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INQUIRY INTO OLDER PEOPLE AND THE LAW

The 'Terms of Reference' below have relevance to my 86 year old mother's treatment over the past three years: it should be noted here I have sought no gain other than to see my mother protected from abuse.

- Fraud;
- Financial abuse;
- Enduring 'power of attorney' provisions;
- Family agreements;
- Barriers to older Australians accessing legal services; and
- Discrimination.

Although my issues relate to South Australia and I am told each State operates differently; overall I believe it should be considered a National State of Emergency. I have provided my concerns and evidence to the SA Ombudsman, SA Attorney General, SA Premier and SA Crown Solicitors Department yet abuse was allowed to continue. In this submission I express my view that South Australian systems to protect the elderly have been found inadequate in all areas to the point that laws and rights are ignored; Government Departments have disregarded procedure and the rights of individuals: they arrogantly operate above the law knowing they will be protected at the highest levels of government from accountability for their actions. SA Government departments have ignored and facilitated Elder Abuse against the elderly they claim to protect and have been proven to be more than incompetent. I am prepared to expand upon any area of interest within this brief submission. I am happy to provide further information to this House of Representatives Standing Committee on Legal and Constitutional Affairs, regarding its inquiry into Older People and the Law, evidence from my complete records and support my claims of fraud and a system in chaos.

**Brief background of facts based on my experiences trying to protect my mother:**

In July my mother then 83 was living a normal happy independent life, driving, shopping, managing finances and looking after her 96 year old husband and a two storey home south of Adelaide where she had lived much of her life. On 2004, 2 days after mum's husband died suddenly and even before his burial, was secretly organising permanent residency for mum in a Nursing Home north of Adelaide (far removed over 50kms / 1+ hrs from her home of away from her close elderly family, friends and familiar places). Written evidence proves this move was directly against mum's wishes and that mum was not given a choice. She was removed from her home the day her husband died and her home, car and many belongings were sold soon after using an EPA which was not even legally active. The window of opportunity was ceased since I was

I was informed after the cruel deeds were done. Mum was informed her car and house was sold by the nursing home. To date nearly 3 years later my mother has not been informed what of her belongings were sold, what is being held/used by the then EPA and what money she has left. Mum has had no access to her bank accounts or pension since her husband died and her rights were taken from her without appropriate medical evaluation and through the abuse of unchecked EPA powers supported by the greed of wanting to grab and cash in assets before my mother's death.

A complex \$3.95 News Agency purchased EPA document was used which alludes on 1997 it was 'witnessed' by the EPA's de facto's I have good reasons to believe such an event never occurred. Mum at no time recalled nor did family or her husband know of the existence of an EPA document. Without mum's permission then inactive EPA was used to sell her home and belongings. Clear examples of legal manipulation / non-disclosure and fraud that have been ignored by SA Government Departments. Evidence shows illegally posed and acted as financial EPA and the

EPA was widely accepted without proper checking before legal requirements (financial incapacity clause) was met to activate the EPA document.

The EPA was claimed by [redacted] from [redacted] 2004 (the date of the death my mother's second husband of [redacted] years), but the EPA document was only 'made legal' by the nursing home doctor on 2004, following [redacted] arranged purchase of the Nursing Home bond [redacted] 2004: while still illegally representing herself as EPA, evidence shows on [redacted] 2004 [redacted] requested the Nursing Home Dr (who has referred to the EPA as his client) write a medical/legal statement for her use to activate the EPA. Without cognitive testing he wrote (I quote in full as written by the Dr);

'To whom it may concerned: Dear Sir / madam,' 're  
 'I have been treating this client for the past month. She was transferred to the [redacted] Nursing Home. Her precious general practitioner was Dr C [redacted]. She suffers from Demencia and is incapable to make financial decision. The power of attorney if her daughter [redacted] 'Yours truly Dr [redacted]'. Records show the Dr saw my mother prior to this statement once on Home admission. At about that time medical records describe mum as being depressed and anxious and medical records show medication changes, later found to be detrimental to my mother's wellbeing. Mum was clearly in shock and grieving but was provided no real emotional support or explanation why she no longer had a say in her life or could no longer return to her home and previous lifestyle. Mum's words 'I don't know when your husband dies they muck-up your life'. Mum was right.

I was concerned over my mother's rapid health deterioration but was illegally blocked access to my mother's medical records by the financial EPA, though mum wanted me to have access. The Nursing Home and Doctors followed the EPA directions. This almost resulted in my mother's death.

Nearly 3 years have passed and a calamity of SA Government errors have meant the actions of the EPA have been virtually ignored, including most areas of Elder Abuse, fraud, theft and deprivation of liberties. My mother has been refused access to and use of her own belongings, subjected to incorrect medication which resulted in near death and Emergency hospital medical care three times before the hospital reviewed and changed mum's medication. My mother has been assaulted within the nursing home in her room trying to stop theft. The financial only EPA refused my mother a key to lock her room, the opportunity to have outings from the lock-up facility without EPA approval. Directive given by [redacted]; 'I must be personally be advised before she is to be allowed to leave the premises at all, even for a few hours'. The EPA did not provide my mother with fitting clothes. Mum's basic human right of access to family, friends and legal support was denied by preventing a phone in mum's room, removal of all telephone/address contact information and replacements and directing the home to block incoming legal support. Theft continued and was not limited to the actions of other residents or from within the Nursing Home.

I first contacted the Guardianship Board and Office of Public Advocate for assistance in 2005. Since their involvement all that has been achieved is incompetence, a bungled investigation resulting in a known to be false and misleading report and cover-ups: the important OPA document has been knowingly incorrectly presented as fact and used in legal process to further inhibit my mother's rights and liberties. The OPA did not interview nor ask close family which did not agree with their incorrect and often wild assumptions based on the EPA's stories. The OPA Officer who wrote the flawed [redacted] 2006 OPA report (which contains a multitude of incorrect and misleading assumptions) concluded she: 'recommended that current arrangements should not be disturbed' 'there is no evidence that informal arrangements are not working'. The SA Public Advocate refuses even today to admit his office's failings, incompetence or to correct the OPA document that has and continues to contaminate proceedings: though subpoenaed evidence I provided to the Crown Solicitors discredits key areas of the OPA document. The Guardianship Board at their hearing, in making their orders refused to consider the evidence before them, evidence that contradicted the OPA document and demonstrated fraud and Elder Abuse: the GB hearing and Orders followed the OPA report (which the GB were aware was incorrect) and in doing so the resulting sham facilitated continued Elder Abuse. I asked the GB for review and was denied. I then appealed SA

Guardianship Board Orders through the SA District Court. In my attempt to protect my mother from further abuse my wife and I have been threatened by SA Government departments and had a multitude of barriers put in front of me. Fraud is widespread. I subpoenaed government and medical records for the District Court hearing: incriminating evidence demonstrating the incompetence, arrogance and level of cover-up by both the GB and OPA. Subpoenaed evidence showed just how easily the EPA was able to take away all decision making from my mother by working around the inadequate legal and medical 'safeguards'. I asked for an independent Geriatric assessment independent of the Nursing Home Dr and EPA. Medical records highlighted that medication combinations plus the effects of stress, anxiety and depression were factors ignored in my mother's earlier diagnoses. These factors were disregarded, becoming less important than the need to abide to the referring Nursing Home doctor's clear request to confirm his diagnoses of financial incapacity and in doing so validate his earlier untested diagnosis written on the direct request of the EPA. The SA District Court appeal was opposed by the SA Crown Solicitors Office who asked for dismissal. However the District Court did not accept the Crown Solicitors argument and accepted the need for review and in 2007 directed the SA Guardianship Board to review their decisions: including if the GB action took away my mother's liberties when they had no right. I await the GB to follow the District Court Orders including review of medication, cognitive capacity and validity of their Orders. I have no faith in the SA Justice Department. I have justly questioned the legality and administration misconduct of the OPA and GB. My claims include why the SA Guardianship Board is exempt from complying with court subpoena requirements and why records provided under subpoena are incomplete. The SA Attorney General does nothing. The SA Premier has not responded. I am informed no-one and no State or Federal body can investigate the SA Guardianship Board or the SA Attorney General. It appears both are above Australian law and accountability. Barriers do not only occur to older Australians accessing legal services: I have been unable to find one free legal service that does more than listen or respond with 'not our area, good luck'. The massive task of fighting government resources within a culture intent on hiding errors and closing their files would be impossible for many elderly people without full and independent legal support. I dread how many other people have had to choose to accept their forced position rather than spend the massive time (in my case nearly three years) and high costs required to fight such injustice and to fight those who claim to but do not protect the 'protected person'.

Aged care facility shortages can in part be directly attributed to premature forced placement of elderly persons by unscrupulous Enduring Power of Attorneys, Doctors and ineffective and incompetent monopolies who ignore their basic role to protect the elderly and vulnerable. Nursing Homes are being used to park the elderly out of sight and out of mind while their lives and assets are stripped. State government laws differ and Elder Abuse is being ignored in at least South Australia. Appropriate checks and safeguards are non-existent. An elderly person can have their human rights taken away without fair medical assessment or through the common interference of drugs or combinations of drugs. The incompetence of government agencies whom ignore legal requirements and process are making life changing decisions that can only be questioned by taking the government agency to court. In South Australia the SA Ombudsman states they cannot investigate the actions of the SA Guardianship Board or the AG. All departments including the Ombudsman are under the SA Attorney General who also refuses to investigate his department's actions or answer my questions about his government departments which facilitate Elder Abuse. It appears the SA Attorney General is also above the law and accountability. There appears a clear need for Federal control to protect Australian citizens and the deterrent of 'appropriate accountability comparable to the impact of the abuse'. It is clear an independent Federal Ombudsman with broad powers to oversee State issues is badly needed. An EPA is required by law to keep accurate records and not to profit from the position: records confirming theft of an elderly person's 'life' and property are unlikely to be presented, even if asked for, and the \$1000 maximum penalty which applies to EPA's who 'know the legal system' is no deterrent. In my opinion all EPA's should only be created through Lawyers or the Public Trustee. The importance the law places on Elder Abuse reflects the value governments place on the rights of the elderly. Even the broad, un-quantified definition 'loss of capacity' and the lack of standardised and reliable testing opens the door for legal abuse and discrimination. I do not believe it is acceptable for government departments to ignore their own legal charters and administration guidelines: nor for such agencies to be exempt from complying with common law? I also

believe an Australian elderly citizen should receive the same protection and have the same rights no matter what Australian State or Territory they happen to live in. The abuse of Human Rights should be stopped and the content of the Australian Constitution should be reviewed. Governments have the responsibility to provide strong deterrents for all the forms of Elder Abuse and put appropriate early safeguards in place. Governments should be accountable under the law, not just to the voting public. It is too late after the event acknowledging 'you can't undo the wrong that has just destroyed a person's lifestyle or remaining few years'. Files should not be closed as a simple means of cover-up.

As previously expressed; 'I have experienced a system that disregards the law and accepts and facilitates Elder Abuse.' The abuse started with the EPA, was continued through intimidation and bullying, and a talent to lie. A characteristic of the OPA and GB has been to make bad assumptions, then poor decisions with disregard to claims and without proper investigation or consideration of all facts. It is not their mother whose life was more than turned upside down because of inadequate laws and safeguards or a lack of interest to protect the elderly from abuse, greed and vindictiveness. Justly or unjustly once a label of even mild Dementia is 'tattooed' on an elderly person's forehead, the vulnerable then become simply a case or file number, whose say is only relevant if it suits the purpose of the regulator. I was told on one occasion by the Public Trustee in reference to residents in Nursing Homes 'do they have a key to their rooms in those places'? Please educate administrators on the reality of old age, short term memory loss and how many people of so called 'cognitive incapacity' (a vague often meaningless and misdiagnosed term), deal with life effectively living at home or living, often against their wishes, in a lock-up nursing homes. The elderly placed prematurely into Nursing Homes have little choice but to adapt and accept a very different and mind zapping life or give-up and die prematurely. They should not have had to accept what would normally have been unacceptable as they have done no crime.

The situation currently standing is quite complex with new issues: in brief my mother's wishes not to live in the nursing home bonded her to. The bond transfer system only works in theory, in reality the homes want maximum returns, and the cost will be significant. Although no Guardian is in place I am told mum has no right to make that decision or move to another residential care facility of her choice. The SA Guardianship Board have not followed the District Court rulings, the Public Trustee don't know what assets my mother owns, yet they are Administrators of her small estate, actions have been ignored, my mother has not been informed what property of hers has been sold, what has been kept and what is being used by . After 3 years my mother has not been answered regarding what money she has left or the content of her Will (presented by to the Public Trustee as mum's last Will). I am expected by the SA Government to go along with disregarding mum's rights, and ignoring her wishes just as they were ignored when she was forced into the Nursing Home soon after her husband's death. I will not disrespect my mother hence the 3 year battle continues in a country where it appears there is no Federal or State support process that really protects the elderly. The South Australian OPA, GB, AG and Premier continue to refuse to answer my questions why, to the detriment of my mother, SA departments have presented false and misleading information in legal process. I am fortunate that relatives in Adelaide (other than ) and here in Brisbane also care about my mother and also object to the injustice she has endured and is expected to continue to endure. It is clear the SA Government is more concerned protecting their jobs and perceived reputation.

Yours sincerely