**Ms Sabina Wynn**

The Executive Director

Australian Law Reform Commission

GPO Box 3708

Sydney NSW 2001

Email: elder\_abuse@alrc.gov.au

To the Australian Law Reform Commission,

We are writing as students from the Griffith Law School who have completed a Law Reform course run by Associate Professor Kieran Tranter. This course has introduced us to the intellectual and political heritage of Australian law reform, the institutions and agents facilitating reform, and the different approaches and methods to reforming law. As our final piece of assessment for the course, our group chose to write to the Commission about the inquiry on Protecting the Rights of Older Australians from Abuse.

This submission aims to analyse the current laws and problems, and propose a number of reforms to be considered in this inquiry. We provide a number of cases, articles, studies and statistics to show the inadequacy of the current laws, and suggest reforms that should be considered as changes recommended by the Commission on this topic. In particular, we recognise the importance of establishing a uniform response across state jurisdictions to prevent and mitigate the occurrence of elder abuse from a human and social rights perspective.

We hope this submission provides a useful and thought-provoking contribution to the Commission’s inquiry into elder abuse.

Kind regards,

Annie Shum

Cori Fitzpatrick

Rene Jurkov

Ben Carruth

Nina Laskowski

P.S. The Commission is welcome to contact the Griffith Law School through Associate Professor Kieran Tranter if there are any questions, clarifications or issues regarding this submission.

**Dr Kieran Tranter**

Associate Professor

**Griffith University Submission to the Australian Law Reform Commission on Protecting the Rights of Older Australians from Abuse**

Issues Paper 47

June 2016

Annie Shum

Ben Carruth

Cori Fitzpatrick

Nina Laskowski

Rene Jurkov

Table of Contents

[Introduction 3](#_Toc454527061)

[Scope of this Submission 3](#_Toc454527062)

[Extent of the Problem 4](#_Toc454527063)

[Submission Issues and Recommendations 6](#_Toc454527064)

[Submission Issues 6](#_Toc454527065)

[Recommendations 6](#_Toc454527066)

[ISSUE 1: Lack of Consolidated Approach to Responsibility in Response to Incidents of Elder Abuse 7](#_Toc454527067)

[Current International Initiatives in Elder Abuse Protections 7](#_Toc454527068)

[Current National Initiatives 7](#_Toc454527069)

[Benefits of a State-Based Response 10](#_Toc454527070)

[Burden on Independent Organisations and Disjointed Regimes Dealing with Elder Abuse 11](#_Toc454527071)

[Conclusions to Issue 1 12](#_Toc454527072)

[Recommendations in Response to Issue 1 12](#_Toc454527073)

[ISSUE 2: The Suitability of Current Definitions and Conceptions of Elder Abuse 13](#_Toc454527074)

[What is Elder Abuse? 13](#_Toc454527075)

[A Definition that Considers the Autonomy of Older Australians, Ageism and Social Rights Perspectives 15](#_Toc454527076)

[Elder Financial Abuse or Financial Abuse? 16](#_Toc454527077)

[ISSUE 3: Inadequacy of Current Legal Protections 19](#_Toc454527078)

[Current Legal Measures for Elder Abuse 19](#_Toc454527079)

[Inadequacies of Current Civil Measures 19](#_Toc454527080)

[Inadequacies with Current Criminal Measures 20](#_Toc454527081)

[The Effectiveness of Criminalisation 21](#_Toc454527082)

[Conclusions in Response to Issue 3 22](#_Toc454527083)

[Recommendations in Response to Issue 3 22](#_Toc454527084)

[Appendices 23](#_Toc454527085)

[Appendix 1 23](#_Toc454527086)

[References 26](#_Toc454527087)

[A. Articles/Books/Reports 26](#_Toc454527088)

[B. Cases 28](#_Toc454527089)

[C. Legislation 29](#_Toc454527090)

[D. Treaties 29](#_Toc454527091)

[E. Other 30](#_Toc454527092)

Elder Financial Abuse

# Introduction

1. This submission is in response to the new inquiry by the Australian Law Reform Commission (‘ALRC’) regarding elder abuse announced by the Attorney-General, Senator the Hon George Brandis QC on 24 February 2016 titled Protecting the Rights of Older Australians from Abuse.[[1]](#footnote-1)
2. We believe elder abuse is a growing concern for all Australians as the number of older individuals in Australia is continuing to increase rapidly. According to the statistics gathered by the Australian Bureau of Statistics (‘ABS’), individuals aged 65 years and over increased from 11.8% to 14.7% in the last 20 years,[[2]](#footnote-2) with 3.5 million elderly people accounted for in 2014.[[3]](#footnote-3)
3. The most recent Intergenerational Report projects that that the number of Australians aged 85 and over will more than double by 2055.[[4]](#footnote-4) This emphasises the continued increase of the average life expectancy and with increasing numbers of pensioners and seniors, the occurrence of elder abuse is expected to continue to rise if vulnerable older Australians are not supported within the confines of law.

## Scope of this Submission

1. Although the ALRC’s inquiry will consider all existing protections for older persons from abuse in current Commonwealth laws and frameworks, this submission will focus on the regulation of financial elder abuse.[[5]](#footnote-5) This submission will be focusing on financial abuse as recent literature suggests that even with estimated underreporting, financial abuse is the most common form of abuse older people suffer from in Australia.[[6]](#footnote-6)
2. There is no uniform legal definition of financial abuse across Australian jurisdictions. However, organisations and bodies such as World Health Organisation (‘WHO’) and the UK Department of Health have provided outlines of defining elements of financial abuse. These are elements are inclusive of, ‘the illegal or improper exploitation or use of funds or other resources of the older person,’[[7]](#footnote-7) and the ‘theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.’[[8]](#footnote-8)
3. The current inquiry is of a national concern. However, solutions must be enacted by State Governments due to jurisdictional powers that the Commonwealth is limited by. Due to the complexity of requiring all states and territories to enact the same legislation, this submission instead suggests that a set of principles and goals should be established at the close of the inquiry that each State or Territory should strive to achieve.

## Extent of the Problem

1. Elder abuse, in particular elder financial abuse, is a growing problem in Australia. Various statistics emphasise how prevalent the problem is and highlight why this issue should be of concern.
2. WHO estimated that, globally around 1 in 10 older people experience elder abuse each month.[[9]](#footnote-9) Essentially, these statistics also illustrate that elder financial abuse occurs at a rate of between 1% and 9%.[[10]](#footnote-10) Even though these statistics signify an area of concern, it’s also apparent that majority of elder abuse goes unreported.
3. It is also projected by WHO that roughly 1 in 24 cases of financial elder abuse is reported to the relevant authorities, showing minimal attempt from the elderly to mitigate this problem.[[11]](#footnote-11) On this global basis, it is assumed that Australia also suffers from underreporting of financial elder abuse. Without accurate reports, it is hard to determine just how severely elderly citizens are being financially affected, which is reasonably unacceptable. However, statistics indicate that in the 2014 financial year, financial abuse was the most prevalent issue raised in calls to the Seniors Rights Victoria helpline, making up 33% of all calls.[[12]](#footnote-12)
4. Despite critique of literature and institutions focusing on the vulnerability of older persons, which results in a lack of autonomy or self-determination,[[13]](#footnote-13) there is evidence to suggest that minorities or ‘vulnerable people’ within the group of older people are much more likely to be targeted as victims of elder abuse.[[14]](#footnote-14) These include indigenous, women, mentally ill, isolated individuals, and emotionally vulnerable people such as those who are recently widowed.[[15]](#footnote-15)
5. These statistics make it clear that elder abuse is a growing issue that needs to be addressed immediately. This evidence highlights the prevalence of the issue and drives the recommendations in this submission.

###

# Submission Issues and Recommendations

## Submission Issues

The issues this submission considers are:

1. The lack of a consolidated approach to responsibility in response to incidents of elder abuse;
2. The suitability of current definitions and conceptions of elder abuse; and
3. The inadequacy of the current legal protections.

## Recommendations

This submission makes five recommendations in response to the issues:

1. A collaborative State response to elder abuse of preventative campaigns, education and regulatory legislation that follow a set of national guidelines for a rapid response and change with consistent principles across Australia.
2. The national guidelines that the collaborative State regulatory and legislative responses follow should uphold principles of autonomy, self-determinism and social human rights by recommending (1) a holistic approach to elder abuse with the protection of all vulnerable persons who are victims of abuse, and (2) supportive decision making as opposed to absolute representation of an individual.
3. The preventative and educational campaigns in the State responses should focus specifically on the issue of elder abuse to raise awareness of the disproportionate amount of abuse being committed towards Australia’s ageing community.
4. The national guidelines that the collaborative State legislative responses follow should require the enactment of more effective options for legislative remedies in civil cases of financial abuse such as stronger clawback laws or punitive damages.
5. The national guidelines that the collaborative State legislative responses follow should guide the creation of a criminal action for financial abuse that is separate from existing crimes such as fraud.

# ISSUE 1: Lack of Consolidated Approach to Responsibility in Response to Incidents of Elder Abuse

## Current International Initiatives in Elder Abuse Protections

1.1 The starting point of the issues relating to elder abuse in Australia stems from the current lack of leadership in responsibility of dealing with the problem. This issue is universal in nature as there is currently no dedicated human rights instrument for older persons. Such a human rights instrument is currently in development by the United Nations General Assembly established Open-Ended Working Group but is still a long way from being ready for ratification by countries.[[16]](#footnote-16)

1.2 In terms of human rights instruments that apply to older persons, there are various instruments that are incidental to the rights of the elderly such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.[[17]](#footnote-17) Currently, the closest the international community has come to a convention for the protection of older people is the United Nations Principles for Older Persons but as these are merely principles, they do not have any obligations attached to them.[[18]](#footnote-18)

## Current National Initiatives

1.3 Despite the lack of an international human rights instrument requiring Australia to protect the rights of older persons, awareness for elder abuse is growing at a national level. There have been many previous reports to do with elder abuse from both the states and the commonwealth such as *Equality, Capacity and Disability in Commonwealth Laws, Older people and the Law,* Senior Rights Victoria’sAnnual Reports*,* and *Diversity and financial abuse in Victoria*.[[19]](#footnote-19)

1.4 The inquiry and terms of reference have acknowledged that there are both State and Commonwealth legislation to consider but it is important to understand the difference between the two. While this inquiry is on a national scale, it is more important to focus on what the States have to offer in terms of protections for elder abuse. This is especially true for financial abuse as the current response across Australia is the appointment of guardianship and trustees enabled under separate state and territory legislations. The following figures indicate individual state responses and legislation:

**Table 1: Individual States’ protections for elder financial abuse[[20]](#footnote-20)**

|  | **QLD** | **NSW** | **VIC** | **SA** | **WA** |
| --- | --- | --- | --- | --- | --- |
|  **Definitions of abuse** | “**Financial Abuse** stealing, misuse, or concealmentof funds, property or a person’s assets.”  | The World Health Organisation in *The Toronto Declaration on the Global Prevention of Elder Abuse 2002* definition. | **Financial abuse:** Using someone’s money, property or other assets illegally or improperly or forcing someone to change their will or sign documents. | **Financial abuse**The illegal, improper use and/or mismanagement of a person's money, property or resources.  | ***Financial or material abuse***: which includes the illegal or improper use of a person‟sfinances or property. |
| **Trigger provisions** | Anyone can trigger investigations based on anything | Anyone can trigger based on: Capacity,Undue Influence,Consent (does not nullify abuse),Duty of care  | ... approved residential aged care providers are obliged toreport alleged or suspected assaults Anyone can report based on signs of abuse | Anyone can trigger investigations based on signs such as:* If the older person **states** that they are being harmed by another person,
* Another person **states** they are harming an older person,
* Another older person, or significant other **states** they have observed abusive acts,
* Someone is not responding to the financial/medical needs of the older person,
* They **observe** an action or inaction that may be considered abusive,
* When there is clear **evidence** that an abusive situation is occurring.
 | Can trigger investigations based on current definitions. Verybasic and do not distinguish between financial exploitation committed with intent, or thatcommitted through careless behaviour or ignorance on the part of the person charged withlooking after an older person‟s financial interests. |
| **Applied for by person?** | The elder and individuals. | The elder and individuals. | The elder and individuals. | The elder and individuals. |  The elder and individuals. |
| **Which public entity investigates?** | **The Office of the Adult Guardian** (OAG) is established under the *Guardianship and**Administration Act 2000***The Public Trustee** is a provider of financial substitute decision‐making and estateplanning services in Queensland. Seniors unable to attend at a Public Trustee branch can request a home visit. **QCAT****Police service** | **The NSW Elder Abuse Helpline & Resource Unit**(as part of the NSW Ageing Strategy) **Family & Community Services**([Part 13A *Crimes (Domestic and Personal Violence) Act 2007* (NSW)](http://www.legislation.nsw.gov.au/maintop/view/inforce/act%2B80%2B2007%2Bcd%2B0%2BN)) **Public Guardian**(Mr Graeme Smith) **Seniors Rights Service** **Police service** | **Seniors Rights Victoria****Elder Rights Advocacy (ERA)****Public Advocate****VCAT**Appoints other guardians**Police service** | **ARAS: Aged Rights Advocacy Service (South Australia)** **The Public Trustee** can act as a trustee, executor of a will, administrator of an estate,, manager, receiver, committee, curator, guardian, next friend, agent, attorney or stakeholder.**The Public Advocate** is the Guardian of Last Resort  **SA Police****SACAT**  | The Alliance for the Prevention of Elder Abuse, Western Australia (APEA:WA)Through The Office of the Public Advocate. **Police Service****Public Advocate****Basically just smaller protocols and communities.** |



**Figure 1:** **Elder abuse responses in Western Australia.** Clare, M., Blundell, B., Clarke, J., “Examination of the Extent of Elder Abuse in Western Australia: A Qualitative and Quantitative Investigation of Existing Agency Policy, Service Responses and Recorded Data” (April 2011) Crime and Research Centre, The University of Western Australia.

## Benefits of a State-Based Response

1.5 Lacey argues that there is public perception of how ageing is largely a Commonwealth matter and that states have limited capacity in influencing laws or regulations on ageing, which is not only false but hugely damaging as the Commonwealth does not have the power to protect older people to the extent that State governments do.[[21]](#footnote-21)

1.6 The Commonwealth largely deals with aging and aged care, which includes the funding of elder related services and benefits such as aged care services, pensions and concessions and welfare set out in the *Aged Care Act 1997* (Cth).[[22]](#footnote-22) Meanwhile, the States legislate on the protection of older, vulnerable adults under legislation such as the various Guardianship Acts in each state.[[23]](#footnote-23) In terms of responding to the issues outlined in the commonly used definitions of elder financial abuse outlined in Para v. in the introduction above, many of them are criminal matters that are dealt with by individual States’ Codes and legislation such as fraud, theft, property or inheritance or financial transactions.

1.7 While there may be arguments that purport the effectiveness of federalism and unilateralist schemes such as the National Disability Insurance Scheme (‘NDIS’) to protect vulnerable older Australians,[[24]](#footnote-24) the development of such strategies are slow.[[25]](#footnote-25) Additionally, some goals may be unachievable due to the Commonwealth having no explicit constitutional power to legislate on the protection of the elderly under s 51 of the *Constitution*.[[26]](#footnote-26) If an international treaty on elder abuse was signed and ratified, the external affairs power and executive power could allow the Commonwealth to create a similar national framework to the NDIS.[[27]](#footnote-27) However as there is currently no such international treaty (see Para 1.1 above), it is hard for the Commonwealth to justify such a scheme. Therefore, it is important for the commonwealth to encourage legislative reform to occur at a state and territory level for timely, effective and practical change.

## Burden on Independent Organisations and Disjointed Regimes Dealing with Elder Abuse

1.8 In addition to incorrect perceptions of responsibility between Commonwealth and State actions, the current State responses to dealing with elder abuse are insufficient. In each of the States, there are only two clear situations where intervention to elder abuse is necessary which are the responses of the police and health services when a crime is involved and when medical treatment is required, respectively.[[28]](#footnote-28)

1.9 When the reported abuse falls outside these two specific issues of criminal matters found in each State’s Criminal Code and medical treatment, there is no official response required by the law. Instead, there is an ad hoc approach in place with independent organisations being the only mechanism for investigation and resolution of elder abuse. These bodies include volunteer groups and independent organisations such as Elder Rights Advocacy, various State helplines and the Senior Rights Service to name a few.[[29]](#footnote-29) See Figure 1 above for a visual representation of Western Australia’s disjointed response to elder abuse. Because there is no clear, unified direction of who is responsible for reporting or investigating the abuse, instances of abuse often go unnoticed or there is an overlap of responsibilities between several of the independent organisations. Authors such as Chesterman have suggested a more collaborative, cross-disciplinary approach to tackling elder abuse is required in the states as opposed to the current disjointed regimes in place.[[30]](#footnote-30)

## Conclusions to Issue 1

1.10 In order to tackle the issue at hand effectively, there needs to be clearer leadership and direction in Australia. As this inquiry cannot address the issue of a lack of international leadership, the focus of the recommendations is on leadership and a clear structure within Australia for responding to incidents of elder abuse, in particular financial abuse.

1.11 It is clear that this issue should be dealt with at the State level. Therefore, we suggest a collaborated State response with the assistance of national guidelines. Cooperation to achieve cohesiveness across the States for preventative campaigns, education and regulatory legislation will ensure responses to elder abuse are strong and clear.

1.12 It is also essential for the States to cooperate with and assist independent organisations in order to lift some of the burden they carry in resolving elder abuse reports and enquiries. This includes clearly defining and assigning responsibilities, such as reporting and investigating to specific bodies.

1.13 Ultimately, a more collaborative approach is required in Australia between States and independent organisations in order for there to be a cohesive and effective response to elder abuse.

## Recommendations in Response to Issue 1

1. A collaborative State response to elder abuse of preventative campaigns, education and regulatory legislation that follow a set of national guidelines for a rapid response and change with consistent principles across Australia.

# ISSUE 2: The Suitability of Current Definitions and Conceptions of Elder Abuse

## What is Elder Abuse?

2.1 There is currently no single agreed upon definition of elder abuse, not only on an international scale, but even on a national or state level.[[31]](#footnote-31) This lack of consensus may be due to the fact that elder abuse is a relatively new in terms of studied phenomena with elder abuse only being formally identified in 1975 by Baker.[[32]](#footnote-32) However, there are common themes to the definitions used by policy makers, academics and other interested parties, and Chesterman argues that these definitions involve a breach of trust as a common element.[[33]](#footnote-33)

2.2 A common example used in literature as a starting point to a definition of elder abuse is as follows: ‘A single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person*’.[[34]](#footnote-34)*

2.3 The literature also indicates that elder abuse falls under the same category as family violence, alongside child abuse and domestic violence, and is not perceived as an issue in itself.[[35]](#footnote-35) While these are useful points of comparison in terms of how the Commonwealth has approached and defined these issues, it is important to separate elder abuse from child abuse.

2.4 Policy and legislation surrounding child abuse are able to define what being a ‘child’ is by age and a lack of capacity to decide what is in their ‘best interests’.[[36]](#footnote-36) However, when approaching elder abuse, a major problem is that no matter how old an individual becomes, that person is still considered an adult in law. Additionally, international instruments such as the International Bill of Rights state that every adult has the right to self-determination and autonomy which is an important consideration that will be discussed below.[[37]](#footnote-37)

2.5 Human development from child to adolescence and adulthood has a fairly predictable window which is marked by biological changes at the onset of puberty as well as social development.[[38]](#footnote-38) These changes include cognitive development and the ability to make complex decisions which has been defined in law as capacity.[[39]](#footnote-39) On the other hand, physiological indicators that a person is aging or is considered elderly are not so predictable. The biological features that the elderly are considered to have include muscle degeneration, thinner skin with less collagen, failing senses and bodily functions, reduced cognitive ability, and weakening of vocal chords.[[40]](#footnote-40) However, the onset of aging and the vulnerability associated with elders is affected by personal, social and demographic factors such as lifestyle choices, mental disorders, indigeneity, social status and cultural backgrounds.[[41]](#footnote-41)

2.5 For example, older culturally and linguistically diverse (CaLD) peoples are financially abused more often than non-CaLD individuals. Literature suggests that this is due to language and cultural barriers, fear of isolation from family members and emotional and financial abuse from the same family members they rely on.[[42]](#footnote-42)

2.6 Therefore current conceptions of the elderly such as retirement age or pensioner concession at 65 years old does not sufficiently address the immense variability in age that a person becomes vulnerable due to their age. At the same time, it is unnecessarily condescending to autonomous adults of that age that are still healthy who do not require external assistance.

2.7 It is impossible to define an older person both in relation to a person’s age without removing autonomy for many adults with the capacity to be self-determinate, and in relation to vulnerability without grouping elderly people together with vulnerable individuals. In response to this complex and delicate situation, Lacey suggests that it is preferable to develop stronger safeguards for the wider protection of vulnerable adults rather than simply focusing on elder abuse as this would not diminish the autonomy and dignity of individuals who are older.[[43]](#footnote-43)

## A Definition that Considers the Autonomy of Older Australians, Ageism and Social Rights Perspectives

2.8 Definitions such as the WHO/INPEA definition risk focusing too much on the individual situation or ‘act’ instead of a societal level. This manifests as ageismand results in the ‘withdrawal of respect and recognition [by law], [which is] deemed abusive by older people’.[[44]](#footnote-44) Therefore elder abuse must be interpreted from a human rights perspective with a focus on enabling or supporting older people in maintaining their autonomy whilst also protecting those that require protection due to certain vulnerabilities that diminish their capacity to decide what is in their best interests.[[45]](#footnote-45)

2.9 In Australia, the National Decision Making Principles proposed by the ALRC in their investigation into *Equality, Capacity and Disability in Commonwealth Laws (DP 81)* support and encourage cooperative decision making through appointing someone to help older australians to understand their rights and financial decisions, rather than appointing someone who has the capacity or ability to make decisions on behalf of the older person.[[46]](#footnote-46) This was adopted in Victoria’s *Amended Powers of Attorney Act 2014* (Vic) where they introduce the use of ‘supportive attorney’ that reflect these principles.[[47]](#footnote-47) Cooperative decision making prevents the exploitation of funds by persons who have the power to act on behalf and control the funds of elderly individuals as the power still lies with the elderly individual themselves.

2.10 However, many of the current state protective measures in place specifically for older Australians, such as the Office of the Public Guardian, do not reflect the national decision making principles.[[48]](#footnote-48) Currently, the legal system does not account for the fact that in many cases, elder financial abuse is committed by a family member or someone who has a relationship with the person being abused and that there is often an emotional aspect to financial abuse. In a recent case held in the NSW Civil and Administrative Tribunal, the Tribunal remarked that ‘[t]he Tribunal is not able to appoint the Public Guardian as a person’s guardian if there is a private person who can be appointed.’[[49]](#footnote-49) Therefore, if an older person wanted to receive help in making financial decisions by having an appointed guardian, they must exhaust all their personal contacts before a Public Guardian is appointed. This would be the case even if the older person was aware that their family member or contact did not have their best interests in mind.

2.11 The absolute power given to Power of Attorneys is also concerning as there are both anecdotal stories and civil cases that highlight how these powers can be abused to control funds to the detriment of the elderly individual. In the case of *Smith v Glegg,*[[50]](#footnote-50) a daughter of the elderly plaintiff was given enduring power of attorney, and used that position to sell her mother’s house to a third party. The Plaintiff, a woman who was living with and extremely dependant on the defendant, was given monetary compensation for her loss, but her dependence and vulnerability was not accounted for in the orders made.

2.12 Overall, elder abuse is a difficult concept to grasp and define. The fundamental reason why this is the case is because the elements that make the elderly vulnerable to abuse vary from individual to individual. With so many factors to consider in the abuse of vulnerable people due to their age, it is easier for many commentators and policy makers to refer to the phenomenon simply as elder abuse without considering what the term actually entails. By grouping all ‘older’ Australians, whatever that threshold may be, as victims of elder abuse, stereotypes and ageism become manifest.

2.13 Therefore, it is useful to approach elder abuse in a similar manner to how domestic violence has been treated by governing bodies. When domestic violence emerged as an international political and social issue in the 20th Century, it was almost exclusively in relation to the abuse of wives and children within the home.[[51]](#footnote-51) Even now, women are far more likely to be victims of domestic abuse than men.[[52]](#footnote-52) Despite domestic violence being a more prevalent incident suffered by women than men, the legislation in place to protect individuals from cases of domestic violence are non-discriminatory on the basis of gender and protect all persons from violence in a relationship.[[53]](#footnote-53) There have also been numerous successful national and state level education campaigns in raising awareness of women battering and domestic abuse.

2.14 The national guidelines recommended under Issue 1 should therefore follow the relatively successful plight of domestic violence by recommending inclusive legislative instruments to protect all vulnerable Australians as well as engage in educational campaigns to raise awareness of the disproportionate number of elderly people suffering from various forms of abuse including financial abuse. This approach addresses the issue of elder abuse while not subscribing to ageism towards older Australians.

## Elder Financial Abuse or Financial Abuse?

2.15 Financial abuse is the illegal or unauthorised use of a person’s property, assets, pension or anything considered valuable; which even includes changing the person's will to name the abuser as heir.[[54]](#footnote-54) Usually this occurs as the perpetrator fraudulently obtains power of attorney, ultimately resulting in the deprivation of money or other property or any asset owned by the victim. Financial abuse applies to both elder abuse and domestic violence. As a result, financial abuse should be inclusive and defined by an exploitation of funds that occurs due to the individual's diminished capacity that are detrimental to the individual if not addressed in a timely manner. This is a more inclusive interpretation of the recommendations given in the report titled ‘*Older People and the Law’*.[[55]](#footnote-55)

2.16 The case of *Commercial Bank of Australia Ltd v Amadio* sets out a helpful precedent for establishing when financial abuse has occurred.[[56]](#footnote-56) Originally financial abuse transpired but was never really publicised until the case of the Amadios. The Amadios were granted relief on the grounds of 'unconscionable conduct'. This action usually refers to a case in which a party makes unconscientious use of their superior position or bargaining power to the detriment of a party who suffers from some special disability or is placed in some special situation of disadvantage.[[57]](#footnote-57) Justice Mason further stated:

‘*Relief on the ground of unconscionable conduct will be granted when unconscientious advantage is taken of an innocent party whose will is overborne so that it is not independent and voluntary, just as it will also be granted when such advantage is taken of an innocent party who though not deprived of an independent and voluntary will, is unable to make a worthwhile judgment as to what is in his best interests.*’[[58]](#footnote-58)

2.17 It’s evident that the principle derived from Mason J defines financial abuse with an accurate and purposive scope. If this principle were to be implemented at a criminal level, it would provide more deterrence, protecting not only the elderly but anyone who is suffering from financial abuse. Currently, simple monetary compensations and penalties are not deterring offenders enough as the problem still is ongoing.

2.18 It is also important to note that a key part of the abuse in *Amadio* related to the fact that the Amadios were CaLD individuals with a minimal grasp of English and were reliant on their son to explain the financial implications of such an agreement to them.

#### Conclusions to Issue 2

2.19 As it is not possible to define and isolate whom an older people in society is through an objective definition of an ‘elderly person’, this submission argues that it is not necessary to have this definition in order to protect the elderly who are vulnerable to abuse. Rather than having legal protections and frameworks specifically addressing elder abuse and having an arbitrary definition of an ‘elderly person’ based on age, background or their current relationships, there should be increased protections for all people who are in vulnerable positions.

2.20 In particular, there should be national guidelines that support the protections for all vulnerable persons in situations of financial abuse rather than isolating it as an issue of elder financial abuse. Although financial abuse was brought to public attention in cases where an older person was abused, financial abuse can occur to any vulnerable person. This holistic and inclusive approach to protecting individuals is more effective in capturing those who need these protections whilst not diminishing the autonomy or dignity of older Australians. In situations similar to *Amadio*, where there is a relationship of dependence, empowering Australians of all ages to have the ability to handle their own funds on their own terms will also help in preventing abuse.

#### Recommendations in Response to Issue 2

1. The national guidelines that the collaborative State regulatory and legislative responses follow should uphold principles of autonomy, self-determinism and social human rights by recommending (1) a holistic approach to elder abuse with the protection of all vulnerable persons who are victims of abuse, and (2) supportive decision making as opposed to absolute representation of an individual.
2. The preventative and educational campaigns in the State responses should focus specifically on the issue of elder abuse to raise awareness of the disproportionate amount of abuse being committed towards Australia’s ageing community.

# ISSUE 3: Inadequacy of Current Legal Protections

## Current Legal Measures for Elder Abuse

3.1 Whilst legislation that has the potential to remedy financial abuse varies from state to state it is clear that no state has a specific statutory or common law remedy for financial abuse. Most state legislation can protect from financial abuse only if it occurs in the specific forms that will be discussed in Paras 3.4 to 3.9.

3.2 Appendix 1 displays the different state mechanisms actionable when elder abuse occurs. Most state actions are triggered through civil liability measures, for example, in QLD this can only be done where it violates a law of contract, negligence, constructive trust, or unconscionable dealings.[[59]](#footnote-59)

3.3 In terms of Criminal Law responses, financial abuse can only ever be prosecuted under laws of fraud or theft, and this is rarely done and will be discussed in Paras 3.10 to 3.14.

### Inadequacies of Current Civil Measures

3.4 As mentioned above, financial abuse is often brought under existing civil actions. For example, in *Sleboda v Sleboda*,[[60]](#footnote-60) the transfer of property between the plaintiff and defendant met the requirements of financial elder abuse; these include the elements of a trusting relationship, special disability, old age, no legal advice given, and the son taking advantage of the father. This case was brought to the court instead as undue influence. As financial abuse is not actionable in itself, applicants can only succeed by bringing their case under civil heads of damage that may not properly address their situation.

3.5 The case of *Sleboda* is a best case scenario for instances of financial abuse, in that the action satisfied all the necessary elements and the claimants were able to seek remedy. The problems with actions being brought under existing civil remedies is that whilst the behaviour may constitute financial abuse it does not always satisfy all the elements of undue influence. For example in the case of *Christodoulou v Christodoulou,[[61]](#footnote-61)* the elderly victim attempted to argue under heads of undue influence and unconscionability and failed as it did not satisfy key elements of these actions despite her being in a position of abuse.

3.6 In terms of actual remedy, currently most civil disputes decided in favour of the elderly victim have focused on limited monetary compensation rather than consequences for the perpetrator like in criminal actions.[[62]](#footnote-62) These remedies are inadequate as they do nothing to compensate the elderly person for the emotional pain and limited options they face when they go through financial abuse. Furthermore elderly people have less time to recuperate money lost and less financial options where they cannot reclaim finances.

3.7 In the case of *Sleboda,* the only orders that were made were for the transfer of half the interest in the property back to the applicant.[[63]](#footnote-63) Another case had an order of $180,000 and interest after a daughter had obtained property from her mother for under half its value, and while it was a fair amount of monetary compensation, the court did not take into account the fact that the daughter was the only social, financial and familial support the applicant had.[[64]](#footnote-64)

3.8 Realistically, these orders are a slap on the wrist for what is seemingly a large and continuing problem. Neither the social and familial situations of the individual are accounted for, nor their continued vulnerability. In response to this, some states already have ability in civil jurisdiction to claw back assets for the victim.[[65]](#footnote-65) However this is not uniform across all states, for example, Western Australia has very little ability to give assets. The enaction of remedies such as clawback laws would better compensate victims and grant elderly victims the ability to regain control of the assets they lost due to financial abuse. Civil measures should therefore not be the only viable option for compensation, especially with orders as insignificant as this.

3.9 Even where an action can be brought elderly people often lack the knowledge and resources to pursue civil litigation. The average pensioner receives $37 per day which is well below the means necessary to afford civil representation.[[66]](#footnote-66)

### Inadequacies with Current Criminal Measures

3.10 As far as criminal action goes, financial abuse can only ever be prosecuted under laws of fraud and theft. This brings into line the same issues that are faced with civil actions; financial abuse, while morally wrong, does not always satisfy elements of fraud or theft. By making financial abuse its own category of crime the legal system brings attention and provides incentive to investigate and report this issue. Furthermore, the rate of reporting by elderly people increases as those who cannot afford civil litigation now have recourse to justice through criminal actions.

3.11 There is minimal research in Australia regarding investigations into financial abuse due to under-reporting.[[67]](#footnote-67) American and British statistics on the area can still be applied when looking into investigation problems as whilst they operate under a different system of laws the victims often share similar characteristics internationally. The US Department of Justice states that often times financial abuse will go uninvestigated by police as it is often difficult to get a statement from the victim due to the familial nature of the crime.[[68]](#footnote-68)

3.12 Even where police have investigated allegations of financial abuse, problems still occur regarding prosecutions. Prosecutions will only be brought under the head of fraud or theft, and will only occur where the prosecutor deems it will be reasonably effective.[[69]](#footnote-69) As financial abuse often does not always satisfy or fall under the elements of fraud, it is difficult to find cases where success is likely. At current there are no cases where financial abuse has been criminally prosecuted under fraud, therefore success rates and statistics in this area and its effectiveness are not included in this analysis.

3.13 The key issue here is that financial abuse can often occur in ways that do not fit the definition of fraud and therefore no action can be made in a large amount of cases. Often the current criminal actions are incidental to intentions to commit financial abuse. Older people currently don’t have criminal avenues to pursue until after the substantial damage has occurred. In extreme cases, elderly people are murdered for financial gain from family members before the offence is even investigated.[[70]](#footnote-70)

3.14 Overall current focus is on trying to figure out when financial abuse will amount to a crime and in what situations it can fit under the category of fraud or theft. Where we create an an actionable criminal area for financial abuse, the burden is shifted to question when financial abuse is not a crime rather than trying to slot it into other existing categories.[[71]](#footnote-71)

## The Effectiveness of Criminalisation

3.15 In 2010 America adopted federal legislation to prosecute forms of elder abuse and neglect, including financial exploitation and abuse.[[72]](#footnote-72) There have also been specialised criminal statutes enacted by Canadian states that criminalise specifically on the issue of elder financial abuse along with existing criminal laws that prosecute on theft, forgery, and false impersonation.[[73]](#footnote-73) This indicates an effective international example that has been set and can even be used as a form of guidance on Australian initiatives.

3.16 A criminal action should differentiate financial abuse from fraud as often times elder abuse does not fall into the category of fraud and these vulnerable persons will not otherwise have access to recourse for the wrongdoing committed against them. Differences lie in the fact that financial abuse is often committed by family members and associates in a position of trust to the elderly person whereas fraud is deception made by strangers. Moreover, financial abuse often fails to satisfy elements of fraud as the perpetrator often has the consent of the elderly person to do the abusive action.[[74]](#footnote-74)

3.17 The biggest barrier to bringing a criminal action in the area of financial abuse is poor reporting and investigation of the issue. Currently the rate of reporting for elder financial abuse is quite low. Enacting specific criminal legislation for the issue along with awareness campaigns discussed in the recommendations of Issue 2 ensures greater publicity and is likely to lead to increased reports, detection, and investigations into the issue.

3.18 As per the Court of Criminal Appeal in *R v Radich,[[75]](#footnote-75)* one of the purposes of criminalisation and criminal punishment is to offer protection through publicly displaying the action by making it clear that it is unacceptable and will be punished. In the present case, one of the biggest problems is that low perceptions of financial abuse leads to inadequate investigation and prosecution. By criminalising and adequately punishing financial abuse, a deterrent effect is created leading to less incidence in future.

## Conclusions in Response to Issue 3

3.19 There is currently no clear avenue to claim for losses from financial abuse. The remedies granted to successful actions are also minimal at best, and often just consist of moving the elderly person to a different guardian or agent rather than actually making reparations for what was lost. The accessibility of civil actions is also a complicated issue as the expense of litigation is often beyond the means of elderly Australians who are dependant upon community legal centres and free services to gain back their assets. As the civil remedies do not sufficiently provide relief against financial abuse and are not sufficiently affordable, a criminal avenue is needed.

3.20 In order to combat the issues with the present civil avenues not bringing justice against perpetrators, separate criminal actions for financial abuse need to be established. The elements and definitions for such criminal actions would be based on the holistic approach to financial abuse set out in Issue 2 above. Specifically, the elements would need to address who falls under the scope of the criminal protection and what the crime entails. The overall goal of enacting a criminal action for financial abuse is to not only deter the occurrence of financial abuse by creating accountability in a crime, but to also improve rates of financial abuse reporting and awareness.

## Recommendations in Response to Issue 3

1. The national guidelines that the collaborative State legislative responses follow should require the enactment of more effective options for legislative remedies in civil cases of financial abuse such as stronger clawback laws or punitive damages.
2. The national guidelines that the collaborative State legislative responses follow should guide the creation of a criminal action for financial abuse that is separate from existing crimes such as fraud.

# Appendices

## Appendix 1

Individual States’ protections for elder financial abuse with references

|  | **QLD** | **NSW** | **VIC** | **SA** | **WA** |
| --- | --- | --- | --- | --- | --- |
|  **Definitions of abuse** | “**Financial Abuse** stealing, misuse, or concealmentof funds, property or a person’s assets.”[[76]](#footnote-76)  | The World Health Organisation in *The Toronto Declaration on the Global Prevention of Elder Abuse 2002* definition. | **Financial abuse:** Using someone’s money, property or other assets illegally or improperly or forcing someone to change their will or sign documents.[[77]](#footnote-77) | **Financial abuse**The illegal, improper use and/or mismanagement of a person's money, property or resources.[[78]](#footnote-78)  | ***Financial or material abuse***: which includes the illegal or improper use of a person‟sfinances or property. |
| **Trigger provisions** | Anyone can trigger investigations based on anything[[79]](#footnote-79) | Anyone can trigger based on: Capacity,Undue Influence,Consent (does not nullify abuse),Duty of care[[80]](#footnote-80)  | ... approved residential aged care providers are obliged toreport alleged or suspected assaults[[81]](#footnote-81) Anyone can report based on signs of abuse | Anyone can trigger investigations based on signs such as:* If the older person **states** that they are being harmed by another person,
* Another person **states** they are harming an older person,
* Another older person, or significant other **states** they have observed abusive acts,
* Someone is not responding to the financial/medical needs of the older person,
* They **observe** an action or inaction that may be considered abusive,
* When there is clear **evidence** that an abusive situation is occurring.[[82]](#footnote-82)
 | Can trigger investigations based on current definitions. Verybasic and do not distinguish between financial exploitation committed with intent, or thatcommitted through careless behaviour or ignorance on the part of the person charged withlooking after an older person‟s financial interests.[[83]](#footnote-83) |
| **Applied for by person?** | The elder and individuals. | The elder and individuals. | The elder and individuals. | The elder and individuals. |  The elder and individuals. |
| **Which public entity investigates?** | **The Office of the Adult Guardian** (OAG) established under the *Guardianship and**Administration Act 2000[[84]](#footnote-84)***The Public Trustee**: provider of financial substitute decision‐making and estateplanning services in Qld. Seniors unable to attend a Public Trustee branch can request a home visit[[85]](#footnote-85)**QCAT** **Police service** | **The NSW Elder Abuse Helpline & Resource Unit** as part of the NSW Ageing Strategy[[86]](#footnote-86)**Family & Community Services[[87]](#footnote-87)**[Part 13A *Crimes (Domestic and Personal Violence) Act 2007* (NSW)](http://www.legislation.nsw.gov.au/maintop/view/inforce/act%2B80%2B2007%2Bcd%2B0%2BN) **Public Guardian**Mr Graeme Smith**Seniors Rights Service[[88]](#footnote-88)****Police service** | **Seniors Rights Victoria****Elder Rights Advocacy (ERA)****Public Advocate****VCAT**Appoints other guardians**Police service** | **ARAS: Aged Rights Advocacy Service (South Australia)[[89]](#footnote-89)** **The Public Trustee** can act as a trustee, executor of a will, administrator of an estate,, manager, receiver, committee, curator, guardian, next friend, agent, attorney or stakeholder. **The Public Advocate** is the Guardian of Last Resort[[90]](#footnote-90) **SA Police****SACAT** | **The Alliance for the Prevention of Elder Abuse, Western Australia (APEA:WA)**Through The Office of the Public Advocate. **Police Service****Public Advocate****Basically just smaller protocols and communities.** |

# References

## A. Articles/Books/Reports

Adams, Valerie Margaret et al, 'Financial Abuse of Older People by a Family Member: A Difficult Terrain for Service Providers in Australia' (2014) 26(3) *Journal of Elder Abuse and Neglect* 270

Augustine, J. M. and G. H. Skrepnek, 'Impact of health, social, lifestyle, and economic factors on life expectancy in OECD countries' (2013) 16(3) *Value in health : the journal of the International Society for Pharmacoeconomics and Outcomes Research* 254

Australian Government: Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice (ALRC Report 108): 68. Decision Making by and for Individuals Under the Age of 18* (2008) <<http://www.alrc.gov.au/publications/68.%20Decision%20Making%20by%20and%20for%20Individuals%20Under%20the%20Age%20of%2018/research-capacity#_ftn39>>

Australian Government: Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws (DP 81): 3. National Decision-Making Principles* (2014) <<https://www.alrc.gov.au/publications/3-national-decision-making-principles/national-decision-making-principles>>

Australian Government: The Treasury, *2015 Intergenerational Report: Australia in 2055* (2015) <<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report>>

Baker, Alex A, 'Granny battering' (1981) 2(3-4) *International Journal of Family Psychiatry* 369

Carnot, Edward J., *Is Your Parent in Good Hands?: Protecting Your Aging Parent from Financial Abuse and Neglect* (Capital Books, 2004)

Chesterman, John, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115

Clare, Mike, B Blundell and Joseph Clare, *Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data*, Crime Research Centre, The University of Western Australia (2011)

Clare, Mike et al, 'Conceptualising elder abuse: Does this label fit?' (2014) 8(1) *Communities, Children and Families Australia* 37

Close, Graeme L, Philippa Haggan and Anne McArdle, 'Skeletal muscle aging' (2007) 17(1) *Reviews in Clinical Gerontology* 13

Darzins, Peteris et al, *Financial abuse of elders: A review of the evidence: Protecting Elders’ Assets Study*, Monash University, Faculty of Medicine, Nursing and Health Sciences (2009)

Dow, Briony and Melanie Joosten, 'Understanding elder abuse: a social rights perspective' (2012) 24(6) *International Psychogeriatrics* 853

Ellison, Peter T. et al, 'Puberty as a life history transition' (2012) 39(5) *Annals of Human Biology* 352

Family and Community Services, *Preventing and responding to abuse of older people: NSW interagency policy*, NSW Government (2014)

Fitzgerald, G, D Blake and R Thurlow, *Response to the consultation on the review of "No Secrets" Action on Elder Abuse* (2009)

Gibson, Sheri C. and Edie Greene, 'Assessing Knowledge of Elder Financial Abuse: A First Step in Enhancing Prosecutions' (2013) 25(2) *Journal of Elder Abuse and Neglect* 162

Hafemeister, T, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (2003) in National Research Council (US) Panel to Review Risk and Prevalence of Elder Abuse and Neglect.

Harries, Priscilla et al, 'Identifying and enhancing risk thresholds in the detection of elder financial abuse: a signal detection analysis of professionals' decision making' (2014) 14(1) *BMC medical education* 1044

House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law* (2007)

Kaspiew R, Carson R, Rhoades H, *Elder Abuse: Understanding Issues, Frameworks and Responses.*

Kipke, Michele D., *New Research on Adolescent Development and the Biology of Puberty: summary of a workshop on new research* (National Academies Press, 2000)

Lacey, Wendy, 'Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia' (2014) 36(1) *Sydney Law Review* 99

Office of the Public Advocate (Qld) and Queensland Law Society, *Elder Abuse: How well does the law in Queensland cope?* <<http://www.eapu.com.au/uploads/research_resources/How_Well_Does_the_Law_Cope_JUL_2010-QLS.pdf>>

Phelan, Amanda, 'Elder abuse, ageism, human rights and citizenship: implications for nursing discourse' (2008) 15(4) *Nursing inquiry* 320

Senior Rights Victoria, *Annual Report 2014-2015* (2015) <<http://seniorsrights.org.au/wp-content/uploads/2014/03/SRV-Annual-Report-2014-15.pdf>>

Sir Zelman Cowen Centre, *Elder Abuse Prevention Strategy*, Victoria University for the Victorian Government (2000) <<http://www.seniorsrights.org.au/toolkit/wp-content/uploads/2013/08/EAPS-PE-Workshop-1-Manual.pdf>>

Smith, Russell G. and Australian Institute of Criminology, trends & issues in crime and criminal justice, *No. 132 Fraud & Financial Abuse of Older Persons* (1999)

UK Government Department of Health, *No secrets: Guidance on Developing and Implementing Multi-agency Policies and Procedures to Protect Vulnerable Adults from Abuse*, Department of Health and Home Office (2000) <<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/194272/No_secrets__guidance_on_developing_and_implementing_multi-agency_policies_and_procedures_to_protect_vulnerable_adults_from_abuse.pdf>>

Varani, James, 'Skin damage in the aged: it's more than cosmetic' (2009) 4(6) *Expert Review of Dermatology* 549

Wainer, Joanne et al, *Diversity and financial elder abuse in Victoria: Protecting Elders' Assets Study*, Monash University, Faculty of Medicine, Nursing and Health Sciences (2011)

World Health Organization (WHO) and International Network for the Prevention of Elder Abuse (INPEA), *Missing voices: Views of older persons on elder abuse*, World Health Organization (2002) <<http://whqlibdoc.who.int/hq/2002/WHO_NMH_VIP_02.1.pdf>>

Zannettino, Lana et al, 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia' (2015) 27(1) *Journal of Elder Abuse & Neglect* 74

## B. Cases

*Blomley v Ryan* (1954) 99 CLR 362

*Bridgewater v Leahy* (1998) 194 CLR 457

*Christodoulou v Christodoulou* [2009] VSC 583

*Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447

*R v Gavare* [2012] SASCFC 52

*R v Radich* [1954] NZLR 86

*Sleboda v Sleboda* [2007] NSWSC 361

*Smith v Glegg* [2004] QSC 443

*TQI* [2015] NSWCATGD 8

## C. Legislation

*Adult Guardianship Act,* R.S.B.C. 1996

*Advance Care Directives Act 2013* (SA)

*Aged Care Act 1997* (Cth)

*Australian Constitution*

*Child Protection Act 1999* (Qld)

*Consent to Medical Treatment and Palliative Care Act* 1995 (SA)

*Crimes (Domestic and Personal Violence) Act 2007* (NSW)

*Guardianship and Administration Act 1993* (SA)

*Guardianship and Administration Act 2000* (Qld)

*Mental Health Act 1993* (SA)

*Patient Protection and Affordable Care Act,* Pub. L. No. 111-148, 124 Stat. 119, subtitle H (2010) (‘*Elder Justice Act*’).

*Powers of Attorney Act 2014* (Vic)

*Powers of Attorney and Agency Act* 1984 (SA)

*Protections for Persons in Care Act,* R.S.A. 2000

*Victims of Domestic Violence Act,* S.S. 1994

## D. Treaties

*International Covenant on Civil and Political Rights,* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

*International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

*Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

*United Nations Principles for Older Persons* GA Res 46/91, UN GAOR, 74th pen mtg, UN Doc A/RES/46/91 (16 December 1991).

## E. Other

Aged Rights Advocacy Service (ARAS), *Residential Care: Preventing Elder Abuse: Forms of Abuse - Financial* <<http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/forms_of_abuse/financial>>

Aged Rights Advocacy Service (ARAS), *Reporting an abusive situation* <<http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/principles/reporting_an_abusive_situation>>

Australia's National Research Organisation for Women's Safety (ANROWS), *Fast Facts: Violence against women: Key Statistics* (2014) <<http://media.aomx.com/anrows.org.au/s3fs-public/Key%20statistics%20-%20all.pdf>>

Australian Bureau of Statistics, *Population by Age and Sex, Regions of Australia, 2014* <[http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3235.0Main%20Features102014?opendocument&tabname=Summary&prodno=3235.0&issue=2014&num=&view=](http://www.abs.gov.au/ausstats/abs%40.nsf/Latestproducts/3235.0Main%20Features102014?opendocument&tabname=Summary&prodno=3235.0&issue=2014&num=&view=)>

Australian Bureau of Statistics, *Feature Article: Population by Age and Sex, Australia, States and Territories* <[http://www.abs.gov.au/ausstats/abs@.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument](http://www.abs.gov.au/ausstats/abs%40.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument)>

Australian Government, *Information and Services: Benefits and Payments: Older Australians* <<http://www.australia.gov.au/information-and-services/benefits-and-payments/older-australians>>

Australian Government: Australian Institute of Family Studies, *Publications: Australian child protection legislation* <<https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>>

Australian Government: Australian Institute of Health and Welfare, *Authoritative information and statistics to promote better health and wellbeing: Life expectancy* <<http://www.aihw.gov.au/deaths/life-expectancy/>>

Australian Government: Australian Law Reform Commission, *Terms of Reference: Protecting the Rights of Older Australians from Abuse* <<http://www.alrc.gov.au/inquiries/elder-abuse/terms-reference>>

Australian Government: Australian Law Reform Commission, *Elder abuse* <<http://www.alrc.gov.au/inquiries/elder-abuse>>

Elder Abuse Prevention Unit, *Promoting the right of all older people to live free from abuse: Getting Help* <<http://www.eapu.com.au/getting-help>>

Elder Rights Advocacy, *Empowering Older Victorians* <<http://www.era.asn.au/index.html>>

National Disability Insurance Scheme, *NDIS* <<http://www.ndis.gov.au/>>

Office of the Public Advocate (Qld), *Elder Abuse Resource Directory: A Queensland Guide to Services, Assistance and Information*, Queensland Government (2012) <<http://www.justice.qld.gov.au/__data/assets/pdf_file/0017/94220/elder-abuse-resource-directory.pdf>>

Office of the Public Guardian, *Report Abuse* The State of Queensland <<http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/forms_of_abuse/financial>>

Office of the Public Guardian, *About us* <<http://www.publicguardian.qld.gov.au/adult-guardian/about-us>>

Senior Rights Service, *Legal, Advocacy, Education* <<http://seniorsrightsservice.org.au/>>

Senior Rights Victoria, *What is elder abuse?: What are the types of elder abuse?* <<http://www.seniorsrights.org.au/toolkit/toolkit/what-is-elder-abuse/#item-2>>

The National Council to Reduce Violence against Women and their Children, *Domestic violence laws in Australia*, Australian Government: Department of Social Services (2009) <<https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf>>

The Public Trustee, *Let's talk about Elder Abuse*, Queensland Government (2016) <<http://www.pt.qld.gov.au/files/elder-abuse-brochure.pdf>>

UNDESA: Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons, *Main Page* <<http://social.un.org/ageing-working-group/>>

United Nations Office at Vienna: Centre for Social Development and Humanitarian Affairs, *Strategies for confronting domestic violence: a resource manual*, UNODC (1993) <<https://www.unodc.org/pdf/youthnet/tools_strategy_english_domestic_violence.pdf>>

US Department of Justice, Centre for Problem Oriented Policing, *Financial Crimes Against the Elderly <*<http://www.popcenter.org/problems/pdfs/crimes_against_elderly.pdf>>

World Health Organization (WHO), *Elder abuse: Fact sheet No 357* <<http://www.who.int/mediacentre/factsheets/fs357/en/>>

1. Australian Government: Australian Law Reform Commission, Elder abuse <<http://www.alrc.gov.au/inquiries/elder-abuse>>. [↑](#footnote-ref-1)
2. Australian Bureau of Statistics, *Feature Article: Population by Age and Sex, Australia, States and Territories* <[http://www.abs.gov.au/ausstats/abs@.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument](http://www.abs.gov.au/ausstats/abs%40.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument)>. [↑](#footnote-ref-2)
3. Australian Bureau of Statistics, *Population by Age and Sex, Regions of Australia, 2014* <[http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3235.0Main%20Features102014?opendocument&tabname=Summary&prodno=3235.0&issue=2014&num=&view=](http://www.abs.gov.au/ausstats/abs%40.nsf/Latestproducts/3235.0Main%20Features102014?opendocument&tabname=Summary&prodno=3235.0&issue=2014&num=&view=)>. [↑](#footnote-ref-3)
4. Australian Government: The Treasury, *2015 Intergenerational Report: Australia in 2055* (2015), 12. <<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report>>. [↑](#footnote-ref-4)
5. Australian Government: Australian Law Reform Commission, Terms of Reference: Protecting the Rights of Older Australians from Abuse <<http://www.alrc.gov.au/inquiries/elder-abuse/terms-reference>>. [↑](#footnote-ref-5)
6. Valerie Margaret Adams et al, 'Financial Abuse of Older People by a Family Member: A Difficult Terrain for Service Providers in Australia' (2014) 26(3) *Journal of Elder Abuse and Neglect* 270, 271. [↑](#footnote-ref-6)
7. World Health Organization (WHO) and International Network for the Prevention of Elder Abuse (INPEA), *Missing voices: Views of older persons on elder abuse*, World Health Organization (2002) <<http://whqlibdoc.who.int/hq/2002/WHO_NMH_VIP_02.1.pdf>>, 3 in Lana Zannettino et al, 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia' (2015) 27(1) *Journal of Elder Abuse & Neglect* 74, 75 [↑](#footnote-ref-7)
8. UK Government Department of Health, *No secrets: Guidance on Developing and Implementing Multi-agency Policies and Procedures to Prtotect Vulnerable Adults from Abuse*, Department of Health and Home Office (2000) <<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/194272/No_secrets__guidance_on_developing_and_implementing_multi-agency_policies_and_procedures_to_protect_vulnerable_adults_from_abuse.pdf>> in Priscilla Harries et al, 'Identifying and enhancing risk thresholds in the detection of elder financial abuse: a signal detection analysis of professionals' decision making' (2014) 14(1) *BMC medical education* 1044, 1045. [↑](#footnote-ref-8)
9. World Health Organization (WHO), *Elder abuse: Fact sheet No 357* <<http://www.who.int/mediacentre/factsheets/fs357/en/>>. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Senior Rights Victoria, *Annual Report 2014-2015* (2015) <<http://seniorsrights.org.au/wp-content/uploads/2014/03/SRV-Annual-Report-2014-15.pdf>>, 8. [↑](#footnote-ref-12)
13. John Chesterman, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115, 118. [↑](#footnote-ref-13)
14. See e.g. Lana Zannettino, et al, 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia' (2015) 27(1) *Journal of Elder Abuse & Neglect* 74, 75 ; Wendy Lacey, 'Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia' (2014) 36(1) *Sydney Law Review* 99, 100. [↑](#footnote-ref-14)
15. See Peteris Darzins et al, *Financial abuse of elders: A review of the evidence: Protecting Elders’ Assets Study*, Monash University, Faculty of Medicine, Nursing and Health Sciences (2009); Joanne Wainer et al, *Diversity and financial elder abuse in Victoria: Protecting Elders' Assets Study*, Monash University, Faculty of Medicine, Nursing and Health Sciences (2011); both in Lana Zannettino et al, 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia' (2015) 27(1) *Journal of Elder Abuse & Neglect* 74, 75. [↑](#footnote-ref-15)
16. See UNDESA: Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons, *Main Page* <<http://social.un.org/ageing-working-group/>>. [↑](#footnote-ref-16)
17. *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976). [↑](#footnote-ref-17)
18. *United Nations Principles for Older Persons* GA Res 46/91, UN GAOR, 74th plen mtg, UN Doc A/RES/46/91 (16 December 1991). [↑](#footnote-ref-18)
19. Australian Government: Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws (DP 81): 3. National Decision-Making Principles* (2014); House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law* (2007); Senior Rights Victoria, *Annual Report 2014-2015* (2015); Joanne Wainer et al, *Diversity and financial elder abuse in Victoria: Protecting Elders' Assets Study*, Monash University, Faculty of Medicine, Nursing and Health Sciences (2011); R Kaspiew et al, *Elder Abuse: Understanding Issues, Frameworks and Responses.* [↑](#footnote-ref-19)
20. NB for the full version of this table with annotated footnotes and citations, see Appendix 1. Also note, for each State, there is no specific avenue of appeal available. [↑](#footnote-ref-20)
21. Wendy Lacey, 'Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia' (2014) 36(1) *Sydney Law Review* 99, 102. [↑](#footnote-ref-21)
22. Ibid 101. For a list of what the Government is currently funding for older Australians, see generally: Australian Government, *Information and Services: Benefits and Payments: Older Australians* <<http://www.australia.gov.au/information-and-services/benefits-and-payments/older-australians>>. [↑](#footnote-ref-22)
23. See above Table 1. [↑](#footnote-ref-23)
24. National Disability Insurance Scheme, *NDIS* <<http://www.ndis.gov.au/>>. [↑](#footnote-ref-24)
25. The NDIS took many years of discussions about disability reform and it took three years from the Productivity Commission’s Inquiry into the matter: National Disability Insurance Scheme, *Our History* <<http://www.ndis.gov.au/about-us/our-history>>. [↑](#footnote-ref-25)
26. Wendy Lacey, 'Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia' (2014) 36(1) *Sydney Law Review* 99, 102-103. [↑](#footnote-ref-26)
27. Ibid 103; The Constitution, ss 51(xxix), 61. [↑](#footnote-ref-27)
28. John Chesterman, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115, 120. [↑](#footnote-ref-28)
29. Elder Rights Advocacy, *Empowering Older Victorians* <<http://www.era.asn.au/index.html>>; Elder Abuse Prevention Unit, *Promoting the right of all older people to live free from abuse: Getting Help* <<http://www.eapu.com.au/getting-help>>; Senior Rights Service, *Legal, Advocacy, Education* <<http://seniorsrightsservice.org.au/>>. [↑](#footnote-ref-29)
30. John Chesterman, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115, 120. [↑](#footnote-ref-30)
31. Amanda Phelan, 'Elder abuse, ageism, human rights and citizenship: implications for nursing discourse' (2008) 15(4) *Nursing inquiry* 320, 321. [↑](#footnote-ref-31)
32. Alex A Baker, 'Granny battering' (1981) 2(3-4) *International Journal of Family Psychiatry* 369. [↑](#footnote-ref-32)
33. John Chesterman, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115, 115. [↑](#footnote-ref-33)
34. World Health Organization (WHO) and International Network for the Prevention of Elder Abuse (INPEA), *Missing voices: Views of older persons on elder abuse*, World Health Organization (2002) <<http://whqlibdoc.who.int/hq/2002/WHO_NMH_VIP_02.1.pdf>>; 3 in Briony Dow and Melanie Joosten, 'Understanding elder abuse: a social rights perspective' (2012) 24(6) *International Psychogeriatrics* 853, 853; and John Chesterman, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115, 115. [↑](#footnote-ref-34)
35. Amanda Phelan, 'Elder abuse, ageism, human rights and citizenship: implications for nursing discourse' (2008) 15(4) *Nursing inquiry* 320, 321; John Chesterman, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115,117. [↑](#footnote-ref-35)
36. E.g. Section 8 of the *Child Protection Act 1999* (Qld) where child is defined as an individual under 18 years. For a full list of legislation to do with the protection of children in Australia, see Australian Government: Australian Institute of Family Studies, *Publications: Australian child protection legislation* <<https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>>. [↑](#footnote-ref-36)
37. *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *International Covenant on Civil and Political Rights,* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). [↑](#footnote-ref-37)
38. See e.g. Michele D. Kipke, *New Research on Adolescent Development and the Biology of Puberty: summary of a workshop on new research* (National Academies Press, 2000); Peter T. Ellison et al, 'Puberty as a life history transition' (2012) 39(5) *Annals of Human Biology* 352. [↑](#footnote-ref-38)
39. See Australian Government: Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice (ALRC Report 108): 68. Decision Making by and for Individuals Under the Age of 18* (2008) <<http://www.alrc.gov.au/publications/68.%20Decision%20Making%20by%20and%20for%20Individuals%20Under%20the%20Age%20of%2018/research-capacity#_ftn39>>. [↑](#footnote-ref-39)
40. See e.g. James Varani, 'Skin damage in the aged: it's more than cosmetic' (2009) 4(6) *Expert Review of Dermatology* 549; Graeme L Close, Philippa Haggan and Anne McArdle, 'Skeletal muscle aging' (2007) 17(1) *Reviews in Clinical Gerontology* 13. [↑](#footnote-ref-40)
41. See e.g. Australian Government: Australian Institute of Health and Welfare, *Authoritative information and statistics to promote better health and wellbeing: Life expectancy* <<http://www.aihw.gov.au/deaths/life-expectancy/>>; J. M. Augustine and G. H. Skrepnek, 'Impact of health, social, lifestyle, and economic factors on life expectancy in OECD countries' (2013) 16(3) *Value in health : the journal of the International Society for Pharmacoeconomics and Outcomes Research* 254. [↑](#footnote-ref-41)
42. Lana Zannettino et al, 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia' (2015) 27(1) *Journal of Elder Abuse & Neglect* 74, 82. [↑](#footnote-ref-42)
43. Wendy Lacey, 'Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia' (2014) 36(1) *Sydney Law Review* 99, 113. [↑](#footnote-ref-43)
44. Briony Dow and Melanie Joosten, 'Understanding elder abuse: a social rights perspective' (2012) 24(6) *International Psychogeriatrics* 853, 853. [↑](#footnote-ref-44)
45. Wendy Lacey, 'Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia' (2014) 36(1) *Sydney Law Review* 99, 104. [↑](#footnote-ref-45)
46. Australian Government: Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws (DP 81): 3. National Decision-Making Principles* (2014) <<https://www.alrc.gov.au/publications/3-national-decision-making-principles/national-decision-making-principles>>. [↑](#footnote-ref-46)
47. *Powers of Attorney Act 2014* (Vic), ss 3, 84-90. [↑](#footnote-ref-47)
48. See Office of the Public Guardian, *About us,* The State of Queensland <<http://www.publicguardian.qld.gov.au/adult-guardian/about-us>>. [↑](#footnote-ref-48)
49. *TQI* [2015] NSWCATGD 8, [48]. [↑](#footnote-ref-49)
50. [2004] QSC 443. [↑](#footnote-ref-50)
51. See e.g. United Nations Office at Vienna: Centre for Social Development and Humanitarian Affairs, *Strategies for confronting domestic violence: a resource manual*, UNODC No (1993) <<https://www.unodc.org/pdf/youthnet/tools_strategy_english_domestic_violence.pdf>>. [↑](#footnote-ref-51)
52. Australia's National Research Organisation for Women's Safety (ANROWS), *Fast Facts: Violence against women: Key Statistics* (2014) <<http://media.aomx.com/anrows.org.au/s3fs-public/Key%20statistics%20-%20all.pdf>>. [↑](#footnote-ref-52)
53. See e.g. the *Domestic and Family Violence Protection Act 1989* (Qld). For a more comprehensive list of laws relating to domestic violence in Australia, see The National Council to Reduce Violence against Women and their Children, *Domestic violence laws in Australia*, Australian Government: Department of Social Services No (2009) <<https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf>>. [↑](#footnote-ref-53)
54. See Edward J. Carnot, *Is Your Parent in Good Hands?: Protecting Your Aging Parent from Financial Abuse and Neglect* (Capital Books, 2004). [↑](#footnote-ref-54)
55. House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law* (2007) <<http://www.aph.gov.au/parliamentary_Business/Committees/House_of_Representatives_Committees?url=laca/olderpeople/report/finalreport.pdf>>. [↑](#footnote-ref-55)
56. (1983) 151 CLR 447 (*‘Amadio’*). [↑](#footnote-ref-56)
57. Ibid 461 (Mason J). [↑](#footnote-ref-57)
58. Ibid 462 (Mason J). [↑](#footnote-ref-58)
59. Office of the Public Advocate (Qld) and Queensland Law Society, *Elder Abuse: How well does the law in Queensland cope?* <<http://www.eapu.com.au/uploads/research_resources/How_Well_Does_the_Law_Cope_JUL_2010-QLS.pdf>>. [↑](#footnote-ref-59)
60. [2007] NSWSC 361 (‘*Sleboda’)*. [↑](#footnote-ref-60)
61. [2009] VSC 583. [↑](#footnote-ref-61)
62. See *Smith v Glegg* [2004] QSC 443; *Sleboda v Sleboda* [2007] NSWSC 361; *Bridgewater v Leahy* (1998) 194 CLR 457. [↑](#footnote-ref-62)
63. *Sleboda v Sleboda* [2008] NSWCA 122, 60. [↑](#footnote-ref-63)
64. *Smith v Glegg* [2005] 1 Qd R 561, 71. [↑](#footnote-ref-64)
65. See *Blomley v Ryan* (1954) 99 CLR 362, 405 where a contract of sale was nullified and property was given back to seller after undue influence was present by son in transaction. [↑](#footnote-ref-65)
66. House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law* (2007). [↑](#footnote-ref-66)
67. R Kaspiew, Carson R, Rhoades H, *Elder Abuse: Understanding Issues, Frameworks and Responses,* para 3. [↑](#footnote-ref-67)
68. US Department of Justice, Centre for Problem Oriented Policing. *Financial Crimes Against the Elderly: <*<http://www.popcenter.org/problems/pdfs/crimes_against_elderly.pdf>>. [↑](#footnote-ref-68)
69. Ibid. [↑](#footnote-ref-69)
70. *R v Gavare* [2012] SASCFC 52. [↑](#footnote-ref-70)
71. G Fitzgerald, D Blake and R Thurlow, *Response to the consultation on the review of "No Secrets" Action on Elder Abuse* (2009) in Mike Clare et al, 'Conceptualising elder abuse: Does this label fit?' (2014) 8(1) *Communities, Children and Families Australia* 37, 43-44. [↑](#footnote-ref-71)
72. *Patient Protection and Affordable Care Act,* Pub. L. No. 111-148, 124 Stat. 119, subtitle H (2010) (‘*Elder Justice Act*’). [↑](#footnote-ref-72)
73. See e.g. *Adult Guardianship Act,* R.S.B.C. 1996 c.6.; *Protections for Persons in Care Act,* R.S.A. 2000 c. P29; *Victims of Domestic Violence Act,* S.S. 1994, c. V-6.02. [↑](#footnote-ref-73)
74. T Hafemeister, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (2003) in National Research Council (US) Panel to Review Risk and Prevalence of Elder Abuse and Neglect. [↑](#footnote-ref-74)
75. [1954] NZLR 86. [↑](#footnote-ref-75)
76. The Public Trustee, *Let's talk about Elder Abuse*, Queensland Government No (2016) <<http://www.pt.qld.gov.au/files/elder-abuse-brochure.pdf>>. [↑](#footnote-ref-76)
77. Senior Rights Victoria, *What is elder abuse?: What are the types of elder abuse?* <<http://www.seniorsrights.org.au/toolkit/toolkit/what-is-elder-abuse/#item-2>>. Financial abuse is the most common form of abuse seen at Seniors Rights Victoria. 65 years is commonly used as the age for ‘elders’, however there may be differing age eligibility criteria. Seniors Rights Victoria, for example work with persons aged 60 and over and Indigenous Victorians aged 45 and over. [↑](#footnote-ref-77)
78. Aged Rights Advocacy Service (ARAS), *Residential Care: Preventing Elder Abuse: Forms of Abuse - Financial* <<http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/forms_of_abuse/financial>>. [↑](#footnote-ref-78)
79. Office of the Public Guardian, *Report Abuse,* The State of Queensland <<http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/forms_of_abuse/financial>>. [↑](#footnote-ref-79)
80. Family and Community Services, *Preventing and responding to abuse of older people: NSW interagency policy*, NSW Government (2014) <<http://www.ageing.nsw.gov.au/__data/assets/pdf_file/0018/300465/FACS_NSW-Interagency-Policy.pdf>>. [↑](#footnote-ref-80)
81. Sir Zelman Cowen Centre, *Elder Abuse Prevention Strategy*, Victoria University for the Victorian Government No (2000) <<http://www.seniorsrights.org.au/toolkit/wp-content/uploads/2013/08/EAPS-PE-Workshop-1-Manual.pdf>>. [↑](#footnote-ref-81)
82. Aged Rights Advocacy Service (ARAS), *Reporting an abusive situation* <<http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/principles/reporting_an_abusive_situation>>. [↑](#footnote-ref-82)
83. Mike Clare, B Blundell and Joseph Clare, *Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data*, Crime Research Centre, The University of Western Australia No (2011) <<http://www.ncpop.ie/userfiles/file/International%20Reports/Examination%20of%20the%20Extent%20of%20Elder%20Abuse%20in%20Western%20Australia.pdf>>. [↑](#footnote-ref-83)
84. “To protect the rights and interests of adults with impaired capacity by, acting as a guardian where no one else is available and appropriate, acting as a statutory health attorney, consenting to forensic examinations (e.g. to obtain evidence that a criminal offence has been committed), visiting specified places where adults with impaired capacity live to safeguard their right and interests (Community Visitor Program), investigating alleged abuse, neglect or exploitation of adults with impaired capacity. The *Guardianship and Administration Act 2000* defines impaired capacity for a matter as meaning the adult is not capable of all of the following: (i) understanding the nature and effect of decisions about the matter; (ii) freely and voluntarily making decisions about the matter; and (iii) communicating the decisions in some way.” Retrieved from Office of the Public Guardian, *About us*, <<http://www.publicguardian.qld.gov.au/adult-guardian>>. [↑](#footnote-ref-84)
85. “The Public Trustee does not have authority to intervene in cases where an adult with impaired capacity is being subjected to neglect, abuse or exploitation (these matters should be referred to the Adult Guardian). However, if it is suspected a senior has capacity and is being financially abused, The Public Trustee can provide the senior with estate planning advice and help to set up safeguards to protect their remaining assets. If a senior does not know anyone suitable to act as their financial attorney The Public Trustee can be nominated.” Retrieved from Office of the Public Advocate (Qld), *Elder Abuse Resource Directory: A Queensland Guide to Services, Assistance and Information*, Queensland Government (2012) <<http://www.justice.qld.gov.au/__data/assets/pdf_file/0017/94220/elder-abuse-resource-directory.pdf>>. [↑](#footnote-ref-85)
86. Offers free services that provides information, referrals and support for older people. [↑](#footnote-ref-86)
87. Department of Family and Community Services, ‘Elder Abuse Helpline’ NSW Government, retrieved from <<http://www.facs.nsw.gov.au/>>. [↑](#footnote-ref-87)
88. Created for people over 60 that are socially or economically disadvantaged. Seniors Rights Legal Service solicitors give advice on: human rights matters, age discrimination and financial abuse. [↑](#footnote-ref-88)
89. This is an independent organisation that promotes/protects the rights and wellbeing of older people, through the provision of information,representation , support and education . [↑](#footnote-ref-89)
90. This provides systemic and some individual advocacy to people with impaired mental capacity and their carers. Also has a Dispute Resolution Service which offers a mediation service to assist in the resolution of disputes. Draws upon law from: *Advance Care Directives Act 2013* (SA), *Guardianship and Administration Act 1993* (SA), *Mental Health Act 1993* (SA), *Consent to Medical Treatment and Palliative Care Act 1995* (SA) and *Powers of Attorney and Agency Act 1984* (SA). [↑](#footnote-ref-90)