**Elder Abuse Submission**

Established in 1935, Resthaven is a not-for-profit aged care organisation associated with Uniting Church in Australia. Resthaven is respected for delivery of high quality, responsive community and residential aged care services. Resthaven shares the lives/wisdom of older people and their carers, supporting them to remain independent for as long as possible, in their own homes or in accommodation at one of Resthaven’s eleven residential care services. Resthaven provides support to approximately 9,500 older people/annum in metropolitan Adelaide, the Adelaide Hills, Murraylands, Riverland and Limestone Coast. The Resthaven workforce of 2100+ is supported by 450 volunteers.

Resthaven has offered responses to Question 3, Questions 11-21, Questions 32 and 35.

Further information can be obtained from

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**What is Elder Abuse?**

*The**ALRC is interested in comment about how elder abuse is defined and about best practice legal responses to elder abuse, including examples from other jurisdictions.*

**Question1**

To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse;

* Harm or distress
* Intention
* Payment for services?

**Question 2**

What are the key elements of best practice legal responses to elder abuse?

**Question 3**

The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning a number of Special needs groups;

*In aged care; service providers become aware of individuals who are victims of abuse, and have limited protections in place*

* Aboriginal and Torres Strait Islander people:

***Mr A****, an Aboriginal man, lives at home, in a multi-generational family environment. He is a recipient of an Aged Pension, however this money is accessed by the family leader, who has Mr A’s PIN number and card, on pension day. Mr A has no access to his own funds, and is dependent on the family leader for shelter and food. Mr A receives a Home Care Package, the service provider recognises the practices within this household as abuse, however work cooperatively to negotiate solutions with respect given to cultural practices. Centrepay mechanisms are negotiated to pay Mr A’s accounts at the local pharmacy, and for necessary services. At Mr A’s request, a staff member takes him to the bank fortnightly, and then shopping, so he can make purchases to meet his needs.*

* People from culturally and linguistically diverse communities
* Lesbian, gay, bisexual, transgender or intersex people
* People with a disability

***Mrs B*** *is 75year old woman residing in a residential aged care home. She has right sided paralysis, and some subtle frontal and executive cognitive deficits. Mrs B has appointed her son as her EPOA, MPOA and EPOG prior to her condition deteriorating.*

*On admission to residential care Mrs B’s cognitive function was assessed and indicated she had minimal impairment but there was some short term memory loss. Her son had taken over management of all of her financial affairs and he viewed her as “dementing” despite being assessed by her doctor, and a geriatrician as having minimal deficit and was able to make her own decisions. Mrs B’s son gradually ceased to consult with her and made decisions on her behalf, he removed all of her jewellery for “safe keeping” and was slow to bring in her personal items from her home. He provided her with regular spending money but then repeatedly questioned her about what she spent it on. She became very concerned at his overly controlling ways but she valued the relationship with her son as her only child and did not wish to challenge him as was fearful the relationship may be placed in jeopardy.*

*In conversations with the residential manager Mrs B disclosed the son’s denial of her simple requests, the reducing amounts of funds he gave her for her personal use and the interrogative measures he took with her and his repeated derogatory comments about her cognitive impairment. With the support of the residential manager Mrs B agreed to involve Aged Rights Advocacy Service and gradually felt more empowered to challenge her son. Her son refused to participate in any mediation meetings and Mrs B eventually took action in revoking her son’s legal position in managing her affairs and appointed another person to this role. She has subsequently not had any interaction with her son.*

* People from rural, regional and remote communities.

*The complexity of issues seen in the broader population are further exacerbated in rural and remote communities.*

***Mr and Mrs C*** *reside 30km from the nearest town; Mrs C has a diagnosis of dementia. Mr C is sole family Carer for his wife, and denies there is any other family. He has Enduring Power of Attorney. Staff of the local health service, and previous Aged care providers have concerns in relation to care provided to Mrs C by her husband, however this is not based on witnessed abuse, but a sense that “all is not right.” Hospital staff insisted that a Home Care Package be in place prior to discharge from hospital, due to concerns for this client’s welfare.*

*Home care staff are present in the home for only 1 hr each day due to the need for 2 staff to effect transfers, and the distance to travel to the client each day. Over a period of months, a picture is established of a complex situation of abuse. Mrs C has been isolated from her family; a son and daughter contacted the in-home provider seeking information about their mother’s wellbeing, as they are not able to gain information from Mr C. Mr C does not administer prescribed medications, the pharmacist is able to provide the data referencing prescriptions filled. Home care staff become aware of restrictions made to Mrs C’s diet, by Mr C, which cause her adverse effects .In home staff are aware Mr C leaves his wife alone over extended periods, however he refuses all offers of respite.*

*Staff also witness rough treatment, and report this to their supervisor.*

*Home care staff sought advice from Office of the Public Advocate, and convened a meeting with Police, Health service staff and the client’s GP. The GP sought advice from medical defence, and determined they would not be involved in submitting an application to the Guardianship Board. Once an opportunity for hospital admission arose an ambulance was called by homecare staff, enabling application to be made to the Guardianship Board while Mrs C remained an inpatient. The Guardianship hearing resulted in appointment of a Guardian, and decisions made to admit to residential care.*

***Mrs D*** *lives in a multi generational home with her daughter and grandson, in a rural town. There is a strong history of mental illness evident in each family member in this home. Mrs D who is 80 years old, is the home owner, and mortgage holder receives a full DVA Pension, and the family need this income to support the household. Mrs D’s daughter has been renovating the home, and her mother, who is bed bound, remains in the home, while renovations occur, subjecting her to noise, dust, and intrusion, which upsets her as she has dementia. In the course of the renovations Mrs D is moved to the back room of her house, which is not suitable for her needs, as the bathroom is not accessible, heating and cooling is non-existent in this room. Home-care staff work to negotiate solutions to these challenges. Extensive negotiation, and commitment to case management is required to reach a positive outcome for this client.*

**Question 4**

The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?

**Social Security**

**Question 5**

How does Centrelink identify and respond to people experiencing or at risk of experiencing abuse? What changes should be made to improve processes for identifying and responding to elder abuse?

**Question 6**

What changes should be made to laws and legal frameworks relating to social security correspondence or payment nominees to improve safeguards against elder abuse?

**Question 7**

What changes should be made to the laws and legal frameworks relating to social security payments for carers to improve safeguards against elder abuse?

**Question 8**

What role is there for income management in providing protections or safeguards against elder abuse?

**Question 9**

What changes should be made to residence requirements or waiting periods for qualification for social security payments, or the assurance of support scheme, for people experiencing elder abuse?

**Question 10**

What other risks arise in social security laws and legal frameworks with regard to elder abuse? What other opportunities exist for providing protections and safeguards against abuse?

**Aged Care**

**Question 11**

What evidence exists of elder abuse committed in aged care, including in residential, home and flexible care settings?

*It seems the key point is that by the government’s own funding regime a maximum of 12.5% of people aged over 70 are assumed to be accessing formal aged care. A vast number of older people are living independently in the community with varying degrees of support from family, friends and, for some, privately sourced services that are not regulated as aged care services. There is another cohort (approx 600,000 people) that are supported for low level care via the Commonwealth Home Support Program which is a grant funded arrangement between government and providers but is not covered under the Aged Care Act.*

*The evidence, (NSW Elder Abuse Helpline and Resource Unit, 2015) is that the vast majority of elder abuse is perpetrated by family members: 71% of reports. This study found 47% of perpetrators were adult children, in 12% of cases the victim’s spouse perpetrated the abuse. An element not to be overlooked is that quite a lot of this abuse has not arisen for the person in old age but is a continuation of family violence that has occurred in relationships throughout the person’s life.*

1. *Aged Care Providers*

*Aged care providers often find it difficult to address matters of abuse perpetrated by family/friends as the only means of redress is – for a competent older adult – encouragement for them to report to the police or seek advocacy. For non-competent decision makers (e.g. people with dementia and other conditions) - if there is an appointed guardian then that person has the responsibility to address (if the guardian is not acting in the best interests of the person then providers can with the support of GP make a report to the relevant statutory authority to review the circumstances). Providers face a real challenge for the older person who has not made any Advance Directives about the appointment of guardians prior to their loss of competency and where it is not evident there is a suitable substitute decision maker to work with. Any process requires a medical statement and some GPs are reluctant to become involved in the statutory processes required particularly if there is evidence of family conflict and the GP is treating a wider group of family members (this often occurs within small CALD communities or in country communities).*

*It is additionally challenging for home-care providers who suspect matters of concern, but do not have 24/7 oversight of the situation.*

1. *Broader Community*

*There is limited understanding in the broader community that abuse is defined as anything other than assault. In the community setting, family members that lock doors to prevent the older person from accessing the outside environment, may not be aware that there are other opportunities to ensure safety without deprivation of liberty. Equally, use of chemical restraint by family members is sometimes due to limited access to, and poor understanding of the benefits of input from specialised mental health services. A broader community understanding of abuse, in all of its presentations is important in addressing these issues.*

**Question 12**

What further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?

*Aged Care Assessment Program’s role is to assess for eligibility for aged care under the Aged Care Act. They have no statutory authority to challenge legal guardianship orders. Some further training as to the appropriate information they could give a competent older person about their rights to report to the police might be relevant*

**Question 13**

What changes should be made to aged care laws and legal frameworks to improve safeguards against elder abuse arising from decisions made on behalf of a care recipient?

*The decision making capacity and individual rights of a competent older adult to make their own choices is already protected under law. Familial conflict is also often a source of difficulty that impacts on the individual person in their decision making and interactions with aged care providers.*

*There are already many regulatory frameworks that create safeguards in regard to key personnel, police checks, accreditation review of systems, community visitors scheme, health professional registration etc. The substantial matter is the role of family as decision makers for the non competent person who has not formally appointed guardian or when the appointed guardian is seen not to be acting in the best interests of the person. It is the view of Resthaven that the aspect to be strengthened is not specifically that directed to Approved Providers but is in the accountability of legally appointed guardians and the follow up of the relevant state authorities to evaluate the effectiveness of the formally appointed guardian. At the moment the default is that the appointed guardian is acting appropriately*.

*On one hand, in the majority of situations, formal and informal arrangements work very well in ensuring the older person’s wishes are upheld. The formal appointment of a guardian, does not, of itself ensure the best interests of the person are represented. The current process, by which appointment of guardianship is accepted, does not include any education as to the breadth and scope of the role of the appointee*. *Where providers see evidence of adverse actions taken by the guardian, or by others with influence over the older person, processes already exist for reporting of assault. In the broader context of abuse processes are less well defined.*

**Question 14**

What concerns arise in relation to the risk of elder abuse with consumer directed care models? How should safeguards against elder abuse be improved?

*The introduction of Consumer Directed Care (CDC) gives greater control of how funds are used, to the individual, and therefore potentially to a person appointed to act on behalf of the older person. An area of grey exists where a third party (not the care recipient, nor the provider) designs and receives a benefit. This can be complicated when the care recipient lives with the third party.*

*It may be the issues arising in the current funding environment are not so much due to the CDC Model, but the Income Tested Fee component of the funding model. Older people (Care Recipients) sometimes see the means tested client contribution as a disincentive to engaging with the appropriate level of care to meet their care needs. Furthermore, providers see evidence of family members acting in the role of surrogate decision makers, for older people with limited decision-making capacity, who decide not to engage support at the appropriate level, based not on ability to afford this support, but a desire to maintain their inheritance.*

*There have been discussions concerning the CDC fund holding role of the provider, leading to a conflict of interest, that arises from unspent funds, however this aspect will be addressed by changes to the regulatory framework which take effect as of February 2017.*

*Although not linked to CDC, a related risk exists at the time the care recipient requires admission to residential care. If the appointed guardian or representative is also the beneficiary of the person’s will, and chooses to preserve their inheritance rather than sell assets to secure residential care.*

**Question 15**

What changes to the requirements concerning quality of care in aged care should be made to improve safeguards against elder abuse?

*Approved Provider status, police checks, regular assessment against quality standards by the Australian Aged Care Quality Agency (AACQA) and mandatory reporting already exist, and costs for the ongoing maintenance of these systems are borne by the aged care provider.*

*The standards are already rigorous with regard to provider systems and evidence of these is assessed by independent reviewers who also talk extensively with care recipients in the course of the reviews.*

**Question 16**

In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse*?*

*If this is a reference to management of physical and chemical restraint then there are already substantial guidelines and checks and balances in residential and home care. Resources have been developed to assist providers to minimise restrictive practices, in the form of a Decision-making Tool; Supporting a restraint-free environment in Community and Residential care (Department of Health and Ageing 2012) providers undertake staff education to ensure best practice principles are applied to understanding changed behaviours, and engaging least restrictive practices. The need for education for staff and volunteers working in Aged Care is constant and on-going. The Australian Aged Care Quality Agency (AACQA), undertakes regular review processes, through Accreditation Standards 2,3 and 4. The ability to require improvement and sanction providers who fail to demonstrate good practice in this domain already exists.*

*In the community setting, family members who lock doors to prevent the older person from accessing the outside environment, or use of chemical restraint by family members is sometimes due to limited access to, and poor understanding of the benefits of input from specialised mental health services. A broader community understanding of abuse, in all of its presentations is important in addressing these issues. In South Australia, Office for the Ageing, (OFTA) and Aged Right Advocacy Service, (ARAS) are committed to provide community education.*

**Question 17**

What changes to the requirements for reporting assaults in aged care settings should be made to improve responses to elder abuse?

*In Aged care, the requirement already exists to report to the Police and the Department of Health. In Residential Aged Care during 2014-15, “the Department received 2,625 notifications of reportable assaults. Of those, 2,199 were recorded as alleged or suspected use of force, 379 as alleged or suspected unlawful sexual contact, and 47 as both. With 231,555 people receiving permanent residential care in 2014-15, the incidence of reports of suspected or alleged assaults was 1.1 percent” (2014-15 Report on the Operation of the Aged Care Act 1997).*

*The incidence of abuse in the broader population of older people is not well documented.*

*While reporting is mandated, the process of making a report, in itself does not trigger any actions. It is up to providers to implement processes to address risks and negotiate solutions. Responsible providers already invest time and resources to ensure positive outcome are achieved for older people. A significant number of reports are not confirmed through investigation. Once reported to the Police, the response can vary from immediate attendance to non-engagement, based on the nature of the alleged matter. This is especially the case if the allegations of abuse relate to a victim or perpetrator with diminished capacity.*

**Question 18**

What changes to aged care complaints mechanisms should be made to improve responses to elder abuse*?*

*It is Resthaven’s view that the aged care complaints system has been subject to various reviews and improvements over the years. It remains important that reports be made initially to the management of the service (and to the corporate office, if the matter is not resolved adequately at site level) to ensure investigation, review and a timely response. It should be noted that most providers, including Resthaven, have well developed internal complaints mechanisms, which ensure positive outcomes for older people and maximise opportunities for improvement. Internal mechanisms for complaint handling are reviewed by the Australian Aged Care Quality Agency (AACQA), along with specific outcomes. If the AACQA has concerns in relation to a provider’s systems for complaints handling, or specific outcomes, then a mechanism already exists to ensure improved performance in this area.*

*The Aged Care Complaints Commissioner mechanisms that currently exist do not enable the provider an avenue to address vexatious complaints.*

**Question 19**

What changes to the aged care sanctions regime should be made to improve responses to elder abuse?

*Sanctions and penalties should only be implemented in the event that aged care providers are found to have systemic issues and breaches of compliances. An important consideration is the ongoing care of care recipients while sanctions are in place. It should be noted that the magnitude of the risk should result in a graded approach to the application of sanctions. Such a graduated response should be available to the authorities.*

**Question 20**

What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification of and responses to elder abuse?

*Identification of concerns occurs before contact is made with formal advocacy services. Advocacy services perform a valuable role in assisting older people to negotiate a positive outcome, often through mediation, and education. The Aged Rights Advocacy Service (ARAS) in South Australia has developed a Train the Trainer model for abuse prevention, and a useful model for community services staff; “The protocol for responding to abuse of older people at home in the community”. Given the largest numbers of older people live independently at home, or with informal assistance from family, friends, or privately sourced services, knowledge of these resources in the broader community is an important step in improving access. Consideration should be given to ensuring that the broader community understands the full scope of what is understood to be abuse. Opportunities for educating people working in banking, emergency services, healthcare, churches, councils, to recognise and report abuse would contribute to better outcomes for individuals living in the community setting.*

*There has been reluctance by advocacy services to be the initiator that seeks review of Guardians before the Guardianship Board. Resthaven thinks this aspect of the services is important and should be clearly defined as within scope.*

*Clients in rural areas have very limited opportunities for face-to-face support from aged care advocacy services.*

**Question 21**

What other changes should be made to aged care laws and legal frameworks to identify, provide safeguards against and respond to elder abuse*?*

*A legal framework in isolation does not deliver an effective mechanism for prevention of abuse. Community education, education of personnel at key transition points to further support older people to live life without abuse in its many forms. A program to ensure individuals who are appointed as substitute decision makers understand scope and breadth of their responsibilities, and the core tenets of advocacy. Improved access to professional advocacy supports in country areas and for special needs groups.*

*A recent matter in a SA residential home was debated in the media and it included an aspect related to surveillance of a resident in their room within the aged care home. Resthaven believes the aspect of surveillance challenges Federal and State Law as it applies to individual’s rights within an aged care home versus their own home. This case also raises other related considerations with respect to whether they are competent, the issues of privacy and dignity for a resident, and other individuals (staff, visitors). Importantly such a topic should be considered within a broader context of individuals who are vulnerable having similar risks whether they be in their own home, aged care, disability service, educational or a health service environment.*

**The National Disability Insurance Scheme**

**Question 22**

What evidence exists of elder abuse being experienced by participants in the National Disability Insurance Scheme?

**Question 23**

Are the safeguards and protections provided under the National Disability Insurance Scheme a useful model to protect against elder abuse?

**Superannuation**

**Question 24**

What evidence is there of older people being coerced, defrauded, or abused in relation to their superannuation funds, including their self-managed superannuation funds? How might this type of abuse be prevented and redressed?

**Financial institutions**

**Question 25**

What evidence is there of elder abuse in banking or financial systems?

**Question 26**

What changes should be made to the laws and legal frameworks relating to financial institutions to identify, improve safeguards against and respond to elder abuse? For example should reporting requirements be imposed?

**Family agreements**

**Question 27**

What evidence is there that older people face difficulty in protecting their interests when family agreements breakdown?

**Question 28**

What changes should be made to laws or legal frameworks to better safeguard the interests when family agreements breakdown?

**Appointed decision-makers**

**Question 29**

What evidence is there of elder abuse committed by people acting as appointed decision-makers under instruments such as powers of attorney? How might the type of abuse be prevented and redressed?

**Question 30**

Should powers of attorney and other decision-making instruments be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?

**Question 31**

Should the statutory duties of attorneys and other appointed decision-makers be expanded to give them a greater role in protecting older people from abuse by others?

**Question 32**

What evidence is there of elder abuse by guardians and administrators? How might this type of abuse be prevented and redressed?

*In some cases Guardians are unaware of the core tenets of Guardianship; and make decisions based on a desire to protect their own lifestyle, and not on the rights and wishes of the older person. Educating persons to whom powers are granted, could be a starting point for prevention of abuse.*

**Public Advocates**

**Question 33**

What role should public advocates play in investigating and responding to elder abuse?

**Question 34**

Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?

**Health Services**

**Question 35**

How can the role that health professionals play in identifying and responding to elder abuse be improved?

*Resthaven is confused as to why the questions relating to health services do not deal with the risk of elder abuse occurring within the health sector, inferring heath professionals and their working environments, as opposed to the Aged Care Sector, are uniquely removed from such risks. Resthaven believes this is a narrow view inferred in this Law Commission review. The types of considerations of risk of elder abuse within aged care should be assumed to be present as risks within all humans’ service delivery contexts where older people are service users and this includes health services. Such aspects as, chemical and physical restraint, handling of older individuals, relative prioritising of care of older individuals and so on, are areas of risk across sectors.*

**Question 36**

How should professional codes be improved to clarify the role of health professionals in identifying and responding to elder abuse?

**Question 37**

Are health-justice partnerships a useful model for identifying and responding to elder abuse?
What other health service models should be developed to identify and respond to elder abuse?

**Question 38**

What changes should be made to laws and legal frameworks, such as privacy laws, to enable hospitals to better identify and respond to elder abuse?

**Forums for redress**

**Question 39**

Should civil and administrative tribunals have greater jurisdiction to hear and determine matters related to elder abuse?

**Question 40**

How can the physical design and procedural requirements of courts and tribunals be improved to provide better access to forums to respond to elder abuse?

**Question 41**

What alternative dispute resolution mechanisms are available to respond to elder abuse? How could they be improved? Is there a need for additional services, and where should they be located?

**Criminal law**

**Question 42**

In what ways should criminal laws be improved to respond to elder abuse? For example, should there be offenses specifically concerning elder abuse?

**Question 43**

Do state and territory criminal laws regarding neglect offer an appropriate response to elder abuse? What changes should be made to make them better safeguard against elder abuse?

**Question 44**

Are protection orders being used to protect people from elder abuse? What changes should be made to make them better safeguard against elder abuse?

**Question 45**

Who should be required to report suspected elder abuse, in what circumstances, and to whom?

**Question 46**

How should the police and prosecution responses to reports of elder abuse be improved? What are best practice police and prosecution responses to elder abuse?

**Question 47**

How should victims’ services and court processes be improved to support victim of elder abuse?

**Question 48**

How should sentencing laws and practices relating to elder abuse be improved?

**Question 49**

What role might restorative justice play in responding to elder abuse?

**Question 50**

What role might civil penalties play in responding to elder abuse?