



AASW
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**Australian Association
of Social Workers**

*Submission to the Australian Law
Reform Commission
Re: Elder Abuse Issues Paper*

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Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 10,000 social workers throughout Australia.

We set the benchmark for professional education and practice in social work and have a strong voice on matters of social inclusion, social justice, human rights and issues that impact upon the quality of life of all Australians.

The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally. The social work profession is committed to the pursuit of social justice, the enhancement of the quality of life, and the development of the full potential of each individual, group and community in society. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledge. Social workers work with individuals, families and groups in numerous fields, including aged care. Social workers consider the relationship between biological, psychological, social, cultural and spiritual factors and how they impact on a person's health, wellbeing and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as systemic or structural issues) that may be having a negative impact, such as inequality, injustice and discrimination.

Social workers have a long and proud tradition of working together with older Australians towards active ageing. This includes a strong commitment to self-determination, dignity and respect. Social workers are involved in the delivery of aged care and carer support services in a range of fields of practice including direct service delivery, service planning, service management, research and policy. Using effective interpersonal skills and maintaining a person-centred approach they provide a range of services such as: complex psychosocial assessments, advocacy, mediation or negotiation, counselling, referrals, liaison and education. They support older Australians in many areas including health, housing, income support, Indigenous services, disability, workforce participation and community development. Social workers work collaboratively with older people to identify goals and work towards positive outcomes. Furthermore, they are committed to recognising strengths in order to build capacity, create opportunities and take action. Therefore, social workers are uniquely placed to hold both a broad and an in-depth view of the multiple issues facing older Australians within a rights-based context and with a focus on wellness and social connectedness.

Our submission

Elder abuse, as defined by the World Health Organisation 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. Elder abuse can take various forms such as physical, psychological or emotional, sexual and financial abuse. It can also be the result of intentional or unintentional neglect.¹

The AASW believes that it is a human rights issue that requires a comprehensive set of strategies, and the cooperation of multiple individuals and groups. Preventative strategies informed by human rights principles need to be the foundation of the response to elder abuse in the private and the public lives of older people, whether it be in the spheres health, finance, education, care and support services, or recreation. Social workers are integral to services that cater for the health and wellbeing of older Australians in all settings across the aged care continuum. Therefore, AASW welcomes the opportunity to contribute to this inquiry into elder abuse.

This submission was developed in consultation and collaboration with our members. It draws from their significant knowledge and experience. We acknowledge their significant contribution to the development of this submission.

Some of the content that members provided to our submission may also be found in other submissions to this inquiry.

¹ World Health Organization, 'Elder abuse', Ageing and life course, WHO, 2012, retrieved 22 August 2016, <http://www.who.int/ageing/projects/elder_abuse>

What is elder abuse?

1. To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse: harm or distress; intention; payment for services?

- 1.1. Definitions of elder abuse need to appreciate the complex dynamics and circumstances that contribute to its existence. As with child abuse and family violence, elder abuse is primarily about power and control, and this needs to be a central focus in its definition.
- 1.2. When defining elder abuse, it needs to be acknowledged that it can be perpetrated within quite different types of 'relationships of trust' including family members or friends, paid service providers/care workers or by strangers who ingratiate themselves with an older person for opportunistic abuse. Furthermore, elder abuse is not just about an individual's actions but also includes institutional abuse and societal discrimination.
- 1.3. People over 65 years old are the most rapidly growing age group in Australia and the wealthiest cohort, increasing their risk of being targeted for abuse. Financial abuse is one of the more common forms of elder abuse, perpetrated predominantly by the older person's adult children and grandchildren. This manifestation of elder abuse can sometimes be the hardest for services to determine and therefore must be a core element when defining it.

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

- 2.1. A rights-based collaborative national strategy for preventing and responding to elder abuse is required, with respective state- and territory-based legislation allowing for the development of adult protection agencies.² Such agencies will be able to develop coordinated and legally valid response systems to: address abuse and harm to vulnerable older people; investigate and respond to allegations of abuse; and also to respond to people at risk of self-neglect.
- 2.2. Self-neglect can result in harmful outcomes for some people, e.g. people with impaired decision-making ability living in challenging domestic environments (squalor, hoarding, neglected living conditions) where their safety and health is put at risk. Legislation enabling the development of adult protection agencies could enable mandated responses to assess and investigate these situations.
- 2.3. The question of what constitutes vulnerability requires careful consideration as does the need to ensure that an older person's vulnerability is not further exploited by the intervention responses. It is important to address abusive/harmful behaviours in ways that help the victim but do not cause further harm or distress. Identifying and naming the abusive and/or criminal acts and encouraging charges to be laid is important wherever possible as it puts the focus on the offence or the abuse. However, some interventions may result in undesired outcomes for the victim, for example moving into an aged care facility as a safe outcome contrary to the wishes of the older person, or removing the person's decision making ability through guardianship or administration procedures.
- 2.4. It is important to embed supported decision-making models^{3 4} into any legal response to ensure people who have cognitive impairment affecting their decision making, are wherever possible able to make their own decisions, and are provided with support if needed.

² Phelan, A. (2013). *International perspectives on elder abuse*. Routledge, UK

³ http://www.opa.sa.gov.au/resources/supported_decision_making

⁴ <https://www.alrc.gov.au/publications/towards-supported-decision-making-australia>

- 2.5. Legal responses should address the three distinctly different types of perpetrators including: family and those in personal relationships; employed care workers and other service providers; and opportunistic criminals.
- 2.6. The powers of the police to respond to issues of financial abuse are minimal. These are often referred to as civil matters. It is unreasonable to expect a vulnerable older person who is often reliant on the perpetrator to meet their daily living needs to want to pursue civil action against them. There should be stronger legislation and improved training of police to protect older people from financial abuse.
- 2.7. Greater screening and background checks for the aged care workforce, including volunteers, is required.

3. The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies (Not real names)

- 3.1. **Case Study 1:** Mrs Jones is 91 and is bed bound. Mrs Jones has been admitted to the local hospital with a chest infection. Mrs Jones reports to the social worker that she does not like the nursing home she lives in. She reports that the carers are rough and sometimes shout at her when she asks to go to the toilet (bed pan) at night. They tell her they are busy, she is demanding and that they will get to her when they can. Some of the carers just say she has a pad on should and does not need the bed pan. Mrs Jones begs the Social Worker not to say anything as she has nowhere else to go and does not want to make them angry. The Social Worker offers alternative facilities for discharge, however Mrs Jones refuses saying they are all just the same.
- 3.2. **Case Study 2:** Judy is an Aboriginal woman in her 50s and lives in public housing with her son, his girlfriend, and frequently other young people on an intermittent basis. Judy has a longstanding diagnosis of a mental health issue. Judy values her relationship with her son and wants to support him but is powerless to manage the range of associated problems. This threatens her ability to sustain her public housing tenancy and successful independent community living. Problems such as multiple friends staying in the home using drugs and alcohol making it unsafe for services to be delivered, multiple untrained dogs living inside the home making it unhygienic and unsafe for Sonia and service providers and using her money.
- 3.3. Further case examples, can be provided upon request.

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

- 4.1. It is well established that there is a lack of research on the prevalence of elder abuse in Australia.⁵ Besides two key studies, the majority of the research tends to come from North America or the United Kingdom. There needs to be greater investment into local research to better understand its prevalence.
- 4.2. There are longstanding and well-known problems relating to the sourcing of evidence regarding elder abuse. Data regarding the prevalence is limited and compromised by lack of agreement on data terminology and definitions. Our members have reported that when investigating and delivering direct responses to alleged abuse, workers and victims are often reluctant to name 'abuse' in any formal data collection, unless there is undeniable proof. This reluctance to tick a box on a client record identifying the type of abuse or relationship to the abuser inevitably leads to under-reporting, especially for the more subtle forms of abuse.

⁵<https://aifs.gov.au/publications/elder-abuse/3-what-known-about-prevalence-and-dynamics-elder-abuse>

- 4.3. Using a term like 'suspected' or 'alleged' abuse weakens the data. Mandatory reporting of certain assaults in aged care facilities has generated data on worker mistreatment, and does not identify, and therefore not generate, data on other forms of abuse. State helplines tend to get enquiries from family and significant others that generates another form of data.

Social security

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

- 5.1. Centrelink is in the process of making welfare recipients create online accounts; this increases the risk of perpetrators taking advantage of this anonymous form of accessing payments and services. Better supporting access to in-person appointments could address some of the concerns, paralleled by improved training of Centrelink staff in order to identify issues of elder abuse.

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

- 6.1. Safeguards should be introduced to ensure there are sufficient checks and balances surrounding payment nominees, especially at the time of setting up the arrangement and then at subsequent review times.

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

- 7.1. For some people the Carer Payment is a more generous and less onerous form of income support than the Newstart Allowance. Application to receive this payment may not reflect a person's intent to provide care.
- 7.2. The person receiving the care should be, wherever possible, consulted and/or included in the carer application process. This has to include being asked if they are seeking this arrangement to be put in place. They should be able to do so privately, away from the person applying to be carer.
- 7.3. If carers become financially dependent on this payment it can impact on objective decision making regarding the need for the older person to move to an Aged Care Facility, due to the impact on the carer regarding their income and often housing.
- 7.4. We recommend social security legislation be amended to address this issue to ensure the arrangements are bona fide and not facilitating abuse by default.
- 7.5. We have for a number of years advocated for an increase in the Newstart Allowance, which in this case would remove an incentive for persons with no interest in delivering care applying for the carer's allowance.

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

- 8.1. We are not in favour of compulsory income management especially where people have decision-making capacity. If people do not have decision-making capacity there are existing legal options in place such as the various state administration orders. We would support the possibility of income management as a voluntary option for people with decision-making capacity, but this would need significant safeguards.

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

9.1. There needs to be more ready access to a special benefit payment, supported by an investigative body.

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

10.1. Ensuring social security laws and processes safeguard the rights of older people and not increase the risk of the older person losing autonomy must become a priority. Any legislative change should support independent decision-making potential and not erode individual rights.

Aged care

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

11.1. As identified previously, there are longstanding and well-known problems relating to the collection of evidence regarding elder abuse. Improved research in this area is greatly needed.

11.2. Furthermore, there is a distinct lack of protocol for identifying and responding to elder abuse particularly in regard to the paid sector. While the mandatory reporting requirements for Commonwealth funded aged care services have their benefits, this only addresses allegations of serious physical or sexual assault. There are no mandatory requirements regarding allegations of neglect, institutional abuse, or psychological abuse. The Commonwealth will investigate if a facility has breached its responsibilities under the Aged Care Act; however there is often an insufficient response to provide immediate protection for the alleged victim.

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

12.1. Aged care assessment programs play a vital role in identifying elder abuse, however they do not have the capacity to manage/investigate abuse. Across the aged care system, the most formal safeguarding strategy for older people has been focused in residential care settings with the introduction of mandatory reporting of assault of a resident. Outcomes of the implementation of this policy have not been evaluated adequately as to whether it is actually achieving effective protection and/or redress for victims.

12.2. Risks and opportunity for elder abuse to occur may actually be higher for an older person living in the community, especially if they are physically or culturally isolated and/or dependent on another person. Referral of an isolated older person into the community aged care system may offer an initial interface where it is possible to identify and respond to abuse as part of assessment and provision of health and other home support services. In the context of a person's private home and family, abuse investigation is sensitive and frequently needs to be undertaken slowly as a trusting relationship is developed.

12.3. The Aged Care Assessment Team assessment processes provide an opportunity to identify abuse and in some cases further investigation and intervention. However, the capacity to respond and the range of responses undertaken if abuse is suspected varies across ACAT providers nationally.

- 12.4. With the Regional Assessment Service, identification of abuse is limited by the assessment skill and experience of the assessors, and the short time frame and low cost payment framework for completion of an assessment. If abuse is not identified at the entry assessment, no referral for appropriate support can be initiated.
- 12.5. There needs to be standardised training for assessors, for example the Common Risk Assessment Framework (CRAF)
- 12.6. The implementation of Health Care Homes starting 1st July 2017 has significant potential for improving the assessment, and intervention, of elder abuse. There needs to be a review of this policy to make sure that staff are properly trained and procedures are in place.
- 12.7. When assessing/investigating abuse allegations, if the older person's consent to investigate abuse allegations cannot be obtained, no appropriate legal authority exists to gain access to the older person, to explore issues of mental capacity and risk or to undertake any other relevant investigation.
- 12.8. If a client seeks or agrees to disclose and explore issues of abuse, effective intervention frequently requires specialist expertise and strong working relationships between relevant agencies. Recent Aged Care reforms driven by a competitive funding model have diminished the already limited capacity in the aged care system to identify elder abuse and access to appropriate expertise to respond.
- 12.9. If not detected at assessment, awareness of elder abuse may arise during ongoing service provision through Commonwealth Home Care Packages (HCP) or Commonwealth Home Support Program (CHSP). The development of trusting relationships between care workers and their clients and families may result in disclosure or identification of abuse. In these circumstances the care worker has a clear obligation to report to the service provider (employer), who must respond appropriately, but capacity to provide a comprehensive response may be limited by skill, experience and the recognised time required to address complex situations.
- 12.10. HCP offer four levels of government subsidised support to eligible older people in the community. Services may include ongoing case management to oversee the program outcomes for the client, which includes responding to identified risks to client safety and welfare. However, HCP providers are unlikely to have the specific expertise required to investigate and respond to serious alleged or suspected abuse. HCP is not intended to provide long-term case management or intensive clinical intervention.
- 12.11. Advice lines and hotlines provide information and some referral support, but rarely any active intervention. Advocacy services also provide information and some referral support but are limited by the constraint of acting only under client consent. The CHSP includes Specialised Support Services for specific conditions such as dementia, continence, vision and hearing support, and it is proposed that this service stream should also include funding for expert support teams for high risk victims of suspected or known abuse.
- 12.12. It is strongly recommended that a clear and accessible pathway to timely expert assessment and response should be established within the Commonwealth Aged Care system.

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

- 13.1. There needs to be an incorporation of supported decision-making principles and models, which reduce focus on the vulnerability of the victim. Furthermore there needs to be greater clarity regarding the roles and responsibilities of substitute decision makers and informal arrangements. This includes maintain the principles of "assumed capacity", so any guidelines need to link with the principle that people have assumed capacity to make decisions therefore every effort needs to be taken to ensure the individuals wishes and input.
- 13.2. Establish the ability to investigate instances where decisions are made by others to prevent services from being delivered.

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

- 14.1. Consumer Directed Care (CDC) leaves vulnerable adults particularly with cognitive impairment at great risk of abuse and neglect. This can include:
- Financial exploitation – overcharging or using large portions of the individual budget for administrative fees.
 - Neglect. Carers not being effectively regulated or trained to provide the necessary care.
 - People who may be experiencing or be at risk of experiencing abuse are frequently unable to even seek or initiate assistance, or to exercise the choice and control that is central to CDC models
- 14.2. CDC models frequently disadvantage vulnerable people with complex needs who are not able to successfully act as a 'consumer' in their own interests. Needs for assistance may not be related solely to the provision of services but more linked to case management. Complex and expert case management may be beyond the scope of service coordination available from the Commonwealth Home Care Package provider.
- 14.3. Adult protective legislation would enable an independent agency to assess, investigate and respond if concerns were raised by the person, paid staff or others.
- 14.4. A block funded specialised support service could provide expert support teams to respond at both Commonwealth Home Support Programme and Commonwealth Home Care Package levels.
- 14.5. A person can also be vulnerable to abuse when substitute decision makers make CDC decisions that override those of the older person or are not in their best interests. Supported decision making models need to be embedded into this system.

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

- 15.1. In relation to the recent elder abuse reported in a South Australian Aged Care Facility perpetrated by a staff member, we support the following recommendations prepared by Aged Rights Advocacy Service in SA⁶, which highlighted the following:
- The right to choose to have a safety camera in place. This should always be with the consent of the older person or their representative.
 - The need for mandatory elder abuse recognition training for all staff in residential aged care facilities.
 - Education of residential aged care facilities managers on how to respond to complaints or concerns raised by staff.
- 15.2. We also strongly support training of all staff to ensure caring and respectful treatment of older people in ACFs, as well as about elder abuse. Procedures should support reporting of all forms of elder abuse from anyone having contact with the older person, effective response strategies including unannounced external visits and staff support and performance measures.

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

- 16.1. The community, health professional, facility staff, patients and families need greater education on what are acceptable restrictive practices and how to report concerns.

⁶ http://www.sa.agedrights.asn.au/files/488_aras_media_release_26_july_2016.pdf

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

17.1. No comment

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

18.1. Aged Care Complaints mechanisms should focus more on the patient and the concerns for their wellbeing, and less on the facility as a whole and whether they have breached their provider responsibilities under the Aged Care Act. This needs to include unannounced external visits talking to individual residents and family as nominated by the auditors.

18.2. The complaints system is onerous and can be very challenging for an older person to initiate and maintain a complaint against a provider in whose residential care they are living. An aged care facility is an elderly person's home, where they have established friendships and senses of security that contribute to their sense of self, the protection of that person's residency, as a priority, must be reinforced while a complaint is processed.

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

19.1. No comment

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

20.1. The ability of advocacy services to be responsive is limited by the principles of the advocacy model that generally precludes direct intervention: in situations where mental incapacity is an issue; where the person refuses or cannot give consent; with perpetrators of abuse. This limitation leaves a significant response gap when considering a comprehensive national strategy.

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

21.1. No comment

The National Disability Insurance Scheme

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

22.1. No comment

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

23.1. No comment

Superannuation

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

24.1. No comment

Financial institutions

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

25.1. As exemplified in the case study below, our members have reported numerous instances where banking and financial system did not provide an adequate response to elder financial abuse.

25.2. **Case study 3:** Hugo raised concerns with care staff at his aged care home that his daughter and her partner were withdrawing money from his account by forging his signature. He also disclosed that they were sometimes violent and often demanded money. The concern was followed up by the social worker who spoke to the bank. While they acknowledged that fraud had occurred, they would not take further action unless police became involved. He was too scared to go to police fearing losing contact with his only daughter, and did not wish to pursue it further.

25.3. Further case examples, can be provided upon request.

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

26.1. There is scope for financial institutions to develop age-friendly products and to generally promote and advocate for the rights of older people in their financial transactions. Bank tellers need to be educated and have clear procedures in place for when they have concerns about inappropriate requests or withdrawals or unusual activities/behaviours.

26.2. Tighter legal controls and accountability should be established for financial advisors generally, including those operating in the area of retirement and post-retirement financial services.

26.3. Charges should be laid by banks when individuals have fraudulently misappropriated funds. Should be taken out of the hands of the family member to make a complaint. With the above example it should not have been left to the father to lay charges. The son had illegally obtained money and had lied to the bank.

Family agreements

27. What evidence is there that older people face difficulty in protecting their interests when family agreements break down?

- 27.1. The HILDA Survey Report 2016⁷ reveals that elderly couples have the highest mean net wealth of all population cohorts in Australia, which is likely to increase the potential for financial abuse if family agreements breakdown. We support the concept of developing greater protections for the parties involved in family agreements, and an associated public awareness campaign which recognises the mutual benefits, but warns of the risks.
- 27.2. We note there are some strong barriers to declaring or registering family agreements especially in the culturally and linguistically diverse (CALD) community where traditional ways of managing wealth and property are often longstanding and there is suspicion of legal or government-led options. This same privacy also increases the risk of something going wrong.

28. What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?

- 28.1. We support a broadening of existing state-based tribunals to hear matters related to these issues.

Appointed decision-makers

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

- 29.1. Ongoing community education about the responsibilities of attorneys is required and should be specified clearly within the power of attorney (POA) documentation, in multiple languages.
- 29.2. Lawyers (and others) assisting with preparation of POA should be more educated and accountable in taking instruction from vulnerable people with uncertain mental capacity, ensuring that the person has adequate understanding of the process and consequences of the appointment of an attorney, and is not under any coercion.
- 29.3. Redress can be costly and time consuming through legal processes. Existing administrative tribunals can hear these matters if the person has a formal or informal advocate prepared to undertake this action. For those who have capacity the legal system should be less dismissive, more encouraging of pursuing legal options and less ageist. It doesn't need to be as onerous as it is.
- 29.4. Within this question it is worth noting that influence and coercion in making or changing wills, or transferring property or assets to another person (without a POA) is a significant form of financial elder abuse, and should also be addressed in the consideration of law reform and the role of lawyers. Freedom of Information applications to this agency frequently seek documentary evidence of a deceased client's mental capacity at a certain point in time because the beneficiary of the estate is alleged to have assisted the client to change their will in their favour when the client no longer had testamentary capacity.

⁷ <https://www.melbourneinstitute.com/hilda/>

29.5. Increased education to solicitors around conducting capacity assessments should be provided to begin with and there should be increased regulation and requirements that need to be met for solicitors to be sure the POA or Enduring Guardianship (EG) is legitimate.

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

30.1. We support the idea of a national register. Such a register would require national consistency and transferability, and should include national accessibility.

30.2. Determining who should host and manage the register will need greater consultation with key stakeholders.

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

31.1. No comment

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

32.1. From the experience of our members most appointed decision-maker arrangements in families work smoothly and to the satisfaction of all concerned. However, it is not uncommon to be aware of appointed decision-makers taking actions that are not in the interests of the older person. State tribunals should be able to respond where such actions are reported, although many inappropriate actions are likely to be undetected because they are low level, or the older person is tolerant or unaware of the actions.

32.2. Any additional accountability or compliance measures may deter people from accepting roles as attorneys and guardians for their family members.

Public advocates

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

33.1. There needs to be greater consistency regarding the role and capabilities of public advocates across all states and territories.

33.2. Public advocates should be given a legal mandate to investigate and respond to elder abuse as they are best placed in the service network. Currently the Public advocate's functions focus on the rights and needs of mentally incapacitated persons. Service eligibility criteria may need to be broadened to include where there is only suspected impaired decision-making ability to enable the Office of the Public Advocate (OPA) to investigate allegations and circumstances, arrange formal assessment of decision-making capacity and appointment of a substitute decision-maker where relevant.

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

34.1. Yes, this legislation is required to provide mandated ability for an agency to assess, investigate and respond to allegations of elder abuse.

Health services

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

- 35.1. The current composition of the health workforce does not adequately provide services that consider the full range of psychosocial needs of older Australians.
- 35.2. As part of the healthcare workforce, social workers are able to provide expert support in the area of elder abuse from assessment through to interventions. Developing effective responses to individuals experiencing abuse is difficult given the complex dynamics. The healthcare workforce needs greater involvement of professionals able to intervene in complex situations where abuse is occurring and social workers are best positioned to provide this service.
- 35.3. Publicity, education, and training would improve the role and capacity of health professionals to identify and respond to abuse. Many health professionals would be more confident in initiating a discussion with their client or patient and taking further action to respond if there was a clear pathway for skilled and sensitive investigation of their concerns.
- 35.4. Stronger relationship building is needed between health services, police and local community services. There should be an interagency response with one agency taking the lead to coordinate. All agencies play a part in developing safety plans, investigations, allegations and providing ongoing support.
- 35.5. There should be time lines and strong guidelines for responding which are national or state-wide. These should be mandatory and enforced.

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

- 36.1. We support the development of multidisciplinary training incorporating health care providers, police and advocates, to be provided at undergraduate and in-service levels. Expertise is needed across the sector in this area.

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

- 37.1. We support an increased working relationship between police and health around education and responding to elder abuse.
- 37.2. There are several other models that could be applied that we would like to bring to the attention of the commission including: Adult Protective Services models, family violence models, a public health model, victim advocacy model, restorative justice to name a few⁸, greater research is needed to assess their possible applicability.

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

- 38.1. If there are concerns for a person's safety, including allegations of financial abuse, privacy laws should not apply to certain organisations, such as health and the police. However, this process needs to take into consideration the older person's wishes and self-determination.

⁸ Nerenberg, L. (2007). *Elder abuse prevention: Emerging trends and promising strategies*. Springer Publishing Company. UK

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

- 39.1. Yes, but these tribunals are already at capacity and need increased resources. Furthermore, they are in need of improved training of staff and appropriate supportive legislation.
- 39.2. The Guardianship Tribunal provides a key role in assisting to protect older people from abuse. They should be funded accordingly to minimise length of stay for individuals waiting for hearings. At this stage people can wait for months for a guardianship hearing and guardian to be appointed.

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

- 40.1. There are a number of strategies that can be implemented including: allocated supports, provision of effective hearing devices, breaks for longer sessions, use of remote participation technology where appropriate, separating the alleged perpetrator from the older person where appropriate, or coming in on different days.

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

- 41.1. South Australia has an excellent alternative dispute resolution program within the Office of the Public Advocate that could be expanded.⁹ There similar programs across other states, including NSW that can be reviewed for their applicability at a national level.

Criminal law

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

- 42.1. There needs to be a comprehensive review of all the different laws that elder abuse may come under, especially the strengthening of laws were third parties, such as banks, are involved in the abuse.
- 42.2. In 2014 a SA Office for the Ageing working group (Safeguarding Steering Committee, Legislative Response Working Group) undertook a basic audit of key pieces of legislation identifying potential for further review,¹⁰ improvement, and making recommendations for future reform. A more comprehensive review of key legislation is required.
- 42.3. Implementation of the law is a problem because elder abuse complaints get lost in the mainstream, the onus of proof is too hard and the task is often too onerous for an older victim of crime. Ageist attitudes diminishing the impacts of abuse often mean that legal action is not considered in situations of alleged elder abuse.

⁹ http://www.opa.sa.gov.au/what_we_do/dispute_resolution_service

¹⁰ <http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/department+of+health/office+for+the+ageing>

43. Do state and territory criminal laws regarding neglect offer an appropriate response to elder abuse? How might this response be improved?

43.1. No comment

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

44.1. Our members report that issuing of protection orders in elder abuse situations is limited because of the complex family dynamics involved, and the lack of familiarity of police with the nature of elder abuse. Victims of elder abuse seem unlikely to consider applying for a protection orders as a remedy for the abuse.

44.2. From the experience of our members, Apprehended Violence Orders (AVO) that allow perpetrators to continue living in the home can sometimes not adequately protect the older person. Furthermore, they have reported instances when the police have been called to investigate suspected abuse but did not take out an AVO because the client had dementia, and therefore was not taken seriously. In those cases it is best practice if the person had an advocate such as a dementia support worker/case manager/social worker to support them when making the complaint to police.

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

45.1. Any organisation working with older people (including aged care providers, health services, other community services, retail, corporate, etc.) should all have internal reporting protocols that allow escalation of suspected abuse of an older client, customer or service user to senior managers as required to provide advice, consultation and decision making about appropriate intervention.

45.2. Mandatory reporting of suspected abuse to an external authority is regarded as an infringement of the older person's rights and is not recommended, but we support the establishment of a body with legal authority to respond to reported abuse. Voluntary reporting to an authorised agency followed by mandated response is our preferred model, as described in the report *Closing the Gaps: Enhancing South Australia's Response to the Abuse of Vulnerable Older People*.¹¹

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

46.1. Police need to have a greater awareness of mental capacity and vulnerability issues. Formal partnerships between police and welfare/aged care services for investigation and response are effective, such as the Quebec model.¹²

47. How should victims' services and court processes be improved to support victims of elder abuse?

47.1. As identified previously, there are a number of ways services and processes can be improved including: greater allocated supports, improved training of court staff, provision of effective hearing devices, breaks for longer sessions, use of remote participation technology where appropriate, separating the alleged perpetrator from the older person where appropriate, or coming in on different days.

¹¹ <http://www.agac.org.au/images/stories/closing-gaps-final-rep-prop-policy.pdf>

¹² <http://www.maltraitancedesaines.com/en/police-ipras>

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

48.1. We would support a restorative justice¹³ approach, where the abused person wishes to maintain the relationship with the abusive person.

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

49.1. We support consideration of the Victorian Royal Commission into Family Violence findings regarding restorative justice processes.¹⁴ Processes that are able to maintain and improve relationships and that emphasise offender accountability are to be recommended. However, it will not suit all situations of abuse, for example, paid care workers or those who have inflicted serious criminal damage.

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

50.1. No comment

Conclusion

The AASW welcomes the opportunity to make a submission into this inquiry. We look forward to continuing to work with the government towards improving the health and wellbeing of older Australians.

Submitted for and on behalf of the Australian Association of Social Workers Ltd

¹³ <http://www.ncbi.nlm.nih.gov/pubmed/21462047>

¹⁴ <http://www.rcfv.com.au/>



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