136. Older Women's Network NSW

Name of organisation: Older Women's Network NSW

Question 1

In describing or defining elder abuse: harm or distress; intention; payment for services, should be taken into account as suggested below.  However, we need to take a wider view and take into account the complex causes, that lead to structural and interpersonal violence and the dynamics of situations many older people experience, the impact and effects on the individual and on society. We also need to recognize power differentials and discrimination based on age, gender, race, disability and sexuality. The more marginalised, disempowered and socially excluded a person is, the more vulnerable they are to abuse and exploitation (Mears, 2015).

The terminology needs to be able to take into account the full range and complexity of violence and abuse. Abuse of older people is a more encompassing terminology that enables us to take into consideration the dynamics of violence and the fact that abuse is often cumulative across the life span for older people.  We also need to recognize that for older women gender discrimination across the life span has a cumulative effect which results into a high life time of violence and abuse (Brownell, 2014).

‘Elder abuse’ has its origins in an individualized medical approach and does not take into account the age and gender-based violence perpetrated against older people. Moreover there is evidence that this limited terminology leads to a gender-neutral approach to prevention and protection of older people (Choi et al, 2014:9).

In order to respond to and prevent violence against older women OWN is:

* Raising awareness that that older women have experienced a lifetime of abuse and violence further compounded by class, ethnicity, race, sexuality and disability.
* Working towards to a paradigm shift from understanding of violence and abuse against older people as a personal, individual problem, to a paradigm that analyses the impact of structural violence  (UN 2015).
* Advocating to put in place policies and practices that work towards ensuring that older women are free from violence and exploitation and have the right to dignity and respect (van Bavel et al., 2010,UN 2015).
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**Harm or distress; intention; payment for services**

Rather than focusing on individual harm/distress, we should take into account intentionality and power differentials. It is difficult to measure harm and distress, particularly for older people, when abuse has occurred across the life span, with cumulative effects and impact. In this context, harm and distress is assumed to be measured today or at a time when the abuse has occurred. This is a gross underestimation of this cumulative and complex impact of the abuse on older people.

**Payment for services**

Payment for services qualifies as abuse, if services are unaffordable for a substantial part of the population impacting on the wellbeing of people.

Question 2

The key elements to best practice need to be based on a rights based framework. Legislative reform is needed at both state and federal level to ensue consistent best practice and strengthen safeguards. There is need for legislative reform to bring forth uniform and national legislation with respect to powers of attorney, guardianship laws and financial administration. The key elements of best practice, are practices that empower, support and protect the most vulnerable members of our society.

Question 3

Older people, especially older women are subjected to discrimination based on membership of the following communities: Aboriginal and Torres Strait Islander people; People from culturally and linguistically diverse communities; Lesbian, gay, bisexual, transgender or intersex people. As members of often marginalised and powerless communities, they are vulnerable to structural and interpersonal violence and abuse.

**Aboriginal and Torres Strait Islander people;**

In Aboriginal communities, both the terms “elder” and “abuse” can be considered problematic, as “elder” has a specific meaning in Aboriginal communities, and “abuse” may be considered inept and confrontational (Kaspiew, Carson & Rhoades, 2016).

During the 2016 NSW Legislative Council Inquiry, Aboriginal Elders highlighted that they had seen or experienced financial, psychological, emotional and physical abuse, as well as neglect. As with other older women, older women in Aboriginal communities encounter various forms of financial abuse involving pressure to assist family members.

Aboriginal people have reported feeling the impact of elder abuse earlier, given their lower mortality age, such that a person may be considered ‘older’ at a younger age. There is a lot of shame and secrecy associated with this abuse which contributes to its under-reporting.

Women in dependent relations with family and informal carers are particularly susceptible to theft and fraud since they may be recipients of the aged pension (OWN, 2015). Older women experience domestic violence and they formed the majority of indigenous clients who were receiving Supported Accommodation Assistance Programme services (OWN, 2009).

We endorse the claim that: ‘these forms of abuse experienced by the Indigenous Australians are attributed to the level of community disconnectedness and dysfunction resulting from the dismantling of Indigenous communities and cultures by Europeans (NSW Legislative Council Report, 2016).

**People from culturally and linguistically diverse communities;**

The Federation of Ethnic Community Council highlighted that older Australians from Culturally and Linguistically Diverse Backgrounds are less likely to access Australian systems and services. In particular, older women and older people with conditions such as dementia can be viewed very differently in diverse cultures and identifying and reporting abuse and violence can be difficult or impossible where there is no awareness of the signs or symptoms. This is especially the case where older people are not accessing aged care services and have limited contact with people outside their families (Federation of Ethnic Community Council report, 2015).

Research into the experience of culturally and linguistically diverse older people has found that some are at a greater risk of abuse as a result of limited English skills, social isolation, dependency on family members, unwillingness to disclose abuse because of stigma, and cross-generational factors resulting in different expectations of care and support (NSW Legislative Council Report, 2016)

**Lesbian, gay, bisexual, transgender or intersex people;**

A recent study of discrimination, depression, and anxiety amongst older LGBTI Australians found that many of the participants were afraid that ageing and disability would again expose them to institutional heterosexism in the provision of aged care services (Barrett, Whyte, Leonard, Comfort, 2015). Those interviewed were afraid that in accessing aged care services, they would need to ‘straighten up’ and return to the closet. The concerns articulated related to encounters with aged services, other clients and visitors.

Older LGBTI people feel that they have to conceal their identity from homecare workers. One of many distressing stories told by workers with older LGBTI people involved a transsexual person with some dementia whose son had admitted him to a nursing home as a man and who was subsequently ashamed and traumatised when staff attending him discovered he was a woman. He had lived his life as a transsexual and had made the transition but his son influenced him to conceal his hard won identity to enable entry to the home (Barrett, Whyte, Leonard, Comfort, 2015).

Question 4

We have ample evidence that abuse of older people is a major social problem in Australia.  Although the statistics and records that provide this evidence are very scattered, it is possible to extract the statistics from relevant agencies and map the extent and nature of violence and abuse of older people (OWN, 2009). National coordination bringing together state and national databases to assist in mapping the extent of the problem Australian wide, would be a useful initiative.

Many agencies are already working effectively with older people, through state agencies, NGOs, community based agencies. A research priority should be documenting, evaluating and analyzing innovative community based responses to abuse of older people, looking at identifying promising practices, policies and programs.  The Commonwealth could take a more active role in collating the resources and best practices of state based agencies responsible for abuse of older people and apply them in a national approach (NSW Legislative Council, 2016).

Research into the impact of CDCs and safeguards on older people, informal and formal carers.

Question 5

Question 6

Question 7

Question 8

Income management measures play the role of helping people budget their welfare payments and ensure they are getting the basic essentials of life, such as food, housing and education. However, in relation to abuse of older people, income management measures can lead to unintended consequences which exacerbate the reluctance to disclose violence and abuse for fear of being identified for compulsory income management.

Also, compulsory income management runs counter the themes of self agency, empowerment and human rights of the recipients (Australian Law Reform Commission (ALRC, 2011). Income management should be applied within the common understanding of the United Nations Human Rights based approach to development Cooperation where individuals, families and communities are recognized as stakeholders in their own development rather than passive recipients of commodities, service provision and policy development (UN, 2006). Preventive and sustainable measures should be put in place to address the structural causes of the social problems and the economic inequalities experienced by the recipients of income support.

Question 9

Question 10

Question 11

Violence and abuse in aged care facilities and in the home is a serious problem, for older people, carers and friends and for care workers.  There is ample evidence of abuse occurring in aged care facilities and in the home.  The dynamics of abuse that take place behind closed doors are insidious.

There have been alarming reports of abuse of older people in aged care facilities. For example, the case of abuse of an 89 year old woman who was being abused by a care worker. The abuse was caught on a camera that was hidden in the room and showed how the care worker dragged her on the floor, threatened her, called her names like you ‘’horrible old lady’’, ‘’nasty old cow’’ (Brooke, 2012). More recently, on 26th July 2016, Crouch, Novak, Gailberger,  Robertson, (2016) reported an incident of a care worker attempting to suffocate an older man in Adelaide Nursing home.

These individual cases as reported in the media, are the tip of the iceberg. Abuse of older people in residential care is a widespread problem and is a complex and difficult issue to deal with, particularly when institutions are understaffed, staff are under qualified and poorly paid, and simply do not have time to provide adequate care.  Abusive, violence and disrespectful behavior can become the norm- this is a difficult cycle to break.

Violence and abuse in the home and the community is also a serious problem, for older people, carers and friends and for care workers and is also complex and difficult to deal with. Older people, their carers and care workers, are all, both victims and often perpetrators of abuse and violence.

There is ample evidence of abuse of older people occurring in the community. Older people, especially older women, experience violence and abuse in their homes from a range of people, from family members; spouses, siblings, adult children and grandchildren and from formal (paid) and informal (unpaid) carers. Older women stay in the home and tolerate abuse for of a range of reasons; including financial dependency, fear of being placed in aged care facility, fear of being ostracized by families, friends and social networks, fear of being socially isolated and fear of poverty and homelessness (McFerran,2009, OWN, 2009). Older women are traumatized and frightened when they are living in abusive situations. Not only are they living in fear but they also have a lot of difficulty speaking about their situation and have little self-confidence (Mears, Brock & O’Sullivan, 2016).

This culture of disrespect leading to abuse and violence, is fostered through ageism, manifested in individual and structural violence impacting on all older people. We have ample Australian evidence of this. The AHRC found that older people face discriminatory attitudes and behaviors stemming from negative stereotypes about older people; older people are regarded as lonely, isolated, forgetful, don’t like being told what to do by some one younger and have difficulties learning new things. Older people face discrimination in the work place, in retail and social situations and in access to social services like health care, where service providers do not see value in spending time with older people. This discrimination impacts on the emotional and psychological wellbeing of older people. Many reported feeling worthless, sad, angry, and ashamed (AHRC 2009, 2013 and 2016).

Question 12

Identifying, responding and supporting older people who are the victims of abuse, should be part of the assessment process. Assessment teams should be supported in following abuse cases and liaising with other agencies. Many Aged Care Assessment Teams (ACATs) in NSW have developed local protocols and creative and effective strategies for supporting older people in very complex and dangerous situations, despite not being funded to do this follow up support and care (Mears and Field, 2007).

There have always been difficulties in regard to ACATs responsibilities in this area, due to the rather uneasy and unclear allocation of state and Federal legislative structures, for example, abuse in residential care, Commonwealth responsibility, in community care, state responsibility. The ACATs were often unsure of their responsibilities, when dealing with abuse of older people, but most found ways to work through these difficulties, and go beyond their assessment brief to deal with complex cases of abuse (Mears and Field, 2007).

ACATs are community based, multidisciplinary teams, with a wealth of connections, skills, knowledge and experience. Many of the team members have been working in the sector much of their working lives and live in local communities. The teams have knowledge and expertise, and practice skills, to deal with complex cases, often going way beyond assessment. They frequently deal with violence and abuse. Some of these teams have been doing excellent, and very creative, work dealing with violence, abuse and neglect for decades.

Assessments and case management needs to be done by multi-disciplinary teams, working alongside older people in their communities. These teams should include those with expertise in health and social care services. The ACATs are an excellent model. Assessment Teams need to be well connected and able to ensure all agencies and aged care services are involved In dealing with abuse and violence against older people, both individually and systemically.

All service providers, state and Commonwealth funded, need to be sensitive, aware and well trained to support older people and their families to deal with and prevent individual and systemic violence and abuse, consistent with state and Federal legislation and guidelines.

Question 13

OWN advocates for a national framework and protocols enabling interagency and collaborative work between older people, community based agencies and service providers. This would assist in ensuring consistent and constructive responses to older people experiencing violence and abuse across Australia. There are a number of sound state based frameworks, including the NSW Interagency policy on preventing and responding to abuse of older people (NSW Family and Community Services (FACS, 2014). This document guides service responses and provides the framework under which service providers can develop their own policies and guidelines, to ensure protection, support for care recipients.

Question 14

There is uncertainty among older people and organisations such as OWN, as to how Consumer Directed Care (CDC) is going to work in Australia. There are significant concerns regarding the potential for abuse and exploitation of older people, informal carers and care workers with CDC. There are also concerns in regard to the lack of national safeguards for older people, their families and carers and paid care workers, protecting them from abuse and exploitation.

OWN is concerned that with the introduction of CDC the risk of abuse of older people may well increase. Hussein et al (2016) demonstrated that while personal budgets as direct payments may enhance consumer independence, choice and control, CDC also created conditions under which abuse and exploitation occurred, particularly financial abuse. In this research, the risk of abuse by those receiving direct payments was mainly from paid care workers, working for unregulated care providers. Under CDC, care provision  becomes a commodity that create competition, with a focus on profit, as opposed to a consumer centric model of service delivery.

OWN is very concerned about the potential impact of CDC on care workers. UK researchers have pointed out that consumer directed care and personal budgets can ‘produce significant changes in the labour market and organisation of paid care work, which can entail substantial risks for job quality, income and working time security, health and safety, skill development and representation’ (Ismael et al, 2016). We need to monitor these possible changes in Australia, to ensure the introduction of  CDC does not erode the employment and working conditions of care workers, and their ability to respect the rights of older people and provide good quality, flexible, individualized and relationship based care.

In order to safeguard against abuse of older people, there is need for service providers to work with care users, family members and other people involved in care to co-produce approaches to care delivery in a manner that will minimize risk of harm as part of the design of consumer-directed aged care models and planning particularly in instances of direct payments. Active participation in consumer directed care heavily relies on a person’s capacity to participate.

A national system is needed to implement assisted and supported decision-making to ensure older people to make informed choices about their care. There is also a need to develop a formal program to promote health literacy to ensure empowerment of older Australians to make informed decisions about their care (AHRC, 2012).

Question 15

The changes to the requirements concerning quality of care in aged care require a multi-faceted approach. At the national level, there is need to develop a consolidated framework of quality assurance indicators based on consumer centric position. This will mean that there is transparency, consumer involvement in the processes of designing aged care, and a mechanism through which consumers are able to access information on the quality of care provided by both residential and community-based aged care. A centralized system responsible for setting aged care standards and accreditation, setting prices, designing easy to understand quality of care indicators and collection of data is needed (NACA, 2015).

For both residential and community-based aged care, there is need for consistency in the data collected. A focus on both clinical outcomes and a qualitative measure of the quality of care will be pivotal in designing consumer directed care packages hence safeguarding against abuse of older people (NACA, 2015).

We need to do all we can to ensure quality aged care provision. Regulation is about the standards we should reach. Care work is important work, carrying high levels of responsibility, requiring well trained, compassionate care workers and care managers. The provision of good quality care is a basic human right. The quality of care is dependent on the quality of the care workforce. To ensure high quality aged care provision we need high quality, well trained and committed care workers, in both residential and community care.

The aged care workforce is one of the fastest growing sectors of the workforce, providing employment opportunities for older workers, particularly older women. This growth will continue as the demand for care workers increases with the implementation of the NDIS and the Aged Care Reforms, providing employment opportunities for older workers, particularly older women.

The aged care workforce is over 90% female, with a high percentage of older workers, 73 percent were 45 years and over, (compared to 38 percent of workers 45 years and over in the labour force overall). Most care workers and care managers come to work in this sector as older workers, with decades of paid work experience, (for example, nurses, teachers, police). They are well educated and qualified with 62 percent having had one or more years’ specialised training for work with older people or people with a disability. They also have extensive informal care responsibilities, with 65 percent having in the past cared informally for older relatives or friends with a disability and 47 percent of care workers caring for one or more older relatives and juggling this informal care with their paid care work (Mears and Garcia, 2011). Care work is an attractive option for older women who are looking to a career change, returning to work after a period of informal care, or wanting to work fewer hours.

Care workers report that working conditions are generally good. Work satisfaction is high and care workers reported having time to care and relatively low pressure and stress. Care work suits these older women, with 96 percent reporting that their family responsibilities fitted well with their working hours.

However, there is systemic discrimination in this sector, with appalling employment conditions. Most care workers have insecure employment. 87 percent worked part-time and 30 percent worked split shifts. There are few opportunities for promotion, a paucity of training opportunities, no formal training and little formal recognition of prior knowledge or experience, paid or unpaid. The greatest cause of dissatisfaction is the appalling pay. The average pay rate, in 2011, was $A19 per hour (Mears and Garcia, 2011). It was the very poor pay rates that were given as the main reason for care workers leaving the sector.

If we are serious about providing high quality care, we need also to ensure decent employment conditions for care workers. Top of the list is the pay rates. Also needed is good quality training, (most care workers are required to and Cert 4, the training provided is very uneven, with some very poor training from the private providers), access to further education in aged care, a career structure and promotion opportunities.

In 2011 it was reported that care workers in NSW have better working conditions than their Swedish colleagues; they have more control over their work, flexibility and opportunities to form relationships with those being cared for (Meagher et al, 2016). We need to ensure these working conditions are preserved, protected and improved.

One of the most important and pervasive preventative mechanisms to combat abuse and violence towards older people particularly older women lies in strengthening the skills and knowledge of the personnel who work or volunteer in the aged care services sector itself, or in broader commun­ity networks such as neighbourhood centres and local Government supported services and initiatives (OWN & WEL, 2015) Older people need to be well informed of their rights, and need support to advocate in their own interests. Community based agencies are integral to empowering and supporting older people to make independent and informed decisions in their own interests.

We need to invest in the aged care workforce and provide employment opportunities in a sector where being older and/or having disability, is the norm, rather than the exception. The predominance of older care workers in this sector is a distinct strength. Not only does the sector benefit from the additional experience and expertise these older workers bring to the job, but care work provides opportunities for older women to work in part time jobs that, for the most part, enable them to successfully combine work and family commitments (Mears, 2016, Submission to AHRC Willing to Work Inquiry).

Question 16

Restrictive practices such as the use of chemical, mechanical, social or physical restraint and seclusion should not be used in the aged care facilities. It is unfortunately, too easy for restrictive practices to be used as ‘a means of coercion, discipline, convenience or retaliation by staff or others providing support, when aged care facilities are understaffed’ (NSW Legislative Council Inquiry, 2016).  Use of these practices is abuse.

Aged care workers, in residential and community care, deal with difficult and dangerous situations on a daily basis.  To ensure restrictive practices such as chemical, mechanical, social or physical restraint and seclusion are not used, care workers and informal carers, need to be supported and given adequate time to provide responsive and flexible and individualized care.

Staffing levels need to be adequate to ensure workers have time to spend with older people, to work together, with older people, relatives and friends, to ensure people are treated with respect and dignity. If further treatment is needed, this should take place in a psychiatric facility, not an aged care facility.

There are excellent training programs, run by organisations such as Alzheimer’s Australia, that assist staff to deal with difficult behavior, not using chemical, mechanical, social or physical restraint and seclusion.

Question 17

There are inconsistent and confusing policies for reporting abuse across the sector. The Commonwealth Aged Care Quality Agency regulates and prescribes reporting for residential facilities, but in NSW reporting in the context of homecare and in the community sector takes place under the NSW Interagency policy Preventing and responding to abuse of older people. This creates a serious systemic constraint in reporting arising from different reporting regimes for workers in Home Care and residential care sectors (OWN & WEL, 2015).

Reported assaults are the tip of the iceberg. Inadequate training, rigid work schedules and very low pay for care workers can mean they lack the confidence to report abuse. In fact care workers are amongst the lowest paid workers in community services with a base salary well below the average wage, at about $52,000 a year. Registered nurses and enrolled nurses in the aged care sector are paid less than their counterparts in public hospitals (OWN &WEL, 2015).

Question 18

Complaints mechanisms cover a wide range of complex and confusing reporting mechanisms, as outlined above. We need to provide preventative and systemic responses, as well as responses to individual complaints. A Federal Framework and Guidelines are needed.

One model that deals with complaints about abuse of older people, is the NSW Elder Abuse Helpline and Resource Unit (EAHRU). This needs to be resourced, strengthened and centralised, especially their training and education functions. Those working for the EAHRU play a vital role in advising and supporting complainants and people making reports, where a direct approach to the police might be intimidating or challenge deep rooted family loyalties or affections. The EAHRU works closely with the police as well as with The Aged Care Rights Service (TARS) and Women Legal Services (WLS NSW).

The Department of Families and Community Services (**FACS**) evaluation of the EAHRU identified strong support for the helpline - albeit from a limited sample. However, relatively few older people themselves contact the elder abuse helpline. Rather the majority of the callers are relatives of the victims.

However, this is just one of many possible approaches. Many older women in OWN and WEL have reported that, placed in the situation where they suffered abuse or violence, they would be unlikely to contact the helpline or identify it as a place to get help and advice.  Older women report that the title itself is seen as disturbing and not relevant to them. They, rightly, do not perceive themselves as ‘victims’. Women from organisations representing CALD communities advised that their older members and their families would be unlikely to contact an official telephone counseling and advice service (OWN & WEL, 2015).

This contrasts with the positive power in ‘1800 Respect’, the national Domestic Violence counseling service contact. A campaign to encourage older women to utilise this helpline would offer another mechanism to report and deal with abuse of older people.

Question 19

The ‘aged care sanctions regime’ is mostly applied within the residential care. Yet it is in the community where the bulk of abuse against older people is taking place, hidden, behind closed doors. It is community-based services and programs that deal with this abuse. Sanctions are not a way to solve this problem. Aged care services need to be resourced to provide quality care and enable adequate responses, so there is little need for sanctions.

Question 20

In addition to aged care advocacy services, community based advocacy and activist organisations, such as the OWN, play a pivotal role in raising awareness, preventing and dealing with violence against older women. Older Women’s Network of NSW (OWN) is an active network of older women in NSW who seek to uphold the dignity, respect and rights of older women. Operated almost entirely as a volunteer organisation, OWN has its roots in advocating for social justice, and providing meaningful and engaging activities to enhance social connectedness and wellbeing. The supports OWN provides to older women are wide-ranging, including research and publications, information on relevant issues, community based groups and activities.

OWN auspices 6 Wellness Centres (Bankstown, Blacktown, Illawarra, Newtown, Northside and Sutherland) and approximately twenty OWN groups located in metropolitan and regional areas of NSW. The Wellness Centres and OWN groups play a major role in enhancing the participation, community connectedness and social inclusion of older women. The Wellness Centres reach out, support, and deal with the problems faced by older women (Benton & Russell 1991, Cora, 2014 cited in OWN & WEL, 2015) and make it possible for older women in their communities to access and participate in a range of affordable and appropriate social, educational and physical activities.

Community based organisations, such as the OWN, need to be recognised, resourced and  supported to build on and enable a meaningful contribution to supporting and empowering older women to recognise and deal with abuse and violence.

Question 21

We already have in place policies legislation, service provision and strategies to detect abuse and to support and protect older people. However, most of these strategies are rarely, if ever**,**utilised to protect and support older people. What we recommend is that existing policies legislation, service provision and strategies to detect abuse and to support and protect women be routinely utilised to protect and support older women.

Question 22

There is systemic discrimination against older people given that those over 65 are not eligible to participate in the NDIS. The concerns outlined above in regard to the introduction of Consumer Directed Care in aged care, also apply to this sector.

Question 23

Question 24

Older people aged 75 years and over and still working full time continued to be deprived of the benefit of the 3% salary sacrifice to their superannuation fund – a situation that does not apply to mandated employer superannuation guarantee. Furthermore, women have lower superannuation balances than men over their career duration. As OWN we recognize that far great numbers of older women in their sixties (55%) have no superannuation.

A 2015 report of the Association of Superannuation Funds of Australia (ASFA) states that 2011/12 data showed average superannuation balances at the time of retirement to be approximately $197,000 for men and $105,000 for women. This is a gap of around 53.2%. (ASFA, 2015). The ALRC in their report Access All Ages report of 2013 noted that superannuation is an earned benefit and a statutory right and therefore emphasis should be put on aspects that act as barriers to workforce participation for older people rather than access to the superannuation.

Ways of preventing abuse in relation to superannuation and improving employment of older people include:

* Removal of the restrictions on contributions by older people aged over 75 years
* Developing partnerships with government, industry and community to create meaningful employment and lifelong learning for older people and specifically older women
* Educating employers about the benefits of diverse and inclusive workforces including older people

Question 25

The Australian Association of Gerontology (AAG) (2015) provided evidence of banking and financial abuse as occurring in these forms; using an older person’s money without their consent, coercing an older person into handing over an asset moving into their home for personal gain, misuse of power of attorney by spending their money in ways that are not in the person’s best interests or are for direct personal gain.

Other instances include forcing an older person’s signature or misleading them about the purpose of a signature; coercing an older person to become a guarantor without them having sufficient knowledge to make an informed decision; getting an older person to sign a will or power of attorney through deception or undue influence; overcharging for or not delivering services, including care services; promising long-term care or accommodation in exchange for money or property (or in order to receive a Carer Payment or Allowance) and then not doing so; pressuring an older person to take out a loan or a product which is not for their benefit (Australian Association of Gerontology 2015).

Question 26

Changes to laws and legal frameworks relating to financial institutions to identify, improve safeguards against and respond to abuse of older people are clearly needed. National guidelines, that are easy to understand and transparent would be useful.

Reporting requirements may be useful to raise awareness amongst staff, regarding the possibilities of abuse, and indeed fraud. In many cases, for example, unauthorized use of bank accounts, this is not ‘elder abuse’, this is fraud and should be reported to the police. All managers and employees should be trained- and have the knowledge and skills to intervene, if they suspect abuse is occurring.

In additional, older people should be able to readily access financial advice.  Centrelink Financial Advice Service would be well placed to provide an independent source of financial advice, education and guidance for older people, in particular, the most vulnerable, those with few resources.

Question 27

There is ample evidence that older people, older women in particular, are often reluctant and in many cases, unable to protect their own interests in negotiations with family members. This is the case, not only when agreements break down, but also when these agreements are forged. Older women are often motivated by love for their children, not money. Unfortunately, this is not always reciprocated. We have heard and documented many, many stories of older women signing their houses over to their children, with the promise that care and accommodation will be provided for them.  Granny flat issues are becoming increasingly common. Many older people enter into informal arrangements with their children to pay for additions or enhancements to property, including granny flats, and subsequently are unable to make a claim for their share of the asset. Verbal agreements based on trust and dissolve.  Older  women are left destitute, being forced into couch surfing, homelessness or premature residential aged care  (McFerron, 2010, OWN 2009).

This is not a new phenomenon. At a consultation for the NSW Committee on Abuse of Older People in their Homes, in the mid 1990s, when asked what could be changed, one woman responded with, “I would like to see a simple message on every power pole in every street in the state saying, ‘Never sign your house over to anyone’”.

The Australian Association of Gerontology (2015) also highlighted cases of inheritance impatience’ where family members regard older relatives’ assets as belonging to the family rather than the older relatives, since the assets will be coming to them as an inheritance in due course (or so they expect). Some families believe that simply because their relative is old they have the right to make decisions for them without even consulting them. Also, younger people may feel that they can’t ‘get ahead’ without access to financial support from parents or grandparents and this may create undue pressure on older people (AAG, 2015).

The Seniors Rights Service proposed that a preventative measure in legislation which provides a standard family agreement for the creation of a granny flat arrangement or any other family financial agreement, with model clauses to protect older people, be introduced (NSW Legislative Council, 2016).

Question 28

To safe guard the interests of older people when family agreements breakdown, the Civil and Administrative Tribunal should be given jurisdiction to approve family agreements for the accommodation and care of older people; dissolve family agreements when they are being disregarded or misused or are not protecting the older person; and make compensation payments to the older person (NSW Legislative Council, 2016)

Question 29

There is a great deal of confusion and uncertainty regarding the role of Powers of Attorney. A Federal framework would be a good way forward.

There is also a need for action to improve legal practitioners’ assessments of people’s mental capacity, and some lawyers also need to devote more time to ensuring that the parties to wills, enduring powers of attorney, contracts of sale and other financial transactions understand the implications of the documents they are about to sign. The evidence highlights the weighty responsibilities that the law confers on lawyers here, the complex issues of which they should be aware, and the substantial risks of not exercising their duty as carefully as they should (NSW Legislative Council, 2016)

Miskovski (2014) noted financial abuse occurring in instances where an adult child who held power of attorney misused this power and did not act in the interests of the older person. Cases of adult children selling off the properties of the older person without his/her knowledge were highlighted. In other instances, an adult child with enduring powers of Attorney and also the beneficiary of a will  acted to preserve their inheritance by not selling the family home. Other adult children  exhausted the resources in the estate, to the disadvantage of the other beneficiaries. Legal redress is often unattainable for practical reasons, for instance, assets are unrecoverable or personal reasons, for instance, the older person decides that maintaining relationships is more important than pursuing justice (Kaspiew, Carson & Rhoades, 2016).

Question 30

A national register modeled on Victoria’s legislative model for enduring powers of attorney, would enable solicitors, banks and others to check the authenticity of an instrument or to track one down and would also send the signal that these are documents to be taken seriously. Registration would deliver greater safeguards against financial abuse.

Question 31

OWN understands that Victoria has recently amended legislation on powers of attorney to create a new supportive attorney role to assist older people to make informed financial decisions and give effect to them. We support recommendations made in this respect in the submission from TARS to investigate creation of a new category of supportive attorney to assist financial decision-making, without the older person ceding their control over financial decisions (OWN &WEL, 2015).

Question 32

The records of hearings of State Tribunals, such as the NSW Guardianship Tribunal, contain disturbing evidence of abuse by guardians and public administrators. Given the hidden nature of this abuse, it can safely be assumed that these instances would make up a very small percentage of cases where abuse of this nature is taking place. There is need for a national legislation for guardianship and financial administration. However, until such time as uniform legislation is in place, jurisdictions need to maximise the portability of instruments.

Question 33

A Public Advocate with the power to investigate complaints about abuse and also to initiate its own investigations would have a central role in educating, preventing and investigating abuse. A Public Advocate should include the following:

* promoting and protecting the rights of vulnerable adults at risk of abuse, exploitation and neglect
* receiving and investigating complaints about abuse, exploitation and neglect by individuals or organisations
* conducting investigations where an investigation is warranted
* powers to require specified documents, written answers to questions, and attendance at a conference for the purpose of resolving a matter under investigation power of entry and inspection
* engaging in both individual and systemic advocacy (NSW Legislative Council Inquiry Report, 2016)

Question 34

No, we have sufficient protective legislation and tribunals to identify and respond appropriately to abuse of older people.

Question 35

Health and social care professionals are working in the frontline of care and are in the best position to respond and to prevent abuse. All those working with older people should have access to education and training in understanding, identifying and responding to abuse. Health and social care professionals, particularly those working in residential care and community care have a central role, not only in responding to abuse of older people, but more importantly, preventing abuse.

Systemic discrimination is experienced routinely in Australia, by Indigenous Australians, women, those with disabilities, those identifying as GLBT, immigrants, and refugees. Age provides another barrier. Most older people are marginalised and many have experienced a lifetime of social exclusion.

The research tells us that those who are socially excluded and marginalised, are also those who are most vulnerable to interpersonal abuse and violence. This needs to recognized, that is, the majority of older people are marginalised and discriminated against- making them vulnerable to abuse, violence and exploitation (Mears, 2015).

Health and social care professionals are working in the frontline of care and are in the best position to respond and to prevent abuse. All those working with older people should have access to education and training in understanding, identifying and responding to abuse.

Question 36

Question 37

As Sue Field Western Sydney University, stated, ‘At the moment there is very little in the way of formal communication channels [or] partnerships between the health professionals and lawyers working in this area. A more structured approach such as the integrated model [of Health Justice Partnerships] is an excellent example of what can be achieved (Legislative Council, 2016)

Models need to be developed that support collaborative networks and partnerships beyond health-justice partnerships, to include all key agencies and sectors responding to abuse of older people, community based aged, health and legal service sectors, as well as specialized agencies, for example, women’s health centres, CALD services and Indigenous services. These strategies should be incorporated in the Interagency protocols for responding to abuse of older people which should be established in every state and territory (OWN, 2009).

It is important that all agencies working with older people, aged care, health care, legal services, work together. There are good models for interagency work in the domestic violence sector, (Bryce,2015, Victoria Royal Commission on Violence, 2016). Including older people in these already established programs would be relatively easy. Many agencies are already doing this.

OWN and WSU are holding a Symposium on Older Women and Violence: Innovative Policies, Programs and Practices on the 21st September, 2016. The aim of this symposium is to bring together people working with older women in Greater Western Sydney, to network and share promising policies, programs and practices to prevent violence against older women and to build strategic alliances and ongoing research partnerships. Those presenting their work with older women, include: Marnie Fitzpatrick, Older Women’s Network (OWN) Wellness Centres; Meredith Lea, People with Disability Australia; Jane Gold & Samantha Hunter, Penrith Women’s Health Centre; Lyla Coorey and Lynda Andrews), ECAV, NSW Health; Nicole Laurance, Social Workers in Disabilities (SWID) & Denise Beckwith, Silent Tears project; Adriana Volona, Cumberland Women’s Health Centre; Louise Sutcliffe, Western Sydney Community Forum; Julie Williams & Beth Collins, City of Parramatta; Sandie O’Neill, LEEP NGO Inc, and Amrit Versha, TAFE NSW, Sandie O’Neill, LEEP NGO Inc, and Amrit Versha, TAFE NSW, Sue Field, School of Law, WSU and Nalika Padmasena, Seniors Rights Service.

Question 38

Changes should be made to ensure that the framework of empowering, protecting and supporting older people is at the forefront. Abuse of older people is everybody’s business. The ‘right’ to privacy does not trump the right to protect and support people. Again, the frameworks for intervention in cases of domestic violence, offer a model that can easily include older people. Rights to privacy and confidentiality, should not prevent people from providing services to protect older people from abuse.

In a consultation in NSW in the 1990s, home care workers were asked whether they had ever witnessed violence or abuse. One worker replied, ‘I see it all the time, but she has made her choice to stay with him and it is not my role to intervene’. Another worker told the story of an intervention where a dependent husband was being abused by his wife. Her response was, ‘Where were you for the last 60 years, when he was abusing me?’ At Concord Hospital, a social worker told stories of women who had left violent relationships, only to be coerced by families and children into returning to the family home to care for the violent husband on his discharge from hospital.

Question 39

All tribunals should automatically have this jurisdiction, access to support and clear referral pathways.

Question 40

Question 41

Question 42

No, there should not be offences specifically concerning elder abuse. There are already excellent frameworks, policies and legislation in place to deal with violence towards and abuse of older people. For example, the Victorian Seniors Rights Service recommends that violence and abuse against older people be more explicitly incorporated into the legislation and penalties governing Domestic Violence, rather than creating a new category of elder abuse. The criminal justice system is already able to respond compassionately and sensitively to abuse of older people.

The NSW Police already have an adequate basis for statutory responses under offences detailed in the Crimes Act. Such offences include those common to the spectrum of violence against women such as: intimidation, assault, wounding, detaining for advantage, failure to provide the necessities of life, larceny, fraud, forgery, and identification matters. Where allegations of violence and abuse from a carer are involved, police advised the recent Forum on Elder Abuse convened in Auburn of sections of the Crimes Act especially relevant to carers, including Section 44 Failure to provide the Necessities of Life and Section 35 Reckless Grievous Bodily Harm Reference needed here.

Current laws could be strengthened to provide safe guards against financial abuse. For example, amendments to the Powers of Attorney Act 2003 to become consistent with Victoria’s equivalent legislation. Offences and penalties should be introduced for misuse of enduring powers of attorney.

The following amendments should be made:

* New indictable offences for dishonestly obtaining or using an enduring power of attorney, (ss. 135, 137).
* Additional powers for the Civil and Administrative Tribunal including the power to order compensation for any loss caused by the enduring attorney in contravening the Act (ss. 71-72, ss. 77-80).
* More stringent execution requirements for the making and revoking of enduring powers of attorney, including elevated witnessing requirements (s. 23, ss. 32-36, ss. 44-50).
* Clear articulation of the duties of enduring attorneys to act honestly, diligently and in good faith and to exercise reasonable skill and care (ss. 63-70).
* New provisions prohibiting conflict of interest transactions (ss. 64-65).

Beyond these amendments, a national framework for education of attorneys (and principals) prior to their appointment, for attorneys be put in place so they actually understand their obligations, to challenge the belief of some attorneys that now they have power of attorney, the older person’s money is theirs.

A Federal framework is also needed for Guardians, Power of Attorney and Advance Care Directives.

Question 43

Yes, and improvement through community education and education and training of all professionals working with older people, as to what is criminal behavior, and how the criminal justice system can deal with these cases. At present, these laws are underutilized in responding to abuse of older people.

Question 44

Question 45

Question 46

Establishing the position of Vulnerable Community Support Officer responsible for supporting a range of vulnerable groups including people from culturally and linguistically diverse backgrounds, people with disability and older people.

WLS NSW in their submission to the NSW Inquiry, recommended that the police have further training around the nature and dynamics of domestic and family violence, including for older women. There should be more training for police especially frontline police officers to give timely responses to abuse of older people. The Domestic Violence Liaison Officers (DVLOs) have an important role to play here.

Training should also cover different areas training on how to investigate and prosecute complex and difficult, such as cases of abuse of and by people with dementia, financial abuse especially abuse of enduring powers of attorney.

Those aged 50 and over have the lowest rate of reporting domestic violence, with only 28% reporting the incident to the police, compared with 62% of 15-19 year olds (Gretch, and Burgess, 2011).

Question 47

The lack of understanding of court processes by both the victims and perpetrators has escalated the misuse of the justice system in cases of domestic and family violence which has had a debilitating impact most especially on older women. Also, the laws and the justice system that is police and courts have been identified as further victimizing and marginalizing older people who come to seek justice. There is therefore need for specialist domestic and family violence courts with specialist magistrates which should be responsible for both civil and criminal domestic and family violence matters. In respect to this, magistrates should be properly trained and dedicated to be able to provide fairer and safer outcomes for victims (Bryce, 2015). Further consideration should be given to victims to have access to support services at court such as a state-wide duty-lawyer program, court support workers and interpreters.

Question 48

There are gaps in the existing criminal code which could be improved through introduction of dedicated offences and appropriate penalties. Bryce (2015) recommends the introduction of three offences including an offence on strangulation which is a key predictor of domestic homicide; a circumstance of aggravations for all criminal offences related to domestic and family violence should be introduced; a recording on a person’s criminal record that the offence was in the context of domestic and family violence allowing court to consider the perpetrators history and conduct in subsequent sentencing in similar situations. A review of existing penalties for offenders who repeatedly contravene orders should be conducted with a view of strengthening and increasing these penalties.

Question 49

Question 50

Other comments?

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