

RINGING CHANGES: NSW TRUSTEE AND GUARDIAN

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The 1st July 2009 saw the former Public Trustee of NSW and the Office of the Protective Commissioner and Public Guardian cease operating under their historic names and merge to form the NSW Trustee and Guardian. Proclamation of an Act brought NSW into line with all other jurisdictions in Australia whereby the services of financial management to people who have lost capacity and the provision of will making, deceased estates management, trustee and power of attorney services are provided by the one statutory organisation.

This significant and important change will integrate a range of services across NSW and bring financial management services much closer to clients through a branch office network. Trustee services have been available throughout most of the state for a number of years. In May 2010 we will begin delivering financial management services through nine of our regional offices commencing with our new office in Bathurst. Plans are already underway to establish an office in the Wagga area to cover the South West of NSW.

The Public Guardian, whilst administratively responsible to the CEO of the new organisation, remains statutorily independent and maintains an important systemic advocacy role.

The legislative changes also heralded a marker point in the history of two long standing and distinguished organisations. The Public Trustee opened its doors in 1914 and has served the NSW community for 95 years through the making of wills, the managing of deceased estates either as executor or administrator, the management of trusts and, in more recent years, through the promotion of enduring powers of attorney as a vehicle for pre-planning particularly as people grow older. However its antecedents stretch well back to the Curator of Intestate Estates, which was established in 1847

The Office of the Protective Commissioner, whilst operating under a 1983 Act, can trace its history back to 1878 and the establishment of the Master in Lunacy in NSW. The Master had the capacity to determine whether a person was capable of managing their affairs and, if not to take over control and management of the same. Today, that determination and decision is undertaken by Courts and Tribunals who can then appoint either a statutory or private financial manager.

The history of both organisations is rich and chronicles the development of each organisation as well as some of their more famous clients. The Master in Lunacy managed the estate of the great Australian writer and poet Henry Lawson and the Public Trustee went on to administer his estate when he died in 1922 without a will.

No one can predict the future and today the NSW TG continues the strong focus on encouraging adults with capacity to plan ahead, make a will, an enduring power of attorney and enduring guardianship. However we know that, in practice, the younger you are the less likely you are to think about these confronting situations. Just under 50% of the population of NSW tell us that they have made a will. We have no reliable figures on how many enduring powers of attorney or enduring guardianship instruments have been executed.

Our promotion of preplanning mechanisms also comes with a health warning. On the one hand we encourage people to make provision while they still can. None of us can be certain of our future health and capacity. On the other hand we also preach caution when choosing a substitute decision maker. The advent of enduring powers of attorney and enduring guardianship has been a tremendous asset, providing people with a choice. Equally they have been the target of abuse by unscrupulous family members, friends and occasionally service providers.

We are witnessing an increasing number of older people being the victim of financial, emotional and sometimes physical abuse and neglect.

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Undue influence to sign documents or to give over money and other assets are familiar to our staff. We are witnessing first hand the increasing pressure placed on seniors by their children and grandchildren to distribute their assets and wealth while they are still alive. Reverse mortgages are rather too commonplace and may be regarded by some as a vehicle for liquidity - but for whom? Monies are frequently directed towards the costs of other family members but have the effect of undermining the financial security of the older person.

An increasing phenomenon has been the emergence of the Power of Attorney "collectors" -people who convince more than one elderly person to make them Attorney and then systematically asset-strip their victims. Discovery typically comes after significant loss has been incurred. Recovery of assets is not always possible, leaving staff and all decent minded people to ruminate over the immorality of abuse of vulnerable people.

It is easy to think of our services being confined to money only but this is not the case. This year NSWTCG was conducting a follow up on a client in an Aged Care facility. We discovered that she had a terminal illness, no pain relief, no palliative care plan and full tissue thickness bed sores. Our urgent application to the Guardianship Tribunal saw the Public Guardian appointed. She died some weeks later but with proper care and dignity. Our complaint in relation to the ACF proceeds.

NSWTCG has a strong role in promoting responsible forward planning. As an independent organisation we are in the position to provide trustee, power of attorney and financial management services but are subject to considerable external scrutiny and accountability. We also have a responsibility to advocate at an individual and systemic level for our clients' best interests. Our services and those of like minded organisations represent a vital community service for our aging population

Managing a person's finances is a powerful form of control and brings with it the highest level of moral and fiduciary responsibility. NSWTCG is committed to reviewing all of its practices and procedures in both its Trustee and financial management services to ensure that the needs of our clients are safeguarded as they age and that their testamentary wishes are properly recorded and implemented after the one event that not one of us can ever escape - our death.