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Has Access to Compensation Improved Outcomes for Victims of Financial Elder Abuse in Victoria?

Presenter: Luke Wright

OFFICIAL

State Trustees Limited acknowledges the Traditional Owners of Country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the Elders past and present.

Original artwork 'Four Sisters Coming Together' by Melissa Bell 2023.

Ten Years On: Has Access to Compensation Improved Outcomes for Victims of Financial Elder Abuse in Victoria?

Purpose of this presentation

This presentation examines whether legislative reforms have improved outcomes for older Victorians experiencing financial elder abuse by:

- **Looking back** at findings from a 2016 review of financial elder abuse cases encountered by State Trustees.
- **Examining what has changed** following the introduction of compensation powers under the *Powers of Attorney Act 2014* and the *Guardianship and Administration Act 2019*.
- **Comparing recent case outcomes** to determine whether victims now have better access to financial recovery and justice.
- **Identifying the lessons** for practitioners, decision-makers and policy makers working to prevent and respond to financial elder abuse.

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State Trustees: The public trustee of Victoria

- Victoria's public trustee, serving Victorians for more than 80 years.
- Provides financial administration, trustee and executor services, and prepares wills and enduring powers of attorney.
- Commonly appointed by VCAT as administrator for adults with impaired decision-making capacity, pursuant to the Guardianship & Administration Act, 2019.
- Investigates suspected financial abuse and, where appropriate, pursues recovery of misappropriated funds.

Financial Administration – Quick facts

- 👥 **~9,000** clients under (VCAT appointed) financial administration
- ⚖️ **~900** new VCAT appointments annually
- 👴 **36%** of clients are aged **65 years and over**

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A decade of reform: From recognition to compensation.

Year	Milestone	Why it Matters
2010	**Parliamentary Inquiry into Powers of Attorney**	Identified that victims faced significant barriers recovering misused funds and obtaining compensation. *"The Committee heard that it is currently very difficult for victims of abuse of powers of attorney to recover assets or seek compensation."*
2012	**Victorian Law Reform Commission – Guardianship Final Report**	State Trustees, Seniors Rights Victoria, the Office of the Public Advocate and others advocated for a simpler, lower-cost pathway to recover misused funds through VCAT rather than the courts. *"Recovery through the courts was often costly, complex and unrealistic."*
2015	**Powers of Attorney Act 2014 commences**	Introduced VCAT compensation powers and new offences relating to the dishonest use or misuse of powers of attorney.
2016	**State Trustees' Baseline Review**	Review of financial elder abuse matters arising from VCAT appointments. Key question: Could victims realistically recover financial losses?
2020	**Guardianship and Administration Act 2019 commences**	Compensation powers and offence provisions to administrators.

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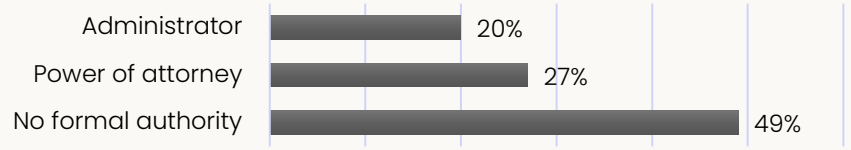
Outcomes of State Trustees' 2016 review (n=219)

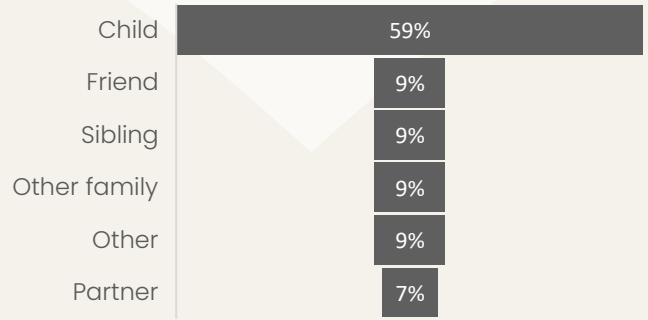
Who are the victim-survivors and alleged perpetrators?

Victim-survivors	Alleged perpetrators
56% Female	55% Male

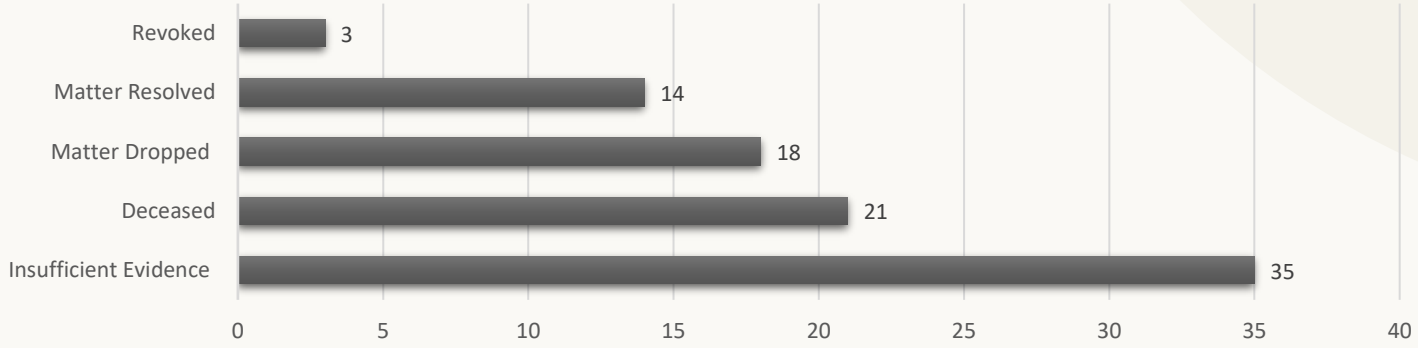
What legal authority did the alleged perpetrator have?



Relationship to the victim-survivor



Case outcomes (%)



Key Findings

•56% of victim-survivors were women.

•Children accounted for 59% of alleged perpetrators.

•Almost half (47%) of alleged perpetrators had a formal legal authority over the person's finances.

• In 14% of cases the matter was resolved, and money/assets were recovered.

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Outcomes of State Trustees' 2026 review (n=1119)

Who are the victim-survivors and alleged perpetrators?

	2016	2026
Victim-survivors	56% Female	60% Female
Alleged perpetrators	55% Male	51% Male

What legal authority did the alleged perpetrator have?

Relationship	2016 (%)	2026 (%)
Adult children	59%	72%
Other family	9%	10%
Friends/carers	9%	8%
Partners	7%	4%

Case outcomes (%)

Outcome	2016 (%)	2026 (%)
No evidence	39%	37%
Deceased	23%	21%
Funds/assets recovered	15%	11%
Confirmed - unable to pursue	20%	21%
Confirmed - did not pursue	(no data)	8%
Authority revoked	3%	3%

Relationship to the victim-survivor

Relationship	2016 (%)	2026 (%)
Adult children	59%	72%
Other family	9%	10%
Friends/carers	9%	8%
Partners	7%	4%

Key Findings

•Adult children were responsible for 72% of confirmed financial elder abuse matters, up from 59% in 2016.

•The profile of perpetrators has not fundamentally changed over the last decade.

•Financial elder abuse continues to occur primarily within trusted family relationships rather than through friends or strangers.

• Decrease in funds/assets recovered compared to 2016.

• 'Confirmed – did not pursue' = financial elder abuse confirmed, but the person's 'will and preference' was not to pursue recovery.

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Recovery in cases where financial abuse was confirmed.

Authority	Funds/ assets recovered	Unable to pursue (Legal reasons)	Did not pursue (will and pref.)	Total
Informal	35	111	46	192
POA	46	56	23	125
Administrator	31	40	7	78

Authority	Positive Outcome Rate
Informal	18%
POA	37%
Administrator	40%

- Half of confirmed abuse matters involved attorneys or administrators, but informal arrangements remain the single largest category.
- Matters involving attorneys and administrators were approximately **twice as likely to achieve a positive outcome** as matters involving informal arrangements.
- Compensation powers give victims options to remedy financial elders abuse.
- There are still evidentiary hurdles to seeking compensation.
- Sometimes, despite the evidence, the older person does not want to take action to recover their funds/assets.

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Compensation claim against a VCAT appointed Administrator

Case Study: Ms Aung's Story *(pseudonym)*

Date	Key Event
December 2020	Diagnosed with dementia.
February 2021	VCAT appointed her son as administrator.
January 2023	Moved into permanent residential aged care.
May 2024	Following irregularities identified in annual accounts lodged with VCAT, the son's appointment was revoked, and State Trustees was appointed administrator.
May – November 2024	State Trustees reviewed financial records and identified **$33,420** in unexplained ATM withdrawals and **$83,000** transferred to the former administrator. Despite repeated requests, no evidence was provided that the funds were used for Khin Mar Aung's benefit.
December 2024	State Trustees commenced compensation proceedings under **s.181 of the Guardianship and Administration Act 2019**, seeking **$116,420**. The application included a detailed Statement of Claim and schedule of transactions.
January 2025	VCAT held a directions hearing and gave the former administrator two months to respond and provide supporting evidence.
May 2025	After considering the evidence, VCAT ordered the former administrator to **pay $29,880 compensation** for losses caused while acting as administrator.

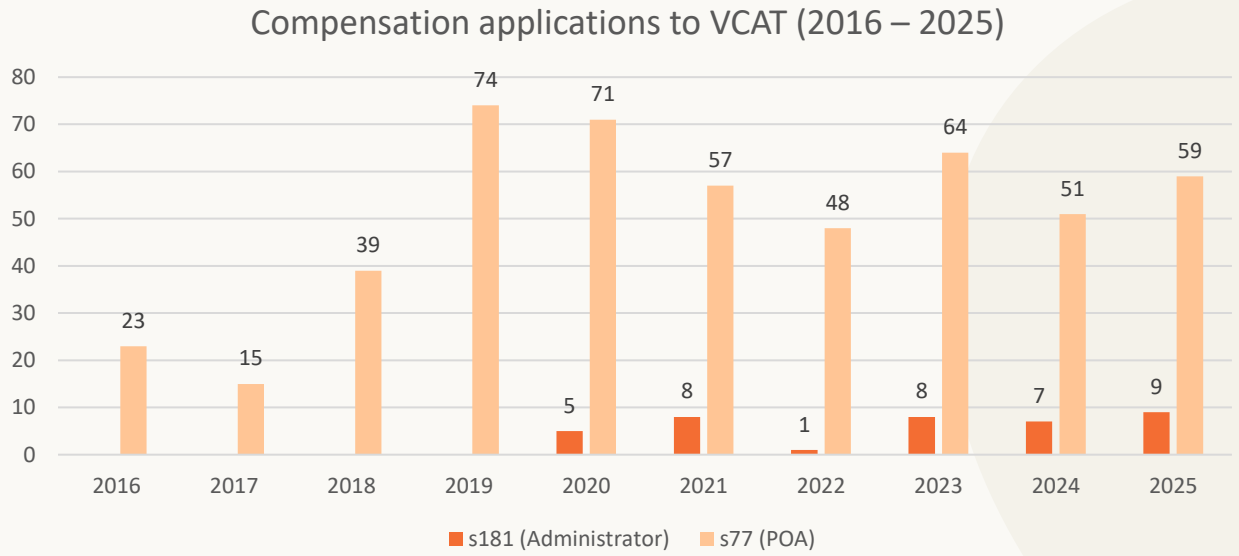
Compensation claim against an Attorney

Case Study: Mr. Jones *(pseudonym)*

Date	Key Event
Jul-03	Mr Jones appoints his sister Mary and her partner as attorneys under an Enduring Power of Attorney.
Jul–Nov 2016	Mr Jones is diagnosed with mixed dementia and entered permanent residential aged care.
Mar-17	Attorney (Mary) applies to VCAT alleging concerns about financial management and asking for reimbursement of expenses. Mary's partner never uses his powers.
May-17	Mary withdraws $25,000 from Mr Jones' account while VCAT proceedings are underway, claiming reimbursement.
Jul-17	**VCAT revokes the Enduring Powers of Attorney** and appoints State Trustees as administrator.
2017–2018	State Trustees investigates the transactions. Initial view changes after evidence confirms the $25,000 came from Mr Jones' term deposit.
Oct-18	**VCAT authorises State Trustees to commence compensation proceedings** against the former attorney.
Dec-18	**Mr Jones dies.** The compensation application continues through the executor/beneficiary of the estate.
Aug-19	VCAT hears the matter and finds the former attorney breached her duties under the Powers of Attorney Act 2014.
Sep-19	**VCAT orders the former attorney to repay $25,000** to Mr Jones's estate as compensation.

Has the law been used?

Compensation applications and convictions offences since reform



Offences for dishonest use of Powers of Attorney (2016 -2025)

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
POA Offence convictions	0	1	2	2	1	0	1	6	1	58
Number of people convicted	0	1	≤3	≤3	1	0	1	≤6	1	≤3

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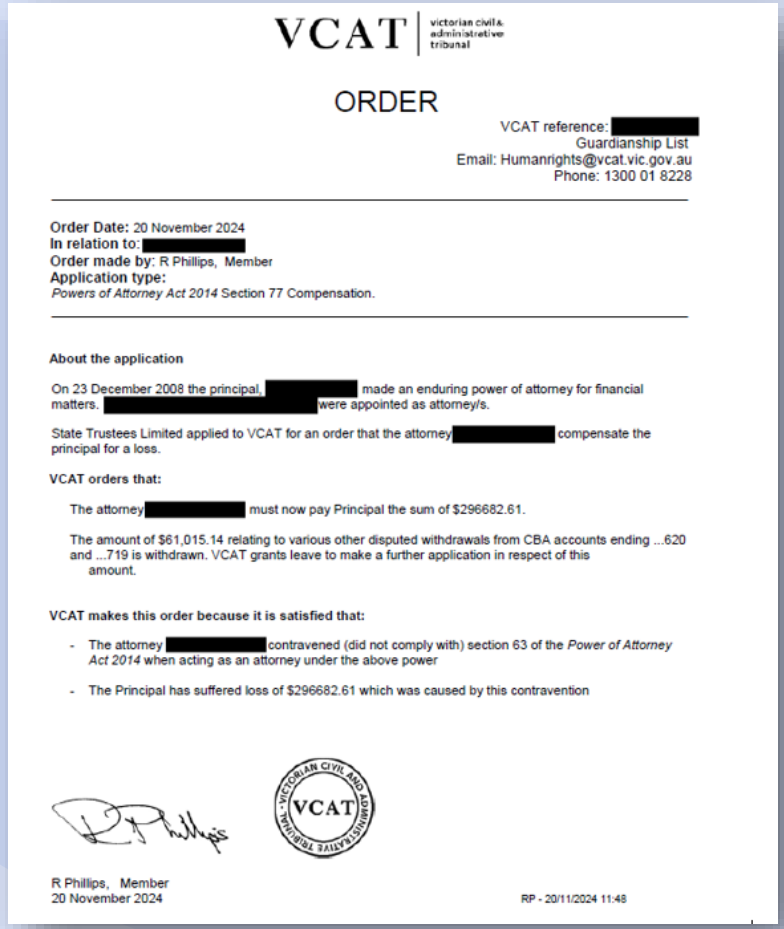
Concluding remarks

- Compensation powers under the **Powers of Attorney Act 2014** and **Guardianship and Administration Act 2019** have created a practical pathway for victims to seek recovery through VCAT.
- Victims now have access to a **lower-cost, more accessible forum** than traditional court proceedings.
- **The reforms are being used** - Compensation applications are regularly being brought under both s.77 and s.181.
- **Evidentiary hurdles** remain substantial—recovery often depends on obtaining financial records, capacity evidence (POAs) and proving the loss.
- **A compensation order is not the same as compensation recovered.** VCAT can determine liability and make compensation orders, but enforcement may still require action through the Magistrates' Court.



VCAT | victorian civil & administrative tribunal

ORDER

VCAT reference: [redacted]
Guardianship List
Email: Humanrights@vcat.vic.gov.au
Phone: 1300 01 8228

Order Date: 20 November 2024
In relation to: [redacted]
Order made by: R Phillips, Member
Application type:
Powers of Attorney Act 2014 Section 77 Compensation.

About the application

On 23 December 2008 the principal, [redacted] made an enduring power of attorney for financial matters. [redacted] were appointed as attorney/s.

State Trustees Limited applied to VCAT for an order that the attorney [redacted] compensate the principal for a loss.

VCAT orders that:

The attorney [redacted] must now pay Principal the sum of $296682.61.

The amount of $61,015.14 relating to various other disputed withdrawals from CBA accounts ending ...620 and ...719 is withdrawn. VCAT grants leave to make a further application in respect of this amount.

VCAT makes this order because it is satisfied that:

- The attorney [redacted] contravened (did not comply with) section 63 of the *Power of Attorney Act 2014* when acting as an attorney under the above power
- The Principal has suffered loss of $296682.61 which was caused by this contravention

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL VCAT

R Phillips, Member
20 November 2024

RP - 20/11/2024 11:48

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Strengthening Victoria's Response to Financial Elder Abuse. What next?

1. Extend civil recovery options beyond formal decision-makers?

- Existing compensation powers focus on attorneys and administrators.
- Many confirmed abuse matters involve people acting under **informal arrangements** without legal authority.

2. A National Register of Powers of Attorney

- Improve transparency and verification of appointments.
- Enable banks, aged care providers and government agencies to confirm authority quickly.

3. Greater monitoring and reporting by financial institutions

- Strengthen identification of unusual transactions and financial exploitation.
- Encourage consistent referral pathways where financial abuse is suspected.

4. Dedicated Adult Safeguarding Bodies

- Provide specialist investigation and intervention powers.
- Coordinate responses across legal, health, banking and community sectors.

Thank you

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