

## 45. A Johnston



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### ADJ Consultancy Services

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From: Adam Johnston, Proprietor, ADJ Consultancy Services

CC:

Date: 16<sup>th</sup> August 2016

Re: Response to Issues Paper – Elder Abuse

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### What is elder abuse?

**Question 1** To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse:

- harm or distress;
- intention;
- payment for services?

While acknowledging that the three listed elements are well understood as potential elements to an offence, in either criminal or civil settings, I don't think it covers half the issues that my mother and I experience. As someone confined to a wheelchair by cerebral palsy for all of my life, with [REDACTED] as my primary carer, we have seen it all. A few things stand out:

#### 1. We are invisible

[REDACTED] and I both notice that it can be difficult to receive service in shops, even to the point of being acknowledged as part of a queue for service. Shop staff and/or other patrons will routinely ignore or push past us. Obviously, there is no reason for either of us to be part of the consumer economy.

Yet, [REDACTED] is a full-time laboratory scientist and manager (as well as being my carer) and, I am a fully qualified (if unemployed) solicitor. But all

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LOBBYIST NO.: LR2013000559 - REGISTERED TRADE MARK NO: 15292249

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other elements of our “assumed profile” must say “impoverished widowed-shopper with [REDACTED]” to many. Which is ironic when you consider that last year [REDACTED] took a bus only to have the driver say when she paid the fare: “Oh, you’re the only one who hasn’t asked for a concession.”

2. We don’t know anything and, need the guidance of case workers and other alleged experts

Another element of harm and distress is the way we, people with disabilities who are getting older and our parents/carers who are older still, are routinely treated by both government and non-government organisations alike.<sup>1</sup>

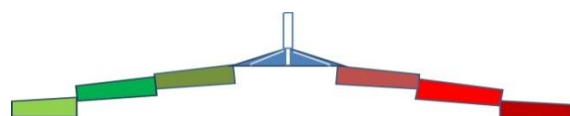
While words like “choice” and “empowerment” fall like confetti from the mouths of politicians, service providers and, the other policy wonks, for people who have to live with the consequences there is a very different experience. [REDACTED] and I had a particularly negative experience of the [REDACTED]. This was supposed to be a program of support for ageing carers with disabled children.

Responding to an advertisement in the local paper, Mum and I were confronted (one year later) by a bombastic, self-righteous and bullying case manager from a local non-government organisation/charity, who invited herself into our lives and, then insisted we dispense with our existing supports, in favour of her services. When we said “no, that’s not what we ever had in mind,” this person’s real character and intentions were suddenly put on display. Only a Ministerial complaint got rid of her, as did my clear statement that I was quite prepared to leave the [REDACTED] program and, tell anyone who cared to listen why this had happened.

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<sup>1</sup> Sometimes it can be difficult to tell the difference between the two. Government and NGOs seem to have entered a symbiotic relationship, where the first gives the second money/grants to *allegedly* take care of the former’s disabled or elderly citizens. This has worried me for a long time, particularly after serving as a board member of a major NSW disability charity [REDACTED]. The experience disavowed me of any real belief in the nobility or benevolence of many charitable organisations; see generally, my submission in response to the *Discussion Paper – Governance In The Not-For-Profit Sector In Australia* (2012) <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2011/Review%20of%20not-for-profit%20governance%20arrangements/Submissions/PDF/Johnston%20Adam.ashx> as at 2 July 2016

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Again, this was the then State Government's 'innovative pilot,' which claimed to put the concerns of ageing carers and disabled adult children at the heart of everything it did. But it took determined self-advocacy to show both the NGO sector and the State Government that neither [REDACTED] nor I would be "steam-rolled" into agreeing to things we didn't want, or giving up vital existing services we both relied upon in order to be able to live together in the family home.<sup>2</sup>

The harm and distress all of this caused both me, and [REDACTED] should practically be considered as a separate head of damage. However, most people still think of NGOs and like charities as kindly, benevolent organisations run by those whose motives and character are beyond reproach. It's only when you have to deal with many of these organisations that the idealised veneer slips to reveal the reality.

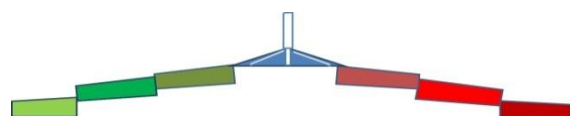
**Question 2** What are the key elements of best practice legal responses to elder abuse?

If we are talking about care situations, this should include far greater use of robotic carers, perhaps in preference to hired, human assistance/care staff. Such technology is increasingly moving from the realms of science fiction to science fact.<sup>3</sup>

<sup>2</sup> These experiences have made me a confirmed sceptic of the National Disability Insurance Scheme. My [REDACTED] experience was outlined in the first of three submissions to the Productivity Commission's *Disability Care Inquiry* available at: first submission <http://www.pc.gov.au/inquiries/completed/disability-support/submissions/sub0055.pdf>; Second submission - <http://www.pc.gov.au/inquiries/completed/disability-support/submissions/sub0186.pdf>; Third submission - <http://www.pc.gov.au/inquiries/completed/disability-support/submissions/subdr0716.pdf> my appearances at the Sydney public hearings were equally ineffectual at halting the NDIS juggernaut <http://www.pc.gov.au/projects/inquiry/disability-support/public-hearings> as at 30 May 2016. I also provide an unabridged version of my first submission to the Productivity Commission; the Commission itself was reluctant to publish this version. For my part, there was nothing in the document I wouldn't have been prepared to defend publicly; it came to represent what I now see as a consistent failure by institutions (both public and private) to hold the NGO/charitable sector to proper account for its behaviour.

<sup>3</sup> See e.g.: Sparrow, R., and Sparrow, L. 2006. *In the hands of machines? The future of aged care*. Minds and Machines 16: 141-161, May, [http://profiles.arts.monash.edu.au/rob-sparrow/download/InTheHandsOfMachines\\_ForWeb.pdf](http://profiles.arts.monash.edu.au/rob-sparrow/download/InTheHandsOfMachines_ForWeb.pdf); Heather Kelly, *Robots: The future of elder care?* CNN, July 19th, 2013, 03:42 PM ET, <http://whatsnext.blogs.cnn.com/2013/07/19/robots-the-future-of-elder-care/>; Maureen Dowd, *Silicon Valley Sharknado*, The Opinion Pages | Op-Ed Columnist, July 8, 2014, [http://www.nytimes.com/2014/07/09/opinion/maureen-dowd-silicon-valley-sharknado.html?\\_r=0](http://www.nytimes.com/2014/07/09/opinion/maureen-dowd-silicon-valley-sharknado.html?_r=0) as at 19 July 2014. From Ms Dowd's article I note, in particular: "Vinod Khosla, the Sun Microsystems co-founder, has

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This should not just be the case for those who are elderly, but for all who may be infirmed or disabled, due to factors other than age. In my view, we also need to ask a question: is continually seeking to improve medicine and extend people's life expectancy actually a good and proper thing to do? As I age with disability, even at 42, it is not hard to make an argument that the prolongation of life is a form of abuse. Personally, I was horrified when former Treasurer Joe Hockey suggested people could live to 150.<sup>4</sup> What would be the point? What would we do with all that extra time? Could we financially afford to live that long; and would we be doing nothing but living in miserable ill-health? I think it is likely that we would all struggle to find and maintain meaning over such a long period of time and, will all be impoverished and incredibly sick in the end.

We already know that many self-funded retirees are struggling to fund 30 or so years of retirement now.<sup>5</sup> It would be naïve to suggest things are

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*predicted that algorithms and machines will replace 80 percent of doctors in years to come, making medicine more data driven and less like "witchcraft."*

*In a rare joint interview last week with Khosla at his Silicon Valley summit, Google founders Sergey Brin and Larry Page talked about their A.I. (Artificial Intelligence) hopes. "You should presume that someday," Brin said, "we will be able to make machines that can reason, think and do things better than we can." They have always been interested in robots — they named their operating system Android — and are running "the brain project," described by Brin as "really machine-learning focused." In January, they acquired the British A.I. developer DeepMind, founded by Demis Hassabis, a game designer, neuroscientist and former child chess prodigy."*

<sup>4</sup> See e.g.: NEWS.com.au [national Joe Hockey believes a child born today could live to the age of 150](http://www.news.com.au/national/joe-hockey-believes-a-child-born-today-could-live-to-the-age-of-150/news-story/2cf691df51bda573d66cb284dab37748) January 19, 2015 2:55pm, <http://www.news.com.au/national/joe-hockey-believes-a-child-born-today-could-live-to-the-age-of-150/news-story/2cf691df51bda573d66cb284dab37748> as at 12 August 2016

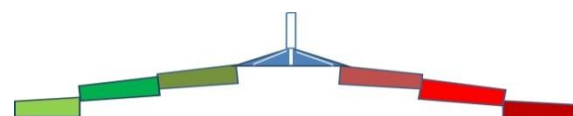
<sup>5</sup> See e.g.: *Self-funded retirees feel the pinch of low interest rates on their term deposits* [AM](http://www.abc.net.au/news/2015-05-06/retirees-feel-pinch-of-low-interest-rates/6447996) By [Michael Edwards](http://www.abc.net.au/news/2015-05-06/retirees-feel-pinch-of-low-interest-rates/6447996) Updated 6 May 2015, 3:49pm, Wed 6 May 2015, 3:49pm <http://www.abc.net.au/news/2015-05-06/retirees-feel-pinch-of-low-interest-rates/6447996>; see also Anthony Keane (News Corp Australia Network) *Interest rate slide is hurting retirees*, June 10, 2016 10:52pm, <http://www.news.com.au/finance/money/costs/interest-rate-slide-is-hurting-retirees/news-story/a872b16cf390f8c6252406b650ddeb37> as at 12 August 2016. Mr. Keane provides this graph from the Reserve Bank, which emphasises just how much retirees are having the income cut.

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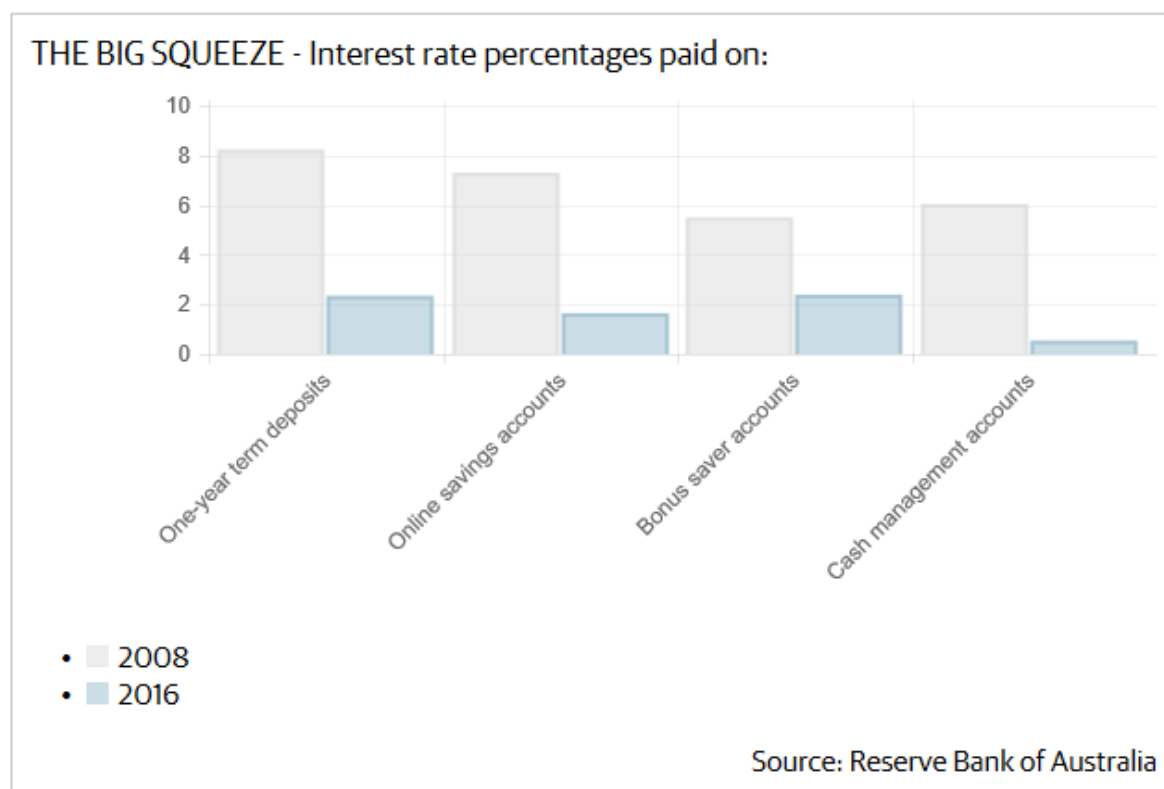
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going to get easier; at best, retirees will be subject to the vagaries of the market with ever more limited access to an old age pension. Personally, one has been a long-term opponent of the superannuation system. It does not serve a labour force increasingly faced by casual, temporary and piece-work employment, where the steady accumulation of savings does not (and cannot) apply.<sup>6</sup>

As for best practise mechanisms, we have to stop thinking of the aged, disabled or otherwise (allegedly) vulnerable<sup>7</sup> people as the province of the charitable sector<sup>8</sup> and instead, as people who are treated as citizens.<sup>9</sup>



<sup>6</sup> See e.g.: my submission to the Financial System (Murray) Inquiry at [http://fsi.gov.au/files/2014/04/Johnston\\_Adam.pdf](http://fsi.gov.au/files/2014/04/Johnston_Adam.pdf) as at 12 August 2016

<sup>7</sup> I hate the implications of this description, but debating it at length will not achieve much. It is an engrained part of the lexicon

<sup>8</sup> This was an issue I took up with the ALRC during its inquiry into disability and capacity before the law; see [https://www.alrc.gov.au/sites/default/files/subs/12\\_a\\_johnston.pdf](https://www.alrc.gov.au/sites/default/files/subs/12_a_johnston.pdf) (as at 13 August 2016) where Oscar Wilde's comments on charity are very deliberately and pointedly quoted.

<sup>9</sup> In NSW the State Government gives countless billions in advances, grants and service contracts to the charitable sector and yet, the State's Auditor-General cannot audit the spending of that money by

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This does not dismiss social welfare as part of tax system, but says that governments should provide welfare directly rather than subsidising dubious third parties (charities) to do it for them; whether this be by direct grants or the forgone revenue of tax expenditures. And, I would assert that all manner of charities are dubious<sup>10</sup> and poor deliverers of goods and services.<sup>11</sup>

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charities/NGOs. This is despite a clear Recommendation for the Parliament's Public Accounts Committee that the *Public Finance and Audit Act 1983 (NSW)*, be amended; see the Committee's report at <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5507/Efficiency%20and%20effectiveness%20of%20the%20Audit%20Office%20o.pdf> and my submission at <https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Summary/48395/Submission%20No%207.pdf> as at 13 August 2016. In this document, I very deliberately make an argument that for the disabled (and elderly alike, "farming us out" to the NGO sector is a denial and denuding of our public citizenship. This is an issue I have taken up elsewhere, including a Commonwealth inquiry into tax deductibility. Here, the argument was to remove tax deductions and tax-free status for charitable entities; unfortunately, the inquiry lapsed due to the 2016 Federal election, but my submission can be found here <http://www.aph.gov.au/DocumentStore.ashx?id=00874c93-07f4-4b37-9403-c50fef481832&subId=407687> as at 13 August 2016

<sup>10</sup> You only have to look at recent media to see just how bad it is: e.g.: *Secret camera captures nursing home 'suffocation'*, Australian Broadcasting Corporation - Broadcast: 25/07/2016 - Reporter: Andy Park, <http://www.abc.net.au/7.30/content/2016/s4507208.htm>; also note *Two men charged with childcare fraud in multi-million-dollar counter-terrorism investigation*, Australian Broadcasting Corporation Broadcast: 12/08/2016 - Reporter: Sean Rubinsztejn-Dunlop, <http://www.abc.net.au/7.30/content/2016/s4518871.htm>; and further (from an international perspective) *World Vision 'shocked' by Israel allegations Gaza manager diverted charity money to Hamas*, By Middle East correspondent [Sophie McNeill](#), Updated 5 Aug 2016, 11:49am Fri 5 Aug 2016, 11:49am <http://www.abc.net.au/news/2016-08-05/world-vision-boss-gaza-accused-by-israel-diverting-money-hamas/7692594> as at 13 August 2016

<sup>11</sup> While my principal experience is in the disability employment sector, these have been consistently poor involved NGOs and, it is easy for me to believe that NGO incompetence, ineptitude and/or maladministration is replicated consistently across all fields in which they have a presence, including elder care. See Senate Education and Employment Committees inquiry, *Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Strengthening\\_Job\\_Seeker/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Strengthening_Job_Seeker/Submissions) (Submission 12) as at 6 January 2016; and also see my submission to the Independent Review of the Job Seeker Compliance Framework (the Disney Review), September 2010, Department of Education, Employment and Workplace Relations, <http://www.deewr.gov.au/Employment/ComplianceReview/Documents/AdamJohnstonSubReviewFinal.pdf> as at 20 November 2012. Given these experiences, you will not be surprised at my continued public funding of (and generous tax dispensations given to) NGOs; see potential reforms suggested in my submission to the *Lavarch NFP Tax Concession Working Group* at [http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2012/Tax%20concessions%20for%20the%20not-for-profit%20sector/Submissions/PDF/001\\_Adam\\_Johnston.ashx](http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2012/Tax%20concessions%20for%20the%20not-for-profit%20sector/Submissions/PDF/001_Adam_Johnston.ashx) as at 13 August 2016

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What needs to happen is that the State (all levels of government) has to rediscover its relationship with, and responsibilities to, its citizens. It seems these duties can be clearly and directly articulated when it comes to say, the threat of terrorism; that is a government role of paramount importance and urgency. By contrast, it's okay to outsource services for the elderly, disabled and other 'vulnerable' communities to third parties. My submission to the last Commonwealth Parliament's inquiry into tax deductibility suggested there were some historical and legal precedents against such a conclusion.<sup>12</sup>

I stand by this view and, feel that both the elderly and disabled are very poorly served by a lazy public policy setting, where the default setting says: Thou art disabled, elderly, or otherwise infirmed. Thou shalt receive goods and services from the charitable sector and, thou shalt be happy and content with these offerings, however grim these may be in reality.

This is not good enough. It is not so much that I call for more spending on social welfare; such spending already consumes the largest slice of the Commonwealth budget and has done for many years.<sup>13</sup> Rather, we need more strategic spending (which requires an honest evaluation of our tax base, alongside revenue and outlays<sup>14</sup>) on science and technology aimed

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<sup>12</sup> Refer to footnote 9, above.

<sup>13</sup> To make matters worse, much of the welfare system operates as a disincentive to work. Other than for the falling rate of accumulation by superannuation balances, it is hard to think of any real reason to work beyond 60 or 65, unless you are amongst a fortunate few where one's work is also a vocation. Employers can lawfully stop making contributions beyond a certain age and, on lower to middle incomes, people can be better off financially, on welfare, than in work. If you have a disability, employment can take additional physical tolls; see generally, my submission to the *McClure Review of the Welfare System* at <https://engage.dss.gov.au/wp-content/uploads/2016/06/Welfare-review-1.pdf> as at 14 August 2016

<sup>14</sup> Part of the reason for the concern about elder abuse is the fact that we know that Australia does not have the revenue to pay for goods or services for the aged. This is despite having come through a mining boom and have had years of continual economic growth, far in excess of many international counterparts. Furthermore, we have known for a long time that the population is ageing and becoming more infirmed (e.g.: *World report on disability*, [http://www.who.int/disabilities/world\\_report/2011/report/en/](http://www.who.int/disabilities/world_report/2011/report/en/) and *World report on ageing and health*, <http://www.who.int/ageing/publications/world-report-2015/en/>).

We cannot say we have not been warned about the issue. However, a significant difficulty relates to structural failings in our taxation system and revenue base; my recommendations as to how these problems could be dealt with in my submission to the *Rethink Tax Review* at <https://engage.dss.gov.au/wp-content/uploads/2016/06/Rethink-submission-1.pdf>. The other half of this equation is having our fractious political system address tax and outlays shortcomings with sufficient rigour to generate meaningful reform. In

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at not just managing chronic disease but curing it. It continually annoys me that we the disabled and/or elderly are told we must manage our medical conditions and accept ultimate decline of function. As I have said elsewhere, a clear focus of public policy should be the elimination of chronic disease and disability from the human condition.<sup>15</sup> In my view, science is on the verge of big steps in this direction.

This is positive, but overall, no-one with a disability or who is aged, can miss an overwhelming impression that we are not a government priority. If we were a priority, outsourcing our care and lives to the NGO sector would be a source of much greater debate.

**Question 3** The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning:

- Aboriginal and Torres Strait Islander people;
- people from culturally and linguistically diverse communities;
- lesbian, gay, bisexual, transgender or intersex people;
- people with disability; or
- people from rural, regional and remote communities.

I refer you to my answer to Question 1. Equally, see my contribution to the Department of Human Services consultation regarding integrated care.<sup>16</sup> In particular, the submission draws attention to the paucity of care services within retirement villages, as well as the dismissive and discriminatory approach to the family circumstances of my mother and me.<sup>17</sup>

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my view, this is unlikely (see e.g.: my submission on Senate voting reform and related documents at <http://www.aph.gov.au/DocumentStore.ashx?id=46843386-896e-4e6a-8f0d-5aae67fd40c4&subId=409662> as at 14 August 2016

<sup>15</sup> See generally, my submission and associated documents, provided to the 2015 Pre-Budget process, attached

<sup>16</sup> Refer to Individual Submission – Adam Johnston at [https://engage.dss.gov.au/integrated\\_carer\\_support-submissions/1465123340-2/](https://engage.dss.gov.au/integrated_carer_support-submissions/1465123340-2/) as at 14 August 2016

<sup>17</sup> See my submission to the consultation, p.12-13 of 14 at <https://engage.dss.gov.au/wp-content/uploads/2016/06/Submission-Designing-the-new-integrated-carer-support-service-1.pdf> as at 14 August 2016

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**Question 4** The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?

As stated earlier, there is a need to research and debate whether the prolongation of life (just because medical science can do it) is a good idea. Or is it a form of abuse? Equally, at some point, somebody needs to raise the issue of euthanasia. In my view, people regardless of age, should have the ultimate choice. Why live in misery and pain because law, social conventions pressed by influential lobbyists and, a timid political class, stymie any real chance for reform.

At any age, people should be able to live in peace, free from pain and, with limited reliance on medication. We should also be able to move about at will, with relative ease. This is where medical science can do its best work and, for my part, I wait for it to deliver on some of the independent movement criteria.

Further, as stated in Question 1, the conduct of some allegedly benevolent (and government subsidised) service providers should be condemned. Governments should also be criticised for the all-to casual nature with they have removed care services from public provision, to private or NGO providers. In my view, a good and worthwhile life also means personal freedom from the charitable sector and, any lasting dependence on it.

### **Social security**

**Question 5** How does Centrelink identify and respond to people experiencing or at risk of experiencing elder abuse? What changes should be made to improve processes for identifying and responding to elder abuse?

**Question 6** What changes should be made to laws and legal frameworks relating to social security correspondence or payment nominees to improve safeguards against elder abuse?

**Question 7** What changes should be made to the laws and legal frameworks relating to social security payments for carers to improve safeguards against elder abuse?

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**Question 8** What role is there for income management in providing protections or safeguards against elder abuse?

**Question 9** What changes should be made to residence requirements or waiting periods for qualification for social security payments, or the assurance of support scheme, for people experiencing elder abuse?

**Question 10** What other risks arise in social security laws and legal frameworks with regard to elder abuse? What other opportunities exist for providing protections and safeguards against abuse?

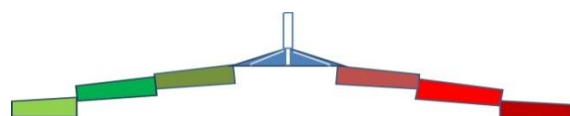
Short of asking payment nominees to keep receipts and/or provide them to Centrelink, there are both privacy and pragmatic problems about monitoring a large group of payment and correspondence nominees. My *Rethink* submission also proposed drawing on European models of a basic universal pension, funded at least in part, by abolishing tax deductions and other tax expenditures.

Technically, Centrelink probably could (and may already) use 'big data' to monitor its clients; as it already does with staff.<sup>18</sup> Whether it *should do that*, even in the name of preventing elder abuse, is highly debateable. In my view, the universal pension mentioned earlier would be preferable to maintaining the highly flawed superannuation system and, amending probate law to ensure those holding Power of Attorney could not inherit the estate of the principal, would do much to keep the duties separate.

However, given that many people will nominate children or other close relatives as holders of such duties and, nominate the same people to inherit assets, perhaps applying a cooling-off period, where assets could not be sold or transferred into another party's name, until well after a principal's passing, would have a similar impact. Comparable rules could apply to assets held by financial institutions and co-signatories. People would be required to keep assets in good order, but could not personally benefit from them.

<sup>18</sup> See e.g.: Department of Human Services uses big data analytics to measure staff performance - Hamish Barwick (CIO) 26 August, 2014 09:52, [http://www.cio.com.au/article/553213/departments\\_human\\_services\\_uses\\_big\\_data\\_analytics\\_measure\\_staff\\_performance/](http://www.cio.com.au/article/553213/departments_human_services_uses_big_data_analytics_measure_staff_performance/) as at 15 August 2016.

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### **Aged care**

**Question 11** What evidence exists of elder abuse committed in aged care, including in residential, home and flexible care settings?

**Question 12** What further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?

**Question 13** What changes should be made to aged care laws and legal frameworks to improve safeguards against elder abuse arising from decisions made on behalf of a care recipient?

**Question 14** What concerns arise in relation to the risk of elder abuse with consumer directed aged care models? How should safeguards against elder abuse be improved?

**Question 15** What changes to the requirements concerning quality of care in aged care should be made to improve safeguards against elder abuse?

**Question 16** In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse?

**Question 17** What changes to the requirements for reporting assaults in aged care settings should be made to improve responses to elder abuse?

**Question 18** What changes to aged care complaints mechanisms should be made to improve responses to elder abuse?

**Question 19** What changes to the aged care sanctions regime should be made to improve responses to elder abuse?

**Question 20** What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification of and responses to elder abuse?

**Question 21** What other changes should be made to aged care laws and legal frameworks to identify, provide safeguards against and respond to elder abuse?

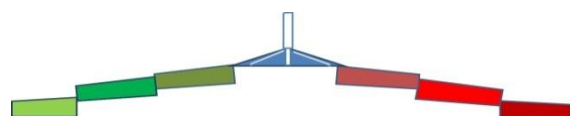
Personally, one views aged care (be it housing the disabled, the aged, or both) as a form of abuse in and of itself. Earlier, I cited media reports about a case of elder abuse in a nursing home.<sup>19</sup> I do not think this is isolated; look to the public record, not only of media outlets, but also of nursing disciplinary panels and tribunals and, the evidence is there.<sup>20</sup>

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<sup>19</sup> Refer to footnote 10

<sup>20</sup> On which I have sat as a lay member, though in writing this submission, I speak only as an individual and do not presume to speak on behalf of any organisation or public body

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The fear of being advised at some point, that either my mother or I require aged care, drives my questioning of human life being prolonged. It also drives my support for euthanasia law reform. It further drives my willingness to campaign for medical science to be supported, to cure the illnesses of age and disability.

I would not put a dog in an aged care facility, much less someone I claimed to love. This is when we, as a society, need to ask when a meaningful life has been reduced to something perhaps better described as 'pitiful existence.' One notes that many such facilities are run by NGOs and receive large government subsidies. This 'default' policy setting, referred to earlier, does little but maintain people in varying degrees of misery, dependence and ill-health.

If we must have aged care, the details of providers, their staff, staff qualifications and personnel records and, any conduct allegations, should be publicly available. Transparency is the only way to assure safety. Equally, with regard to allegations against staff, given the potential vulnerability of many clients (and the reluctance of many to come forward), it would be in the public interest to reverse the burden of proof. I would do the same in relation to staff working for care agencies funded by the National Disability Insurance Scheme, putting the onus on staff to prove their integrity.

### **The National Disability Insurance Scheme**

**Question 22** What evidence exists of elder abuse being experienced by participants in the National Disability Insurance Scheme?

**Question 23** Are the safeguards and protections provided under the National Disability Insurance Scheme a useful model to protect against elder abuse?

As someone with a disability who is eligible (whether he likes it or not) for the NDIS, the prospect gives me no pleasure. I have outlined my reservations in two submissions to the McClelland Royal Commission, which are attached (along with supporting documentation) for your information. While one is not yet formally part of the NDIS system, when this occurs, one expects to suffer fraud, abuse and neglect at the hands of NGOs.

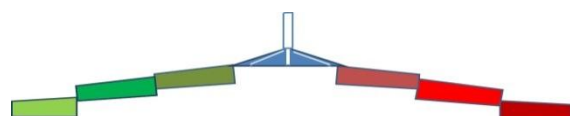
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POST: 35 WOOLRYCH CRESCENT DAVIDSON N.S.W 2085 AUSTRALIA ABN: 62 275 253 029 NSW LOBBYIST NO.: 62 275 253 029 (ABN) COMMONWEALTH

LOBBYIST NO.: LR2013000559 - REGISTERED TRADE MARK NO: 15292249

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We have seen what the NGOs are like in their care of children, thanks to the Royal Commission hearings. Many of the same major charities are part of the NDIS rollout. Why are we making the same mistakes again, with regard to the elderly and disabled? Are our policymakers so indifferent to the consequences of their decisions, that they do not see the seeds of the next Royal Commission being sown right now? I have seen it coming for a number of years and, am not afraid to make the prediction publicly, as I have equally made known my opposition to the NDIS. With undue haste, governments have outsourced all manner of human services to the NGO sector; it will come back to haunt policymakers one day soon.

### Superannuation

**Question 24** What evidence is there of older people being coerced, defrauded, or abused in relation to their superannuation funds, including their self-managed superannuation funds? How might this type of abuse be prevented and redressed?

I have provided evidence to parliamentary committees, the NSW Independent Commission Against Corruption,<sup>21</sup> the McClelland Royal Commission (and via the supporting documentation, this inquiry, evidence of fraud in an NGO. I was applauded when [REDACTED] [REDACTED] decided not to formally report the matter to anyone. This was allegedly on the basis that the families of clients who were defrauded did not want to take official action. The organisation was also only too happy to preserve its corporate image – so the worker was quietly fired and nothing more happened.<sup>22</sup>

For me, the culture of “near enough is good enough” and almost unquestioned deferral to management and financial “experts” wore thin. Our Executive Management Team were far from the ‘best and the brightest.’ Lost money, defrauded clients and disputes with third parties

<sup>21</sup> See generally, my submission to ICAC, entitled “FUNDING NGO SERVICE DELIVERY OF HUMAN SERVICES IN NSW,” attached

<sup>22</sup> See Appendix 5, contained in “Pre-Budget bundle”, p. 14 of 21, attached



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contractors which never seemed to end, were just the issues I knew about. There were undoubtedly many more undeclared failings. Most governance shortcomings will never be accounted for, and few senior staff will ever be held to account for their incompetence, as governments find it easier to uncritically continue funding NGOs in the disability and aged care sectors. Over recent years, I have concluded that the NGOs provide convenient places for all governments to “park” (or dump) difficult people with messy problems (including me), generally out of public sight.

### **Financial institutions**

**Question 25** What evidence is there of elder abuse in banking or financial systems?

**Question 26** What changes should be made to the laws and legal frameworks relating to financial institutions to identify, improve safeguards against and respond to elder abuse? For example, should reporting requirements be imposed?

I refer you to my answer regarding Social Security, above.

### **Family agreements**

**Question 27** What evidence is there that older people face difficulty in protecting their interests when family agreements break down?

**Question 28** What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?

If family agreement breakdown, the law should state that all assets, wealth and benefit default to the older/elderly person. My assumption is that the elder person probably created or accumulated the wealth. If family members understood they would lose assets (or claims to assets) they would have motivation to behaviour properly.

### **Appointed decision-makers**

**Question 29** What evidence is there of elder abuse committed by people acting as appointed decision-makers under instruments such as powers of attorney? How might this type of abuse be prevented and redressed?

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**Question 30** Should powers of attorney and other decision-making instruments be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?

**Question 31** Should the statutory duties of attorneys and other appointed decision-makers be expanded to give them a greater role in protecting older people from abuse by others?

**Question 32** What evidence is there of elder abuse by guardians and administrators? How might this type of abuse be prevented and redressed?

I refer you to my earlier answers regarding Social Security and Family arrangements.

### Public advocates

**Question 33** What role should public advocates play in investigating and responding to elder abuse?

**Question 34** Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?

It concerns me as to who these public advocate might be, particular given the possibility that governments may outsource advocacy to the NGO sector and, then progressively reduce funding. Either way, there are already countless advocacy groups in the NGO sector; at times, whether they are serving clients or their own preferred agendas, is unclear.<sup>23</sup>

### Health services

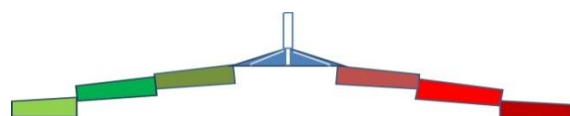
**Question 35** How can the role that health professionals play in identifying and responding to elder abuse be improved?

**Question 36** How should professional codes be improved to clarify the role of health professionals in identifying and responding to elder abuse?

**Question 37** Are health-justice partnerships a useful model for identifying and responding to elder abuse? What other health service models should be developed to identify and respond to elder abuse?

<sup>23</sup> I discuss the role of lobbyists cum advocates at length in a submission to the NSW Government – Review of the Lobbying Code of Conduct at [http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0005/170753/ADJ\\_Consultancy\\_Services\\_Submission\\_on\\_Lobbying\\_Regulatory\\_Impact\\_Statement.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0005/170753/ADJ_Consultancy_Services_Submission_on_Lobbying_Regulatory_Impact_Statement.pdf) as at 16 August 2016. Also note my related comments on political donations at [http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0003/166008/Submission\\_19\\_-\\_Adam\\_Johnston.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0003/166008/Submission_19_-_Adam_Johnston.pdf) as at 16 August 2016

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**Question 38** What changes should be made to laws and legal frameworks, such as privacy laws, to enable hospitals to better identify and respond to elder abuse?

Health services should be mandatory reporters, just as they are in relation to child abuse and neglect. As noted earlier, in my view, the onus of proof should be reversed, for the reasons outlined.

As for the reporting model, Part 3A of the *Ombudsman Act 1974 (NSW)* provides a clear example.<sup>24</sup> I note however, that this model is entirely confidential. Confidentiality is seen by some to improve the safety of vulnerable people and encourage others to make disclosures. Reflecting on my own experience, I have doubts about this rationale, as explained to Commissioner McClelland<sup>25</sup> and, outlined in detail in my submission to the NDIS *Draft Safety and Quality Framework*.<sup>26</sup>

### Forums for redress

**Question 39** Should civil and administrative tribunals have greater jurisdiction to hear and determine matters related to elder abuse?

**Question 40** How can the physical design and procedural requirements of courts and tribunals be improved to provide better access to forums to respond to elder abuse?

**Question 41** What alternative dispute resolution mechanisms are available to respond to elder abuse? How should they be improved? Is there a need for additional services, and where should they be located?

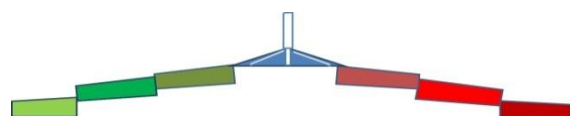
First and foremost, people need to be willing to complain and, see complaint processes as both accessible and worthwhile. In my experience, many agencies promise easy dispute resolution, but fail to deliver. For example, in regard to a complaint about a vocational

<sup>24</sup> I acknowledge that I am a former Complaints, Investigation and Project Officer for the NSW Ombudsman

<sup>25</sup> See "Submission With Reference to the Public Notice Placed in the Sydney Morning Herald of Friday 17<sup>th</sup> June 2016 – Public Hearing into Disability Service Providers", pp. 1-3 of 7 in "Royal Commission bundle"

<sup>26</sup> See generally, my submission to the Department of Human Services at <https://engage.dss.gov.au/ndis-qsf-submissions/1430713127-2/> as at 16 August 2016

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education provider, as the complainant I emailed the Department of Education, was referred to a specialist complaint agency, and had to put my complaint and evidence on their online form. Nothing happened for months until I complained to the Ombudsman and, was referred to the original agency's complaint line.

Even after all that, not much came from the complaint – the VET provider is still being funded and, still providing courses which involve the issue of certificates of dubious value. Personally, there was little, if anything, gained from pursuing the complaint. Certainly, this would appear to be the experience of many people, verified by notable level of cynicism expressed by callers to the NSW Ombudsman's office.

### **Criminal law**

**Question 42** In what ways should criminal laws be improved to respond to elder abuse? For example, should there be offences specifically concerning elder abuse?

**Question 43** Do state and territory criminal laws regarding neglect offer an appropriate response to elder abuse? How might this response be improved?

**Question 44** Are protection orders being used to protect people from elder abuse? What changes should be made to make them a better safeguard against elder abuse?

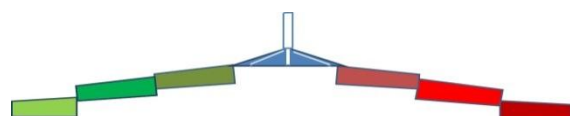
**Question 45** Who should be required to report suspected elder abuse, in what circumstances, and to whom?

**Question 46** How should the police and prosecution responses to reports of elder abuse be improved? What are best practice police and prosecution responses to elder abuse?

**Question 47** How should victims' services and court processes be improved to support victims of elder abuse?

**Question 48** How should sentencing laws and practices relating to elder abuse be improved?

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**Question 49** What role might restorative justice processes play in responding to elder abuse?

**Question 50** What role might civil penalties play in responding to elder abuse?

As stated earlier, reversing the onus of proof may assist to raise the profile of elder abuse, as well as people's willingness to complain. Equally, until we deal seriously with the question of access to justice, little will change. I was writing about this issue over a decade ago,<sup>27</sup> with similar issues coming up only a year or so, as the Productivity Commission conducted an *Access to Justice* Inquiry.<sup>28</sup> As my submissions explain, until governments are prepared to tear down the legal fraternity's service monopoly, prices will not change, service bottlenecks will not clear and, many people will continue to go without any form of representation.

Yours faithfully,

Adam Johnston

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<sup>27</sup> See my comments to the NSW Law and Justice Foundation at <http://www.lawfoundation.net.au/report/consultations/D3603BE57B05808CCA257060007D4F1E.html> and <http://www.lawfoundation.net.au/report/consultations/57ACAB8603D4F279CA257060007D4F29.html> as at 16 August 2015

<sup>28</sup> See my two submissions to the most recent inquiry at <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test2/submission-counter/subdr164-access-justice.docx> and <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test2/submission-counter/subdr297-access-justice.docx> at 16 August 2016