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18th August, 2016

ALRC President Professor Rosalind Croucher AM

Commissioner-in-charge of the Elder Abuse Inquiry

Australian Government

Australian Law Reform Commission

Dear Professor Rosalind Croucher AM,

Re: Inquiry into Elder Abuse – Submission

Please accept our Submission for the above Elder Abuse Inquiry.

We would like to take this opportunity to commend the ALRC for conducting this Inquiry, and we look forward to seeing the action taken as a result, to help protect the elder senior citizens of Australia.

The disturbing rate of abuse has continued to grow for too long. We need boundaries. We have a moral responsibility to take effective action promptly to efficiently reduce the occurrence and trend that’s evident.

Thank you for considering our submission. If you have any questions at all regarding the content, or the work we do for the senior community and the service providers that help them with their finances, please contact us on the details below. We would welcome an opportunity to speak during further consultation rounds in the inquiry process.

Your sincerely,

Anne McGowan

CEO

Protecting Seniors Wealth



SUBMISSION

Prepared by: Anne McGowan

Protecting Seniors Wealth

August 2016

INQUIRY: ELDER ABUSE

Conducted by the Australian Law Reform Commission

Elderly people are at risk. Elder abuse is far more widespread than most people know, and financial abuse is the most common form of abuse. Taking this into consideration, and that a very high percentage of financial abuse could be easily prevented with the introduction of new laws and certain changes to the legal system, we have a responsibility to take that action, in order to protect elder seniors from further abuse.

Any form of abuse should not be tolerated. Senior elders should be respected and cared for in their later years. Not subjected to the appalling levels and often complicated forms of abuse. Financial abuse is a major factor.

Financial abuse leads to other forms of abuse. And there’s a new emerging “unwanted” trend fuelling the rapidly increasing wealth abuse epidemic called **“Inheritance Impatience”**. This, along with the unprecedented increase in the number of seniors in our communities, presents a huge problem that needs to be addressed effectively and efficiently. And it can be, by taking the appropriate and accountable action.

*Our lives begin to end the day we become silent*

*about things that matter.*

* Martin Luther King

SUBMISSION – INQUIRY INTO ELDER ABUSE

**Situation Overview**

Twelve important key facts and issues concerning the current environment elders are now facing:

* 70% of the wealth is owned by seniors, making them a prime target.
* There’s an unhealthy sense of entitlement and greed by the perpetrators for their own financial gain.
* It’s mostly not reported due to embarrassment, fear and shame.
* The main perpetrators in financial abuse situations are their own family members, often their adult children.
* Other predators are neighbours, people posing as financial advisors or care givers, or other unscrupulous predators.
* The elders most often already have their legal affairs in order, yet they’re being subjected to harassment, bullying, coercion, lies and manipulation, to change or sign new legal documents against their will.
* Situations can be complicated, as family are most often involved, and if the elders do not agree to sign, other forms of abuse occur.
* Financial abuse often leads to other forms of abuse – verbal abuse, physical abuse, violence, emotional abuse and neglect.
* Sadly, elders are left too humiliated to speak up, with their dignity shattered, and their money is taken or stolen.
* Elders need help, and prompt assistance with situations. They find it too difficult to deal with the ongoing tactics, and the cunning and relentless perpetrators.
* According to reports, 60% of elder abuse is financial abuse – in order to access their money, home or investments.
* Of course all forms of abuse need to addressed. However, effectively dealing with financial abuse by making some changes to the existing structure and legal system is paramount, and could prevent a very large percentage of the abuse.

**Five KEY Suggestions to Prevent Elder Abuse**

Our investigations over the past two years indicate that if certain boundaries could be established, the high rate of elder abuse would be significantly reduced. With the introduction of the following measures relating to the largest form of elder abuse – financial exploitation (which leads to many other forms of elder abuse), the occurrence rate would dramatically reduce, and be prevented almost entirely in certain areas.

1. **Introduce a New Law – The Elder Justice Law**

The introduction of a new law that could be called the Elder Justice Law, making it a Criminal Offence to abuse an elder person (including financial abuse) would deter abusers. More details are included in the following pages on the Sydney lawyer proposing such a law. The US introduced an Elder Justice Act.

1. **Establish a New Agency – Adult Protective Services**

A new agency could be established to specifically deal with elder abuse (including financial abuse), with the power and resources to step-in immediately once reported and investigate promptly, without delay. The US has an Adult Protective Services agency.

1. **Change the Privacy Laws – Financial Services Can Report Abuse** If privacy laws can be altered, it would allow financial planners and banks to report abuse directly to an Agency (as mentioned above). The service providers who work on frontlines helping seniors with their financial and other affairs need to be able to report abuse. As financial elder abuse is reported to be 60% of elder abuse, the ability to do this is key.
2. **Register for Legal Documents – Wills & Powers of Attorney**

The extent to which elder people are being abused to sign new legal documents, either giving Powers of Attorney to people who abuse the privilege, or by having elders change their Wills leaving all or a greater share of their assets, is growing and is of epidemic proportions. A Register/s would provide a system for monitoring.

1. **Training & Education Programs – Police & Service Providers**

The Police could play a much bigger role in prevention if they had the resources and training to recognise elder abuse situations. Education is crucial, along with tightening up the legal system to support them, with training to deal with different types of abuse.

The Financial Services industry and all services who work on the front lines and help senior elders with their affairs, could assist to play a more proactive role once better informed about recognising the abuse and informing them of procedures in terms of reporting.

**How to Close “The Gaps” in The System**

Essentially, closing the GAPS in the system efficiently and accountably will lead to much improved boundaries and prevention of elder abuse. Appropriate action needs to be taken in order to effectively do something about this appalling level of abuse. The level of abuse will not go away by itself. The disturbing trend will continue and keep growing unchecked.

Our investigations indicate ALL the service providers are experiencing difficulties dealing the bold and cunning perpetrators, especially the following who help them with their care and financial arrangements:

* Aged Care Providers
* Financial Services
* Lawyers

They find it not only frustrating but upsetting to see their elder senior clients subjected to the most common form of abuse – financial exploitation. As one barrister quoted at a conference on aged care recently … ***“The Real Elephant in the Room is Financial Elder Abuse”***.

The five keys to prevention outlined on the previous page would help to close the gaps in the system. Some interesting points of interest to further reinforce the need for effective boundaries:

* The perpetrators are not concerned if they upset or hurt and elder person, or when **take their money and assets**. The perpetrators do not care if they take elders’ finances needed for their aged care.
* This is a ***human rights issue,*** and should be dealt as a separate issue, as swiftly and with as much effort as other human rights issues.
* The predators with their unhealthy **sense of entitlement and greed** lie, manipulate, coerce, badger, bully, and use worse abusive tactics in order to get elders to sign legal documents. There is not a system in place to check if there’s already a valid existing Will. They simply take them to another lawyer (and usually lie to the other lawyer) and arrange for new legal documents. A register would help.
* In the US, the Investor Protection Trust recently conducted a survey and found that **1 in 5 elders were subjected to financial swindles**. However, that survey also revealed they now have a much better system in place for help and prevention - the agencies and service industries are able to step up, report and respond quickly.

**Important Details Relating to Suggestions & References:**

**New Elder Justice Law**

If a new law was introduced, making it a criminal offence to abuse an older person, this would help to minimise the rate of occurrence. Certainly in the area of financial abuse, many would not proceed for this reason. At present it’s reasonably easy for the perpetrators to ‘get away with it’. The Sydney lawyer proposing to introduce a new law, and has already outlined how that law could look, is Rodney Lewis of Elderlaw.com.au and he speaks in the following ABC interview.

<http://www.abc.net.au/7.30/content/2015/s4355854.htm>

**Establish a New Agency – Adult Protective Services**

In addition to the already overloaded agencies, due to the alarming growth of financial abuse and other forms of abuse, creating an agency that could step in promptly and investigate straight away that offers comprehensive protections and quicker response times. When financial abuse is occurring it needs to be dealt with quickly before the loss of assets and money occurs. If the financial services industry and care provider managers could report without time consuming delays it would protect the elder seniors before further abuse and erosion of assets. In the US they introduced an agency called Adult Protective Services to investigate reports of abuse.

**Change Privacy Laws to protect Advisors Reporting Abuse**

There was a Bill introduced in the US to protect advisers reporting financial abuse, and this also includes training on how to spot elder financial abuse. Our organisation provides training such as this in our already established program.

<http://www.investmentnews.com/article/20160705/FREE/160709984/house-passes-bill-to-protect-advisers-reporting-elder-financial-abuse>

**National Register for Legal Documents**

National Registers for both Wills and Powers of Attorney to close the gaps in the system would effectively help with financial abuse prevention. Lack of national registers for Wills provides a loop hole for financial abuse to occur as the perpetrators lie to lawyers and arrange for change of wills or new wills, against the wishes of the elder person, while they’re being coerced by means of Undue Influence. The lack of a National Register for Powers of Attorney is leaving banks unclear on Power of Attorney and leaving the door open to abuse of those documents.

<http://www.australianageingagenda.com.au/2015/07/24/lack-of-national-register-leaving-banks-unclear-on-power-of-attorney/>

**Training & Education Programs**

Training for service industries who work on the front line and help seniors with their finances will be imperative. As will a strong message, sent to the perpetrators and possible future predators who operate against laws and abuse older people. Such a campaign advising of the consequences of these actions, especially if a new Elder Justice Law is introduced making it a Criminal Offence to abuse an older person, is communicated. This communication should be clear, direct and with a no-nonsense approach, such as our ad shown below for Elder Abuse Awareness Day.

<http://www.financialstandard.com.au/news/view/83545377>



**Elder Abuse Figures**

Our investigations lead us to believe the rate of financial abuse is in fact much higher than earlier research figures suggests of 1 in 20. In the US, a recent survey found that 1 in 5 elders were subjected to financial swindles. Financial abuse in Australian could even be as high 1 in 10 or possibly as high as the figures reported in the US. Conducting surveys, would give clearer indications, along the lines of the organisation listed below (IPT).

<http://investorprotection.org/ipt-activities/?fa=research>

**A Multi-Faceted Approach Is Key**

New Laws and changes to the legal system, along with programs to inform and create awareness, will be the key to preventing elder abuse, including financial abuse – “The real elephant in the room”.

<http://www.royalgazette.com/news/article/20160409/ageing-forum-financial-abuse-concerns>

**References for more relevant information**

* The Senior (VIC, Sept issue); ABC News 16 July, 2015; SMH 22 Nov, 2015
* <http://www.thesenior.com.au/news/elder-abuse-reports-tip-of-the-iceberg>
* <http://acl.gov/NewsRoom/blog/2016/2016_05_04.aspx#.Vy0VyrUC4Ds.email>
* <https://www.facebook.com/protectingseniorswealth>



Thank you for helping to protect senior elders and their rights!