



Family conflict, the older person and the Guardianship Division of NCAT

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Recent cases

- Dispute about sale of assets – father owns block of units – daughter wishes to sell for nursing home bond – son resisting the sale
- Dispute about access – many family members living in same house – one faction denying the other access visits to the mother within the house
- Exploitation – elderly woman with relatives overseas – financially exploited by carer
- Vulnerability/undue influence – elderly woman revokes previous enduring powers of attorney and enduring guardianship appointments – removes two daughters and appointed another – challenge to legal capacity

Disputes involving older people

- Concerns about the person at home but unable to assess
- Refusal of/cancellation of services
 - person not aware of risk
- Placement in aged care
 - person may not wish to enter into a nursing home
 - family member living rent-free
 - family disputes - which nursing home, sale of assets

Disputes involving older people – cont'd

- Sequestration/denial of access
 - Taking person from nursing home/not returning person
- Suspicion about use of money/powers of attorney/gifts/valuable items
- Longstanding conflicts and poor relationships
- Inheritance disputes – but not dead yet!
- Second marriages, life estates

How does a dispute end up in NCAT?

- Decision-making disability – dementia
- Informal arrangements not working
 - > Conflict between the older person and service providers
 - > Conflict between family members
 - > Abuse and exploitation
 - > Legal need for order e.g. sell a house, coercive accommodation function
- Application made by person with “a genuine concern for the welfare of the person”

What is the Guardianship Division?

- The NSW ‘super tribunal’

- Second largest Division of NCAT:

Consumer and Commercial Division	(81.8%)
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Guardianship Division	(15.8%)
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Administrative & Equal Opportunity Division	(1.2%)
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Occupational	(0.4%)
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- Receives about 10,000 applications year

* Figures from NCAT Annual Report 2016-2017

What can the Guardianship Division do?

- Appoint guardians (personal/lifestyle decisions)
 - > accommodation
 - > health care
 - > medical and dental consent
 - > services
- Appoint financial managers
- Review guardianship/financial management orders
- Review enduring powers of attorney & enduring guardianship appointments
- Consent to treatment

How does the Tribunal operate?

- Guardianship principles
 - > Welfare and interests of the person paramount
 - > Protect from abuse and exploitation vs. maximise freedom

Older people in the Guardianship Division

- Older people – the largest area of work

Age	% of applications (2016-2017)
Over 65	61%
Over 85	23%

* Figures from NCAT Annual Report 2016-2017

Disability: dementia

- Most common disability is dementia

Type of disability	% of applications (2016-2017)
Dementia	42%
Intellectual disability	20%
Mental illness	15%
Brain injury/neurological	14%

* Figures from NCAT Annual Report 2016-2017

Steps before NCAT

- Planning ahead
 - > enduring powers of attorney
 - > enduring guardianship appointments
 - > advance directives
- Other informal arrangements – Centrelink nominee, joint signatory on bank account
- Mediation of disputes – some considerations:
 - > vulnerability/suggestibility
 - > coercion / undue influence / pressure
 - > older person changing alliances
 - > want to maintain the peace, distressed by conflict
 - > techniques to maximise capacity
 - > welfare and interests / public interest considerations