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27 MAY 2007
BY: LACA

Submission No. 81.1
Date Received

Supplementary Submission regarding Enduring Powers of Attorney and Family Conflict Resolution

Carers Queensland has provided additional information to support our previous submission. In Queensland, an Enduring Power of Attorney (EPA) enables a principal to appoint an attorney to manage his or her financial, health and/or personal affairs if the principal becomes unable to do so. As such, EPAs are a formal means to provide maximum autonomy, dignity and sovereignty in the event of future incapacity. In short, EPAs enable people to maintain authority over their own lives.

By establishing an EPA, older people and their families think that the principal is putting in place a legal document that will allow for certain people, often family members, to make decisions on the older person's behalf should they become unable to make such decisions in the future. However, the Guardianship and Administration Tribunal is empowered with the ability to revoke an EPA, remove an attorney and appoint a new attorney or change the terms of the EPA. In effect, attorneys are only able to operate to the extent to which they are authorised by the Tribunal. Clearly, such safeguards are important where there is proven abuse, exploitation or neglect by the attorney/s. However, in the absence of such, the principal's right to self-determination should be paramount and their wishes and preferences for decision making adhered to – as set out in their EPA.

There are some concerns, evidenced by the experience of workers in Carers Queensland's Family Support and Advocacy Program, that EPAs are being revoked by the Tribunal primarily on the basis of family disagreement, dissension and conflict. There appears to be the belief that if family disagreement or conflict exists, an adequate decision-making arrangement cannot be reached within the family and, in such cases, it is better to appoint a third-party (generally the Adult Guardian or Public Trustee) who is perceived to be 'neutral' and 'safer'.

A decision to do so though, overrides the principal's own preferences as indicated in their EPA.

While family discord can complicate decision making arrangements, removing decision-making authority from the family is not always the best solution. It often does not address the family fracturing that will continue to affect the family and the older person. Nor does it serve the interest of the older person as decision making authority is placed with a bureaucrat who has very little understanding of the person and their preferences.

A much better solution would be to adequately support families to resolve conflict within their family unit and, in doing so, place them in a position to much more effectively undertake such decision-making responsibilities in support of the older person. This again, illustrates the usefulness of social strategies such as mediation and dispute resolution to complement legal processes.

Carers Queensland strongly holds the view that, in general, it is families and carers who are in the best position to make decisions with, or for, older people who do not have the capacity to do so themselves. Because of the close personal relationships that families or carers have with the older person, these substitute-decisions will often be made on the basis of a thorough understanding of the person's wishes and preferences and, therefore, better serve the older person.

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