

# WOMEN'S ELECTORAL LOBBY (WEL) SUBMISSION TO AUSTRALIAN LAW REFORM COMMISSION INQUIRY PROTECTING THE RIGHTS OF OLDER AUSTRALIANS FROM ABUSE

February 2017

## General Comment

- **WEL recommends that more attention be paid to greater vulnerability of older women to abuse from family members and in the aged care system.** Women are overwhelming primary nurturers and are more vulnerable to 'inheritance impatience' pressures from their adult children. Because older women are generally poorer than men they end up in aged care settings which may not have the quality controls of better quality aged care services. This applies to both residential and ageing in place settings.

## ALRC 3. POWERS OF INVESTIGATION

To the best of WEL's knowledge there is no organisation in NSW with powers to investigate suspected elder abuse. There is a suggestion in the report is that this be done by a Public Advocate or Public Guardian.

- **WEL recommends strongly against the existing Public Guardian's Office in NSW being given powers to investigate suspected elder abuse.**

This Office is not skilled or resourced for this and has, at best, a patchy track record in the work it does do. WEL is unaware of the situation in other states/territories.

- **WEL recommends the establishment of a separate independent state/territory level Public Advocate or Ombudsman with resourcing, staffing, investigatory skills.**

One option is to attach Public Advocate/ Ombudsman to state Ombudsman's Office. It needs to be independent of the NSW Office of the Public Guardian and equivalent bodies in other states/territories.

## ALRC 3.2. THE RIGHT OF OLDER PERSONS TO REFUSE ASSISTANCE/CARE.

The ALRC Paper acknowledges the need to balance protection from abuse with the right of older people to make decisions that affect them.

This is a CRITICAL point, albeit fraught with difficulty. WEL consulted a lawyer who worked in Community Legal Centre. She has seen a few cases where well-meaning health and aged care professionals have formed a view, sometimes on very limited evidence, that a person needs to have a guardian or financial manager, where the older person is very opposed to this. Health and aged care professionals have gone ahead and had this imposed via a Guardianship Tribunal order. The Tribunal is generally inclined to accept the view of health care professionals in lawyer's experience.

The right of older people to take risks, just as people of all ages do every day, is often referred to as "the dignity of risk" - to retain the dignity of control over one's life and key decisions, even where there might be some risk of harm or exploitation. This issue is possibly

more relevant for women where society has a view that we need to be 'looked after' and are less able to manage on our own than a man might be.

- **WEL recommends that older people facing the NSW Guardianship Tribunal and its equivalent in other states have a right to representation from a lawyer or advocate/ombudsman.**

The current position in NSW is that a lawyer has to seek special leave of the Guardianship Tribunal to represent someone coming before them. The Tribunal is often disinclined to grant leave. Having some representation increases the chances of countering the evidence of health care professionals and helps to garner second opinions on behalf of the older person to present to the Tribunal.

If investigatory powers are to be given to an Advocate or Ombudsman, then this evidence could also be put before the Tribunal.

### **ALRC 5. ENDURING POWERS OF ATTORNEY AND ENDURING GUARDIANSHIP- Need for system of supervision/accountability for people exercising powers**

There are numerous suggestions under this heading, all with merit. Most important are the need for a system of supervision/ accountability for people exercising these powers. The Public Guardian is supposed to supervise some of this, but in the experience of lawyer WEL consulted, The Public Guardian in NSW is ineffectual, unavailable or under-resourced to provide a system of supervision/ accountability for people exercising these powers. The absence of effective supervision is a major risk for older people leaving them open to unfettered exploitation

- **WEL recommends** that responsibility for a system of supervision/ accountability for people exercising powers of enduring Power of Attorney and Enduring Guardianship powers be placed with the proposed Advocate/Ombudsman.

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