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Protect us from the guardian

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The Rev George Capsis, a burly, blunt-spoken Baptist minister, is a bit of a crusader. His Community Outreach Ministry in the seaside suburb of Caringbah provides care and comfort for life's underdogs, the homeless, the drug addicted – and, on his days off, the Cronulla Sharks rugby league team, of which he is the chaplain.

Until last November Capsis never dreamt that the fight that would get him most fired up would be right in his backyard. That was when responsibility for his ailing, widowed, 82-year-old mother-in-law, Gladys Raffa, was taken away from Capsis and his wife, Gail, and she was placed in the hands of the NSW guardianship authorities.

“It’s been an absolute disaster,” he raged this week, after outlining to a parliamentary committee a litany of misfortunes which had befallen the old lady since all the important decisions in her life, from where she should live to how her money is managed, were taken over by the little-known twin offices of the Protective Commissioner (OPC) and the Public Guardian (OPG).

Despite the offices’ intervention, Capsis says Raffa’s son Brian had managed to take advantage of the situation to move into his mother’s house, take over her affairs, and had been “fraudulently using my mother-in-law’s money to pay off his debts”. Apprehended violence orders had been taken out to prevent other family members visiting her. Finally, she had been moved into a nursing home, where she was going steadily downhill.

“There is no accountability; they are a law unto themselves,” Capsis testified. “If this was a child, the police would be down there like a shot; an old person with dementia – people don’t want to know about you.”

There was enthusiastic applause from most of the 50 people who crowded into Parliament’s ornate Jubilee Room last week for the hearing, many of whom had also been trying for years to extricate their loved ones from the jurisdiction of the guardianship authorities. So emotional have the hearings been that one man even shouted out “Gestapo!” as the committee chairman, Newcastle Labor MP Milton Orkopoulos, appealed for order.

Parliamentary committees, especially one as uninspiringly named as the Public Bodies Review Committee, are normally low-key affairs, ignored by the public, manned by party hacks and hopefuls, and conducted to predetermined agendas in grey-upholstered back offices. The depth of interest and pent-up feeling aroused by this inquiry has surprised everyone.

The committee has been overwhelmed by no fewer than 122 written submissions – many from aggrieved relatives, but also from most of the professional bodies dealing with the disadvantaged.

Rather than disappoint, the committee has taken the unusual step of commandeering the parliamentary theatre where, today, as many people as possible will be given five or 10 minutes of fame to vent their grievances at a public

forum.

Judging by witnesses such as Capsis who have been heard so far, this will add further evidence to the picture that is emerging of a deeply dysfunctional government bureaucracy, serving its own interests rather than those of the public, and protected from scrutiny for decades by draconian secrecy laws, and public indifference to unsexy issues affecting the old, the disabled and the mentally ill.

When created in the 1980s the new guardianship authorities – successors to the official once called the Master in Lunacy – were seen as a model of social enlightenment. People deemed unable to look after themselves could be brought before a quasi-judicial body called the Guardianship Tribunal and compulsorily committed to the care of the Government.

Lifestyle decisions – where to live, what care to give – were to be made by the Public Guardian. Financial management would be the responsibility of the Protective Commissioner, who took control of all a person's assets, from the house to the pension card. These two offices became, in effect, a surrogate family.

In making these decisions, says the 1987 Guardianship Act, “the importance of preserving the family relationships ... should be recognized”. And people subject to guardianship orders “should be protected from neglect, abuse and exploitation”. Well, that's the theory – we'll look again later at the evidence of how it works in practice.

With the greying of society, and as a result of thousands of people being emptied out of psychiatric institutions in the wake of the 1983 Richmond report, the number of NSW people subject to orders – two-thirds of them suffering from mental illness, developmental disabilities, and conditions of old age such as dementia – has been expanding exponentially.

At latest report, the two offices had 11,239 “clients”, with almost 100 new cases a week flooding into the tribunal. To look after them, and almost \$2 billion of their assets, the two offices have a staff of 400 with each officer responsible for between 50 and 150 people – an impossible case load which itself is a major cause of complaint. A former Commonwealth auditor, John Mayger, has said in a submission that the authorities were “often unaware of many of their [clients'] correct addresses” and had no idea whether benefits to which they were entitled, such as rent assistance, telephone cards, or travel concessions, were being delivered. A snap audit found that 100 per cent of pensioners – everyone in the sample – were being paid the wrong amount, errors amounting to millions of dollars. The most scathing evidence came from Georgina Connolly, principal solicitor with the Intellectual Disability Rights Service Inc., who cited one case where the guardianship authority was unaware one client had a child, and refused to assist another with accommodation when he was eligible for parole from prison. “It is difficult for me to see how a client's best interests were served by him remaining in jail,” she remarked drily.

Connolly said that because the OPC was “reluctant to actively pursue the legal interests of people with disability”, clients often missed out on victim compensation and personal injury payments to which they were entitled.

Recently introduced community consultation forums were “tokenistic” and “little more than a PR exercise”.

Some OPG staff took no active role in protecting the interests of clients. Others “are so opinionated that they will ignore the people under their control, their families and professional carers to pursue a course of action which they deem to be best for the person ... based on the results of one short visit”.

Even the conservative Australian Medical Association received a round of applause when it criticized interference in medical treatment by unqualified guardianship officials. Dr. Hugh Patterson, the NSW acting secretary, said doctors found it “quite harrowing” when long-standing treating doctors were arbitrarily replaced, and treatment decisions overruled without reason and with no avenue for appeal.

But the most dramatic evidence was given by a woman, Paddy Costa, who became outraged over the treatment of her mother by the guardianship authorities – the appointment of a new case officer to look after her, three months after her death, being the final insult.

Five years ago, Costa founded the now 800-strong group COPPA (Carers of Protected Persons Association) whose relentless lobbying was largely responsible for the parliamentary inquiry.

For the first time, Costa was able to publicly reveal details of a series of cases she categorized as “a gross abuse of human rights” – until now, critics of the guardianship authorities have been muzzled by legislation which makes it a crime, punishable by up to 12 months’ jail, to identify anyone who comes before the Guardianship Tribunal. Ostensibly, this is protects client privacy, but Costa is convinced the legislation has been used to silence critics. This lack of accountability goes further – the guardianship authorities are not subject to the Ombudsman, Freedom of Information requests are routinely rejected, and even the minister responsible, the then Attorney-General, Jeff Shaw, refused to intervene in what he called a “quasi-judicial authority.”

It is only because her evidence, a 48-page dossier, was produced to the committee and thus protected by parliamentary privilege, that Costa has been able to shed light on some of the grosser cases of abuse she has come across.

She cited the case of a Cessnock man – whose wife became brain-damaged and paraplegic after a road accident – who was left to raise their two young children.

The guardianship authorities had threatened to obtain a legal separation so that the family home could be sold, with the proceeds going to support the wife in a nursing home – and the husband and children left homeless.

In another, a man who complained about the medical treatment given to his institutionalized mother was prevented from visiting her. He was not told when she died, discovering this by accident when he visited his father’s grave and was shocked to find his mother buried beside him.

A 90-year-old woman with dementia had a budget drawn up for her modest \$665 fortnightly income, which provided for a “savings plan” under which \$233 was put aside. Closer examination revealed that this left her with no budget for food, accommodation or medical needs.

A woman was ordered to leave the family home so that it could be rented out after her father was admitted to a nursing home. Distraught, she took a drug overdose, spent three months in a psychiatric ward, and finally electrocuted herself in the shower by attaching wires to her body.

Costa also gave evidence of cases of theft and fraud against the authorities’ highly vulnerable clients. Five employees of the OPC have been convicted in recent years, including one man who is serving five years in jail after stealing \$464,000, and attempting to swindle an old woman out of her estate by forging her will.

On a more mundane – but equally important – level, broadsides were leveled by witness after witness against what they saw as grossly incompetent financial management by the OPC.

Many cases involve people who have received substantial damages after being terribly injured in accidents, and have had their affairs surrendered to the OPC by well-meaning relatives, who later find the money has been squandered by excessive legal costs, high fees, bad investment decisions, and poor tax planning.

The most extraordinary case to come to light so far involves the former movie star Jon Blake, who became brain damaged and quadriplegic after a road accident in 1986.

Since then, almost half the \$8 million he was awarded by way of compensation has been eaten up by costs, and his mother may have to fork out another \$750,000 in legal fees from his estate, even though she won control of his finances from the OPC after a prolonged court battle.

One financial expert who will give evidence next week is Greg Pride, principal consultant at financial planners the Berkley Group. He calculates that partly because of its policy of investing only in bonds rather than the more profitable – though riskier – stock market, OPC clients have over the years received less than half the return on their investment of people with money invested with private sector trustees.

He is scathing of the qualifications of the OPC’s in-house fund managers, and says that they are legally exempt from the requirement that investment advisers be licensed by ASIC (the Australian Securities’ and Investments’

Commission) – “which is like John Howard’s chauffeur not being required to have a driving license”.

This is, of course, an area of high emotion and conflict. Families are often divided over how best to care for elderly and incompetent relatives. “Friends” can take advantage. There is a conflict of interest – should the estate be spent caring for the relative, or conserved as an inheritance for the heirs?

Unfortunately, most of the evidence so far is that the intervention of the guardianship authorities does not lead to consensus and conciliation, but what one witness described as “all-out war”.

The man newly appointed as acting head of the guardianship bureaucracy is Ken Gabb, a former Unsworth Government minister. He has yet to give evidence, and his office said no submission had been prepared which could be used in this story to balance the picture.

However, Gabb has written to the committee, not to rebut any of the testimony, but to ask that in its proceedings it protect the privacy of people subject to guardianship orders, quoting a Supreme Court judgment to support his appeal.

After Costa and others protested that it looked as though Gabb was attempting to intimidate witnesses, the media and the committee, Orkopoulos took the unusual step of reassuring them that the committee would not be “muzzled”. It would “fearlessly” ask the questions that needed to be asked, and would recommend whatever “reforms” to the guardianship system it thought necessary.

For George Capsis and several hundred other angry victims of the system, that cannot happen too soon.

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