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BY: LACA

Dr Nicholas Horne *NH*
Inquiry Secretary
House of Representatives Standing Committee Older People and the Law
Inquiry
PO Box 6021
Parliament House
Canberra ACT 2600

Submission No. 71.1
Date Received

Dear Dr Horne

Please find below the answers to questions asked of Advocare.

1. Advocare indicates in its submission that a lack of monitoring of powers of attorney and lack of accountability means that there is an increased likelihood of abuse (p. 6).

- *Is Advocare of the view that there should be more government regulation to cover the monitoring of Enduring Powers of Attorney?*

In Advocare's work with older adults who are experiencing elder abuse, it has become apparent that Enduring Powers of Attorney are wide open to abuse. While there are penalties for misuse of an EPA, there is not a system of monitoring applied to all EPAs with the result that financial exploitation is more likely to be perpetrated and go on undetected.

Administrators are audited on a regular basis. The roles of EPA donees and administrators are similar and Advocare believes that both should be closely monitored.

- *If so, what form should this take?*

It is Advocare's view that monitoring of EPAs would best be done through either the Office of the Public Advocate or the State Administrative Tribunal, which would need to be resourced to employ more staff. While it is acknowledged that monitoring would require significant resources, it is a system that needs to be in place to ensure the financial security of vulnerable older adults.

2. **Does Advocare have any thoughts on how an individual's capacity to enter into financial or other agreements, such as power of attorney arrangements, should best be assessed?**

The Mini Mental State Examination can provide a guide to a person's capacity, although it is not definitive. Therefore, in addition, it is preferable that an assessment is done by a psycho-geriatrician. Such an assessment can give a more reliable assessment of capacity taking into account all aspects of the person's life. However it has been Advocare's experience that such assessments can sometimes take time, resulting in a delay in assisting the person to make decisions for example, about their financial affairs, the need to apply for a restraining order or entering into other agreements. At times such decisions or actions need to be taken quickly to avoid the abuse continuing.

3. **Advocare notes in its submission that its clients can potentially be those in aged care facilities (p. 3). The Committee has heard that carers in such facilities can pressure residents for gifts or even to change their wills so that the carer will receive a financial advantage.**

- *What is Advocare's experience of this issue (if any)?*

Advocare has not had any cases where an older person has been pressured by a paid carer for gifts or to change a will so that the carer will receive financial advantage.

- *Does Advocare have any suggestions as to how vulnerable people could be protected from such pressure?*

All facilities and community services have strict rules whereby a carer is not to receive gifts or pressure an older person for financial favours. Such behaviour would be seen as a breach of their contract, and could result in termination of their employment.

One option is that there could be tougher penalties for such a breach encompassed in relevant legislation. This would hopefully be a deterrent.

All residential facilities and community services could reinforce their policies regarding the receipt of gifts or pressuring the older person for financial favours through regular education, including orientation.

Regular education could be given to residents and community care clients regarding the responsibility of care workers to not exploit clients, as well as their right not to be exploited.

The above education could be provided by advocacy services such as Advocare.

A note about the policy could also be included in literature, brochures etc which are given to clients.

There could be a requirement that when a will, EPA or other document needs to be signed and witnessed by a resident, one of the witnesses be a doctor or manager of the facility who could determine whether or not the older person understands what they are signing, if the documents have been filled out willingly, and if the person has capacity.

Please also find attached Advocare's Speak Out Survey on Elder Abuse.

Yours sincerely

Maureen Sellick
Manager, Policy and Support
Advocare Inc
Level 3 King's Complex
517 Hay Street
Perth WA 6000