

## **Sydney Morning Herald - Guardian authorities accused of abuses- by Ben Hills.**

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Two more story features showing the uncontrolled victimization by authorities in this country under the guise of assisting those who can't help themselves.

These people are crooks, (one was jailed for 5 years for embezzling 'client's' funds) criminals, and a menace to society who should be eradicated.

Read on... you'll be horrified to think that these things can be happening in a 'civilized' country.

A victim's rights organization is calling for a parliamentary inquiry into what it claims are abuses, lack of accountability and financial mismanagement by the NSW guardianship authorities.

Ms. Paddy Costa, founder of Carers of Protected Persons Association (COPPA), has given the President of the Legislative Council, Ms. Meredith Burgmann, a dossier detailing some of the complaints from 800 families.

More than 11,000 people are subject to orders by the Guardianship Tribunal because they are deemed incapable of handling their own affairs. Two State Government guardianship agencies have absolute power over their welfare and finances.

Among the cases Ms. Costa has investigated:

\* A girl of 16 who was awarded \$3 million in damages from a car accident which left her mildly intellectually disabled. While under guardianship she was encouraged to leave home and live in refuges, was raped, stabbed, began using drugs and put on 60 kilograms before her mother won joint custody;

\* A 77-year-old woman whose husband was placed in guardianship and sent to a nursing home. The guardianship authorities applied for a Family Court property settlement and placed a caveat over her house - she believes only her husband's death forestalled her eviction and the sale of the property.

Four years ago when he was Minister for Community Services, Mr. Ron Dyer acknowledged that the guardianship authorities were "**capable of making mistakes**" and said he would establish a complaints commission.

**Nothing happened.**

**They take people from their families to safeguard them. But sometimes it goes terribly wrong.**

WE CAN'T tell you who she is, but she has one of those sweet Georgian names, redolent of rosewater, tea dances and knitting jumpers for our boys in Gallipoli. And although she was born 85 years ago, in the shadow of World War I, "Edith" is as bright as a button - and hopping mad.

She is sitting on the sun-flooded veranda of the block of apartments she owns, overlooking Mosman Bay, picking away at some needlework as she talks about that dreadful day two years ago when she learnt from her son John that she had been ordered to attend a hearing of the Guardianship Tribunal - **a hearing that could have made her, in effect, a ward of the state.**

"It really shook me up, I can tell you," she says. "They never even spoke to me first. I could understand it if I was some poor down-and-out, but look at me - I am self-sufficient. I live as well as the Queen."

Well, give or take a corgi or two. Edith doesn't just own the valuable block of flats. She manages it, collects the rent, organizes the maintenance. She has an active social life and plays cards three times a week. Her eyes are bright behind her pebble glasses, her conversation is acute, and she walks slowly but without a stick.

Is this a woman "... of diminished intellectual capacity, unable to manage your financial affairs and thus disadvantaged and exploited by your son", as the allegation to the Guardianship Tribunal put it? **"It's a pack of lies," she bristles. "As anyone would have found out if they had come to see me."**

The real reason the application was lodged, as the president of the Guardianship Tribunal, Nick O'Neill, now acknowledges, was **"conflict within the family"**. But the consequences, if she had been made subject to either guardianship or an order placing her affairs in the hands of a financial manager, would have been catastrophic. As its own publicity makes clear, **"any order that the board makes ... interferes with fundamental human rights"**.

The system was originally designed to protect people unable to look after their own affairs - the official in charge was once called the **Master in Lunacy**, and many of the people subject to orders are elderly and suffering from dementia, psychiatric illness or brain damage. A decade ago, however, the concept of incapacity was expanded. Many more people are now being caught up in the guardianship net and finding it almost impossible to escape.

Once an order is made, **the authorities can, and do, tell people where to live, what care they must receive and what medical attention to undergo - including the use of experimental drugs on people unable to give informed consent, and the compulsory sterilization of young women. While subject to a guardianship order, one woman has been compelled to have an abortion, and another told how her hair should be cut, and when.**

All a person's assets are confiscated and placed in the hands of a functionary with the Orwellian title of Protective Commissioner. Once an order is made, a person's property, bank account, shares, pension, medical card, will, and the contents of any safety-deposit box, must be handed over. In at least one case where a man was admitted to a nursing home, the Protective Commissioner filed for a property settlement in the Family Court intending (or so the man's elderly wife believes) to evict her from her retirement-village home and sell it.

**"I had no idea these people existed, let alone the powers they have," says John, a property developer who has vowed to take the Guardianship Tribunal to the United Nations Human Rights Commission.**

The reason most people, like John, know nothing of the guardianship authorities is simple: **lack of scrutiny. It is illegal (penalty: one year in prison) to identify anyone who appears before the Guardianship Tribunal. Legal representation may not be allowed. Evidence is not sworn. There is no appeal except to the (also little-known) Protective Division of the Supreme Court.**

The handling of cases by the guardianship agencies is not subject to Freedom of Information legislation - Edith, for example, had to battle for seven months to obtain a copy of the application made to have her placed under guardianship. You cannot appeal to the Ombudsman. Even the NSW Attorney-General, Jeff Shaw, one of two ministers responsible, has said he cannot intervene because it is a **"quasi-judicial authority"**.

Fortunately for Edith, her son had the money and the clout to hire a lawyer and fight for her rights. The tribunal hearing was hastily cancelled. But they still wonder, and worry, how she could have come so close to losing her freedom **when a simple telephone call to her or her doctor would have shown how false the application was.**

PADDY Costa thumps down a plastic-bound volume the size of the Yellow Pages on the table in the lounge room of her house in inner-city Petersham. **"That's only about 20 of the worst cases,"** she says. "I have another 800 on my books and there wouldn't be a week go by without more people contacting me."

Four years ago, outraged by the treatment of a relative whose affairs were taken over by the guardianship authorities, she founded a unique organization called COPPA (Carers of Protected Persons Association) to take up the cause and seek a parliamentary inquiry. She was mobbed by relatives of people subject to guardianship orders who were deeply aggrieved about the way they and their loved ones had been treated.

One thing they have in common is a fear and distrust of the guardianship authorities - and with reason.

While researching this article, I was telephoned out of the blue by a Melbourne woman who told me she was quaking at home waiting for police to knock on her door - she had refused to tell the Victorian guardianship people (who have even wider powers than those in NSW) the whereabouts of her elderly mother and they had written to her saying that unless she did she would be in contempt of court, arrested, and punished with a fine of up to \$100,000, five years in prison, or both.

The number of people under guardianship or financial orders has quadrupled in the past decade as the population gradually greys and medical advances make it possible to keep people's bodies functioning long after their minds have packed up. There are 11,500 people in NSW who have lost the right to manage their own lives, and about 2,500 new applications were made last year cases are pumped through the tribunal at the rate of 4.5 a sitting day.

Anyone can apply for an order over someone they believe "incapable of making their own lifestyle or financial decisions". About half the applicants are relatives, and the rest social workers, doctors and other professionals. Most cases involve older people about two-thirds are over 65 commonly suffering from dementia. But a disturbing number are younger (16 is the minimum age) and they include people with eating disorders, people who have AIDS, or who are deaf, blind or autistic. An extraordinary 14 per cent have "reason unknown" recorded against their names.

In about two-thirds of cases the person winds up in the care of a public servant named Brian Porter, a 58-year-old former lawyer, who has worn the two hats of Protective Commissioner (he looks after the money) since 1981 and Public Guardian (he looks after your welfare) since the office was invented in 1989. It is against the behavior and performance of people under his control that most complaints arise.

Porter rarely gives interviews and is clearly uncomfortable when questioned about some of the complainants on Paddy Costa's books - he says he is so nervous his throat has dried up, and goes to fetch a glass of water. "There is always another side to the story," he says.

He is keen to point out that "granny bashing" is on the rise and he is there not to strip people of their rights but to "re-empower" older people who are being abused or exploited.

**"We don't have a week go by here that we don't have another example of quite severe elder abuse in a financial sense ... Like a painter comes into an old person's home and pretty quickly owns the house, ships the old person out into a nursing home and sells the house. Con people are extraordinary."**

He is less keen to discuss cases such as that of "Carol", one of the people whose personal and financial welfare were under state control when a whole series of calamities befell her. He does not interpret his statutory obligation to protect his clients from "neglect, abuse and exploitation" as including looking after Carol's day-to-day welfare, even though her carers were hired and paid by him from her estate.

Carol's woes began when at the age of five she was hit by a car on her way to school and left mildly brain-damaged and with-out the use of one arm. She is one of seven children in a close-knit Lebanese/Australian family who cared for her until, aged 16 and with a multimillion-dollar compensation award heading her way, she was reported to the tribunal by a social worker and made subject to guardianship and financial management.

Carol says a social worker told her she was "boss of her own body" and free to live where she wished and to go out with boys - her family was horrified when told that they should provide her with condoms. Disputes quickly developed and Carol left home and was placed in a refuge in Darlinghurst.

Cut off from her family, her life spiraled out of control. She began using amphetamines and alcohol, she put on 60 kilograms, she was stabbed in a fight. The last straw came when she was raped and then told by a social worker that if she had the baby it would be taken away from her. She agreed to have an abortion.

Now back with her family her mother has won joint guardianship, they have rented a house for her near their own home, enrolled her in a gym to lose weight, and rid her of "carers" she said she did not need Carol says, "I couldn't be better."

She and her family, however, are far from happy with the way the authorities still control the \$3 million she was eventually awarded in compensation. She wants to invest at least some of it in a block of apartments to provide for her long-term financial needs - her financial managers insist she is better off putting it in government bonds.

Dr Alec Preda, a doctor who for seven years was one of the commission's "court visitors", says this kind of case mismanagement is common. As a "visitor" responsible for monitoring the care of people in guardianship, he had a caseload of about 100, and would see people no more than once a year.

**"There are frequent stuff-ups ... I can even remember one case where a man died because he was not taken to hospital in time," he says. "The problem is you have a concentration of power in the hands of one authority which is not responsible to anyone."**

**What makes this lack of accountability doubly concerning to people like Preda is that last year, with little public debate, the law was changed to allow "clinical trials" - described by critics as medical experiments on human beings - of drugs, medical devices and procedures to be performed on people subject to guardianship orders without their informed consent.**

**Last year one such trial was approved of a drug which, it is hoped, will improve the white blood cell count to combat pneumonia and sepsis. Since then the use of another eight experimental drugs designed to slow the development of dementia and reduce damage from severe strokes has been approved by the tribunal, although O'Neill would not name them nor discuss any details, for fear of damaging the commercial interests of the drug companies involved.**

**Although approval for such clinical trials is subject to strict conditions and must conform with National Health and Medical Research Council guidelines, people such as Barbara Wright, a nurse who is president of the Medical Consumers' Association, are extremely concerned.**

**She is appealing to the Human Rights and Equal Opportunity Commission, claiming that experimental drugs with the potential to harm (known side-effects of one drug trialled include bone pain and enlarged spleen) should not be used on people who are incapable of understanding what is being done to them.**

**"These people are being used as guinea pigs for the profits of the multinational drug companies," she says. "It is the most appalling abuse of human rights."**

He lays on his back on a hospital-style bed, a fragile figure with his hair wet from the bath from which he has just been lifted by his burly carer, his eyes open but unfocused. When "Margot", his elderly mother, tries to get him to acknowledge the visitor by blinking or moving his thumb,

there is no response. "I've got you a nice bit of perch for lunch," she whispers, kissing his damp forehead and turning away.

This is how "Jason" has been for 13 years. Totally dependent on his mother and on 24-hour-a-day care, living in a specially built suite under the family home fitted out with the tilt-tables and other apparatus needed to keep him alive.

Now aged 40, Jason was once one of the most promising young talents in the Australian arts. That ended abruptly when a car accident left him profoundly brain-damaged.

**The battle to obtain compensation for his horrendous injuries he was eventually awarded more than \$7 million was nothing compared with the war his mother is now waging to remove him from the clutches of the guardianship authorities.**

**Tears of anger and frustration run down her face as she describes how they have mismanaged her son's welfare, using his money to fight her through the courts to try to take Jason from the care of his mother.**

Among many complaints: thousands of dollars from his award were spent leasing a house for him and buying and storing furniture that was never used. One carer hired to look after Jason turned out to have a criminal record, while another extraordinary as it sounds became besotted by the helpless young man, kidnapped him from the house, and spirited him away for a fortnight.

Eventually his mother was made his guardian, but she is still trying to extricate Jason's finances, which she believes are being squandered, and invest them in a private trust fund.

**She calculates \$3 million of the award has gone already, an extraordinary \$2 million in legal costs alone.** "The legal profession treats people like her as a milking cow," Costa says. "Her greatest worry is that when she passes on, the money will be gone and [Jason] will be buried in some dark ward."

As near as can be calculated from year-old accounts, the Protective Commissioner is entrusted with \$1.75 billion of the assets of people deemed incapable of handling their own affairs - \$850 million in cash, the rest in property.

This great pool of funds money which is all thousands of people have to last them the rest of their lives is still in such safe but underperforming investments as government loans and bank and building society deposits, even though the law was changed in March last year to allow investment in the more profitable stock market. All private trust companies switched part of their portfolio into stocks almost immediately.

The result is that the Protective Commission claimed a 9.6 per cent return on its investments last financial year, compared with a 13.7 per cent average for Australia's large superannuation funds. It might sound nitpicking, but this shortfall of 4.1 per cent represents about \$35 million in extra income that the commission's "clients" should have received. The Auditor-General is conducting a performance audit sparked by this and other complaints.

Greg Pride, an investment consultant at Godfrey Pembroke, says that most people whose assets are managed by the commissioner never see even this paltry return. This is because of the unique way the commission is financed.

**Its \$15 million-a-year operating cost comes not from the Government but from charging its clients 5.25 per cent of their investment income.**

**"Decisions are being made by people on \$30,000 a year who don't even have an ASIC [Australian Securities and Investments Commission] license," he says. "It's scandalous, absolutely scandalous, that these poor people have been swallowed up by a monster under the banner of, 'We are protecting your interests.'"**

**As well, the potential for outright fraud was underlined last year when a senior official at the Protective Commissioner's office was found to have stolen \$500,000 by forging wills, and opening a bogus bank account using the birth certificate and pension card of a woman institutionalized for 45 years. Jeffrey Douglas Nichol, 47, was sentenced to five years' jail.**

WHEN they took her husband away to a nursing home, Margit Harves felt a sense of relief. Joe was suffering from severe dementia and had taken to wandering off in the night from their house in a retirement village at Turramurra.

But she didn't expect the authorities would decree that he had to be put in a home in Warriewood, which would entail her traveling by public transport for two hours a day to visit him. Nor did she realize that placing his affairs in the hands of the guardianship authorities would almost cost her home.

Both were on a pension, and the only major asset the couple possessed was the house. The Protective Commissioner applied to the Family Court for a property settlement, which she believes would have led to her eviction and the sale of the home, with the proceeds being split between them.

Mrs. Harves, who was then aged 77, says, "I nearly dropped dead on the spot when I found out they had put a caveat on the house. How can they do this when it's in my name? What are they doing putting an old lady out in the street?"

The fact is they can, and do. In the Harves case, the proceedings were forestalled only by Joe's death.

Without money, large amounts of money, to go to the Supreme Court, people like Mrs. Harves, Carol, Margot and all the others have nowhere to appeal.

Ron Dyer, when he was NSW Community Services Minister, did acknowledge in 1995 that the guardianship authorities were "**capable of making mistakes**" and promised to establish a complaints tribunal. **But nothing happened.**

Until it does, the hundreds of people on Costa's books will continue to demand: **who is guarding the guardians?**

## **THE TRIBUNAL PROCESS**

- ANYONE CAN APPLY FOR AN ORDER COVERING SOMEONE THEY BELIEVE IS "INCAPABLE OF MAKING THEIR OWN DECISIONS"
- GUARDIANSHIP TRIBUNAL "LIFESTYLE DECISIONS" SUCH AS PLACE OF RESIDENCE, CARE, MEDICAL TREATMENT WILL BE MADE BY PUBLIC GUARDIAN OR PRIVATE GUARDIAN (FAMILY, FRIEND)
- ALL ASSETS AND INCOME WILL BE CONTROLLED BY PROTECTIVE COMMISSIONER OR PRIVATE FINANCIAL ADVISER