive arm of government.!* I was informed by the Federal Attorney-General’s Office they can’t intervene in State Legislation or the adverse impact a States legislation has on the rights of Australian citizens living in another State. Surely this Inquiry is an opportunity for the ALRC to recommend ways to better protect some vulnerable Australians.

Queensland publically/painfully recognised *“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). I argue the definition of organised crime must also include corrupt Government with systemic problems and demonstrated maladministration, corruption and complicity.

It is no wonder people are looking for changes in transparency/accountability of governments around the world – the radical alternatives no longer seem as risky anymore compared to a corrupt government which has in place structures/laws/systems to avoid accountability for violations of its own laws. 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.”*

When Governments abuse or turn a blind eye to citizen abuse, the complicity that allows this needs to be acted against/prosecuted – this requires more ethical and proactive better Governments.

Chris Jenkinson

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