TOWARD CONTROL OF ELDER ABUSE - SUBMISSION FOR 27 FEB 2017

INTRODUCTION We have long looked for some outlet for our terrible experiences trying to protect a parent against “impatient inheritor” siblings, a near impossible task in the face of unquestioning support for them by OPA and VCAT. We wanted to put in a complaint but our lawyers said much worse things happen to others at VCAT, save your energy for the carer role. Reading through the submissions already received here we see they had a good point. The stories are heartbreaking. Here we are going to try to focus on detailed measures that could have stopped the madness in its tracks or at least softened the many blows. Our family has been left permanently in conflict and our mother, who we are pleased to say lived to her 90s and died at home (but at great cost to us) went from a happy person to very disturbed one and threatened suicide regularly for her last 3 years. Although found not to have dementia by a geriatrician and then a neuropsychologist, the instigators of the VCAT Hearings continued to treat her as if she did – even to taking her out but sitting at a different table in the café. In the end, fortunately, they did not bother to visit more than a few times a year. We filled the gap with visits and phone calls with more distant relatives and neighbours who were kindly normal people, and were lucky to find some council carers who shared her interests in crosswords and bird watching and loved to visit and enjoy the large garden she had planted.

2. NATIONAL PLAN

Clearly from the large number of tragic cases quoted in this enquiry, a broad plan is needed. It must lead to action - soon. But note: many of us have now learnt to mistrust authorities.

Example: After a VCAT summons giving our mother one working day notice of a Hearing, I phoned VCAT and pointed out they ask for documents to be sent with notice of 3 working days, so why should the subject of an enquiry have less? The answer was - if that was done, then the old lady must have been in desperate need of a Hearing. All I could say, having been overseas and unable to get there, was “You make me ashamed of my country”.

Identification of authorities, lawyers and accountants as well as relatives who have acted wrongly appears to be almost entirely missing in this nation. It seems so easy to get away with misdeeds that people may consider themselves remiss if they do not try. The situation can be likened to child abuse in the 60s and 70s, when it usually brought no consequences except that many of those who reported it were branded liars. But with elder abuse we do not want enquiries and criminal trials 30 years down the line – rather, we need some form of accountability short of criminal proceedings. And we need a continuing forum, much as this enquiry has temporarily provided, where people can make their experiences heard. If VCAT forms part of a complaint, there must be immunity from the daunting $6,000 fine for disclosing court proceedings to others.

3. POWERS OF INVESTIGATION

We read with horror OPA’s submission calling for increased powers of investigation. We believe the fundamental problem there is its simplistic assumption of the “whistle-blower” being always in the right, and a predetermined role of OPA representing the interests of that person. Should it be a clever manipulative child, OPA then becomes a perpetrator of elder abuse. Rather, there should be increased controls and accountability for OPA.

SPECIFIC SUGGESTIONS

a) An OPA official should enquire into the financial relationship between the so-called whistle-blower and the subject before proceeding any further. If e.g. properties together worth $2m are being occupied by such a person or friends with expenses paid by an elderly parent, or if a sibling supporting the whistle-blower has taken large cheques while having EPA, the official needs training to get past the assumption of “lilywhite whistle-blower”.

b) The standard form used to obtain a diagnosis of dementia from the subject’s GP should be scrapped or at least reworded. It presupposes dementia while at the same time reminding the GP there will be no payment for this service. It is too easy for a rushed GP to answer as the form dictates, especially without the patient present. In our case the GP’s opinion was overturned by specialists, but the sad result was a loss of confidence of the old lady in the GP and her refusal to attend him after 8 years of trust. This was made worse by the form having been kept secret, and her being confronted with it first in a courtroom.

c) An OPA official should knock at the door and produce identity documents before entering the home of an elderly person. It is not enough to claim “a letter of introduction was left at the premises”, especially when none is found despite extensive searching, and when later in court she refuses to answer if any was left with “I pass on that question”.

d) An OPA official should not visit when the elderly person is tired from other outings, and certainly not collude with “whistle-blowers” to tire the person out beforehand.

e) A whistle blower should not be allowed to wait outside during the interview.

f) An OPA official should not condemn an elderly person for being in dressing-gown at 10 am as it is normal for people in their own homes to get up late and wear what they like.

g) An OPA official should allow for the fact that an elderly person may not hear well, or read without glasses and not commence an interview without making sure aids are in place.

h) The recruitment of OPA officials/guardians should be more carefully considered. By magnifying simple situations into serious ones there is an ever increasing need for such employment, and recruitment appears to have become careless. We found a vast difference in attitude between one official previously trained in police work overseas and another with extensive experience in helping the local community, e.g. with bushfire relief.

IN SUMMARY FOR OPA

Checks need to be in place to reduce power of individual investigating officials. We suggest obtaining routine histories of financial transactions between elderly parents and children (back 30 years if needed) for whistle-blowers as well as carers before any such enquiry is taken on - a history able to be checked by others, with sanctions if later found to be wrong.

Stereotypes such as “eldest son the usual abuser of elderly mother” are supported by facts, but this is not the only one to consider. Such a son may use a gullible younger sibling, e.g. “little sister” to make the application to VCAT. Or friends, used to having years of access the old person’s beach house and considering it as their own, may pressure the adult child to have the parent declared demented so they get absolute freedom of use of the property.

Caution should also be used by OPA in taking on cases where the instigating relatives are wealthier than the carer relatives who they will outlast economically in court cases. That is the sign of a possible plot against the old person.

Another wake-up call should be when the instigators call for their own accountant to be put in charge of the elderly person’s finances.

A list should be drawn up of “warning signs” as given above that suggest OPA is about to become the proxy abuser of the elderly person - and used in training programmes.

SUGGESTED CHANGES FOR VCAT PROCEEDINGS

VCAT proceedings should not be undertaken lightly due not only to the public expense but to the harm they can do to elderly persons, particularly if not demented, and to the lasting estrangement at best, and continued aggression at worst, they can cause within a family.

Separate urgent and non-urgent cases. VCAT Hearings should be a last resort, never called at a few days’ notice unless there is a severe danger to health or life of the elderly person. We believe the problem of elder abuse may have been fuelled by the natural tendency of an organisation to want to expand, for employees to want to feel important, and the ease with which the present systems at OPA and VCAT can be exploited for financial gain by relatives.

Notification of a Hearing should require a response in writing from the elderly person or a representative along with all other parties affected within 7 days, after which no hearing can be held in under 3 weeks where there is no danger of injury or death (needs to be well defined to sort urgent and non-urgent cases).

Elderly persons can usually get their ears/ hearing checked and hearing aids adjusted within 3 weeks, but appointments are difficult to get at shorter notice. Note it is not enough to just find lost hearing aids or get new batteries. If there is a wax blockage in the ear that needs clearing, the aid will not work. It is very easy to mistake poor hearing and slow responses for dementia and in a rushed Hearing the elderly person may get sidelined altogether.

It should be mandatory to include the elderly person in discussions and to record their state of hearing (e.g. is it good one to one / not good in large spaces or not good with 3 or more people?) in writing before any hearing gets underway. It is utterly absurd that the term “Hearing” is used for such court proceedings when the subject of enquiry is unable to hear what is being said about them. This is a very serious form of abuse. To be discussed in every personal matter, including dress and personal habits, by close relatives together with strangers in a public space and not even know what is being said, would probably produce temporary signs of dementia in 80% of the population. It is like those nightmares we have all had at some time, of going out without the right clothes in public – and then with great relief we wake up. Here it is a form of extreme bullying, from which one never wakes up.

Hearings should be held at a time to suit the elderly person. A 9am start for someone who has to travel an hour to get there is unreasonable. There also needs to be adequate breaks and refreshments available. Impatient inheritors can trot across the road to the sandwich shop, elderly persons or their carers need to be reminded to bring food and drink.

If a first enquiry orders investigation into financial dealings this MUST be held, going back as far as is necessary. It should not be able to be quashed by “whistle-blowers” or accomplices, or reduced by them to a restricted time period in which they appear to advantage.

Serious accusations must not be taken at face value but investigated. Should a gravely false claim be made, such as “my sibling X was taking our parent’s money while having EPA” be found to apply to the instigators instead, a fine should be imposed for wasting court time.

The rule that an instigator of a VCAT Hearing may bring a friend for support should be reviewed. This appears to be a product of the view that such a person needs support. In reality it means that the values and scheming of non-related persons tend to dominate the situation. This in turn can mean that the instigating relative acts in a colder and crueller manner than would be natural. In our case, the old lady could not for years get over the treatment she had received at the hands of a much-loved daughter, and would wander the house at night asking over and over why her daughter had done this to her. She concluded it was the friends’ influence. Friend X had got her father’s beach house by having him declared demented so they were now after hers by the same method. It was hard to argue against.

FOLLOW UP. The many sad cases presented to this enquiry show that outcomes of many Hearings are not what anyone ever intended when VCAT was set up. Note that relatives instigating VCAT proceedings may even use threats of continued hearings to control carers and the elderly person. After 3 hearings our mother was threatened with more and knowing she was now far too frail to cope we had to give way to many unreasonable demands, even cancelling her doctor’s appointments to do so. We hesitate to suggest more bureaucracy! But studies are needed to follow up VCAT outcomes, perhaps by doctoral or postdoctoral students at independent institutions. They should ask “Was the old person any better off? Who lost most financially? Did anyone lose their home? Are relationships better or worse?”

4. CRIMINAL JUSTICE RESPONSES

The stories contributed to this enquiry suggest that criminal justice in most cases fails to meet needs of elderly persons. As long as no adequate Legal Aid is available this is bound to be the case. There is also the problem of working-age lawyers and accountants identifying with the working-age children of elderly persons, and naturally falling in with their version of events. Further, the elderly person may be far less skilled in giving instructions than their younger relatives.

One disturbing discovery we made was that accusations aired in the VCAT court, no matter how wildly wrong or defamatory if uttered outside the court, had the court’s protection. Many of us have never been in a court of law previously, are naturally polite and law-abiding, and are quite unprepared for the viciousness of such attacks. This one caught us totally unprepared, no denial was listened to, and ever since all relatives present have believed the tale of theft to be true. In fact it was the accuser who had been up to such tricks, presumably making the accusation on the principal “attack is the best defence”.

There may be cases where criminal justice is required, but these are outside our experience. What we do need, however, is some body or organisation that will investigate reports of incorrect behaviour on the part of lawyers and accountants. Their own professional bodies are not likely to be impartial as they must act in their own interests, but a demerit point system such as they use could be applied by some body acting for the elderly’s interests.

5. EPA AND GUARDIANSHIP

We most strongly support registration of both agreements, and cannot see why it should not be a public list. But perhaps this could be open to misuse by persons wishing to move in and take over. Certainly the elderly person should be able to apply through a solicitor, doctor or other authorised person to make sure the person they wanted as EPA or guardian is there. It is most important, however, that when such an enquiry is made, the person making it is identified, recorded and a letter sent to the subject of the EPA or Guardianship informing them of who it was that enquired and when, within the week.

When a change is made to either arrangement, a history of change should be recorded (perhaps an extra few lines on a standard document) giving the previous arrangement and the reason for it ceasing, e.g. Appointee has died / moved / been found to be stealing etc. All changes should be listed, perhaps also the persons present when a change was made.

This would have helped in our case, as our mother was shocked when she saw who had EPA (found out at the bank), saying it was certainly her signature but she had never seen the document and never would have signed it if she had. She had been at a new (relative’s) lawyer and had cataracts so that she could not have seen a fold in a piece of paper.

Regarding witnesses to such agreements having qualifications, we do not think this would necessarily be any safeguard. We suggest this should apply to one witness only, and that the other should be a good friend or neighbour of long acquaintance with the person, say > 5 years. The witnesses should not be in the other’s employ, e.g. lawyer and legal secretary.

To some extent, the above suggestions of a “history of change” document and a “history and notification of enquiries record” would apply an extra safeguard against railroading of an old person. Deterrents to bad behaviour are almost absent at present and these measures would supply some.

Generally we would like to see a documentation rule calling for a minimum font size of 14, possibly 12, but not ever 8 or 10 for all text used in such documents. Many old people have cataracts and these are not helped by glasses, but larger print can be useful.

6. GUARDIANSHIP AND FINANCIAL ADMINISTRATION ORDERS

The remoteness of a professional guardian from the needs and preferences of an older person should make this a last resort measure. We shudder to think what might have happened if the OPA official who ambushed our mother in an interview and commented adversely on her dressing-gown had become guardian. Our mother was polite at first but took a growing dislike to her and finally ordered her off the premises, assuming she was selling something as she had not identified herself. She would most likely have carried out her suicide threats if this woman had been appointed her guardian. Fortunately the existing carer (a health professional) remained guardian as complaints against him were groundless.

Own experience. Administration by a small local accounting firm headed by a woman caring quite well for her own elderly mother was probably better suited to our situation than some large firm. But even here the absent siblings could dominate and prevent essential repairs to the house by demanding expensive meetings with lawyers / accountants present, reducing funds available for repairs. So we soldiered on with no effective garden watering system in place, steered our parent away from broken steps and tiles, and put buckets under leaks. We had to provide all purchases and hope to get reimbursed, which did not always happen. Being joint carers we had no allowance but one of us had savings, which went down about $50,000 during this time. We were constantly told our mother was wealthy, could employ anyone she liked so had no need of us, so we could not be paid. The next month we would hear, whoops, no cash flow, would you pay for all household supplies the next 3 months? Where repairs were still being done when our mother died, we had to pay. The accountancy firm was too small to resist the siblings, but a large firm might have given in to them to an even greater extent. People in the workforce identify with others also in the workforce.

One major drawback was that the accountant was afraid to make property deals and did not take up 2 good offers for land our mother wanted to sell, losing her about $80.000.

7. BANKS

Banks should not be allowed to refuse the tracing of cheques when requested by the old person or a representative attorney. In our case NAB would not even take the new EPA documents from our mother although she went in personally and tried to hand them over the counter. They had apparently remained under the influence of the previous attorneys, although their records from less than 5 years back would have showed one of them to be taking many cheques totalling well over $100,000, if they had bothered to look. Later they would claim they thought the document was just a photocopy (It wasn’t, it was drawn up by a well-established local law firm who they easily could have phoned). The obstruction may have been coming from Head Office as after a while tellers pleaded with them to “Let this poor lady trace her cheques”. Finally we employed our own lawyers to write to Head Office demanding action, which then took many months, finalised at 4pm the eve of the last Hearing – too late to analyse and present, and given only after we handed over $1,500 for the work. It was full of repetitions and mistakes that took accountants years to set right.

We do not know what can be done with banks to ensure this does not happen. It seems to us that some kind of law must have been contravened by the bank’s refusals to act.

Is this kind of obstruction/incompetence the reason VCAT no longer calls for financial investigations? It is what our mother expected VCAT to do for her and she felt let down.

A suggestion. Please make public which banks keep records a long time. We will in future prefer them! We think one could be Bendigo, but certainly is not CBA. Do tell!

8. FAMILY AGREEMENTS

Any may be better than none. But when drawn up on the spot and signed the wording may be open to debate later. And whatever the wording they can be misused. We found that relatives if so minded will interpret agreements in strange ways just to make trouble.

Example: We at first prepared for weekly visits, but the siblings only averaged every 3 weeks dropping off to a few times a year. The visits appeared to be wanted partly as a source of annoyance. They often changed at the last minute, or gave only one hour’s notice - or they would make a time and not come. When taking her out they would take 5 hours not the agreed 3 and bring her back exhausted and needing special care for days to get over it. One sibling expected a 94 year old to climb in and out of his truck unassisted. He even walked out on her in a café after 10 minutes. After that we had to send someone with her. The other sibling was not so uncaring but liked to find fault. A favourite trick was to visit unannounced at 9am to catch our mother still in bed. Threats of VCAT followed. But our mother’s GP agreed with us that with a heart condition she should be left to rest whenever she wanted. Agreements should contain flexibility – e.g. to allow for fluctuating health.

9. WILLS

As with the suggestions already made for EPA and Guardianship arrangements, we suggest a history of Will-making be recorded. Where a person uses the same law firm over many years this is easy but we need to extend this into an arrangement that will survive many changes of lawyer and executor, to serve as a deterrent to bad behaviour. E.g. record the following

* Law firm used and how long they have worked for the person.
* Reason for making a new will. (This could be by ticking boxes, e.g. change of property, death of a beneficiary, remarriage etc)
* Date of first visit
* Number of visits, date of first draft.
* Date of final Will.
* Names of persons accompanying the Will maker to the law firm or other institution.

There could also be some kind of central register for Wills, optional of course, to give people a safeguard that the Will be found and acted upon. I would myself use such a register having no children myself, and having seen what I have for relatives – and maybe becoming afraid of them as I age. No subsequent Will should be valid if the person has already registered such a requirement with the proposed central Registrar of Wills (as one does for marriages).

The kind of situation I would like to see prevented is this. An old person is taken to a relative’s lawyer to make a 3rd will in 2 years and complains it does not leave property as she wishes. The relative says she is a nuisance because they read it out to her 3 times before she signed. She goes in secret to her old lawyer and after 3 visits is satisfied with the draft and signs, all in private. After a few weeks she confesses to the relative that she has done this, whereupon he flies into a rage and visits the next morning, pulls out her copy, reads it, denounces it and an hour later takes her to the home of a Justice of the Peace to handwrite another Will, making himself and his accountant executors. He tells her she thereby can “save” another beneficiary from bankruptcy, although how is unclear and nothing to that effect appears in the document. If this document was listed in a “Will Register” it would look suspect, as making a Will in only one hour with strangers does not suit old people.

10. CARE HOMES

Our experience is limited to how to keep out unwanted visitors at the end of life. Staff do not like to interfere. An old man sat with his sister dying of liver cancer, who complained his son had come twice with his family to get her to change her Will. She stood up to them but he worried. When his turn came he tried to have them one at a time (no witnesses) but excluded the son’s wife “who only wants to gawk ”. She barged in and was chased out by his elderly wife. A new stroke resulted and his rehabilitation was called off. Later a doctor friend lined up his doctors and got him to state his wishes. They started at his suddenly loud voice!