

EDITORIAL

The issues that dominate the elder law literature and this edition of the Elder Law Review are capacity and elder abuse and whether special laws are needed to deal with vulnerable elders. The central focus of this edition is the role of mediation in settling disputes. There are no easy solutions where family relationships are in sharp conflict and the older person does not wish to enforce legal rights through litigation. Joan Braun in her article ‘Elder Mediation: Promising Approaches and Potential Pitfalls’ provides reflections on the benefits and risks arising out of elder law mediation as a means of settling disputes. As Karen Williams observes in her article on ‘Elder Mediation in Australia’, ‘concerns about consent, influence, power imbalance, individual support or advocacy and conflicts of interest are justifiably expressed in the context of...elder mediation’. Emma Butt reports on the Canadian project on Elder and Guardianship Mediation and the key themes that have emerged from the Canadian research. One of the key themes is the need for specialised training to deal with issues unique to elders such as elder abuse and capacity issues. Ultimately it is about protecting the rights of a vulnerable elder in a non-threatening, non-confrontational environment.

Financial abuse is particularly problematic where family members have access to the older person’s assets frequently with the use of enduring powers of attorney (EPAs). Natalia Wuth in her article titled ‘Enduring Powers of Attorney: With Limited Remedies – Its Time to Face the Facts!’ calls for a national response providing stronger protection against the misuse of EPAs. This would involve mandatory registration using a standard statutory form with mandatory reporting by the holder of the EPA. The difficulty will be whether this is feasible having regard to the growing volume of EPAs and the costs of monitoring to ensure compliance. Louise Kyle in her article ‘Out of the Shadows: A Discussion on Law Reform for the Prevention of Financial Abuse of Older People’ canvasses possible solutions, particularly in relation to family agreements, and considers whether a more formal model involving registration of family agreements would avoid some of the problems. Financial and banking institutions might also take on a much stronger role in reporting suspected financial abuse.

As with previous editions, this volume includes information about recent decisions and legislative changes affecting elder law in Australia. Phillip McGowan writes on recent developments in case law in New South Wales on duties of solicitors making wills for elderly clients and claims under family provision legislation. Juliet Lucy comments on the demise of the Guardianship Tribunal as a separate tribunal in New South Wales, and Imelda Dodds, the CEO of NSW Trustee and Guardian, provides an update on the restructure of the former Public Trustee of NSW and Office of the Protective Commissioner and Public Guardian to form a merged NSW Trustee and Guardian. The editors also welcome the first student contribution to the Elder Law Review, written by Esterina Lentini, a student in the School of Law, University of Western Sydney. She reviews two recent publications from Senior Rights Victoria: ‘Assets for Care: A Guide for Lawyers to Assist Older Clients at Risk of Financial Abuse’ and ‘Care for Your Assets: Money, Ageing and Family’.

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