The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

18 August 2016

Dear Madam,

 **Australian Law Reform Commission Elder Abuse Inquiry**

I am a 3rd year student enrolled in the Juris Doctor at the University of Melbourne. This submission to the Australian Law Reform Commission’s Elder Abuse Inquiry was originally submitted as a final essay prepared for the JD subject Legal Research. I completed this research for the topic ‘Family Law Reform and Policy’, supervised by Professor Helen Rhoades.

This essay examines service options in the Victorian context and advocates for the development of a multidisciplinary service to provide a holistic response for victims of intra-familial financial elder abuse. This is informed by principles of therapeutic jurisprudence and restorative justice. More widely, the focus is upon delivering outcomes in four key areas: support, education, conflict resolution and collaboration. The focus is upon older people with capacity.

The paper has been adapted to include recommendations for the ALRC.

Thank you for considering this submission.

Yours sincerely,

Sarah Goegan.

# **Australian Law Reform Commission**

**Elder Abuse Inquiry**

**Submission by Sarah Goegan**

 **INTRA-FAMILIAL FINANCIAL ELDER ABUSE: EXPLORING SERVICE OPTIONS TO ACHIEVE THERAPEUTIC OUTCOMES**

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# Summary of Recommendations

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| **Recommendation 1:** A nationally adopted operationalised definition of elder abuse should be developed.**Recommendation 2:** 1. That family violence legislation be reviewed to assess whether it adequately responds to the scope and nature of financial elder abuse committed by relatives.
2. For there to be a formal evaluation of the adequacy of police and magistrate responses to cases of intra-familial financial elder abuse.

**Recommendation 3:** That policymakers and service providers examine the utility of, and are informed by, principles of therapeutic jurisprudence and restorative justice in policy and service development.**Recommendation 4:**1. That key service providers, especially SRV, Justice Connect Seniors Law, courts, health professionals and members of the financial services sector, should collaborate to develop a multidisciplinary model of service provision.
2. That service provision focus upon providing support, education, conflict resolution and collaboration, with a view to achieving therapeutic outcomes.
3. That this program identify the primary points of contact for older people to seek assistance.

**Recommendation 5:**1. That the Federal and State and Territory governments invest in a national elder abuse awareness campaign.
2. For there to be an increase in financial elder abuse information guides available at banks and community legal centres.

**Recommendation 6:** For Federal, State and Territory Governments to support the development of collaborative training mechanisms which bring together professionals from a number of disciplines to ensure uniform training on recognising and responding to risk factors for financial elder abuse. **Recommendation 7:**1. That Australia should avoid implementing adult protection legislation, particularly in regards to older people with capacity.
2. That a front-end, multidisciplinary referral service should be developed to respond to identify and respond to financial elder abuse.
3. That policymakers should consider examples of successful multidisciplinary financial elder abuse services from other countries, with a view however to ultimately developing a support network of services which have as their focus the achievement of therapeutic outcomes which promote empowerment and autonomy of participants.

**Recommendation 8:**1. A multidisciplinary front-end referral service should seek to solidify relationships and communication between legal, health and financial services, to provide a coordinated response to elder abuse cases.
2. The service should seek to ensure that there is a uniform series of services available across entry points (whether the case presents at a health-justice partnership practice, SRV, or a community legal centre).
3. That Victoria should expand on the health-justice partnership model, so as to enhance service providers’ ability to respond to financial elder abuse. Services which should be provided in particular are early conflict dispute resolution, and referrals to counselling, financial advice and crisis housing.

**Recommendation 9:**1. That all states and territories introduce a supportive attorney arrangement option in their Powers of Attorney legislation.
2. That service providers assisting in setting up powers of attorney documents be required to recommend that older people have an unrelated third party in the position of supportive attorney, particularly where family members are being appointed attorney.
3. That State policymakers develop uniform principles of supported decision-making for powers of attorney which draws upon the principles outlined by *Equality, Capacity and Disability in Commonwealth laws*.
4. That older people creating powers of attorney, and their nominated attorney be required to attend education sessions on financial literacy and elder abuse.

**Recommendation 10:**1. That State Magistrates’ Courts and Tribunals provide a specialist elder abuse support worker.
2. That magistrates be trained to deal with a broader range of issues in single proceedings.

**Recommendation 11:**1. That a restorative justice program for financial elder abuse cases be trialled at both the Magistrates’ court and VCAT.
2. That consultation on the development of the program is sought from stakeholders such as local elder support and education agencies, as well as consideration of examples of successful programs, such as in Canada, to develop a specialised program and guidelines for facilitators.

**Recommendation 12:**1. That perpetrator-focused therapeutic justice service options should be developed, which also provides options specific to the form(s) of abuse committed.
2. That services, to the extent possible, seek to have as their primary focus the restoration of familial relationships, without compromising the autonomy and empowerment of the victim.

**Recommendation 13:** That the Federal Government consider developing a national plan to combat elder abuse, which seeks to implement uniform standards and practices in service responses to elder abuse. |

# I Introduction

Elder abuse, as an issue, first arose in the 1970s.[[1]](#footnote-1) However, in Australia elder abuse, and financial abuse, has only recently begun receiving increased public attention.[[2]](#footnote-2) Financial abuse has emerged as the most common form of elder abuse,[[3]](#footnote-3) and has been found to commonly occur within the family.[[4]](#footnote-4) Perpetrators are typically children of the victim, who utilise the established relationship of trust, dependency and emotional support to gain financial advantage.[[5]](#footnote-5) The focus of this research will be upon financial abuse of elders in Victoria with ‘capacity’ within this context. The focus upon elders with capacity has been chosen because these victims often experience pressures from family members which hinder decision-making in their own way, thus service responses must be developed which address both elders with capacity, and those without.

The approach to combating intra-familial financial elder abuse must be informed by two theoretical viewpoints. First, the abuse must be recognised and relocated within the discourse of family violence. This issue was most recently raised by Victoria’s Royal Commission into Family Violence (RCFV) and New South Wales’ Legislative Council Inquiry into Elder Abuse.[[6]](#footnote-6) Second, given the idiosyncratic nature of intra-familial abuse, practices and services implemented to combat the issue would benefit from being informed by principles of therapeutic jurisprudence and restorative justice, so as to best preserve familial relationships.

Informed by these principles, potential practices and services will be examined, with a view to determining how they may more adequately service older people experiencing intra-familial financial abuse, or people who are at-risk. In particular, it will be contended that, given the circumstances and power relationships at play, the role of third party professionals is crucial. The methods considered will examine what role these third parties, such as members of the legal profession, financial services bodies and health practitioners, may play in dealing with financial abuse of elders. This assessment falls into four key intersecting themes: education, collaboration, support and conflict resolution. These are principles by which those involved in combating elder abuse should be informed, and should strive to promote. The principles here may also be considered as applicable to other forms of elder abuse.

In February of this year, the Federal Attorney-General briefed the Australian Law Reform Commission (ALRC) to research and report on elder abuse.[[7]](#footnote-7) The Commonwealth Government, though being somewhat corseted in its legislative capacity, both in its constitutional powers to legislate for elder abuse, and the sheer difficulty of attaining all state and territory compliance with federal legislation, may instead provide a more effective role in arranging a National Plan, and providing funding for states to undertake its execution. Such a plan should not be legislative, but rather to ensure uniformity in guidelines, and in policy and service provision across Australia. The practices, and the principles driving them, considered in this report are advocated as ideas upon which such a plan could be based.

# II Context[[8]](#footnote-8)

## A *Defining financial elder abuse*

Elder abuse is ‘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.’[[9]](#footnote-9) This may be physical, psychological, emotional, sexual, or financial.[[10]](#footnote-10) Financial abuse is a well-explored issue, and is believed to be the most common form of elder abuse.[[11]](#footnote-11) The World Health Organization (‘WHO’) defines financial elder abuse as ‘the illegal or improper exploitation or use of funds or other resources of the older person’ within the context of the definition of elder abuse. A common criticism in elder abuse literature is of the lack of a single, agreed definition of financial elder abuse, and, indeed, of elder abuse entirely.[[12]](#footnote-12) The Victorian Government defines financial abuse of elders as ‘the illegal use, improper use or mismanagement of a person’s money, property or financial resources by a person with whom they have a relationship implying trust.’[[13]](#footnote-13) These definitional discrepancies may result in differences in how elder abuse is dealt with, and, due to scope of language used, (such as the addition of ‘mismanagement’ in the Victorian definition), *which* cases fall under the category of ‘financial elder abuse’. The WHO definition of financial abuse, though widely used, is limited in key aspects. First, it fails to define what ‘improper exploitation’ is. Furthermore, given the sheer breadth of difference between forms of financial elder abuse, which can range from theft, to persuading the older person to enter an agreement which may not be in their best financial interests, to misuse of powers of attorney,[[14]](#footnote-14) the WHO definition has been described as difficult to ‘operationalise’.[[15]](#footnote-15) This has the capacity to ‘inhibit meaningful comparisons of elder abuse and neglect, both locally and internationally.’[[16]](#footnote-16)

In this sense, the Victorian definition, with its additional delineation of the conduct and financial objects involved in this form of abuse, appears to attempt to provide a more ‘operational’ definition. Ultimately, there is prevailing difficulty in developing a definition which will adequately encompass the scope of the issue. Service responses too are challenged by this scope, in that one service cannot feasibly address all forms of financial abuse. This research will focus predominantly on ‘lower-end’ forms of abuse which do not fall within the realm of criminal behaviour warranting prosecution (such as theft) and which are able to be managed via alternate support services and conflict resolution techniques.

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| **Recommendation 1:** A nationally adopted operationalised definition of elder abuse should be developed |

## B *Characteristics*

Most perpetrators of financial elder abuse are relatives of the victim; most commonly adult children.[[17]](#footnote-17) This is characteristic of the strong relationship of trust and dependence often established between elderly people and relatives. Characteristics of financial elder abuse are also examined further in Part III – Theoretical Framework.

## C *Drivers of financial elder abuse against people with capacity*

### 1 *The ageing population*

Older people, being people aged 65 years and older, made up 15% of Australian society in 2014 compared with 7% in 1941.[[18]](#footnote-18) Currently, people aged 85 and over comprise approximately 2% of Australia's population.[[19]](#footnote-19) This is projected to more than double by 2055. The UN Office of the High Commissioner has stated that the global population of people aged 60 and over is increasing ‘at an unprecedented pace, anticipated to rise from its current 740 million to reach 1 billion by the end of the decade.’[[20]](#footnote-20)

### 2 *The* *concentration* *of* *wealth*

As the ageing population grows, the ‘baby boomer’ generation continues to hold substantial assets, such as savings, property, shares, and superannuation.[[21]](#footnote-21) This, coupled with a competitive housing market, making it increasingly difficult for first home buyers to purchase property, has contributed to elderly people experiencing ‘competing pressures to use their assets to provide for their children’, along with other needs, such as healthcare and providing a comfortable retirement for themselves.[[22]](#footnote-22) This has been termed ‘inheritance impatience’,[[23]](#footnote-23) whereby family members ‘deliberately or recklessly prematurely acquire their ageing relatives’ assets’.[[24]](#footnote-24) Miskovski also claims that a bourgeoning ‘culture of inheritance’ is leading to a ‘sense of entitlement and expectation that children will inherit from their parents’;[[25]](#footnote-25) a condition exacerbated by increased life expectancy, resulting in children waiting longer to receive their expected inheritance.

### 3 *Generational attitudes and stereotypes towards elderly people*

Another issue driving financial elder abuse is ageism. The Australian Human Rights Commission, examining discrimination against older people, explored themes within which respondents were asked a series of behavioural statements. These themes were: presumption/presupposition, diminished physical capacity, diminished mental capacity, being a source of amusement, and irrelevance or invisibility.[[26]](#footnote-26) The report found that more than a third of Australians aged 55 years and over have experienced age-related discrimination,[[27]](#footnote-27) which included experiences of ‘relationship invisibility: feeling like they are a burden on friends and family because of the issues associated with ageing.[[28]](#footnote-28) These outcomes caused responses in older people such as shame, anger, and sadness, as well as having an impact upon perceptions of self-worth and the experience of ageing.[[29]](#footnote-29)

## D ‘*Capacity’*

The focus of this research is upon elders with ‘capacity’. Australia does not have a uniform standard of capacity, though the implementation of such a standard has been recommended.[[30]](#footnote-30) Each area of law has its own standard specific to the circumstances or transactions that legislation seeks to address.[[31]](#footnote-31) ‘Legal capacity’ has been described as setting the ‘threshold for undertaking certain actions that have legal consequences’.[[32]](#footnote-32) The New South Wales Legislative Council report described capacity as ‘a legal term referring to an adult’s ability to make a decision for themselves’, and provided that ‘[g]enerally, when a person has capacity to make a particular decision they can:

* understand the facts and the choices involved
* weigh up the consequences and
* communicate the decision.[[33]](#footnote-33)

This complicates setting the focus of this paper, as legislation varies on the standard of capacity relevant to the legal circumstances at hand.

For present purposes, and in order to ensure applicability of the following discussion to various areas of law,[[34]](#footnote-34) capacity here will refer to general decision-making ability,[[35]](#footnote-35) being ‘a level of cognitive ability that is required before a person can lawfully do various things.’[[36]](#footnote-36) This connotes a general level of understanding and agency, particular to each area of decision making.[[37]](#footnote-37) Such individuals possess relevant capacity particular to the criteria set by the specific legal situation,[[38]](#footnote-38) and would therefore be able to actively participate in the services and processes examined below. The crucial issue which the following discussion seeks to address, however, is that, in the context of elder abuse, victims with capacity suffer from feelings of shame, stigma, and often are dependent upon the abuser. These victims, though satisfying legal capacity requirements, are often manipulated emotionally or psychologically, and as such, have hindered decision-making capacity. These issues must be acknowledged by those providing support, and countered by positive factors, such as ‘an assertive personality, being educated about rights…a supportive family/friends/peer networks, and…good coping strategies.’[[39]](#footnote-39) Monro, detailing the characteristics of elder abuse victims, noted that these people were not a readily identifiable, distinct category of older people; there is no ‘socio-economic bar’, nor can it be assumed that elderly people remain in abusive familial relationships due to lack of decision-making capacity.[[40]](#footnote-40)

# III Theoretical Framework

Chesterman has identified a number of central issues with policy frameworks and practice guidelines in place in Australian states for the management of elder abuse.[[41]](#footnote-41) These criticisms are: emphasis on the vulnerability of victims; lack of emphasis on service improvement, developing expertise and facilitating collaborative practices, and lack of clarity as to the relevant primary point of contact.[[42]](#footnote-42) Lacey also identified problems with addressing the issue as including a ‘[p]erceived Commonwealth dominance in the ageing portfolio, despite the lack of a comprehensive legislative mandate to safeguard older Australians; a lack of innovative legal reform at the state level; ageism; the invisibility of…older people; a lack of awareness within the community of both the prevalence, nature and the signs of elder abuse; together with the absence of an international normative framework for protecting the rights of older persons’ as all contributing to the general lack of acknowledgement of elder abuse as a serious issue in Australia.[[43]](#footnote-43) These concerns, and the issues raised in Part II, have shaped the theoretical concepts and service options developed in this research.

## A *Situating Familial Elder Abuse within the broader Family Violence discourse*

Attempts to address intra-familial elder abuse are hindered by two factors: lack of recognition of this abuse’s status as a form of family violence, and generally under-developed structural responses towards financial abuse within the family violence discourse.

### 1 *Elder Abuse as a form of Family Violence*

The topic of family violence has gained considerable momentum on both the State and Federal levels. Given elder abuse is not a ‘typical’ *Family Law Act*[[44]](#footnote-44) matter, the focus here is upon State-level responses. In Victoria, the *Family Violence Protection Act 2008* provides that family violence constitutes behaviour by a person towards a *family member*.[[45]](#footnote-45) The definition of ‘family member’ under the Act includes ‘a person who is, or has been, a relative of the relevant person’.[[46]](#footnote-46) ‘Economic abuse’ is listed as a form of family violence.[[47]](#footnote-47) Thus the Act may be construed to include intra-familial financial abuse of elders. Nevertheless, elder abuse has received less attention within the primarily gendered context of violence against women and children. This focus in the approach to family violence compounds the challenges faced when dealing with elder abuse.[[48]](#footnote-48) Indeed, the definition of economic abuse in the Act, focusing upon behaviour which is ‘coercive, deceptive or unreasonably controls another person’[[49]](#footnote-49) appears incompatible in some respects with the definitions of elder financial abuse, as it may not appear to include more subtle forms of abuse, such as misuse or mismanagement of funds.[[50]](#footnote-50)

This year, the RCFV released its full report. Its Terms of Reference only listed elder abuse as a potential topic to be considered under ‘diversity and family violence’.[[51]](#footnote-51) The Issues Paper contained further questions relating to ‘particular groups and communities in Victoria’.[[52]](#footnote-52) This evinced a disappointing lack of research focus on elder abuse which, as the Commission ultimately noted is a unique issue requiring specific attention. This concern was highlighted in submissions from the Eastern Elder Abuse Network[[53]](#footnote-53) and Justice Connect.[[54]](#footnote-54)

These submissions also emphasised the importance of not conflating elder abuse and family violence. Intra-familial elder abuse is a *form* of family violence, but does not share the same idiosyncrasies of domestic violence. Most elder abuse is perpetrated by adult children, rather than spouses or partners, and may also occur in non-familial contexts (e.g.: aged care facilities and by professional carers).[[55]](#footnote-55) Like domestic violence, elderly women are most at risk of elder abuse, and financial abuse.[[56]](#footnote-56) However, UK prevalence data found ‘[f]inancial abuse increases with age for men’.[[57]](#footnote-57) Also, a significant proportion of perpetrators of elder abuse are women.[[58]](#footnote-58) These distinct features mean that existing services cannot adequately provide for the circumstances surrounding elder abuse; there are few services providing perpetrator support, and almost none providing support for elderly men.[[59]](#footnote-59) Furthermore, the Victorian Government’s announced $572 million ‘statewide funding boost’ over the next two years in response to the RCFV’s most urgent recommendations has not allocated funds specifically towards developing an elder abuse support network. Rather, it is aimed at ‘keep[ing] women and children safe’.[[60]](#footnote-60)

### 2 *The under-recognition of financial abuse*

Though financial abuse is a recognised form of family violence, it appears to be an underused and misunderstood ground in family violence claims.[[61]](#footnote-61) The RCFV heard submissions indicating that economic abuse is a complex issue for victims and service providers given the difficulty of identifying it, and lack of clarity as to legal avenues available, and how service providers themselves can best respond.[[62]](#footnote-62) The Royal Commission acknowledged that ‘[e]conomic abuse is a form of family violence that is not well recognised by the community, service providers or the police.’[[63]](#footnote-63) However, the Report’s chapter on financial insecurity focuses overwhelmingly on women, with a cursory reference to financial abuse of older women.[[64]](#footnote-64) The chapter on elder abuse covers all forms of abuse without specifically analysing financial abuse in-depth. This is concerning, given the prevalence of financial abuse as the most common form of elder abuse. Justice Connect Senior Law has estimated that financial abuse comprises 68% of all of its elder abuse matters;[[65]](#footnote-65) Seniors Rights Victoria (SRV) has stated that 37% of its clients from July 2012 to 2014 reported financial abuse.[[66]](#footnote-66)

Despite this prevalence, these concerns about the lack of understanding and recognition by the community, service providers and police, are ongoing. SRV has noted that Victoria Police, though having a Seniors Portfolio Reference Group, is slow to respond in many cases of elder abuse, let alone financial abuse.[[67]](#footnote-67) It has also raised concerns that the broad legal definition of family violence is not being reflected in community understanding, nor in the practices of magistrates in family violence intervention order proceedings. That is, magistrates do not appear to be utilising the ‘full potential of the legislative definition.’[[68]](#footnote-68)

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| **Recommendation 2:** 1. That family violence legislation be reviewed to assess whether it adequately responds to the scope and nature of financial elder abuse committed by relatives.
2. For there to be a formal evaluation of the adequacy of police and magistrate responses to cases of intra-familial financial elder abuse.
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## B *The combined roles of therapeutic jurisprudence and restorative justice*

Elder abuse is not the same as family violence, but a *form* of it. As with its idiosyncratic demographic characteristics, it also has particular effects upon victims. Older people experiencing abuse at the hands of relatives may be afraid or unwilling to tell others about the abuse, for fear of losing a close relationship, retaliation, or further loss of independence.[[69]](#footnote-69) They may be ashamed, or in denial and unwilling to admit that the actions of their loved one constitute abuse and, though they wish for the abuse to stop, may not want to incriminate the abuser.[[70]](#footnote-70) Furthermore, in the context of financial abuse, loss of economic independence may result in the victim being in a situation of dependence upon the person inflicting abuse, and, as such, would not want to do anything to further jeopardise their financial situation. In this context, implementing methods informed by principles of therapeutic and restorative justice to assist victims or address the risk factors of elder abuse, emerge as ideal. These schools of thought both ‘see the management of emotions and professionals’ interpersonal skills as important in dispute resolution.’[[71]](#footnote-71)

### 1 *Therapeutic* *jurisprudence*

Financial elder abuse victims experience ‘higher levels of psychological distress and depression than their peers, and have a decline in physical health coupled with decreased resources for managing their healthcare.’[[72]](#footnote-72) The abuse may also cause ‘ongoing fear, lack of trust, and acute or chronic anxiety.’[[73]](#footnote-73) Therapeutic jurisprudence, which examines how the law can affect wellbeing and mental health, seeking alternatives to existing modes of legal problem-solving to minimise the negative effects of the law upon vulnerable litigants,[[74]](#footnote-74) is an important theoretical perspective to inform a service model for elder abuse. This is particularly so given therapeutic jurisprudence focuses upon implementing law reform informed by behavioural science and empirical data,[[75]](#footnote-75) which is important in intra-familial abuse, as poor reporting is often due to behavioural factors such as victims’ fear of recrimination or breakdown in family relationships, beliefs that financial issues are a ‘private’ matter, and difficulty consenting to taking action against abuse.[[76]](#footnote-76) Informed by this understanding, available services and the law need to explore ways of encouraging proactivity and empowerment of elders, and may do so by understanding how clients’ emotions can ‘influence their behaviour and attitude to their legal problem.’[[77]](#footnote-77) Despite therapeutic jurisprudence work often relating to courts, it has been claimed to have a far broader scope, having originated in the United States in the 1980s, as part of David Wexler and Bruce Winick’s seminal work in mental health law.[[78]](#footnote-78) King and Guthrie posit that ‘wellbeing’ is broad in this context, and embraces aspects such as satisfaction with legal processes, and wider goals such as ‘the role of the law in promoting self-actualisation of individuals and addressing community problems such as family breakdown, crime and civil disputes.’[[79]](#footnote-79)

Practices following therapeutic jurisprudence principles are also ideal in the financial abuse context, given that, in circumstances where a victim has been stripped of significant financial assets, they may not have the funds to sustain legal proceedings, or the risk of unsuccessful legal action is too great to justify incurring further financial burden.[[80]](#footnote-80) This theoretical viewpoint is also suited to the focus of elders with capacity, since active service models of intervention in elder abuse situations have largely focused on lower dependency individuals with greater functional ability. [[81]](#footnote-81)

### 2 *Restorative* *Justice*

Whereas therapeutic jurisprudence ‘instructs us on the…impact the justice system can have on people’s psychological and physical well-being’,[[82]](#footnote-82) restorative justice is an approach to justice that also has a ‘process element’ as well as a values conception.[[83]](#footnote-83) It is a process whereby ‘stakeholders involved in an injustice have an opportunity to discuss its effects on people and to decide what is to be done to attempt to heal those hurts.’[[84]](#footnote-84) Its central mechanism to achieve this is via victim-offender mediation.

The RCFV heard submissions on the usefulness of implementing restorative justice practices in the management of family violence, and accepted that ‘provided robust safeguards are in place and it is offered as an additional option…to pursuing action through the courts, a restorative justice process should be made available to those victims who wish to pursue such an option.’[[85]](#footnote-85) However, this analysis centred upon the context of violence against women. Restorative justice has been recognised as an appropriate option for victims of elder abuse ‘as they require perpetrators to face up to the impact their behaviour has had on their victims’[[86]](#footnote-86) and includes the family/community context in giving consideration to the victim’s needs.’[[87]](#footnote-87) The New South Wales General Purpose Standing Committee report did not consider implementing restorative justice practices.

As stated, older people experiencing financial abuse may encounter significant psychological distress and depression. Like therapeutic jurisprudence, restorative justice also posits that harmful behaviour, ‘whether related to legal action or not, can cause not only material damage but also emotional or psychological harm that must be healed if the problem is to be comprehensively resolved.’[[88]](#footnote-88) Frieberg describes the two areas as having in common ‘a recognition of the importance of factors such as trust, procedural fairness, emotional intelligence and relational interactions which, if applied more broadly, can provide a constructive alternative to the flawed adversarial paradigm which presently dominates the…justice system.’[[89]](#footnote-89) However, whereas therapeutic jurisprudence has commonly been offender-focused, implementing methods such as diversion to rehabilitation, restorative justice refocuses on the victim, conferring agency upon them to discuss their experience, and *not* placing an expectation upon them to forgive the perpetrator.[[90]](#footnote-90) In this way, both restorative justice and therapeutic jurisprudence avoid paternalistic responses to victim experiences, which is consistent with the human rights perspective adopted by elder abuse literature in Australia.[[91]](#footnote-91) Cannon advocates for the combination of the two, asserting that, to further develop therapeutic jurisprudence, and to implement a ‘complete’, ‘truly therapeutic’ model, the justice system needs to provide ‘good conferencing resources and…victim offender mediation’.[[92]](#footnote-92) Thus, it is asserted that therapeutic jurisprudence and restorative justice may inform and strengthen one another through their core values, and have an ‘abstract resolution’ in ‘holism’; thereby reconciling conflicts between them.[[93]](#footnote-93) Therefore, both may be used to design holistic, multidisciplinary services for elderly victims of financial abuse which, along with the recognition of financial elder abuse as family violence, also assist in delineating a normative framework consistent with the human rights discourse, as sought by Lacey.

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| **Recommendation 3:** That policymakers and service providers examine the utility of, and are informed by, principles of therapeutic jurisprudence and restorative justice in policy and service development. |

# IV The Role of Third Parties and developing a Multidisciplinary Service Model

Intra-familial elder abuse is consistently unreported, which increases the importance of involvement by third party service providers. Despite data on the matter being underdeveloped in Australia, a United Kingdom study found that ‘[b]oth men and women who were in receipt of home care services or in touch with professionals were more likely to report financial abuse.’[[94]](#footnote-94) Thus there is support for the proposition that having a strong network of professionals to assist victims of elder abuse is highly beneficial. Wainer et al stated that this study ‘provides the most relevant benchmark’ of applicability to the Victorian context as a provider of authoritative data on prevalence and management of elder financial abuse.[[95]](#footnote-95) This engagement, and the overall view of service provision, have been conceptualised in this research through four interlinking themes: *support*, *education*, *conflict* *resolution* and *collaboration*. Darzins et al, in their review of elder abuse, stated that ‘[a]s long as financial elder abuse is primarily a family issue, legal action is not likely to be an effective measure for reducing the problem.’[[96]](#footnote-96) As such, the ideas explored focus upon methods which provide therapeutic and restorative outcomes and build awareness of the issue, and are thus generally aimed at avoiding pursuing expensive legal action which, in the financial abuse context, may not be viable for victims. These themes are also consistent with the strategic outcomes and priorities detailed by the Victorian government’s *Elder* *Abuse* *Prevention and Response Guidelines for Action*.[[97]](#footnote-97) That is; increased community awareness of elder abuse, empowerment of older people, active engagement by professionals, and coordinated multi-agency support. Overall, this focus appears to directly address concerns raised by Chesterman and Lacey,[[98]](#footnote-98) and issues raised in Part II.

Given the importance of professional engagement, older people would benefit from a multidisciplinary approach. Indeed, it has been noted that ‘[t]here has been a paradigm shift in the provision and organisation of care in Australia that challenges existing perceptions of ageing and promotes primary interventions that encompass person centred, capacity building, holistic and empowering models of service delivery.’[[99]](#footnote-99) Implementing an ‘active service model or wellness approach’ maximises victims’ independence, decreasing dependence upon family members, carers and service providers so as to prevent abuse.[[100]](#footnote-100) Nerenberg also promotes a multidisciplinary approach as providing a ‘dynamic and active forum for exploring the boundaries and interfaces between disciplines and for integrating new knowledge.’[[101]](#footnote-101)

## A *Service providers in Victoria*

SRV is the ‘key Victorian service addressing and responding to elder abuse.’[[102]](#footnote-102) It provides a helpline, specialist legal services, casework, short-term support, advocacy and community education.[[103]](#footnote-103) SRV works in partnership with Justice Connect Seniors Law, which provides free legal services to older people.[[104]](#footnote-104) Seniors Law also works with the health and community sectors, a partnership which will be further examined. The Victorian branch of the Council on the Aged is also a central information-distributing service to older Victorians. Victoria Police may be contacted in instances of elder abuse, however victims are generally reluctant to do so, particularly since police contact raises an association with crime.[[105]](#footnote-105) Instead, reports are more frequently made to family, community members or health care professionals.[[106]](#footnote-106) The work of SRV and Seniors Law, combined with action by the courts and the health and financial services sector, will be of particular interest. The linkages made between these organisations provide key community resources so that victims have connections both during their experiences with the legal system, and afterwards.[[107]](#footnote-107)

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| **Recommendation 4:**1. That key service providers, especially SRV, Justice Connect Seniors Law, courts, health professionals and members of the financial services sector, should collaborate to develop a multidisciplinary model of service provision.
2. That service provision focus upon providing support, education, conflict resolution and collaboration, with a view to achieving therapeutic outcomes.
3. That this program identify the primary points of contact for older people to seek assistance.
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# V Community and Professional Education

## A *Community* *awareness*

 Enhancing community awareness is a commonly discussed requirement to mitigate ageism, which is an identified risk factor for elder abuse. Intra-familial financial elder abuse should be recognised within the family violence discourse. In April of this year, the Commonwealth and State and Territory Governments rolled out a $30 million jointly funded national awareness campaign targeted at changing entrenched attitudes regarding violence against women and children.[[108]](#footnote-108) The campaign features television, radio, print and online advertising. A parallel media campaign should be run regarding elder abuse, targeting changing ageist attitudes towards older people. Running elder abuse advertising alongside the domestic violence campaign would not only encourage viewers to draw parallels between family violence and elder abuse (thereby situating elder abuse within the dialogue),[[109]](#footnote-109) but would also serve to place the issue in the public sphere. As yet, there has been no broad, community-focused awareness campaign on elder abuse. Ireland has a strong history of elder abuse public awareness campaigns, such as its ‘Say No to Ageism Week’, which provides a good example of an effective domestic initiative in this area.[[110]](#footnote-110)

 SRV has urged for specific advertising aimed at certain groups. Within the context of this research, and consistent with strategic outcome 1.1.3 of the Victorian Government’s Guidelines, there should be community education tools focusing on financial elder abuse.[[111]](#footnote-111) Advertising and educative material on financial abuse should be permanently displayed at banks and community legal centres. This material should be targeted at both older people and family members. For example, SRV’s *Care for your assets: Money, ageing and family*, is a guide for older people focused on family relationships, money, and ‘assets for care’ living arrangements.[[112]](#footnote-112) The availability of physical copies of this guide should be expanded. SRV also has a Help Sheet directed at family and friends who are concerned about an older person who may be experiencing elder abuse, though this is not financial abuse-specific.[[113]](#footnote-113) In terms of potential perpetrator education, there do not appear to be any guides for family members entering financial arrangements with elderly relatives, or general educative material on the problem of financial elder abuse.

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| **Recommendation 5:**1. That the Federal and State and Territory governments invest in a national elder abuse awareness campaign.
2. For there to be an increase in financial elder abuse information guides available at banks and community legal centres.
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## B *Professionals*

 To be able to provide a holistic service, inter-professional education is required. Key groups in the implementation of the multidisciplinary support system are lawyers and legal services (namely SRV and Seniors Law), court officers (magistrates and in-court liaisons), financial and banking representatives, and health service professionals. These groups have existing educative options available, which may be combined to ensure uniformity of professional training.

In 2008, the Law Institute of Victoria (LIV) formed its Elder Law Section as a specialised practice section of the LIV. It seeks to ‘[keep] solicitors informed of changes to policy and legislation affecting senior persons and…to provide a place for lawyers practising in this area to keep apprised of updates, information and ideas for reforms shared by the committee’.[[114]](#footnote-114) This includes running Continuing Professional Development sessions for lawyers on developments in elder law. Within the financial sector, the Australian Bankers’ Association has developed non-enforceable guidelines for identifying financial abuse.[[115]](#footnote-115) In March this year, in its submission to the Department of Justice and Regulation’s Access to Justice Review, the LIV recommended that the government support it in initiatives to provide coordinated training to the ‘community sector, police, judicial officers and court staff’ in all areas of family violence, including the elderly, and to ‘coordinate responses across the legal system.’[[116]](#footnote-116)

Seniors Law provides annual training to pro-bono and community lawyers, health and community professionals.[[117]](#footnote-117) The Department of Health and Human Services also provides a short course for professionals on identifying and responding to elder abuse.[[118]](#footnote-118) The LIV should join Seniors Law and SRV in providing specialised training for lawyers, judicial officers, police, health professionals and financial services members on identifying financial abuse, assessing suitability for alternative therapeutic options, and the legal options available. This would allow coordination of current professional education provided, to ensure uniformity as to appropriate assessment and advice methods utilised in financial elder abuse cases, addressing concerns about expertise, and facilitating collaborative practices.[[119]](#footnote-119) The recognition of financial abuse is a serious issue. The Royal Commission heard reports of magistrates communicating in ‘abrupt, dismissive and disrespectful ways and trivialising violence, especially non-physical violence.’[[120]](#footnote-120) A study assessing health professionals’ ability to recognise elder abuse, found that between a quarter and two-thirds of the professionals failed two identify two clearly abusive behaviours.[[121]](#footnote-121) Having specialised knowledge in the legal, financial and health sectors, which can be shared between disciplines, is crucial to strengthening responses and recognition of elder abuse.

This integration of various bodies of knowledge has been demonstrated to effect in the United States, where the ‘Financial Institutions Training Project’ works to encourage financial institutions to work closely with the Financial Abuse Specialist Team (FAST)[[122]](#footnote-122) in ‘formulating and initiating a plan to train financial institution staff in recognising possible at-risk persons or situations’.[[123]](#footnote-123) In another US state, Chesterman praised how ‘crucial it [was] for the various professionals involved in the State’s adult protection system to understand, and respect, the roles played by other professionals and their organizations in the system.’[[124]](#footnote-124)

To incorporate therapeutic and restorative justice principles in the process of assisting financial elder abuse victims, it is suggested that legal, financial and health professionals should also attend sessions held by experienced counsellors who specialise in providing counselling services to elderly people. Such professionals should provide advice on attitudes towards victims, so as to provide a supportive role, one which encourages empowerment, as well as providing an awareness of behavioural indicators of abuse.

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| **Recommendation 6:** For Federal, State and Territory Governments to support the development of collaborative training mechanisms which bring together professionals from a number of disciplines to ensure uniform training on recognising and responding to risk factors for financial elder abuse.  |

# VI Front-end collaboration to develop a Multidisciplinary Support System

## A *Front end referral, advice and support*

Existing services can be developed to create a holistic, multidisciplinary service model. Pursuant to the theoretical framework employed here, this program should utilise a system of victim-centred therapeutic assistance. Unlike other countries, including the US, the UK and Canada, Australia has not adopted ‘adult protection’ legislation and corresponding services. This should continue, as implementing such a system can involve higher levels of state intervention and prosecution[[125]](#footnote-125) which can have a controlling, paternalistic effect, displacing the older person’s authority. Nevertheless, some of these models from other countries provide notable insight on effective multidisciplinary services.

In the UK, the Safeguarding Adults process ensures that action taken by organisations for the older person is coordinated and monitored; that the adult at risk is involved in decisions which affect their daily life, that relevant parties are kept informed, with decisions made in consultation with other relevant organisations via multi-agency strategy meetings to determine the process and to ensure decisions are known by all relevant organisations. They then arrange a coordinated response and plan for the adult.[[126]](#footnote-126) In California, US, the ‘FAST’ program was initiated by the Council on Ageing. It is a multidisciplinary group of public and private professionals which takes referrals from friends, relatives, neighbours, mandated reporters and legal professionals to Adult Protective Services, which then passes the matter onto FAST. FAST utilises consultants from the public and private sectors, such as bankers, securities and real estate brokers, financial planners and insurance experts.[[127]](#footnote-127) Together, these parties identify, investigate, and prevent the financial abuse in an efficient manner with such immediate actions as freezing finances, visiting the elder and interviewing the suspect.[[128]](#footnote-128) However, FAST is only utilised in cases involving substantial assets.[[129]](#footnote-129)

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| **Recommendation 7:**1. That Australia should avoid implementing adult protection legislation, particularly in regards to older people with capacity.
2. That a front-end, multidisciplinary referral service should be developed to respond to identify and respond to financial elder abuse.
3. That policymakers should consider examples of successful multidisciplinary financial elder abuse services from other countries, with a view however to ultimately developing a support network of services which have as their focus the achievement of therapeutic outcomes which promote empowerment and autonomy of participants.
 |

### 1 *Health*-*justice* *partnerships*

 In Victoria, Seniors Law and cohealth, a community health service in Footscray, have established a health-justice partnership. As part of this, lawyers guide health professionals to identify legal issues, and work together in providing a ‘holistic service to address the social determinants of health.’[[130]](#footnote-130) It also provides more responsive legal assistance, and promotes early intervention and prevention strategies, as well as being an advocate for policy reform to promote the health and wellbeing of clients. To expand this, Seniors Law and SRV should implement a coordinated response in determining which body will provide assistance to older people identified as having ongoing legal issues at cohealth, and other cases presenting with Seniors Law, SRV and community legal centres. These groups could then collaborate on the assistance provided. The services should not only offer legal advice, but also coordinate the involvement of the following services:

* *Counselling referral*:The process of healing fractured relationships may take time, and research has suggested that, before further therapeutic measures, such as restorative justice conferences, occur, individual counselling may be advised.[[131]](#footnote-131) Thus, it is necessary for any multidisciplinary approach to provide the option for referral to counselling for the older person. The benefit of counselling, Groh has identified, includes the victim being able to ‘identify and articulate what is needed for reparation.’[[132]](#footnote-132) Unfortunately however, there is currently no specialist elder abuse counselling service. In Victoria, there is specialist counselling for older people with ‘long-standing mental illness or…functional illnesses such as depression’ but no counselling specifically directed towards elder abuse victims.[[133]](#footnote-133) In Western Australia, the Older People’s Rights Service provides counselling and referral for older people experiencing abuse, or who are at risk of abuse, but only short-term.[[134]](#footnote-134)
* *Financial planning and management*: A financial advisor trained in recognising elder abuse and assisting older people with their finances can attend SRV on a regular basis, providing specialist assistance by appointment, particularly in cases involving substantial assets.
* *Crisis housing*: Financial abuse may ‘force’ major decisions, such as the sale of the older person’s home. This can have a particularly profound effect on older people compared to younger victims of financial abuse, as they may have neither the time nor ability to recover from economic loss.[[135]](#footnote-135) The RCFV recommended that specialist accommodation be made available for older women ‘and some older men’.[[136]](#footnote-136) However, it is unknown when this will be provided.

## B *Conflict resolution and financial arrangements*

 Older people continue to ‘too readily’ enter informal financial arrangements,[[137]](#footnote-137) such as ‘assets for care’ agreements, where they have sold assets and given money to family members in expectation of future care, without first seeking formal legal advice.[[138]](#footnote-138) It is important that front-end dispute resolution and family meetings services are also provided, to encourage older people to manage their finances in such a way as to minimise the risk of financial abuse, whilst also ensuring binding legal documents are in place for major financial agreements. This was proposed by SRV as an initiative the Victorian Government should take on.[[139]](#footnote-139) SRV and the Dispute Settlement Centre of Victoria provide a free front-end referral program to free mediation of family meeting services, with a particular focus upon assets for care arrangements.[[140]](#footnote-140) SRV also provides a basic family agreement pro forma for financial agreements. These are important preventative measures, and have the potential to be further developed to ensure a therapeutic experience for participants. This may be achieved firstly by providing specialist dispute resolution facilitators who have experience in elder abuse or liaising with older people.[[141]](#footnote-141) Part VII, 2 – ‘Conflict resolution’ explores this further.

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| **Recommendation 8:**1. A multidisciplinary front-end referral service should seek to solidify relationships and communication between legal, health and financial services, to provide a coordinated response to elder abuse cases.
2. The service should seek to ensure that there is a uniform series of services available across entry points (whether the case presents at a health-justice partnership practice, SRV, or a community legal centre).
3. That Victoria should expand on the health-justice partnership model, so as to enhance service providers’ ability to respond to financial elder abuse. Services which should be provided in particular are early conflict dispute resolution, and referrals to counselling, financial advice and crisis housing.
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## C *Powers of Attorney*

A major concern is that an Enduring Power of Attorney provides a ‘ready mechanism for attorneys to financially abuse the [principal]’[[142]](#footnote-142) as the attorney’s decisions have the same legal force as if the principal had made them. [[143]](#footnote-143) Though powers of attorney typically come into force once the principal no longer has capacity to make decisions, the time at which powers take effect can be specified in the document, as can conditions upon the decisions attorneys may make.[[144]](#footnote-144) So, an Enduring Power of Attorney can come into force whilst the principal still has capacity. In September 2015, Victoria’s *Power of Attorney Act* 2014 came into force. One aim of this legislation was to address the threat of financial elder abuse, specifically, through new criminal penalties.[[145]](#footnote-145) The legislation also implemented a ‘supportive attorney arrangement’. This arrangement allows a principal to appoint an additional person to ‘support them to make and give effect to (act on) their decisions.’[[146]](#footnote-146) This is a positive legislative endeavour, as it promotes the principal taking on an active role in decision-making. The supportive attorney can be authorised to communicate or assist the principal in communicating supported decisions, and can act to give effect to supported decisions. However, they *may not* make decisions on behalf of the principal.[[147]](#footnote-147)

Given the nature of intra-familial abuse, it would be prudent for atleast one attorney role to be performed by a non-family related third party. This would particularly be useful in Victoria, which provides for the role of supportive attorney. It is important that the older person creating the attorney arrangement is provided with a source of unbiased opinion. The third party may be a lawyer from SRV, or a trained financial advisor, for instance.

It is important for this role to be truly *supportive* rather than *supervisory*, so as to avoid imposing a paternalistic mechanism to oversee the older person’s decisions. This is consistent with the recommendations made by the ALRC in *Equality, Capacity and Disability in Commonwealth Laws* in the context of the National Disability Insurance Scheme (NDIS). The ALRC recommended that NDIS participants should be able to appoint a supporter, rather than having a ‘nominee’ as originally formulated by the legislation.[[148]](#footnote-148) Supporters, the ALRC recommended, should ‘endeavour to ensure the participant’s decisions are given effect’,[[149]](#footnote-149) support the participant to express their will and preferences, and assist them to develop decision-making ability.[[150]](#footnote-150) The supporter’s duties also encompass ‘acting in a manner promoting the personal, social, financial and cultural wellbeing of the…participant’.[[151]](#footnote-151) Though this is obviously beyond the scope of the duties and obligations of the supportive attorney under the Act,[[152]](#footnote-152) providing a trained third party professional as supportive attorney would have consequential beneficial effects for the principal. There is overlap between the ALRC’s comments and the legislation in that the supportive attorney is required to ‘discuss anything about a supported decision with the principal in a way the principal can understand and that will assist the principal to make the decision.’[[153]](#footnote-153) In this way, having a professional assist with decision making can enhance the principal’s involvement in, and understanding of, their financial affairs, thus promoting empowerment and involvement in financial affairs, which in turn addresses risk factors for financial abuse.[[154]](#footnote-154)

### 1 *Education and Powers of Attorney*

In addition to existing safeguards for Enduring Powers of Attorney, which require record-keeping of financial and personal transactions,[[155]](#footnote-155) limits upon the attorney making gifts of the principal’s property,[[156]](#footnote-156) and keeping the attorney’s and principal’s property separate,[[157]](#footnote-157) legal practitioners creating powers of attorney arrangements and policy makers would be prudent to introduce the following measures to promote financial literacy and awareness about financial abuse via powers of attorney:

* Providing on-the-spot educative material about financial elder abuse, as well as having a frank discussion with both the principal and attorney(s) about financial elder abuse, and potential legal consequences of misuse of the principal’s funds;
* SRV hosting basic financial literacy and financial counselling information sessions and appointments, attended by local financial officers to provide expertise on decision-making under an attorney arrangement. A potential exercise which could be undertaken during these sessions is role-playing scenarios involving an attorney wishing to make a significant transaction, and how the principal can best make their wishes known.
* The same restorative justice process examined in Part VII should be made available through the Victorian Civil and Administrative Tribunal’s (VCAT) Guardianship and Administration List, which has jurisdiction to hear disputes concerning misuse of powers of attorney.[[158]](#footnote-158) Under the new Victorian Act, VCAT also has power to award compensation for misuse of a power of attorney.[[159]](#footnote-159)

These measures should be mandated; particularly the requirement that both attorney and principal attend a financial decision-making information session.

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| **Recommendation 9:**1. That all states and territories introduce a supportive attorney arrangement option in their Powers of Attorney legislation.
2. That service providers assisting in setting up powers of attorney documents be required to recommend that older people have an unrelated third party in the position of supportive attorney, particularly where family members are being appointed attorney.
3. That State policymakers develop uniform principles of supported decision-making for powers of attorney which draws upon the principles outlined by *Equality, Capacity and Disability in Commonwealth laws*.
4. That older people creating powers of attorney, and their nominated attorney be required to attend education sessions on financial literacy and elder abuse.
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# VII In-Court Support and Conflict Resolution

## A *Magistrates’ Courts*

 The RCFV proposed that the Magistrates’ Court move towards a therapeutic and problem-solving approach to family violence matters.[[160]](#footnote-160) The focus here will be upon services available in the Magistrates’ Court once a matter proceeds to an application for a Family Violence Intervention Order (FVIO), particularly in-court support, and conflict resolution.[[161]](#footnote-161) The Magistrates’ Court can also hear civil matters, including financial disputes, which can involve family violence.[[162]](#footnote-162)

### 1 *In-court support*

Therapeutic jurisprudence, restorative justice and family violence can come together in Magistrates’ Courts’ management of elder abuse. In its submission to the RCFV, SRV emphasised the difficulties elderly people encounter when entering the court system.[[163]](#footnote-163) SRV represents older people who apply for IVOs due to physical, emotional and financial abuse.[[164]](#footnote-164) In its submission, it raised concerns that, despite the broadened legal definition of ‘family violence’ in Victoria’s *Family Violence Protection Act*,[[165]](#footnote-165) there are still persistent difficulties in how magistrates and the community view family violence proceedings, as well as difficulties within the IVO system.[[166]](#footnote-166) This is particularly damaging for elderly entrants into the court system, and may be ameliorated by implementing therapeutic processes, in particular, providing specialist family violence support officers within the courts, to assist victims. The Royal Commission, focusing on court support for domestic violence victims, heard that the court experience is characterised by long waiting times, inadequate facilities for legal support to privately advise clients, and a lack of safe waiting areas.[[167]](#footnote-167) This is taxing on older people who may experience difficulty navigating the court. The Royal Commission provided important recommendations with regards to these issues, with a view to making court facilities safer for all participants.[[168]](#footnote-168)

More importantly, an issue which was only addressed with regards to domestic violence victims at the court, is the expansion of the Applicant Support Worker program. Applicant Support Workers provide emotional support, information on community services for FVIO applicants and their children, financial decision-making support and assist applicants in understanding the court process.[[169]](#footnote-169) The expansion of this initiative should also involve the inclusion of an elder abuse Applicant Support Worker. The Royal Commission also recommended that family violence courts should adopt a unified approach, in expanding the number of courts which have the power to determine a broader range of issues in some proceedings, particularly where there are related aspects of a case which are due to be heard by the court.[[170]](#footnote-170) This initiative means the court could both deal with an FVIO application by a victim of financial elder abuse, as well as a separate civil claim they might bring to recover assets. This will also have a therapeutic effect upon older people, as it would prevent their needing to recount their experiences several times before the court, an experience which can have a detrimental effect upon wellbeing, as well as potentially requiring several attendances at court.

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| **Recommendation 10:**1. That State Magistrates’ Courts and Tribunals provide a specialist elder abuse support worker.
2. That magistrates be trained to deal with a broader range of issues in single proceedings.
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### 2 *Conflict* *Resolution*

#### (a) Restorative Justice conferences

A key outcome to be achieved by this model is the implementation of a restorative justice program in the Magistrates’ Court for elder abuse cases. The RCFV supported work on a restorative justice approach to family violence matters as an alternative option in domestic violence cases.[[171]](#footnote-171) Cases involving intra-familial financial elder abuse of older people with capacity provide a suitable platform for the implementation of this approach. A roundtable discussion environment can fulfil the dual purposes of providing a safe environment for the older person to voice their feelings and experience, as well as facilitating the discussion of family agreements, financial and estate planning.[[172]](#footnote-172) It also plays an important part in being able to maintain familial relationships which are important to the older person. Restorative justice ‘conferences’ or ‘circles’[[173]](#footnote-173) seek to emphasise the rights of the victim to be respected, and to have an ‘equal voice’ to bring to the table.[[174]](#footnote-174) Discussion on elder mediation has stated that the facilitator of the conference needs to ‘clearly [understand] the issues and…rely on established best practice guidelines to inform his or her approach to the case’, in order to ensure and protect the safety and legal rights and interests of the older adult participant.[[175]](#footnote-175) Such guidelines could be informed and developed by professionals involved in the SRV-Dispute Resolution Centre Victoria dispute resolution program.

 It is important that the procedure not be referred to as ‘mediation’. This term evokes notions of adversarialism, and also commences from a starting assumption that the parties are on equal footing. This is not necessarily the case however, given the abuse of power often resulting in elder abuse. In 2000, Canada implemented a pilot elder mediation program, the Waterloo Region *Restorative Approaches to Elder Abuse Project*. This involved consulting with local community agencies, including the local Mennonite Church, Police, the Native community, seniors themselves, Conflict Resolution Network Canada, and the Waterloo Region Committee on Elder Abuse.[[176]](#footnote-176) A Magistrates’ Court-based restorative justice program for victims of intra-familial financial abuse could involve, as proposed by the RCFV, a ‘group conference model’ which involves an encounter between the consenting victim and perpetrator, and other interested parties such as: representatives of the parties, police officers, family members or friends.[[177]](#footnote-177) Financial advisors, this research argues, should also be included for the purposes of assisting with financial decision making. This model is consistent with the ‘Family Group Conferencing’ approach utilised by the Canadian program, which included supporters of the victim and offender, doctors, case workers and police.[[178]](#footnote-178) That program also provided victim/offender mediation, and a Community Peacemaking Circle, where the offender, victim and supporters come together in a circle, and pass around a ‘talking piece’, where participants each take turns in talking until consensus is reached.[[179]](#footnote-179)

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| **Recommendation 11:**1. That a restorative justice program for financial elder abuse cases be trialled at both the Magistrates’ court and VCAT.
2. That consultation on the development of the program is sought from stakeholders such as local elder support and education agencies, as well as consideration of examples of successful programs, such as in Canada, to develop a specialised program and guidelines for facilitators.
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#### (b) Outcomes

Therapeutic jurisprudence promotes holistic lawyering. That is, lawyers and courts adopting a ‘holistic approach in dealing with defendants’ which, it is argued, should be combined with restorative justice principles ‘to ensure they are also therapeutic in relation to victims.’[[180]](#footnote-180) The focus here has primarily been upon a victim-focused therapeutic approach. However, the inclusion of a restorative justice process at the front-end and court/tribunal stages also raises the opportunity to implement a holistic approach towards perpetrators of abuse. In the intra-familial context, where research has demonstrated older people tend to be unwilling to engage in actions which they fear will have penal consequences for their family member,[[181]](#footnote-181) it may be encouraging for the process to also involve supportive options for the perpetrator.

The Royal Commission suggested positive outcomes of a restorative justice process include practical outcomes, such as decisions in relation to bank accounts, an apology, financial compensation, and a commitment on the part of the perpetrator to address the causes of their behaviour.[[182]](#footnote-182) Counselling for the perpetrator is also important, so as to allow them to understand ‘why he or she caused the harm and what needs to happen to change this pattern of behaviour.’[[183]](#footnote-183) In Victoria, the Court Integrated Services Program (CISP) provides a perpetrator therapeutic justice program which provides accused persons access to a multidisciplinary team approach to assess and refer clients to services such as housing, drug and alcohol support, and mental health.[[184]](#footnote-184) This could be extended to include perpetrators of financial elder abuse. Another outcome in financial abuse cases could be to require the perpetrator to keep records of financial decision-making they undertake with regards to the older person, where a power of attorney arrangement is not in place and they are not legally obliged to do so. For victims, the Canadian restorative justice program achieved positive outcomes in that participants felt they had a major role, their story was told, and they felt protected, supported and adequately informed.[[185]](#footnote-185)

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| **Recommendation 12:**1. That perpetrator-focused therapeutic justice service options should be developed, which also provides options specific to the form(s) of abuse committed.
2. That services, to the extent possible, seek to have as their primary focus the restoration of familial relationships, without compromising the autonomy and empowerment of the victim.
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### 3 *Criteria* *limitations*

 In accordance with the RCFV’s recommendations, multidisciplinary case management and restorative justice conferences must meet a set criteria. Intra-familial financial elder abuse occurs within the context of a relationship of trust.[[186]](#footnote-186) Power dynamics present in abusive familial relationships may be replicated in conflict resolution. In addition, the Canadian restorative justice program naturally required an assessment of any risk of imminent harm to be addressed before moving cases on to restorative justice.[[187]](#footnote-187) Therefore, if restorative justice is to have any effect, the perpetrator must be willing to take responsibility for their conduct. This process could be recommended by SRV or Seniors Law lawyers assisting the older person, or the Applicant Support Worker making a recommendation to a magistrate (or VCAT member) that the parties attend a restorative justice conference. The magistrate will then have the deciding say on whether the parties are suitable for the process. Given this research’s recommendations regarding uniform training, all professionals involved in this process should be able to assess the best options to provide a therapeutic outcome for both parties.

Therapeutic jurisprudence also recognises that it cannot necessarily ‘outweigh other considerations that a court or other legal institution must consider’.[[188]](#footnote-188) While a non-paternalistic approach is endorsed, particularly in providing choice to victims[[189]](#footnote-189) as to the remedial course of action taken, caseworkers, and professionals who make initial contact with victims must also be able to readily identify the severity of the financial abuse which has occurred, and determine whether, in more egregious cases (such as cases involving serious theft), intervention and prosecution should occur. Chesterman has endorsed this.[[190]](#footnote-190) In reviewing methods of managing financial abuse in other countries, he noted that lawyers managing elder abuse cases in the United States were far readier to prosecute for elder abuse.[[191]](#footnote-191) Indeed, though therapeutic jurisprudence criticises the effectiveness and desirability of coercion and paternalism, it nevertheless recognises that ‘coercion is a legitimate part of the justice system’ in circumstances where disputes cannot be resolved in other ways.[[192]](#footnote-192)

# VIII Principles driving a National Plan

 The ALRC has been briefed to consider best practice laws, and ‘legal frameworks’ such as the NDIS and the Aged Care framework.[[193]](#footnote-193) Such a plan is currently in an amorphous stage, having simply been considered by the literature.[[194]](#footnote-194) However, legislative action to deal with intra-familial financial abuse of older people should not occur on the national level. Though AIFS identifies sections 61 and 96, in addition to the external affairs power under section 51(xxix) of the Commonwealth Constitution as providing the legislative power to enact a ‘protective’ framework with respect to elderly Australians,[[195]](#footnote-195) this is undesirable, as states would need to submit to the legislation, and there is also the potential for an adult protection-type service to become an exercise in developing a paternalistic, intervention-driven response to elder abuse. This contradicts the human rights-based, empowerment-driven discourse surrounding discussion on elder abuse in Australia: there cannot be a ‘separate’ law for elderly people, displacing choice and autonomy.[[196]](#footnote-196) The Commonwealth’s role instead should be in assisting states to implement and expand on strategies which have been proven successful. Any national plan should be implemented within a human rights framework, and be a collaborative endeavour, seeking to ensure consistent policy across states, and driven by the four objectives, and the practices therein, which this research has endorsed. This focus will assist in implementing truly holistic services to provide therapeutic outcomes.

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| **Recommendation 13:** That the Federal Government consider developing a national plan to combat elder abuse, which seeks to implement uniform standards and practices in service responses to elder abuse. |

# IX Conclusion

Elder abuse is a complex issue, requiring a holistic response. Management of financial abuse of older people with capacity has been limited by the absence of an ‘operational’ definition, underdeveloped specialist services and expertise and lack of public awareness and education. Recognising this form of abuse within the context of family violence, and developing existing services to ensure a tailored response implementing therapeutic and restorative options, may combat these issues. Third parties, particularly lawyers, financial services staff, dispute resolution and health professionals trained to identify and holistically manage elder abuse are important in providing support at the pre-and post-abuse stages. The services and methods identified exemplify the four key themes which management of financial elder abuse in Australia should be driven by; collaboration, support, education and conflict resolution. From these, effective services have been identified. These are: providing a coordinated multidisciplinary referral and advice service, restorative conflict resolution, victim liaison at court, community education and ongoing professional development to ensure there is strong service provider capability to assist victims and potential victims. These methods have the potential to provide a therapeutic and restorative experience, promoting empowerment, the preservation of important familial bonds, and encouraging positive, proactive action by elders with capacity. This model makes important headway towards developing a legal system which caters to each unique case; reducing alienation and lack of reporting of what is a growing problem in Australian society today.

1. Lisa Nerenberg, ‘Developing a Service Response to Elder Abuse’ (2000) 24 *Generations* 86, 86; *Missing voices: Views of older persons on elder abuse,* WHO Doc WHO/NMH/VIP/02.1 (2002) 2. [↑](#footnote-ref-1)
2. See, for example, within the past year: Australian Broadcasting Corporation, ‘Who will stand up for them? Call to criminalise financial abuse of elderly’, *7:30*, 19 November 2015 (Tracy Bowden) <http://www.abc.net.au/7.30/content/2015/s4355854.htm>; Christine Long, ‘How to stop elder financial abuse at the hands of loved ones’, *The Sydney Morning Herald* (online), 24 February 2016 <http://www.smh.com.au/money/planning/how-to-stop-elder-financial-abuse-at-the-hands-of-loved-ones-20160217-gmwwhz.html>; Michael Edwards, ‘Senate report calls for royal commission to examine reports of financial abuse of elderly, mentally ill’, *ABC News* (online), 4 January 2016 <http://www.abc.net.au/news/2016-01-04/disablity-advocates-call-for-a-royal-commisison/7065838> [↑](#footnote-ref-2)
3. Rae Kaspiew, Rachel Carson and Helen Rhoades, ‘Elder Abuse: Understanding Issues, Frameworks and Responses’ (Research Report No 35, Australian Institute of Family Studies, February 2016); Victoria, Royal Commission into Family Violence, *Royal Commission into Family Violence: Summary and recommendations* (2016). [↑](#footnote-ref-3)
4. Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-4)
5. Rosslyn Monro, ‘Elder Abuse and Legal Remedies: Practical Realities?’ (2002) 81 *Australian Law Reform Commission Reform Journal* 42. [↑](#footnote-ref-5)
6. Royal Commission into Family Violence, above n 3; General Purpose Standing Committee No. 2, Parliament of New South Wales, *Inquiry into elder abuse in New South Wales* (2016). [↑](#footnote-ref-6)
7. George Brandis, ‘Safeguarding Older Australians’ (Media Release, 24 February 2016); George Brandis, ‘Australian Law Reform Commission inquiry – Protecting the Rights of Older Australians from Abuse Terms of Reference’ (Terms of Reference, 24 February 2016). [↑](#footnote-ref-7)
8. For a comprehensive contextual overview of elder abuse in Australia, and both local and international methods of dealing with the issue, see Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-8)
9. World Health Organisation, *A Global Response to Elder Abuse and Neglect: Building Primary Health Care Capacity to Deal with the Problem Worldwide: Main Report* (2008) 1 <http://www.who.int/ageing/publications/elder\_abuse2008/en/>. [↑](#footnote-ref-9)
10. Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-10)
11. Royal Commission into Family Violence, above n 3, vol 5. [↑](#footnote-ref-11)
12. Ibid; Susan Ryan, ‘4th National Elder Abuse Conference’ (Speech delivered at the 4th National Elder Abuse Conference, Melbourne, 24 February 2016). The difficulty in measuring the phenomenon, evidenced in the lack of available prevalence data across Australia, has also been cited as another limitation for progress in combating elder abuse. [↑](#footnote-ref-12)
13. Aged Care Branch, Department of Human Services, *With Respect to Age* (State of Victoria, Department of Human Services, 2009) 12. [↑](#footnote-ref-13)
14. Peteris Darzins, Georgia Lowndes and Jo Wainer, *Financial Abuse of Elders: A Review of the Evidence* (2009) Monash University, 9 <http://www.eapu.com.au/uploads/research\_resources/VIC-Financial\_Elder\_Abuse\_Evidence\_Review\_JUN\_209-Monash.pdf>. Darzins et al state that other common examples of financially abusive behaviours include: misappropriation or misuse of money, property, assets; exerting undue influence to give away assets or gifts, putting undue pressure on the older person to accept lower-cost/lower-quality services in order to preserve more financial resources to be passed to beneficiaries on death, carrying out unnecessary work and/or overcharging for services, denial to access funds, failure to repay loans, living with the older person and refusing to contribute money for expenses, forging or forcing an older person’s signature, promising long-term care in exchange for money or property and then not providing the promised care and getting an older person to sign a will, contract or power of attorney through deception, coercion or undue influence. [↑](#footnote-ref-14)
15. Ibid, 4. [↑](#footnote-ref-15)
16. Judith A Davey, ‘Elder Abuse and Neglect’ in Anne Hayden, Loraine Gelsthorpe, Venezia Kingi and Allison Morris (eds), *A Restorative Approach to Family Violence* (Ashgate Publishing Ltd, 2014) 53, 53. [↑](#footnote-ref-16)
17. Darzins, Lowndes and Wainer, above n 14, 15. [↑](#footnote-ref-17)
18. Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-18)
19. Susan Ryan, above n 15; Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-19)
20. That is, by 2020. See Office of the High Commissioner, *Human Rights of Older Persons* (2016) United Nations Human Rights Office of the High Commissioner <http://www.ohchr.org/EN/Issues/OlderPersons/Pages/OlderPersonsIndex.aspx>. [↑](#footnote-ref-20)
21. Daryl Bagshaw, Sarah Wendt, Lana Zannettino and Valerie Adams, ‘Financial Abuse of Older People by Family Members: Views and Experiences of Older Australians and Their Family Members’ (2013) 66 *Australian Social Work* 86, 87; Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-21)
22. Bagshaw et al, above n 21, 87. [↑](#footnote-ref-22)
23. Kylie Miskovski, *Preventing Financial Abuse of People with Dementia* (June 2014) Alzheimer’s Australia, 18 <https://fightdementia.org.au/sites/default/files/20140618-NSW-Pub-DiscussionPaperFinancialAbuse.pdf>. [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. Australian Human Rights Commission, *Fact or fiction? Stereotypes of older Australians*, Research report (2013), 31. [↑](#footnote-ref-26)
27. Ibid, 5. [↑](#footnote-ref-27)
28. Ibid. [↑](#footnote-ref-28)
29. Ibid. [↑](#footnote-ref-29)
30. Standing Committee on Legal and Constitutional Affairs, House of Representatives, *Older people and the law* (2007), 91. [↑](#footnote-ref-30)
31. Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Law*, Issues Paper No 44 (2013) 36. [↑](#footnote-ref-31)
32. Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) 44. [↑](#footnote-ref-32)
33. General Purpose Standing Committee No. 2, above n 6, 11. [↑](#footnote-ref-33)
34. As elder abuse is a multi-faceted issue. [↑](#footnote-ref-34)
35. Australian Law Reform Commission, above n 32, 44. [↑](#footnote-ref-35)
36. Victorian Law Reform Commission, *Guardianship*, Report No 24 (2012) 98. [↑](#footnote-ref-36)
37. Australian Law Reform Commission, above n 32, 45. [↑](#footnote-ref-37)
38. It should be noted that assessments of legal and mental capacity have been emphasised as not being equated, and people with cognitive impairment should not be assumed to have limited legal capacity, in the sense of being able to exercise legal agency. See Australian Law Reform Commission, above n 32, 46. [↑](#footnote-ref-38)
39. Darzins, Lowndes and Wainer, above n 14, 15. [↑](#footnote-ref-39)
40. Monro, above n 5, 43. [↑](#footnote-ref-40)
41. John Chesterman, 'Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies' (2016) 69(1) *Australian Social Work* 115. [↑](#footnote-ref-41)
42. Ibid. [↑](#footnote-ref-42)
43. Wendy Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia’ (2004) 36 *Sydney Law Review* 99, 99. [↑](#footnote-ref-43)
44. *1975* (Cth). [↑](#footnote-ref-44)
45. *Family Violence Protection Act 2008* (Vic), s 5. [↑](#footnote-ref-45)
46. Ibid, s 8. [↑](#footnote-ref-46)
47. Ibid, s 5(1)(a)(iii). [↑](#footnote-ref-47)
48. Eastern Elder Abuse Network, Submission No 379 to the Royal Commission into Family Violence, *Royal Commission into Family Violence*, May 2015, 5. [↑](#footnote-ref-48)
49. *Family Violence Protection Act 2008* (Vic), s 6. [↑](#footnote-ref-49)
50. See Justice Connect, Submission No 566 to the Royal Commission into Family Violence, *Royal Commission into Family Violence*, May 2015, 6, 11. Justice Connect’s submission advocated for the definition of family violence to be widened include neglect. [↑](#footnote-ref-50)
51. Victoria, Royal Commission into Family Violence, *Terms* *of* *Reference* (2015). [↑](#footnote-ref-51)
52. Victoria, Royal Commission into Family Violence, *Issues Paper* (2015) 11. [↑](#footnote-ref-52)
53. Auspiced and supported by the Eastern Community Legal Centre, above n 48. [↑](#footnote-ref-53)
54. Justice Connect, above n 50. [↑](#footnote-ref-54)
55. Darzins, Lowndes and Wainer, above n 14. [↑](#footnote-ref-55)
56. Jo Wainer, Peteris Darzins and Kei Owada, *Prevalence of Financial Elder Abuse in Victoria: Protecting Elders’ Assets Study* (2009) Monash University, 11 <http://www.eapu.com.au/uploads/research\_resources/VIC-Prevalence\_of\_FInancial\_Elder\_Abuse\_MAY\_2010-Monash.pdf>. Wainer et al examine a number of studies worldwide, and found that, based on data from the Seniors Rights Victoria Helpline, that women were two to three times more likely than men to experience financial abuse. [↑](#footnote-ref-56)
57. Ibid 8. [↑](#footnote-ref-57)
58. Eastern Elder Abuse Network, above n 48, 4. However, it should be noted that, given the lack of comprehensive data on elder abuse and financial abuse of elders, all statistics available are limited in their applicability. [↑](#footnote-ref-58)
59. Ibid 5. [↑](#footnote-ref-59)
60. Minister for the Prevention of Family Violence, Premier, *Urgent Family Violence Investment Will Help Keep Women And Children Safe* (13 April 2016) Premier of Victoria <http://www.premier.vic.gov.au/urgent-family-violence-investment-will-help-keep-women-and-children-safe/>. [↑](#footnote-ref-60)
61. Cybele Stockley, Submission No 915 to the Royal Commission into Family Violence, *Royal Commission into Family Violence*, June 2015, 42. [↑](#footnote-ref-61)
62. Owen Camilleri, Tanya Corrie and Shorna Moore, Submission No 83 to the Royal Commission into Family Violence, *Royal Commission into Family Violence*, 2015. [↑](#footnote-ref-62)
63. Royal Commission into Family Violence, above n 3, vol 4, 93. [↑](#footnote-ref-63)
64. Ibid vol 4, 101. [↑](#footnote-ref-64)
65. Justice Connect, above n 50, 10. [↑](#footnote-ref-65)
66. Stockley, above n 61. [↑](#footnote-ref-66)
67. Ibid 31. This group is ‘made up of key peak bodies and advocacy groups representing their community and is chaired by an assistant commissioner. Since this group commenced in 2014, progress may be limited thus far, preventing a discernible effect upon police responses to elder abuse. See also Victoria Police, *Equality is not the same: Year One Report – 2014*, (Victoria Police, The State of Victoria, 2014), 9. [↑](#footnote-ref-67)
68. Ibid 43. [↑](#footnote-ref-68)
69. Davey, above n 16, 55. [↑](#footnote-ref-69)
70. Ibid. [↑](#footnote-ref-70)
71. Michael S King, ‘Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice’ (2008) 32 *Melbourne University Law Review* 1096, 1096. [↑](#footnote-ref-71)
72. Darzins, Lowndes and Wainer, above n 14, 12. [↑](#footnote-ref-72)
73. Ibid. [↑](#footnote-ref-73)
74. King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice', above n 71, 1112. [↑](#footnote-ref-74)
75. King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice', above n 71; Michael King and Robert Guthrie, ‘Using Alternative Therapeutic Intervention Strategies to Reduce the Costs and Anti-Therapeutic Effects of Work Stress and Litigation’ (2007) 17 *Journal of Judicial Administration* 30; John Braithwaite, ‘Restorative Justice and Therapeutic Jurisprudence’ (2002) 38 *Criminal Law Bulletin* 244; Michael S King, ‘Therapeutic Jurisprudence in Australia: New Directions in Courts, Legal Practice, Research and Legal Education’ (2006) 15 *Journal of Judicial Administration* 129. [↑](#footnote-ref-75)
76. Valerie Margaret Adams, Dale Bagshaw, Sarah Wendt and Lana Zannettino, ‘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, 282. [↑](#footnote-ref-76)
77. King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice', above n 71, 1122. [↑](#footnote-ref-77)
78. Ibid. [↑](#footnote-ref-78)
79. King and Guthrie, above n 75, 36–37. [↑](#footnote-ref-79)
80. Monro, above n 5, 43. [↑](#footnote-ref-80)
81. Janelle Budd, *Prevention of Elder Abuse Project and the Respect for Seniors Campaign, Primary Interventions: Literature Review* (Literature Review, Macquarie University, 2010), 12. [↑](#footnote-ref-81)
82. Braithwaite, above n 75, 244. [↑](#footnote-ref-82)
83. Ibid 244, 246. [↑](#footnote-ref-83)
84. Ibid 246. [↑](#footnote-ref-84)
85. Royal Commission into Family Violence, above n 3, vol 4, 135. [↑](#footnote-ref-85)
86. Davey, above n 16, 60. [↑](#footnote-ref-86)
87. Ibid. [↑](#footnote-ref-87)
88. King, ' Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice', above n 71, 1098. [↑](#footnote-ref-88)
89. Arie Freiberg, ‘Therapeutic Jurisprudence in Australia: Paradigm Shift or Pragmatic Incrementalism?’ (2002) 20 *Law in Context* 6, 7. [↑](#footnote-ref-89)
90. Braithwaite, above n 75, 252. [↑](#footnote-ref-90)
91. Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-91)
92. Andrew Cannon, ‘Smoke and Mirrors and Meaningful Change: The Way Forward for Therapeutic Jurisprudence’ (2008) 17 *Journal of Judicial Administration* 217, 220. [↑](#footnote-ref-92)
93. Braithwaite, above n 75, 245. [↑](#footnote-ref-93)
94. Madeleine O’Keeffe et al, *UK Study of Abuse and Neglect of Older People: Prevalence Survey Report* (June 2007) National Centre for Social Research and King’s College London, 83 <http://www.natcen.ac.uk/media/308684/p2512-uk-elder-abuse-final-for-circulation.pdf>. [↑](#footnote-ref-94)
95. Wainer, Darzins and Owada, above n 56, 8. [↑](#footnote-ref-95)
96. Darzins, Lowndes and Wainer, above n 14, 7. [↑](#footnote-ref-96)
97. Department of Health, *Elder Abuse Prevention and Response Guidelines for Action 2012-14* (2012) Eastern Metropolitan Region Regional Family Violence Partnership <http://www.easternfamilyviolencepartnership.org.au/sites/default/files/Elder%20Abuse%20Prevention%20and%20Response%20Guidelines.pdf>. [↑](#footnote-ref-97)
98. As well as the issues of recognition of elder abuse as family violence. See Part III – Theoretical Framework. [↑](#footnote-ref-98)
99. Budd, above n 81, 10. [↑](#footnote-ref-99)
100. Ibid. [↑](#footnote-ref-100)
101. Nerenberg, above n 1, 91. [↑](#footnote-ref-101)
102. Royal Commission into Family Violence, above n 3, vol 5, 73. [↑](#footnote-ref-102)
103. Royal Commission into Family Violence, above n 3, vol 5. [↑](#footnote-ref-103)
104. *Legal Services,* Seniors Rights Victoria <http://seniorsrights.org.au/our-services/legal-services/>. [↑](#footnote-ref-104)
105. Davey, above n 16, 60. [↑](#footnote-ref-105)
106. Royal Commission into Family Violence, above n 3, vol 5, 76. [↑](#footnote-ref-106)
107. Cannon, above n 92, 220. Cannon emphasises the need for courts to work closely to the community to ensure clients have connections once they complete a program or their experience with the courts. Though this is in the context of offender rehabilitation, similar principles apply to elder abuse victims – continual support is required to ensure positive changes are maintained. [↑](#footnote-ref-107)
108. Jane Norman, *$30m DV Campaign to Focus on ‘Influencers’* (20 April 2016) ABC News <http://www.abc.net.au/news/2016-04-20/dv-campaign-to-focus-on-influencers/7340120>. [↑](#footnote-ref-108)
109. Stockley, above n 61, 20. [↑](#footnote-ref-109)
110. Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-110)
111. Department of Health, above n 97, 9. [↑](#footnote-ref-111)
112. Louise Kyle, *Care For Your Assets: Money, Ageing & Family* *Online Elder Abuse Tool Kit* (2012) Seniors Rights Victoria <http://www.seniorsrights.org.au/toolkit/resources/care-for-your-assets\_guide-for-older-people-on-money-ageing-and-family/>. [↑](#footnote-ref-112)
113. *Help Sheet: Concerned about Someone?* (September 2015) Seniors Rights Victoria <http://seniorsrights.org.au/wp-content/uploads/2015/09/SRV-Concerned-About-Someone-HelpSheet-Sept2015-Web.pdf>. [↑](#footnote-ref-113)
114. Law Institute Victoria, *About Elder Law Section* (2016) Law Institute Victoria <http://www.liv.asn.au/For-Lawyers/Sections-Groups-Associations/Practice-Sections/Elder-Law/About-Elder-Law-Section>. [↑](#footnote-ref-114)
115. Australian Bankers’ Association (2014) *Protecting vulnerable customers from potential financial abuse* (Industry Guideline, Australian Bankers’ Association, Sydney). [↑](#footnote-ref-115)
116. Keren Murray and Andrew Tabone, Submission No 59 to the Department of Justice and Regulation, *Access to Justice Review*, 1 March 2016, 56. [↑](#footnote-ref-116)
117. Seniors Law, *Training for pro Bono Lawyers*, Justice Connect <https://www.justiceconnect.org.au/our-programs/seniors-law/training-and-legal-updates/training>. [↑](#footnote-ref-117)
118. Interact Learning Pty Ltd, *Elder Abuse Prevention Online Training* (2016) Department of Health and Human Services <http://elderabuseprevention.e3learning.com.au/>. [↑](#footnote-ref-118)
119. John Chesterman, *Responding to Violence, Abuse, Exploitation and Neglect: Improving Our Protection of at-Risk Adults* (2013) Winston Churchill Memorial Trust <https://www.churchilltrust.com.au/media/fellows/Chesterman\_John\_2012\_Report.pdf>. [↑](#footnote-ref-119)
120. Royal Commission into Family Violence, above n 3, vol 3, 133. [↑](#footnote-ref-120)
121. C Hempton, B Dow, E.N. Cortes-Simonet, K Ellis, S Koch, D LoGiudice, M Mastwyk, G Livingston, C Cooper and D Ames, ‘Contrasting perceptions of health professionals and older people in Australia: what constitutes elder abuse?’ (2011) 26 *International Journal of Geriatric Psychiatry* 466. The behaviours in question were: locking someone in a house, and using an over chair restraint. [↑](#footnote-ref-121)
122. See Part VI for further discussion on the FAST initiative. [↑](#footnote-ref-122)
123. Betty Malks, Jamie Buckmaster and Laura Cunningham, ‘Combating Elder Financial Abuse - A Multi-Disciplinary Approach to a Growing Problem’ in Elizabeth Podnieks, Ariela Lowenstein and Jordan I Kosberg (eds), *Elder Abuse: Selected Papers from the Prague World Congress on Family Violence* (Routledge, 2012) 67. [↑](#footnote-ref-123)
124. Chesterman, *Responding to Violence, Abuse, Exploitation and Neglect*, above n 119, 37. [↑](#footnote-ref-124)
125. Chesterman, 'Taking Control', above n 41. [↑](#footnote-ref-125)
126. Chesterman, *Responding to Violence, Abuse, Exploitation and Neglect*,above n 119, 60. [↑](#footnote-ref-126)
127. *Guidelines for Establishing and Coordinating a Fiduciary Abuse Specialist Team*, National Committee for the Prevention of Elder Abuse <http://www.preventelderabuse.org/communities/fast.html>. [↑](#footnote-ref-127)
128. Office of the County Counsel, *Financial Abuse Specialist Team (F.A.S.T.)* (9 January 2015) County of Santa Clara <https://www.sccgov.org/sites/cco/Pages/fast.aspx>. [↑](#footnote-ref-128)
129. Ibid. [↑](#footnote-ref-129)
130. Justice Connect, above n 50, 35. [↑](#footnote-ref-130)
131. Arlene Groh, *A Healing Approach to Elder Abuse and Mistreatment: The Restorative Justice Approaches to Elder Abuse Project* (May 2003) Healing Approaches for elder abuse and mistreatment, 13–14 <http://www.healingapproaches.com/images/AHealingApproachElderAbuseMistreatment.pdf>. [↑](#footnote-ref-131)
132. Ibid 14. [↑](#footnote-ref-132)
133. Department of Health & Human Services, *Health and Support Services* (2015) Seniors Online Victoria <https://www.seniorsonline.vic.gov.au:443/services-information/support-services/health-and-support-services>. [↑](#footnote-ref-133)
134. Alliance for the Prevention of Elder Abuse: Western Australia, *Elder Abuse Protocol Guidelines for Action* (September 2013) Advocare, 15 <http://www.advocare.org.au/uploaded/files/client\_added/SO103%20Elder%20Abuse%20Protocol%20v2.pdf>. [↑](#footnote-ref-134)
135. Darzins, Lowndes and Wainer, above n 14, 5. [↑](#footnote-ref-135)
136. Royal Commission into Family Violence, above n 3, vol 5, 92. [↑](#footnote-ref-136)
137. Louise Kyle, ‘Out of the Shadows - A Discussion on Law Reform for the Prevention of Financial Abuse of Older People’ (2013) 7 *Elder Law Review* <http://www.austlii.edu.au/au/journals/ElderLawRw/2013/4.html>. [↑](#footnote-ref-137)
138. Stockley, above n 61, 26. [↑](#footnote-ref-138)
139. Ibid 27–28. [↑](#footnote-ref-139)
140. Ibid 28. [↑](#footnote-ref-140)
141. Indeed, dispute resolution specialists may be involved in the professional training program discussed in Part V – Community and Professional education. It would be particularly worthwhile for dispute resolution specialists to attend a training session held by a counsellor, so as to learn how best to promote a safe, therapeutic environment and relationships within the dispute resolution setting. [↑](#footnote-ref-141)
142. Darzins, Lowndes and Wainer, above n 14, 4. [↑](#footnote-ref-142)
143. Ibid. [↑](#footnote-ref-143)
144. Office of the Public Advocate, ‘Enduring Power of Attorney (Financial)’ Factsheet (undated). [↑](#footnote-ref-144)
145. Explanatory Memorandum, Power of Attorney Bill 2014 (Vic) 57. [↑](#footnote-ref-145)
146. Office of the Public Advocate, *Side by Side: A guide to appointing supportive attorneys* (2015) Office of the Public Advocate, 3 <http://www.publicadvocate.vic.gov.au/our-services/publications-forms/232-side-by-side-booklet-web-version?path=>. [↑](#footnote-ref-146)
147. By Lawyers Commentaries, *Powers of Attorney* (By Lawyers, 2015) 27. [↑](#footnote-ref-147)
148. Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, above n 32, 140. [↑](#footnote-ref-148)
149. Ibid. [↑](#footnote-ref-149)
150. Ibid 141. [↑](#footnote-ref-150)
151. Ibid. [↑](#footnote-ref-151)
152. *Powers of Attorney Act 2014* (Vic), s 90. [↑](#footnote-ref-152)
153. Ibid s 90(1)(e). [↑](#footnote-ref-153)
154. Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-154)
155. *Powers of Attorney Act 2014* (Vic), s 66 [↑](#footnote-ref-155)
156. Ibid s 67 [↑](#footnote-ref-156)
157. Ibid s 69. [↑](#footnote-ref-157)
158. Ibid, s 116. [↑](#footnote-ref-158)
159. Ibid, s 77. [↑](#footnote-ref-159)
160. Royal Commission into Family Violence, above n 3, vol 3, 158. [↑](#footnote-ref-160)
161. Though, as argued in Part VI, C – *Powers* *of* *Attorney*, these options should also be available in VCAT. [↑](#footnote-ref-161)
162. Royal Commission into Family Violence, above n 3, vol 3, 119. [↑](#footnote-ref-162)
163. Stockley, above n 61, 42. [↑](#footnote-ref-163)
164. Ibid. [↑](#footnote-ref-164)
165. *2008* (Vic). [↑](#footnote-ref-165)
166. Such as lack of information flowing between police, the Court and victims, inconvenience of multiple procedural hearings, need for victims to have better support before, during and after a hearing, misuse of intervention orders, delay at court, and lack of enforcement for breaches. See Stockley, above n 61, 44-46. [↑](#footnote-ref-166)
167. Royal Commission into Family Violence, above n 3, 130–132. [↑](#footnote-ref-167)
168. Ibid vol 3, 172. Recommendations included: ‘provide private interview rooms available for use by registrars and service providers’, and ‘use pre-existing local facilities and structures to accommodate proceedings or associated aspects of court business – for example, for use as safe waiting areas.’ [↑](#footnote-ref-168)
169. *Applying for an Intervention Order* (18 June 2012) Magistrates' Court of Victoria <https://www.magistratescourt.vic.gov.au/jurisdictions/intervention-orders/family-violence-court-programs/applying-intervention-order>. [↑](#footnote-ref-169)
170. Royal Commission into Family Violence, above n 3, vol 3, 161–162. [↑](#footnote-ref-170)
171. Ibid 143. [↑](#footnote-ref-171)
172. Joan Braun, ‘Elder Mediation - Promising Approaches and Potential Pitfalls’ (2013) 7 *Elder Law Review* <http://www.austlii.edu.au/au/journals/ElderLawRw/2013/2.html>. [↑](#footnote-ref-172)
173. Groh, above n 131. [↑](#footnote-ref-173)
174. Ibid. [↑](#footnote-ref-174)
175. Braun, above n 172. [↑](#footnote-ref-175)
176. Groh, above n 131, 17. [↑](#footnote-ref-176)
177. Royal Commission into Family Violence, above n 3, vol 4, 137. [↑](#footnote-ref-177)
178. Groh, above n 131, 25. [↑](#footnote-ref-178)
179. Ibid. [↑](#footnote-ref-179)
180. Dr Andrew Cannon, ‘Therapeutic Jurisprudence in the Magistrates’ Court: Some Issues of Practice and Principle’ in G Reinhardt and A Cannon (eds), *Transforming Legal Processes in Court and Beyond* (Australasian Institute of Judicial Administration, 2007) 129, 129. [↑](#footnote-ref-180)
181. Davey, above n 16, 60. [↑](#footnote-ref-181)
182. Royal Commission into Family Violence, above n 3, vol 4, 137-141. [↑](#footnote-ref-182)
183. Groh, above n 131, 14. [↑](#footnote-ref-183)
184. *Court Integrated Services Program (CISP)* (3 May 2016) Magistrates’ Court of Victoria <https://www.magistratescourt.vic.gov.au/court-support-services/court-integrated-services-program-cisp>. [↑](#footnote-ref-184)
185. Arlene Groh and Rick Linden, ‘Addressing Elder Abuse: The Waterloo Restorative Justice Approach to Elder Abuse Project’ (2011) 23 *Journal of Elder Abuse and Neglect* 127, 134. [↑](#footnote-ref-185)
186. Royal Commission into Family Violence, above n 3, vol 4; ‘With Respect to Age’, above n 13; Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-186)
187. Groh and Linden, above n 185, 130. [↑](#footnote-ref-187)
188. King, 'Therapeutic Jurisprudence in Australia', above n 75, 130. [↑](#footnote-ref-188)
189. Michael King and Julie Wager, ‘Therapeutic Jurisprudence and Problem-Solving Judicial Case Management’ (2005) 15 *Journal of Judicial Administration* 28, 31. King and Wager assert that providing choice to participants is more motivating. [↑](#footnote-ref-189)
190. Chesterman, above n 119. [↑](#footnote-ref-190)
191. Ibid 37. [↑](#footnote-ref-191)
192. King, 'Therapeutic Jurisprudence in Australia', above n 75, 130–131. [↑](#footnote-ref-192)
193. Brandis, 'Terms of Reference', above n 7. [↑](#footnote-ref-193)
194. Kaspiew, Carson and Rhoades, above n 3; Chesterman, 'Taking control', above n 41; Lacey, above n 43. [↑](#footnote-ref-194)
195. Kaspiew, Carson and Rhoades, above n 3. [↑](#footnote-ref-195)
196. This has also been endorsed with regards to older people with a disability, as a right enshrined in the *United Nations Convention on the Rights of Persons with Disabilities*. See General Purpose Standing Committee No. 2, above n 6, 19. [↑](#footnote-ref-196)