

SUNCOAST COMMUNITY LEGAL SERVICE INC  
PRESENTS

# PIANO FORTE

A COMMUNITY LEGAL  
EDUCATION RESOURCE GUIDE



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## A COMMUNITY LEGAL EDUCATION RESOURCE GUIDE

In September 2016, Suncoast Community Legal Service toured the play *Piano Forte* to community theatres across the Sunshine Coast. Following these live performances, 20 minute Q&A panel style discussions were conducted, lead by a staff member as facilitator.

Our panel included a lawyer with expertise in elder law and the cast of three actors.

To begin, the facilitator introduced all members of the panel and asked for personal and professional reflections on the play and its content. Following this, an opening legal question was posed to the lawyer before inviting questions from the audience.

This resource was used to guide the discussion with audience members using selected questions from the suggestions detailed.



This guide has been proudly supported by Legal Aid Queensland's Community Legal Education Collaboration Fund and was developed by Suncoast Community Legal Service Inc in collaboration with Uniting Care Community and Sundale Ltd.

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# ABOUT THE PLAY

*PIANO FORTE* is a legal education play written by Toni Wills and developed in partnership with the Suncoast Community Legal Service Inc. The play uses a fictional narrative form to highlight the subtle way elder abuse can occur, in addition to exploring the role and responsibilities of an Enduring Power of Attorney.

The game show scenes throughout the plot contain legal information of benefit to both the character on stage and the live audience.

Development of the play is based on the general principle that ***all people have a right to live dignified, self-determined lives, free from exploitation, violence and abuse and that these rights do not diminish with age.***

Additionally, the play seeks to explore whether people appointed to the role of an Enduring Power of Attorney have sufficient knowledge of the nature of the appointment and the duties and responsibilities involved.

## SYNOPSIS OF PLAY

78 year old Eliza is a widow living alone in her own home. Eliza is estranged from her only daughter, Ruth, but her grandson, Robert has the responsibility of keeping an eye on her and is also her sole Enduring Power of Attorney.

Robert's wife, Lucy is pregnant and wants him to spend less time caring for Eliza and more time earning money and preparing for the arrival of their baby. If she could only convince Robert to put Eliza in Aged Care, her aspirations of having the perfect life would finally be attainable.

When Eliza becomes incapacitated in a coma, Robert must act as her Attorney – a role he doesn't fully understand. Uncertain whether Eliza will survive and with increasing pressure from Lucy to buy a house they can't afford, Robert makes a decision to take \$50,000 out of Eliza's bank account and attends an auction.

Following the house purchase, Eliza discovers Robert's deception. The legal information she has gained from the game show scenes give her the knowledge to call his actions out as 'elder abuse' and the confidence to confront him and demand her money back.

The money is returned to Eliza but from an unexpected source. However, Robert still stands to lose everything he holds dear.

Eliza then prepares to move to Aged Care but this decision is made on her own terms, not anyone else's.

# USING THIS GUIDE

## ABOUT THIS RESOURCE GUIDE

This resource guide is to be used following a viewing of a live performance or video screening of *Piano Forte*.

The document aims to assist facilitators to conduct Q&A style discussions about the key topics raised in the play.

Community organisations and other groups using this guide will be facilitating discussions for a range of purposes and are encouraged to tailor the guide to their individual needs, however the presence of a lawyer with some experience in elder law is highly recommended.

Please note that this resource is intended as a guide only. The format and length of Q&A discussions following the viewing of the play is at the facilitator's discretion and will also be dependent on the level of audience participation.

**The contents of this resource kit should be regarded as legal information only and not legal advice. Legal advice happens when a client speaks to a lawyer one on one in a confidential setting.**

## INSTRUCTIONS FOR USE

There are three key issues in the play which are presented for discussion in this guide.

- **THE ROLE OF AN ENDURING POWER OF ATTORNEY**
- **WILLS/INTESTACY**
- **ELDER ABUSE**

Each key issue is detailed as a heading in this document.

Each heading includes basic information, a series of conversation starters and some topics for further discussion (if required).

It is not intended that all the material in this guide will be used during the Q&A session – some facilitators may wish to share the basic information with the audience and some not. Feel free to add discussion topics and questions or expand on any of the existing conversation starters.

To assist with facilitation, each conversation starter has a range of responses listed denoted by check boxes. The responses may come from the audience or can be used as prompts by the facilitator to engage the audience.

A facilitator can choose to check the box when the material has been covered.

In the conclusion section, there are some suggestions on how to end or wind up the discussion and, importantly, information on where people can seek legal help.

# ISSUE 1

## THE ROLE OF AN ENDURING POWER OF ATTORNEY

### *Basic Information*

An Attorney is appointed to make financial and/or personal decisions on someone's behalf. A person can nominate their Attorney to begin making financial decisions immediately – even if they still have capacity. It can also take effect upon a certain date or occasion (such as when capacity is lost).

The power of an Enduring Power of Attorney to make personal and health decisions commences only when the older person or Principal loses capacity.

It is recommended that a person appoints more than one attorney to reduce the risk of abuse.

## CONVERSATION STARTERS

### **#1** *In the play, how has Robert misunderstood the role of Enduring Power of Attorney?*

#### *Potential Responses –*

- Robert is making personal decisions for Eliza before she loses capacity
- Robert doesn't consult her about decisions; rather he substitutes his decision for Eliza's instead of supporting her decision-making process
- There is no legal obligation for Robert to put his life 'on hold' to care for her (this is his choice to do so) and there may be other support options that would have suited their situation better (such as in-home care)
- Robert doesn't act honestly (he gifts himself the money without Eliza's knowledge)
- Robert steals Eliza's money for his own purposes (the principle that an attorney must keep Eliza's property separate from his own)
- Despite Robert's appointment as Attorney, the money is Eliza's not Robert's

### **#2** *In the play, why can Eliza revoke Robert's appointment as her Enduring Power of Attorney?*

#### *Potential Responses –*

- The behavior of Robert
- Robert stealing Eliza's money
- Abuse of trust
- Failure in Robert's duty as Attorney

**NOTE - Eliza can choose to revoke at any time as long as she has capacity when she does so.**

### #3 ***Are people appointed as Enduring Powers of Attorney given education and training about their role?***

#### ***Potential Responses -***

- No formal training is given to Attorneys despite the very high degree of responsibility over someone else's life that the power confers.
- Many people take on the role of an Enduring Power of Attorney because they are asked by a loved one to do so. They may understand the bare bones of the role but they often don't turn their mind to how they would make such high stakes decisions in practice.
- Community and legal organisations are currently advocating to the Queensland State Government for education and training of Attorneys to be included as part of the legislative framework.
- In Queensland, the current forms for appointing an Enduring Power of Attorney (both short and long) have a number of information pages contained within the form. The Principal and the Attorney are expected to read and understand this information before signing. However while the person witnessing the Power of Attorney has to certify that the Principal understands the nature of the document, there is no requirement for the signature of the person accepting the appointment to even be witnessed.

## **FURTHER DISCUSSION TOPICS**

- DECISION MAKING PRINCIPLES:** The play uses the metaphor of parenthood to talk about the accountability of having two people looking after your interests when you are not able to do so for yourself. Whilst there are many parallels between the parenting role and an Attorney's role, there are also differences. Parents are expected to make decisions which they personally believe are in the 'best interests' of the child. Attorneys have a more difficult job, with the decision-making principles in the Guardianship and Administration Act 2000 (Qld) requiring decision-makers to **support** the person to make their own decisions where possible, to involve them in other decisions affecting their life and ultimately to seek to make the decision the person themselves would have made had they had capacity.
- ROLE OF SPOUSE:** While a big 'take home' message from the play is to consider appointing more than one person as Power of Attorney, it is generally considered that people who have already appointed their spouse as their Attorney can trust that person to act alone. However they should still think about adding joint 'successive' Attorneys whose role begins if the spouse dies or loses capacity themselves.
- WITNESSING DOCUMENTS:** In Queensland, the Enduring Power of Attorney form is required to be witnessed by an eligible witness – in practice, this is usually a lawyer, Notary Public, Justice of the Peace or Commissioner of Declarations not related, a paid carer or health provider of the Principal or the Attorney. The witness must be satisfied that the Principal understands the nature and effect of the document.

# ISSUE 2

## WILLS/INTESTACY

### *Basic Information*

A will is the best way to ensure our assets are distributed according to our wishes when we die. It allows us to nominate who are the beneficiaries of our estate and what those beneficiaries will receive. A will also nominates the executor/s of the estate.

Without a will, the rules of intestacy apply. This may increase the time and cost associated with finalising the estate and create potential conflict between beneficiaries.

## CONVERSATION STARTER

### **#1** *When should a person review their will?*

#### *Potential Responses -*

- The current suggestion is a review every 3 years or when circumstances change significantly (marriage, divorce, births, deaths, retirement etc)
- The Public Trustee of Queensland refers to a will as a 'living document' implying that your will should change as your life changes.

### **#2** *In the play, a number of characters have different issues with wills. What were they?*

#### *Potential Responses -*

- Eliza has a will to avoid any potential family conflict and to have certainty over who receives her estate.
- Robert is thinking of getting a will for the first time as he is having a baby and buying a house.
- Joyce died without a will and her children received the estate. As she was not close to her children, this may not have been her first choice – she may have wished to give money to charity or her piano to a close friend, however without a will these wishes are not enforceable.
- Ruth inherited a piano from her father, George, in his will. Of course once the piano passes to Ruth she can do what she likes with it, but when she sells the piano it still causes a family rift.

## FURTHER DISCUSSION TOPICS

- EXECUTORS: The play strongly promotes the idea of appointing more than one Enduring Power of Attorney, partly so that there is a check and balance on the Attorney's power and less temptation to benefit themselves. A similar concept applies when appointing an Executor who will have the job of administering the will. If the same person who was Enduring Power of Attorney for financial matters subsequently becomes Executor of the estate upon death any inappropriate dealings with the finances are much less likely to be exposed.

# ISSUE 3

## ELDER ABUSE

### *Basic Information*

Elder Abuse is defined as 'any act within a relationship of trust which results in harm to an older person'. There are many types of elder abuse

- Financial
- Emotional
- Psychological
- Social
- Sexual
- Physical
- Neglect

It is noted that often more than one type of abuse applies to a situation. The most commonly reported forms of abuse are financial, emotional and psychological.

The most common perpetrators of the abuse are family members. Risk factors for abuse include social isolation, reliance or dependency on one person, carer stress and family conflict.

## CONVERSATION STARTER

### **#1** *Can you identify the types of Elder Abuse presented in the play?*

- Financial:** Robert using his power as an Enduring Power of Attorney to use Eliza's money for his own purposes
- Psychological:** Robert placing pressure on Eliza about where she should live. Putting her name on a waiting list for Aged Care without her knowledge even though she still has capacity to make her own decisions
- Emotional:** Placing blame on the older person for the responsibility of their care\*

\* This is only touched on towards the end of the play when Robert is justifying his actions, however blaming an older person in this context is a form of emotional abuse.

### **# 2** *The play identified a number of ways a person can protect themselves against financial elder abuse. What were they?*

- Being able to identify that the financial exploitation is a legal matter.
- Understanding the limits on the power of an Enduring Power of Attorney.
- By appointing two or more attorneys acting jointly, or even severally, to enhance accountability.

### **#3 What other ways can a person protect themselves against financial elder abuse?**

- Don't provide your pin or your internet banking details to anyone.
- Don't permit anyone to register you for internet banking.
- Ensure you read your bank statements, and if you have any questions go to your bank.
- Prior to loaning money, moving in with a family member, going into aged care or reviewing your Enduring Power of Attorney, make sure you get independent legal advice.
- Understand that independent legal advice is advice from a solicitor of your choosing whom you see alone and not in the company of a family member.
- Check with Centrelink before loaning or gifting money to family members as it may affect your pension.
- Ensure any agreement between family members is clearly outlined in writing.
- Monitor your capacity and obtain regular capacity assessments from your GP.
- Review your Will and Enduring Power of Attorney every 3 years.
- Join one or more social groups and stay active to avoid social isolation.
- Report concerns about potential abuse to a lawyer, a police officer or the Elder Abuse Prevention Unit.

### **# 4 When it comes to finances, what is the difference between a 'family matter' and a 'legal matter'?**

- It is a family issue when...
  - Money is given freely as a gift by an older person to a family member without pressure or undue influence and the older person clearly understands the nature and effect of their decision to gift their money
  - Money is loaned freely without pressure and with a clear understanding of how and when the money will be paid back. It is always best to have this in writing.
- It is a legal issue when ....
  - Your Attorney is using your money without consulting you
  - Someone takes your money without your permission
  - Someone does not repay money when they said they would
  - Someone pressures you to make unwanted changes to a will or Enduring Power of Attorney
  - Someone promises care in exchange for financial help (or lodging), then doesn't provide the care
  - Someone goes back on their word about living arrangements and it puts you out of pocket.

**NOTE - This can be a tricky distinction for older people as elder abuse is most commonly perpetrated by family members.**

## FURTHER DISCUSSION TOPICS

- **LEGAL RESOLUTION OF ELDER ABUSE MATTERS:** Prevention is always better than the cure, as affecting a resolution can be a stressful and time-consuming process. Resolution may be achieved by
  - Criminal Action - complaint to Public Guardian (or equivalent in other states), who may refer to Police.
  - Criminal Action - complaint to Police who have a discretion whether to investigate and charge perpetrators.
  - Civil Action - in financial matters, there may be a case under the law of contract or in equity.
  - Mediation/ Alternative Dispute Resolution - through private providers or the Department of Justice and Attorney General (or equivalent in other States)
- **PRESUMPTION OF ADVANCEMENT:** The common law principle of 'presumption of advancement' will apply where arrangements are made between a parent and adult child – ie. that any advance of money will be presumed to be a gift rather than a loan unless there is evidence (eg. written loan agreements) to the contrary.
- **REAL LIFE CASE STUDIES:** If a lawyer is present, he/she may be able to speak of case studies known to them.

# CONCLUSION

## ***Some suggested approaches to ending the discussion***

- Encourage participants to seek more information/advice on any issues arising out of this viewing and discussion
- Ask the audience where they turn to get information when they feel something is 'not right'?
- Highlight the legal and support services available to people

## ***Legal and Support Services in Queensland***

- Elder Abuse Helpline (QLD) – 1300 651 192**  
A telephone support and referral service for seniors at risk and/or experiencing elder abuse.
- Seniors Legal Assistance and Support Service – (07) 3214 6333**  
This service provides free legal and social work support for seniors experiencing elder abuse, mistreatment or financial exploitation.
- Local Community Legal Services**  
These locally based service provides free legal advice and referral usually by appointment. To find a community legal service in your area, visit <http://communitylegalqld.org.au/>
- Mediation Services**  
There are a number of mediation services available. Private Mediators offer mediation services for a fee. The Dispute Resolution Centres of the Department of Justice and Attorney General (QLD) offer free mediation services. <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/mediation>
- Legal Aid Queensland - 1300 65 11 88**  
LAQ give legal help to financially disadvantaged people about criminal, family and civil law matters. [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)