



STEP Queensland Enduring Powers of Attorney Intensive 3 April 2012



What's ELRU?

- ❖ ELRU is the Economics & Law Research Unit in the Faculty of Business, Economics and Law at The University of Queensland
- ❖ ELRU was established in May 2009



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Who's in ELRU?

- ❖ Co-directors – **Professor John Mangan**, Professor of Economics, Faculty of Business, Economics and Law and **Professor Jeff Mann**, Professor, Faculty of Business, Economics and Law
- ❖ Research Fellow – **James Stokes**
- ❖ PhD Scholar – **Farhana Chowdhury**
- ❖ Research Assistants – **Stacey McEvoy, Russell Morgan, Mitchell Watt and Tom Cuddihy**



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What's ELRU's focus?

ELRU focuses on:

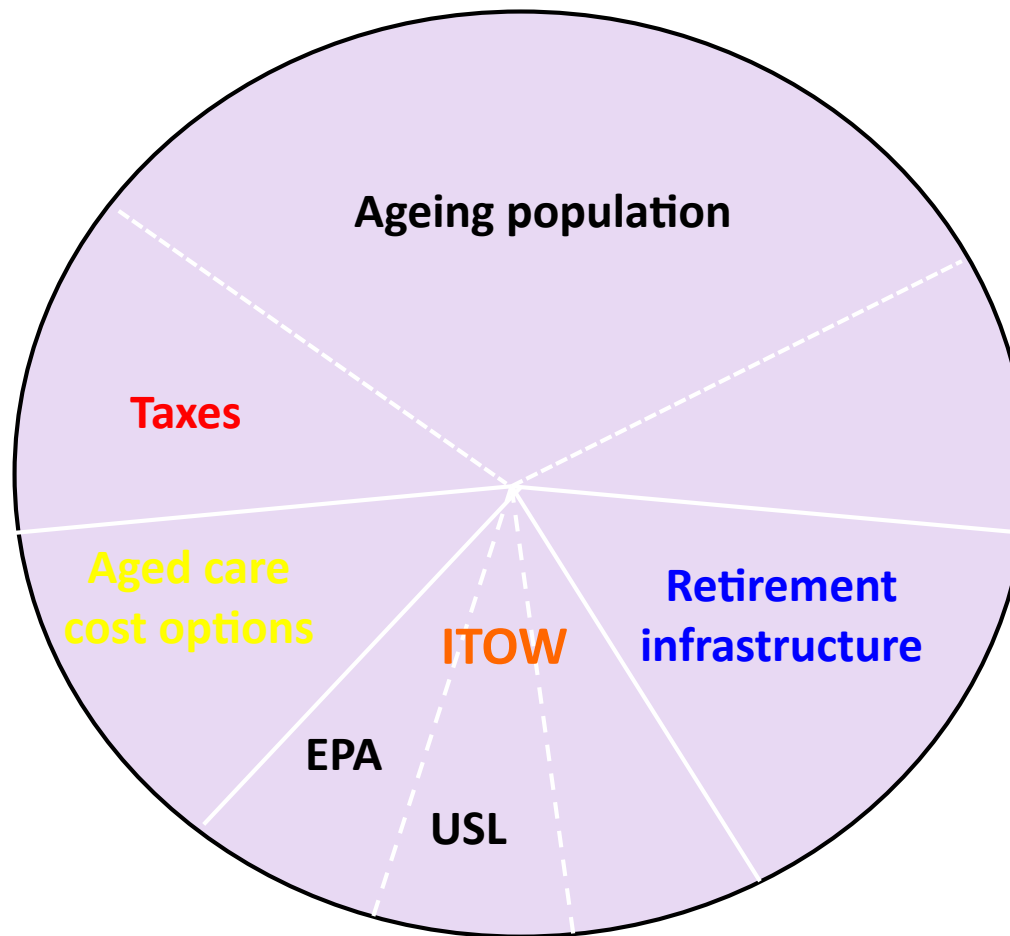
- ❖ economic consequences of laws;
- ❖ research into the dynamics between the performance of an economy or economies, the relevant laws, legal structures and systems and tax regimes.

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What's some of its current projects?

- ❖ Regulatory change affecting infrastructure:
 - Legal structures;
 - Taxes.
- ❖ Ageing population:
 - Intergenerational transfer of wealth (ITOW);
 - EPAs;
 - Uniform succession laws;
 - Aged care cost options;
 - Retirement infrastructure;
 - Taxes.

ELRU's Ageing population project



What's ELRU's interest in Enduring Powers of Attorney (EPAs)?

- ❖ Part of ELRU's Ageing population project and the Intergenerational transfer of wealth: legal & economic issues;
- ❖ EPAs are likely to have a significant effect on wealth transfer for economic performance;
- ❖ ELRU acknowledges the work done by others: avoid retracing what has been done;
- ❖ ELRU wants to come to its own conclusions.

19/9/2011

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Herald Sun

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Alarm at surge in children ripping off elderly parents

ULTIMATE BETRAYAL

Shelley Hadfield

GREEDY children are ripping off their vulnerable elderly parents at an alarming rate, leaving some destitute.

Powers of attorney are used as a "licence to steal", elderly parents are pressured into signing over their homes, or money is simply withdrawn from their accounts, it has been revealed.

A *Herald Sun* investigation has discovered a litany of shocking cases.

In Victoria, State Trustees is investigating 60 possible cases of financial abuse of elderly people by someone close to them. But it believes these are just the tip of the iceberg.

Recent cases include a widow who lost her house after her son encouraged her to sign it over for collateral for his business loan.

Left to live in rags of dead

AN ELDERLY widow has been left to live in dead people's clothes after her son lost her home in a business that turned bad, according to State Trustees.

State Trustees manager Steve Cowell said the man had been unable to get a loan to start his own business, and encouraged his mother to sign over her house to him. The son had power of attorney for his mother's affairs after her husband died.

Within nine months the business fell on hard times, the woman was moved into a nursing home, and the house was sold.

The woman is not eligible for Centrelink payments because she gave her house to her son.

State Trustees has been appointed as the woman's administrator, because she does not have the money to pay nursing home

Shelly Hadfield

fees and is being dressed in clothes left by the home's deceased residents.

"When you speak to the son, he had all the best intentions," Mr Cowell said.

"He does not understand that was his mother's asset, that she spent her life building. She trusted the son to do the right thing by her."

In another case, a son given power of attorney for his elderly mum decided he needed to protect her assets from his sister, with whom he had a bitter relationship, so he transferred the assets to his wife. The plan went well until he and his wife separated, leaving her the sole owner of all of his mother's assets, including her house and car.

Other recent examples seen by law firm Slater & Gordon include: A DAUGHTER who helped her mother to buy a house, after the elderly woman sold her own house. The daughter put the new property in her own name.

A WOMAN who discovered her daughter had been using her credit and Eftpos cards overseas.

AN ELDERLY woman who came out of a nursing home after a period of poor health to find a friend with power of attorney had put her house on the market and had cleared out the property. Slater & Gordon's Michael Clohesy urged people to pick someone they trust when granting a power of attorney, to limit it, and to make two nominees to keep an eye on each other.

Seniors Rights Victoria's hotline is 1300-368-821.

Ultimate betrayal spawned

Law firms receive numerous pleas for help. "I believe the real numbers are ... unreported," State Trustees manager Steve Cowell said. "Most cases are perpetrated by close family members. As a result it is a very silent crime, and one kept very much in the confines of the family."

Seniors Rights Victoria said 39 per cent of 695 people it advised in 2010-11 were seeking help over financial abuse. Sons were abusers in 29 per cent of cases, and daughters in 18 per cent.

Slater & Gordon solicitor Michael Clohesy said there was formal theft, where an enduring power of attorney was used as a "licence to steal", and informal theft, where money was taken from accounts or property stolen.

"It's actually really common,

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but it does not get reported. The poor parents are so embarrassed about it," Mr Clohesy said.

"It's amazing what people do. They think mum and dad are old anyway, they don't need the money, there's \$150,000 sitting in the account," he said.

Some cases were criminal, but often the only remedy was through civil litigation, he said.

Mr Cowell said many perpetrators felt entitled: "There's that view that mum's and dad's funds are mine."

About one in 10 State Trustees clients under VCAT protection orders are victims of financial elder abuse, some of it resulting from financial mismanagement.

There had been a steady in-

crease in cases in the past 15 years, as banks became less willing to lend and some people saw their elderly parents as an easy option for an interest-free loan.

Some were able to get the title to their parents' home transferred to them within 48 hours.

Some victims did not even understand what had happened, because of age and failing health.

Seniors Rights Victoria manager Jenny Blackey said the ageing population meant more financial abuse of parents.

The Elder Abuse Prevention Unit said in its 2007-08 annual report more than \$14 million had been reported stolen from elderly people that year, in Queensland alone. It estimated the total at closer to \$97 million.

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7 of 14 DOCUMENTS

Herald Sun (Australia)

September 19, 2011 Monday
1 - FIRST Edition

Herald Sun EDITORIAL

SECTION: ED; Pg. 24

LENGTH: 432 words

Families prey on parents

AUSTRALIA'S ageing population is becoming increasingly vulnerable to theft and fraud, the Herald Sun reports today.

The perpetrators, however, are not strangers, but members of their own families.

The elderly have become a prime target for unscrupulous children and grand children who are not prepared to wait until the assets are distributed upon death.

They are resorting to what authorities call financial **elder** abuse, and it has become an underlying concern across Australia.

State Trustees is probing 60 possible cases in Victoria, but manager Steve Cowell says there are many more that go unreported.

"Most cases are perpetuated by close family members. As a result the crime is a very silent crime, a hidden crime and one that is kept very much in the confines of the family," he says.

It is a sad indictment of the community that many of our defenceless elderly citizens are being targeted by close family members they have loved and above all, trusted.

Financial **elder** abuse is a shameful and insidious practice, and all the indications are that it is on the rise. In some cases it is unlawful and constitutes serious fraud, theft and misrepresentation.

As such the full force of the courts should be brought down on offenders.

It might also be time to broaden an education campaign for our elderly citizens on the dangers and pitfalls of putting at risk their hard-earned assets.

The tragedy is that many victims are unaware they have been ripped off until it is too late.

What's the aim of this investigation?

- ❖ To research the value of assets held by people aged over 65 years in Australia;
- ❖ To isolate the value of those assets under threat through the abuse of EPAs;
- ❖ To assess the effect such abuse may have on the asset transfer risks to elderly Australians and the wider community;
- ❖ To consider whether the legislative framework governing EPAs is now or in the future effective to curb that abuse and if not, what legislative and/or other changes should be made.

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What's ELRU's methodology?

- ❖ Understand the reasons why EPAs are needed;
- ❖ Understand whether that need will increase;
- ❖ Get a snapshot of the Australian public which may be affected;
- ❖ Isolate the \$ value of wealth held by such a group;
- ❖ Estimate the number of EPAs which may be abused;
- ❖ Isolate the \$ value of assets at risk;
- ❖ Conduct interviews with stakeholders;
- ❖ Conduct public forum on these issues;
- ❖ Assist QLS to conduct a survey of legal practitioners;
- ❖ Consider literature on these issues;
- ❖ Consider lessons from other jurisdictions;
- ❖ Consider possible changes to the EPA laws;
- ❖ Consider whether such changes would lessen the risk.



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Where's ELRU's investigation at?

- ❖ Early days;
- ❖ Responses to come;
- ❖ More fact finding.

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What has been shown so far?

Statistical snapshot of older people in Australia (65 & over)

- ❖ Need for an EPA
 - projected increase between 2010 and 2050 from 13.8% to 28%
 - projected % of people between 65 and 84 from 12% to 23%
 - projected % of people over 85 from 1.8% to 5.0%
 - longer and healthier lives
 - estimated in 2009 40% between 65 and 69 and 88% 90 and over had a disability
 - indicative of the need for an EPA
 - reported that in 2010 after the age of 65, likelihood of dementia doubles every 5 years and for people over 85 it goes to 1 in 4
 - estimate now is 250,000 and likely to rise to over 500,000
 - EPAs will be a major avenue for the administration of the affairs of many people

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What has been shown so far?

- ❖ Rate of uptake of EPAs:
 - 65 and over – 42%: QLRC Report, para. 16.8;
 - “Enduring powers of attorney should be compulsory” to avoid “disaster” (Figot, 2011);
 - “You must have a will and an EPA” advice.
- ❖ Assets
 - Public Trustee Annual Report 2010/2011 “ Value of agency clients assets under management”;
 - Concentration of wealth in older people;
 - 80% of 65 and over own their own home;
 - Estimate of wealth potentially available for transfer to increase to more than \$70 billion in 2030;

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Analysis of some contemporary data

- ❖ Elder Abuse Prevention Unit
 - Most victims aged 75+;
 - Number of referrals- 792 (2009); 863 (2010); 1029 (2011);
 - Most victims on pensions (74%); Self-funded (16.3%);
 - Value of assets abused \$108.7M (2011).

Analysis of some contemporary data

- ❖ Adult Guardian
 - Examines inappropriate asset management
 - 203 investigations
 - Total assets involved- \$11.9M

Analysis of some contemporary data

- ❖ Public Trustee
 - Average misappropriation- \$100,000;
 - Bulk of misappropriations by attorneys;
 - Misappropriations- shares, monies from bank accounts, land and shares in self managed funds;
 - Public trustee normally has to pursue funds;
 - High failure rate; funds disappointed; problems with evidence.
- ❖ Review of reported QCAT cases

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Two points of note from the Public Trustee response

- ❖ “It’s going to be mine so what’s wrong with an early inheritance”: a common response;
- ❖ “Clawback is hard”: a common outcome.

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The Right Balance

- ❖ Necessity to strike a balance between the need for safeguards and the availability of EPAs for financial matters: economic v social issues.
- ❖ Is the current balance right now and if so, will it remain that way?
- ❖ If not, is it a matter of simply changing appointee's attitudes to an EPA role?
- ❖ Or is it also time for a change in the law?

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What can be done?

- ❖ Change the law?
 - Overhaul the current qualifications for EPAs?
 - Formal qualifications for EPAs?
 - Registration by Public Trustee?
 - Notification to Public Trustee without registration?
 - Financial plan to Public Trustee on appointment and/or yearly thereafter?
 - Accounting to Public Trustee on revocation and periodically?
 - Expand powers of the Public Trustee?
 - Random audits by Public Trustee?
- ❖ More education/assistance?
 - Generally
 - On execution
 - Brochures
 - Courses
 - “Solicitors EPA Help Network”
- ❖ Necessity to avoid “heavy handedness” to deprive EPAs of their utility.
- ❖ Solution?

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One solution?

- ❖ Introduce US style filial responsibility laws?
- ❖ Originated in 17th century England (Walters, 2000);
- ❖ Legal responsibility to support one's elderly parents financially;
- ❖ Kill off most EPA abuse by adult children?
- ❖ "...the uniform national recognition and enforcement of the adult's filial responsibility to indigent parents is economically more efficient than having Social Security, Medicare and Medicaid bear the burden." (Walters, 2000);
- ❖ Reduce the numbers of parents in nursing homes (Walters, 2000);
- ❖ Privatised aged care costs?

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The important questions

- ❖ Would any of these possible changes lessen the risks?
- ❖ If we do nothing now, when will we revisit these issues?
- ❖ If there is to be no time line, then what triggers will apply?
- ❖ Is it time to debate/redebate filial responsibility laws?
- ❖ How would those laws affect other issues relevant to STEP?
- ❖ Why is there no national uniformity and recognition in EPA laws and what's the resultant costs?

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ELRU's Current Project

- ❖ “Enduring powers of attorney: Utility v. Risk – Economic consequences of getting the balance wrong”;
- ❖ Our present view:
 - community attitudes and the laws on EPAs have to change to lessen economic risks;
 - the balance is slowly being lost.
- ❖ Our hope is that this is not proved right in the future to the immense detriment to many and the loss of an important tool in ITOW.



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Remember ELRU

Experts in ...

... econometric investigation of the economic efficiencies of laws ...

... the dynamics between the performance of an economy, its law, legal structures, legal systems and tax regimes ...

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