The Challenges of Reviewing Enduring Powers of Attorney

A Toolkit from the Perspective of the Guardianship Division of the New South Wales Civil and Administrative Tribunal

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Introduction

There is no doubt that one of the most complex and time-consuming jurisdictions that we exercise in the Guardianship Division of the New South Wales Civil and Administrative Tribunal (the Tribunal) is that of reviewing enduring powers of attorney. Complexity arises in terms of the nature of the estate managed by the instrument, the range of powers that are available to the Tribunal in relation to the instrument, and more often than not, the level of conflict amongst family to the making, or the operation, of the enduring power of attorney.

In more recent times in Australia, enduring powers of attorney have become a focus in relation to the topic of elder abuse with calls for reform and greater powers to be provided to Tribunals.

In my presentation today, I note that it is with an eye to the fact that the Guardianship Board of Hong Kong may soon be given jurisdiction to conduct reviews of enduring powers of attorney in light of the recommendations of the Law Reform Commission of Hong Kong. I have been fortunate to have an opportunity to read and review the report issued by the Commission in July 2011[1]. It is not appropriate for me to endeavour to second guess what role may or may not be given to the Guardianship Board of Hong Kong. Accordingly, my focus will simply be on the role that the Tribunal plays in New South Wales and hopefully in the months ahead, this may be of use to those involved in proceedings here in Hong Kong if the Guardianship Board's jurisdiction is enhanced.

At the outset of this presentation, I wish to avoid any confusion by making it clear that I will only be examining the Guardianship Division's role of reviewing enduring powers of attorney which, by definition in New South Wales, means only decisions regarding financial and legal affairs. In New South Wales, personal or lifestyle decision-making, such as where a person resides, or decisions as to their health care, is within the realm of an instrument appointing an enduring guardian, not an instrument appointing an enduring power of attorney. I note that the Law Reform

[1] *Enduring Powers of Attorney: Personal Care*, The Law Reform Commission of Hong Kong, July 2011

Commission of Hong Kong has made recommendations that enduring powers of attorney in Hong Kong should allow for personal lifestyle decision-making by an attorney. This role for an attorney is possible in some Australian states (e.g. Queensland, Victoria, and the Australian Capital Territory), but in New South Wales, enduring powers of attorney provide authority only in relation to legal and financial matters.

So, in overview, what I intend to cover today includes:

Why and when was the Tribunal given jurisdiction to review enduring powers of attorney in NSW?

1. What are the workload ramifications of the review jurisdiction?

2. A toolkit – what is the jurisdictional pathway of reviewing an enduring power of attorney?

3. Discuss some case studies.

4. Calls for reform– the role of enduring power of attorneys in elder abuse.

Why and when was the Tribunal given jurisdiction to review enduring powers of attorney in NSW?

Up until 16 February 2004, the predecessor to the Guardianship Division of the Tribunal, the Guardianship Tribunal of New South Wales, did not have any jurisdiction to review an enduring power of attorney. The Tribunal was vested with power to make a financial management order for a person, which had the effect of suspending the operation of an enduring power of attorney, if one was in place, but the Tribunal had no power regarding the document itself.

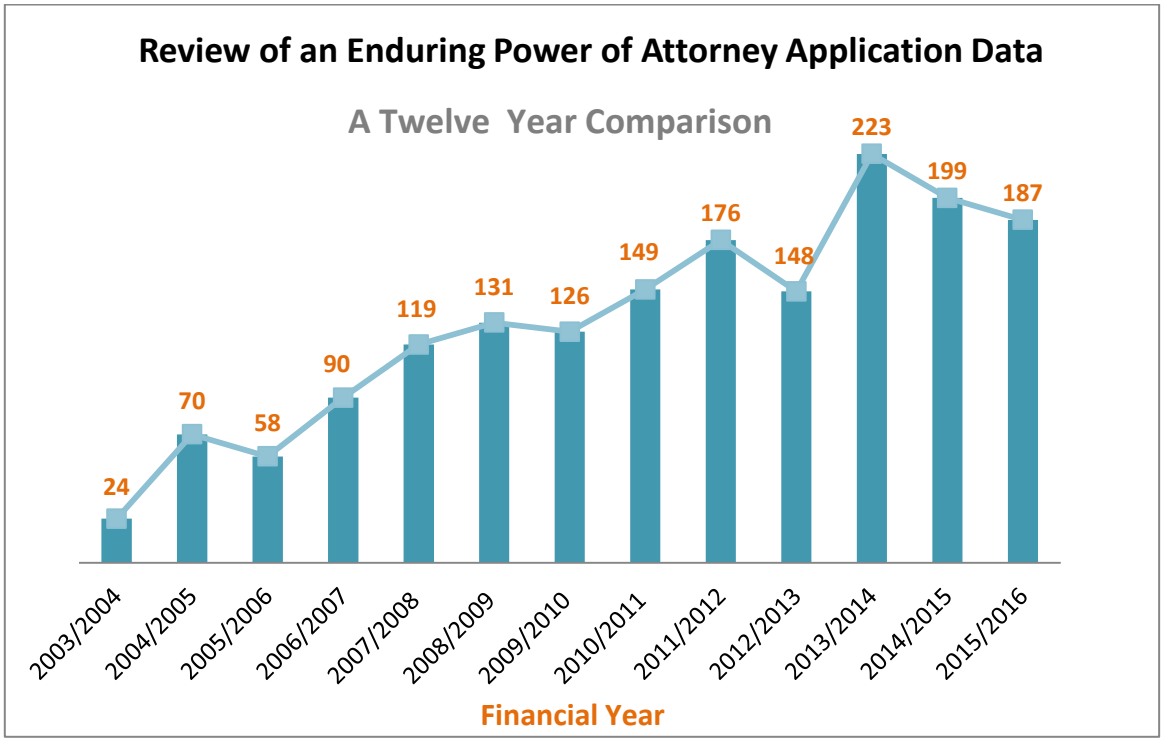
This all changed in 2004 after the government of the day in New South Wales introduced legislation that not only clarified the circumstances in which an enduring power of attorney could be reviewed, but also provided both the Supreme Court and the Tribunal with more or less equal powers to review such instruments. An application to review an enduring power of attorney could be made in either the Court or the Tribunal, and that remains the case today.

The basis for expanding the jurisdiction to the Tribunal, beyond only the Court, was expressed to be a means of providing the general public with a quicker, less formal, and more accessible means of making applications in these matters.

What are the workload ramifications of the review jurisdiction?

The table and graph below shows the number of applications received by the Tribunal regarding the review of enduring powers of attorney since the jurisdiction commenced in 16 February 2004.

Year	No. of Applications
2003/2004	24
2004/2005	70
2005/2006	58
2006/2007	90
2007/2008	119
2008/2009	131
2009/2010	126
2010/2011	149
2011/2012	176
2012/2013	148
2013/2014	223
2014/2015	199
2015/2016	187
Total	**1700**



In 2015/16, applications to review an enduring power of attorney made up approximately 1.82% of the total applications received by the Guardianship Division. However, whilst I cannot provide you with empirical data, I can assure you that the complexity and/or conflict attached to these matters means that they consume far more than the 1.82% of our time and resources.

As with all applications received at the Guardianship Division, these review applications are reviewed on the day of receipt for the purpose of triage. They are allocated to a Case Officer who then prepares the matter for hearing within a time frame based upon the assessed risk to the person or their estate. If the matter is assessed as a high-risk matter, it can be heard by the Tribunal within a matter of days of receiving the application. If the assessed risk is moderate to low, it may be six to eight weeks before the matter is heard.

Interestingly, one of the main tasks undertaken by our Case Officers is to obtain a copy of the enduring power of attorney itself. In New South Wales, there is no requirement that an enduring power of attorney be registered to be operational. As such, there is no registry that can be searched with certainty to obtain a copy of a current and operational enduring power of attorney. Many applications are lodged where the applicant makes allegations against a person engaging in poor management or wrongdoing in managing a person's estate under the belief that they are operating under an enduring power of attorney. However, they are unable to provide a copy of the instrument. An essential starting point for our Case Officers is to confirm that there is in fact an enduring power of attorney in place and that there is a copy of the instrument before the Tribunal.

Many of the applications received to review enduring powers of attorney are directed into a "complex case pathway". This means one or more directions hearing/s will be conducted by a single Legal Member of the Tribunal to examine the application, make directions as to document exchange, submissions, or witnesses, and otherwise take steps to endeavour to narrow or clarify the matters that need to be resolved before it is listed and heard by a three-member panel of the Tribunal.

A Toolkit – what is the jurisdictional pathway?

The Tribunal's jurisdiction to review enduring powers of attorney arises under Part 5 of the *Powers of Attorney Act 2003* (NSW) (the Act) which came into effect on 16 February 2004. This review jurisdiction extends to enduring powers of attorney made before, as well as after, that Act came into effect (s 6(5)).

There are two types of reviews of enduring powers of attorney we can conduct:

- a review of the **making** of an enduring power of attorney, and
- a review of the **operation and effect** of an enduring power of attorney (s 36(1))

The Tribunal does not have jurisdiction to review ordinary or general powers of attorney or irrevocable powers of attorney.

The following examples illustrate some of the circumstances which give rise to applications to review an enduring power of attorney:

- allegations that an attorney is abusing his or her position (for example, by using the principal's money and assets for the attorney's own benefit);
- allegations of a conflict of interest between the attorney and the principal, family members or other attorneys;
- concerns that a principal is continuing to make financial decisions when there are doubts about his or her capacity to do so;
- the attorney is no longer capable or does not wish to make decisions on the principal's behalf; or
- there is a dispute about whether the principal had the mental capacity to make the enduring power of attorney.

(1) Does the Applicant have standing?

The first step the Tribunal needs to take in a hearing relating to an application to review an enduring power of attorney is to determine whether the applicant has

standing to make the application. Pursuant to s 35(1) of the Act, the Tribunal may conduct a review on the application of an **interested person**,[2] defined as:

- the attorney (including an attorney whose appointment has been purportedly revoked);
- the principal;
- a guardian of the principal;
- an enduring guardian of the principal; or
- any other person who, in the opinion of the Tribunal, has a proper interest in the proceedings or a genuine concern for the principal's welfare.

Should the Tribunal conduct a review?

The Tribunal has the discretion to decide whether or not to carry out the review (s 36(1) *Powers of Attorney Act*). This first step must be considered before proceeding to carry out the review.

The Act provides no guidance about what factors the Tribunal should consider when determining this question. If the Tribunal decides not to carry out the review, it should dismiss the application for review.

Slattery J in *Susan Elizabeth Parker v Margaret Catherine Harris & Ors* [2012] NSWSC 1516 noted that there is a "two-step discretion under the *Powers of Attorney Act*, s 36(1) and (2)" at [42]. In the circumstances of the case before him, Justice Slattery noted as follows:

> In my view the Court does not have to conduct a full review of all documents associated with the operation of the subject power of attorney to do this. Something short of a full review must be able to justify the exercise of the s 36(1) discretion as to whether or not the Court should conduct a full s 36 review. In the circumstances of this case the Court can glean sufficient information to exercise the s 36(1) discretion by undertaking a general survey of what [the Applicant] has produced [80].

Are orders required as to the <u>making</u> of an enduring power of attorney?

If the Tribunal has determined that it should proceed to conduct a review of the enduring power of attorney, the next question is whether or not the actual making of the document is challenged or otherwise in question. The Tribunal may make either or both of the following orders:

[2] For a case example of where the an applicant was found not to have standing, see *KTC* [2011] NSWGT 23 (18 October 2011)

- an order declaring that the principal did or did not have mental capacity to make a valid power of attorney, and/or

- an order declaring that the power of attorney is invalid either in whole or in part (s 36(3))

Before making an order declaring that the power of attorney is invalid either in whole or in part, the Tribunal must be satisfied that:

- the principal did not have the capacity necessary to make it, or

- the enduring power of attorney did not comply with the applicable requirements of the Act, or

- the power of attorney is invalid for any other reason (for example, the principal was induced to make it by dishonesty or undue influence)

There is no test for the capacity to make an enduring power of attorney in the *Powers of Attorney Act*. Accordingly, the Tribunal must have regard to the common law when determining applications to review the making of an enduring power of attorney.

The authoritative statement of the test for capacity is found in the joint judgment of Dixon CJ and Kitto and Taylor JJ in *Gibbons v Wright* (1954) 91 CLR 423 at [438]:

> [T]he mental capacity required by the law in respect of any instrument is relative to the particular transaction which is being effected by means of the instrument and may be described as the capacity to understand the nature of that transaction when it is explained.

In *Ranclaud v Cabban* (1988) NSW ConvR 57 (55-385), Young J furthers this discussion about capacity in the context of making a power of attorney:

> Such a power permits the donee to exercise any function which the donor may lawfully authorise an attorney to do. When considering whether a person is capable of giving that sort of power one would have to be sure not only that she understood that she was authorising someone to look after her affairs but also what sort of things the attorney could do without further reference to her.

Thus, a person has capacity to make an enduring power of attorney if he or she understands both the nature and effect of the document when it is explained to the person. The person must be able to demonstrate his or her understanding by communicating this back to the person who provided the explanation.

In *Scott v Scott* [2012] NSWSC 1541, Lindsay J held that each case must be considered on its own facts and that:

> Attention must be focussed on all the circumstances of the case, including the identities of the donor and donee of a disputed power of attorney; their relationship; the terms of the instrument; the nature of the business that might be conducted pursuant to the power; the extent to which the donor might be affected in his or her person or property by an exercise of the power; the circumstances in which the instrument came to be prepared for execution, including any particular purpose for which it may ostensibly have been prepared; and the circumstances in which it was executed [199].

The Tribunal does regularly receive applications to review an enduring power of attorney which relates to the making of the instrument itself.[3] However, the majority of review applications relate to the manner in which the instrument is being operated, or not operated, as the case may be.

Are orders required as to the <u>operation and effect</u> of an enduring power of attorney?

If the Tribunal is satisfied that the instrument subject to a review application is valid and in operation, upon conducting a review, it may make one or more of the orders in s 36(4) in relation to the operation and effect of the enduring power of attorney, but only if it is satisfied that it would be in the **best interests** of the principal to do so or that it would **better reflect the wishes** of the principal (s 36(4) *Powers of Attorney Act*). The orders are as follows:

(a) an order varying a term of, or a power conferred by, the power of attorney;

(b) an order removing a person from office as an attorney;

(c) an order appointing a substitute attorney to replace an attorney who has been removed from office by a review tribunal or who otherwise vacates the office;

(d) an order reinstating a power of attorney that has lapsed by reason of any vacancy in the office of an attorney and appointing a substitute attorney to replace the attorney who vacated office;

(e) an order directing or requiring any one or more of the following:

(i) that an attorney furnish accounts and other information to the tribunal or to a person nominated by the tribunal;

[3] For some case examples, please see *VRH* [2013] NSWGT 5 (18 April 2013), *YLV* [2011] NSWGT 10 (31 August 2011), QBU [2008] NSWGT 18 (4 July 2008)

(ii) that an attorney lodge with the tribunal a copy of all records and accounts kept by the attorney of dealings and transactions made by the attorney under the power;

(iii) that those records and accounts be audited by an auditor appointed by the tribunal and that a copy of the report of the auditor be furnished to the tribunal;

(iv) that the attorney submit a plan of financial management to the tribunal for approval;

(f) an order revoking all or part of the power of attorney;

(g) such other orders as the review tribunal thinks fit.

In exercising its authority under s 36(4) of the Act, the Tribunal most commonly determines to make no order, or, it exercises its powers to revoke the instrument or remove and substitute an attorney.

Interestingly, the Tribunal is rarely requested to makes orders directing an attorney to provide accounts. In the event when it is asked to do so, consideration must be had of the practical aspects of such an order, in particular, issues about the costs of such audits and reports and who are suitable persons to be appointed to conduct them, need to be clarified.

When might an order be in the best interests of the principal?

The *Powers of Attorney Act* does not define the expression 'best interests'. The Tribunal might consider the following factors, among others, when determining whether an order would be in the best interests of the principal:

- the need to protect the financial and legal interests of the principal;
- the need to protect the personal, psychological, social, and emotional interests of the principal;
- the possibility that replacing an existing attorney might cause distress to the principal; or
- the risk of exacerbating any family conflict, to the detriment of the principal.

When might an order better reflect the wishes of the principal?

Where possible, the Tribunal seeks to obtain the views of the principal at the hearing. In order to ascertain the wishes of the principal before their cognitive capacity became impaired, the Tribunal might seek evidence from the attorney, any

solicitors (or other witnesses) involved, and independent persons who do not have a vested interest in the outcome. The Tribunal might also, in suitable cases, seek evidence from family members, whilst noting that in some matters, family members may have a vested interest in the outcome of that enquiry.

An order that is made on this basis should indeed go some way towards respecting the principal's wishes as to the way the enduring power of attorney operates and has effect.[4]

The following questions might be relevant in a particular hearing:

- Did the principal express a wish about the choice of attorney? For example, did the principal deliberately exclude or prefer a particular person, or category of persons, to be the attorney?

- Did the principal wish to preserve certain assets, such as the family home?

- Did the principal express a wish about the number of attorneys to be appointed? For example, did the principal always want more than one attorney to broaden the decision-making process?

- Are there any family or cultural dynamics that might reveal the wishes of the principal?

- Has the principal expressed a more current wish, either to the Tribunal or to others, to which the Tribunal may have regard even though the principal may have lost capacity in relation to certain decisions?

(2) When should the Tribunal treat an application to review an enduring power of attorney as an application for financial management?

If, on a review of the making or operation and effect of an enduring power of attorney, the Tribunal decides not to make an order under s 36 of the Act, it may (if it considers it appropriate in all the circumstances) decide to treat the application to review the enduring power of attorney as an application for a financial management order (s 37(1) *Powers of Attorney Act*).

The Tribunal must first decide to review the enduring power of attorney under s 36(1) of the Act and must decide pursuant to s 36(2) not to make an order under s 36, before it may decide to treat that review application as a financial management application.

[4] For some case examples, please see *CDI* [2013] NSWGT 9 (14 June 2013), *YNB* [2012] NSWGT 4 (28 March 2012), *YLV* [2011] NSWGT 10 (31 August 2011), *QQM* [2011] NSWGT 2 (21 February 2011), *FNB* [2010] NSWGT 9 (29 January 2010), *TKX* [2009] NSWGT 6 (2 September 2009), *TKX (No 2)* [2010] NSWGT 10 (4 February 2010), *KGT* [2009] NSWGT 2 (20 April 2009), and *QBU* [2008] NSWGT 18 (4 July 2008)

If the Tribunal does not commence the review under s 36(1) of the Act, the Tribunal may not proceed to treat the application to review an enduring power of attorney as a financial management application. Similarly, the Tribunal cannot make an order under s 36, such as ordering an attorney to provide accounts, and treat the application as a financial management application as well.

This has proved to be a useful power for the Tribunal in a number of circumstances,[5] such as where:

- an attorney is temporarily incapacitated and there is a need for a financial manager to be appointed until the attorney regains capacity; or

- evidence before the Tribunal leads it to conclude that the only appropriate outcome is for the appointment of the independent NSW Trustee and Guardian, which requires they be appointed through a financial management order.

If the Tribunal decides to proceed under s 37(1) of the Act and make a financial management order for the principal, this operates to suspend the power of attorney being reviewed and any others which may exist (s 50(3) *Powers of Attorney Act*). The power of attorney would come back into effect if the Tribunal were later to revoke that financial management order.

Case Studies

FNB [2010] NSWGT 9 (9 Jan 2010)

These proceedings are an example of the complexity of some applications to review an enduring power of attorney. Mrs FNB was 84 at the time of the hearing and had a diagnosis of moderate to severe dementia. Mrs FNB had two sons and one daughter. Her husband had died in 2004 which had left Mrs FNB with a very large estate consisting of complex multiple company and trust structures.

After her husband died, Mrs FNB moved to reside with her daughter, who she appointed as her enduring power of attorney. In 2006, she moved to live with one of her sons. She then signed a new enduring power of attorney appointing that son.

On a background of conflict between Mrs FNB's children, her daughter made multiple applications to the then Guardianship Tribunal, including an application to review the enduring power of attorney appointing her brother.

[5] For some case examples, please see *NAQ* [2013] NSWGT 15 (6 February 2013), *GSC* [2013] NSWGT 11 (10 January 2013), *ALC* [2011] NSWGT 6 (25 August 2011), *HND* [2011] NSWGT 13 (23 May 2011), and *BSX* [2009] NSWGT 5 (24 July 2009)

After two directions hearings and four days of hearings, the Tribunal decided, amongst other things, to revoke the enduring power of attorney and appointed the New South Wales Trustee and Guardian as Mrs FNB's financial manager. Some of the evidence which led to the Tribunal reaching this conclusion included:

- expenditure of Mrs FNB's estate that was not for her benefit, including purchase of motor vehicles and payment of school fees for the attorney's children, loans to the attorney's estranged wife, and other significant expenses in circumstances where the instrument did not permit any gifting; and

- that the attorney was in a position of conflict in that both he and his mother (as well as other brother and sister) were all beneficiaries of a complex trust structure which by virtue of the enduring power of attorney he controlled as his mother was the sole shareholder of the Trustee Company. There was evidence that the attorney had used the power to make significant distributions to himself and his brother whilst making little to no distributions to mother or sister.

LNN [2014] NSWCATGD 50 (22 Dec 2014)

This matter is an illustration of the powers the Tribunal has to "revive" a lapsed enduring power of attorney and to amend the provisions of the instrument if to do so is in the best interests of the principal and is in line with their known wishes.

Mr LLN was 96 years of age and residing in his own home with his wife. He and his wife had ten surviving children at the time of the hearing and an estate in excess of $AUD 40 million. In 2010 he executed an enduring power of attorney in which he named five of his children as his attorneys and stipulated that "any three (of the appointed children) are to act jointly as my attorneys".

In 2013 Mr LNN was diagnosed with vascular dementia and his cognition steadily declined thereafter. In January 2014, a daughter who was one of his five appointed attorneys died. Because of her death and the fact that the instrument appointing her was a joint appointment with her siblings, the enduring power of attorney lapsed on the day she died.

The surviving attorneys made an application to the Tribunal requesting that we review the instrument. There was no conflict in the family and it was clear on the evidence that it would be detrimental to Mr ZNN's estate if the enduring power of attorney could not continue as the means of managing his substantial estate. The Tribunal exercised its powers to replace another of Mr ZNN's children for the daughter who died as an attorney, ordered that the instrument was reinstated as of the date of the death of his daughter, and amended the terms of the instrument so

that so long as three of the appointed attorneys did not die or otherwise vacate office, the instrument would continue in operation.

Elder Abuse and Enduring Powers of Attorney

In recent years, the role that may be played by instruments appointing an enduring power of attorney has become the focus of a number of enquiries into elder abuse of older Australians.[6]

There is very little empirical data as to the level of elder abuse in Australian society. Some useful comments however can be derived from a report issued in 2016 by a Committee of the NSW Parliament into Elder Abuse[7] as follows:

> 2.6 A recent report prepared by the Australian Institute of Family Studies (AIFS) observes that compared to other areas of interpersonal violence such as family or domestic violence and child abuse, our progress towards understanding elder abuse and developing effective prevention strategies and responses to it, is recognised as considerably less well developed.[8]
>
> 2.7 According to this report, there is very limited evidence in Australia to enable an understanding of the prevalence of elder abuse.[9] While there are difficulties in accurately measuring the number of older people who experience abuse, as a result of varying definitions of abuse and the likelihood of underreporting, one estimate is that around one in twenty people aged 65 and over in New South Wales has experienced some form of elder abuse,[10] equating to approximately 50,000 people.[11] The available evidence suggests that prevalence varies across types, with psychological and financial abuse being the most common types of abuse reported.[12] There is some evidence that in many cases the older person experiences two or more types of abuse, and financial abuse

[6] Legislative Council General Purpose Standing Committee No.2, Parliament of New South Wales, *Elder Abuse in New South Wales*, Report 44 (24 June 2016). Australian Law Reform Commission, *Elder Abuse*, Discussion Paper 83, (15 June 2016).
[7] Legislative Council General Purpose Standing Committee No.2, Parliament of New South Wales, *Elder Abuse in New South Wales*, Report 44 (24 June 2016), 6-7 [2.6]-[2.9].
[8] Rae Kaspiew, Rachel Carson and Helen Rhoades, *Elder abuse: Understanding issues, frameworks and responses,* (Research report no. 35, Australian Institute of Family Studies, 2016) 4.
[9] Kaspiew, Carson and Rhoades (2016), 5.
[10] Submission 75, NSW Government, 5, citing Pamela Kinnear and Adam Graycar, '*Abuse of Older People: Crime or Family Dynamics'* (1999) 113 Australian Institute of Criminology: trends and issues in crime and criminal justice, 2.
[11] Submission 75, NSW Government, 5, citing Mike Clare, Barbara Blundell and Joseph Clare, '*Examination of the extent of elder abuse in Western Australia*' (Research Report, The University of Western Australia and Advocare, 2011).
[12] Kaspiew, Carson and Rhoades (2016), 5.

and psychological abuse in particular are frequently reported as occurring together.[13]

2.8 From an international perspective, a recent WHO review of the prevalence of elder abuse in high and middle income countries reported rates of up to 14 per cent and even higher among people with cognitive impairment and/or living in institutions.[14]

2.9 Data from the NSW Elder Abuse Helpline and Resource Unit (EAHRU) give some insights into the picture of elder abuse in this state. Of the total of 2,234 calls to the Helpline in 2013- 14 and 2014-15 recorded as relating to reported abuse, the most common abuse type reported was psychological abuse (57 per cent), followed by financial abuse (46 per cent), neglect (25 per cent), physical abuse (17 per cent) and sexual abuse (1 per cent).[15] Women were most commonly reported to be the victims (71 per cent compared with 28 per cent men),[16] with the most common age group being 75–84 years of age (33 per cent).[17] In 71 per cent of calls, the alleged perpetrators were family members, and the largest group of perpetrating relatives were adult children (26 per cent sons and 21 per cent daughters). A little over one in ten (12 per cent) of perpetrators were spouses.[18] The AIFS report notes that these findings from the NSW Helpline data are also broadly similar to patterns in Victoria and Queensland.[19][20]

One of the recommendations of the NSW Elder Abuse enquiry was that there should be legislative amendments to the *Powers of Attorney Act* to enhance safeguards as to the operations of these instruments. In particular, it was recommended that criminal offences be introduced for dishonestly obtaining or using an enduring power of attorney, and also, that the Tribunal be granted new powers to be able to order an attorney to pay compensation for the misuse of the instrument.[21]

[13] Submission 75, NSW Government, 5, citing Paul Sadler '*Crime and Older People: Patterns of Elder Abuse*' (paper presented at Crime and older people conference, Adelaide 25 February 1993, 10-11.
[14] Submission 23, Australian Association of Gerontology, 2 citing the World Health Organisation, '*Elder Abuse Fact Sheet*' (Fact sheet No. 357, 2014).
[15] Submission 75, NSW Government, 17.
[16] Submission 33, NSW Elder Abuse Helpline and Resource Unit, 10. These percentages are in respect of 2,151 calls in 2013-14 and 2014-15. In the remaining 1 per cent of calls, the gender of the person about whom abuse was alleged was recorded as 'other/unknown'. In an additional 173 cases, gender was left blank or omitted.
[17] Submission 75, NSW Government, 17.
[18] Submission 33, NSW Elder Abuse Helpline and Resource Unit, 10 -11.
[19] Kaspiew, Carson and Rhoades (2016), 6.
[20] Legislative Council General Purpose Standing Committee No.2, Parliament of New South Wales, *Elder Abuse in New South Wales*, Report 44 (24 June 2016), 6-7 [2.6]-[2.9].
[21] Legislative Council General Purpose Standing Committee No.2, Parliament of New South Wales, *Elder Abuse in New South Wales*, Report 44 (24 June 2016), 100 [6.101].

Similarly, the Australian Law Reform Commission has sought comment on an even broader reform proposal, that all Australian State and Territory Tribunals be vested with the power to order that enduring attorneys and enduring guardians, or Tribunal appointed guardians and financial administrators pay compensation where the loss was caused by that person's failure to comply with their legislative obligations.[22]

If such calls for reform come to fruition and the Tribunal is to be vested with this additional authority in future, this would involve an entirely different set of considerations than those usually exercised by the Guardianship Division. For example, there would most likely be a need for the rules of evidence to apply bringing greater formality to proceedings.

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[22] Australian Law Reform Commission, *Elder Abuse*, Discussion Paper 83, (15 June 2016), 102 [5.76]-[5.87].