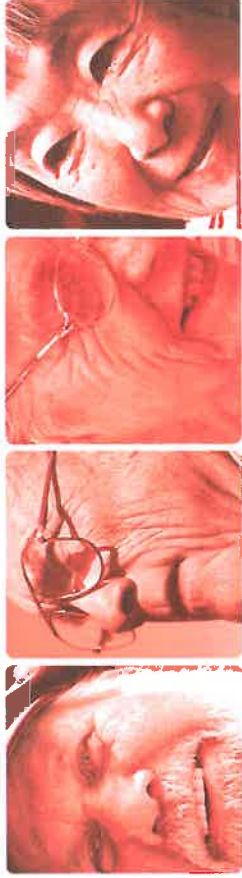
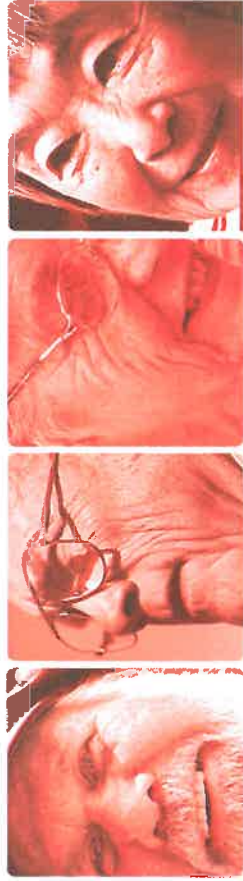


Aged Rights Advocacy Service Inc. Submission to ALRC – Elder Abuse – Attachment 1

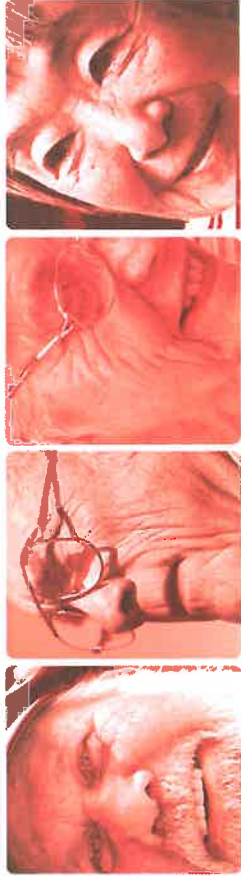
Question	ARAS Commentary
What is Elder Abuse?	ARAS generally uses the Australian Network for the Prevention of Elder Abuse (ANPEA) 1999 definition of elder abuse which is : 'Abuse of an older person 'is any act occurring within a relationship where there is an implication of trust, which results in harm to the older person. Abuse may be physical, sexual, financial, psychological, social and/or neglect'. ARAS also notes the South Australian elder abuse definition: http://sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/stop+elder+abuse/what+is+elder+abuse/what+is+elder+abuse ARAS also notes the WHO definition: http://www.who.int/ageing/projects/elder_abuse/en/ ARAS believes a consistent agreed national definition would assist in obtaining data as well as informing a national framework for addressing this complex social issue. Abuse by non-family members is also possible and does happen such as relationships with friends, neighbours, professionals such as lawyers, accountants and aged care providers can also have a degree of trust. When SAPOL is reportedly dealing with issues around domestic and family violence they do not include 'elder abuse' and is often put down to a family matter and the person is turned away, in our experience with little or no referrals to support services for the older person. There have been improved responses through the SAPOL 'Family Violence Investigation Section' (FVIS) although it has been reported that the FVIS don't necessarily advise of applying for an 'Intervention Order' as an option.
Question 1 To what	ARAS is of the view that harm and/or distress are relevant and should be taken into account when describing 'elder abuse'. In the current existing definition it is generally accepted the conduct or action will result in some form of harm or distress.



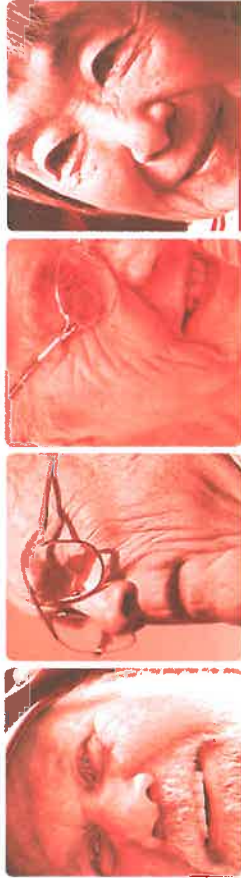
extent should the following elements, or any others, be taken into account in describing or defining elder abuse: • harm or distress; • intention; • payment for service?	ARAS notes that from a CALD perspective the word 'harm' is recognised rather than 'elder abuse'. Due to cultural expectations in the Aboriginal community abuse is also differently understood due to kinship structures and sharing of financial resources is not seen as abusive. There is a significant amount of neglect that may occur without intent however it is nonetheless abusive. It is useful to consider what the end result, outcome or consequence for the victim? The relevance of context becomes apparent and depending on the type of law different concepts come into play in terms of a response to the abuse. The criminal law for example generally requires 'intention' to be proven whereas in civil litigation you may be negligent without having intent to cause harm. The response is context specific but ultimately ARAS believes there must be an appropriate response that is guided by the victim where possible that stops the abuse. The decision to include 'payment for services depends on whether all abuse of older people will be considered 'elder abuse' or if scams and other exploitation of older people should be considered under consumer law? It is also important to consider whether the above definition is including or excluding the rights and entitlements of older people in the 'age care system' or whether a distinction is drawn between rights and entitlements under the Aged Care Act and/or as part of a service agreement (contractual obligations) and whether they are distinguished from elder abuse? In terms of defining 'elder' ARAS generally recognises older people as 65 years and for Aboriginal & Torres Strait Islanders being over 50 years due to their shorter life expectancy.
Question 2 What are the key elements of best practice legal	ARAS believes consideration should be given to: • Establishing 'elder abuse' as a prosecutable offence recognising the vulnerability of older people. Consideration could also be given to reversing the burden of proof; • Timely, responsive and preventative; • Implementing the appropriate balance between freedom for older people to make choices and take risks balanced with the appropriate safeguards;



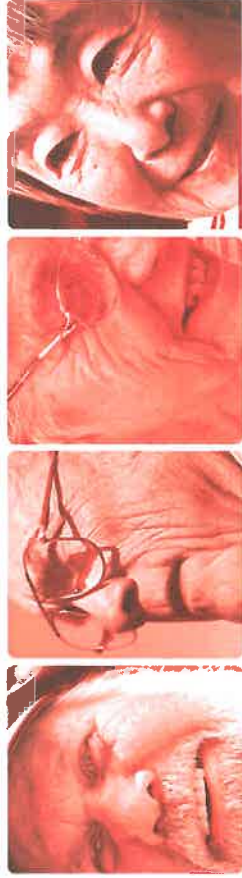
responses to elder abuse?	• Introducing compensation for misusing older person's finances; • Presuming that all older people have capacity to make decisions; • If incapacity is suspected should seek to corroborate the older person's story from another perspective; • Providing low-cost legal /advocacy support services specifically for older people experiencing elder abuse; • National framework with consistent responses and laws in all Jurisdictions – for example Enduring Power of Attorney; • Knowledge of risk factors for elder abuse; • Knowledge of barriers to speaking up about elder abuse; • Knowledge of barriers to taking action including legal impediments; • Consideration of an Adult Protective Service; • Research to understand: ○ Prevalence of abuse; ○ The barriers to obtaining criminal convictions; ○ Research to understand the transfer of wealth between generations or others prior to the older person death (accelerated inheritance); ○ Outcomes/gaps to the current compulsory reporting scheme; ○ Preventative Strategies; ○ Research to identify the economic cost of elder abuse – including from financial abuse as well as the costs to the health & support systems; ○ Any other gaps
Question 3 The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies,	Example Case Study – Abuse of older Aboriginal Person. ARAS received a call from an Aboriginal home care service provider with concerns for a client (D) who was experiencing abuse by relatives. The service provider (SP) described D as vulnerable and showing signs of cognitive decline; D had given consent for the SP to contact ARAS and ARAS also obtained consent from D. • D disclosed that a relative and her friends had been using her money and staying in her home. She was afraid for her safety as her relative would have other people coming over to her home at all hours of the day and night and stay there indefinitely. D was often confined to her room out of fear and had no access to food or essentials, as her money was taken by her relative; • D had asked her relative to leave her home but she had refused and became verbally threatening; • D's family lived in a rural/remote area and whenever the SP spoke to them about the issues they had stated that they would support D however, the support was not reliable or consistent;



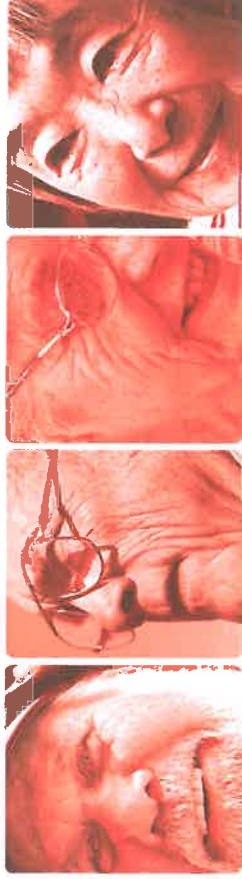
including those concerning:	• An Advocate worked with the SP and D to provide information and support to explore options; • Due to D's level of vulnerability, and subsequent concerns about her decision making capacity, she was referred to a geriatrician for an assessment; D is currently awaiting the appointment for the assessment to determine whether D is referred to SACAT/OPA to have a guardian and administrator appointed.
• Aboriginal and Torres Strait Islander people • people from culturally and linguistically diverse communities; • lesbian, gay, bisexual, transgender or intersex people	Example Case Study – Abuse of an older person from a non-metro area A staff member from one of M's services contacted ARAS (with M consent) after concerns about M being financially abused. ARAS sought consent from M to provide information and support. M is 82 years old and has some help around the home by her son. M also receives some home support services with shopping, cleaning and showering. A country trip was organised to visit with M face to face. • M explained that her son (D) used to help her out including with her banking and paying bills. M had given D her ATM card and PIN number and provided consent for him to access her pension account to pay bills or withdraw money for her. • M went to the bank and found that there was \$2,000 missing from one account and \$50,000 from another. When M followed this up with the bank, she was informed that she had signed authority for her son to access her bank account. M was very upset as she had never withdrawn such large amounts. • M approached D and asked him to return the money. D told her that she needed to wait until he had the money from a business deal. • M also said that her daughter had been entering her house using a key she has and taking items whenever she felt like it. • M stated that she doesn't see her daughter any other time and she is fed up with her using her home like a 'shop'. • M also expressed a sense of loneliness and wanted more services for social support. • She said that she feels afraid as she doesn't know what her children may do to her and if they will harm her. • M would like to change her will and agreed to consider setting up an EPA. After the visit and several phone calls M was provided with the following options: • M to seek legal advice to have the money returned to her. • M to notify the bank that her son does not have the authority to access her bank accounts any longer. She can change her ATM PIN and cancel the second card given to her son. • M to consider reporting the theft of the money to the police. • Police can be notified about M's daughter entering her property without her consent and request the keys back. She could also consider changing the locks and applying for an Intervention Order against her daughter. • M was provided with information about EPA and ACD.



; • people with disability; or • people from rural, regional and remote communities.	Since then, M paid for additional services so she does not need to rely on family members for assistance. M also considered her options for additional social supports to address her isolation. Example Case Study – Abuse of a person with a disability ARAS provided an education session to an aged care community service provider. Following the session and older person with a disability (J) approached the Advocate and requested to talk in private • J was born with a disability which impacted on her opportunities to learn and develop a sense of independence. J had been estranged by her remaining family members; • J was assessed as having mental capacity but was highly vulnerable due to her disability and lack of decision making skills; • When J's parents passed away an old family friend began taking control of J's life. She changed her GP, appointed herself as EPA and Substitute Decision Maker, coerced her into changing her Will and arranged for J to make regular payments to her bank account; • J experienced psychological and financial abuse by someone she should have been able to trust- in this case an old family friend who exploited someone who she knew as being isolated and vulnerable, with no support services or protections in place; Through the community education session, J was provided with information about her rights and options to enable her to address the abuse and regain control. The APP Advocate and the service provider supported J to regain control by accessing appropriate services, information and legal support to make those changes. Example Case Study 1 – Abuse of an older person from a CALD background. ARAS was contacted by the Social Worker with permission from D who was presently in hospital recovering from a broken hip and had concerns about her son. • The advocate visited D with an Italian speaking interpreter and D advised that she had appointed her son M as her Power of Attorney (POA) and since then he had been telling everyone that she has lost her mental capacity. She has recently been assessed by a geriatrician as having her mental capacity. • M had taken over her finances and was pressuring her to move into a residential aged care facility. • He wanted to sell her house and had started to move her furniture into her shed. She was very disappointed with her son M as she and her husband had helped him financially many times as he always made bad financial decisions. • D was also concerned that her will had disappeared from her home. • D was very frightened of standing up to M, who is very forceful and has a bad temper. With support of the advocate, D has managed to regain much of the control of her life. Despite her fear of her son, D has taken positive steps and is now living independently in her own home with support services. D has revoked POA
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	through her solicitor and to change her will. Example Case Study 2 Abuse of an older person CALD background ARAS received a call from a HACC community service SW who expressed concerns for an older person (T) who had recently been discharged home from hospital. T had limited English language skills and had started to revert to using her native language more. • T started displaying signs of cognitive decline and was having some difficulties with daily tasks. She started approaching her long term neighbour for help with general daily tasks • T (82) immigrated to Australia from a former Yugoslavian country many years ago. She never married and had no children. • Prior to her hospital admission, T had lived independently in a large house in an affluent inner city suburb and had only received occasional HACC services for maintenance • The consultant geriatrician at the hospital assessed T as having capacity to make her own decisions, however, it had become clear to the HACC staff that had contact with T that there had been some short term memory loss and a decline in her cognitive function. • Prior to discharge the hospital SW held a "family meeting" with T and her neighbour where it was agreed that the neighbour would take on the role as "carer" • With no other involvement or contact from family or friends, the neighbour arranged for T to see a lawyer and appoint her as EPoA. She also had her Will changed and the neighbour was appointed as executor of T's Will • The neighbour had control of T's finances and held her bank card. Information had been provided to the service provider that the neighbour was taking T shopping and leaving her at the supermarket while she went off to gamble at the pub. After some time alone, T became confused and distressed. The supermarket staffs were aware that T's neighbour was in the pub and arranged for her to be alerted. • With the assistance of ARAS Advocates, T was referred to a Community Geriatric Team for follow up and assessment. Subsequently T was supported with a number of support services. T's situation highlights the need for better safeguards to protect isolated vulnerable older people from CALD communities from abuse and exploitation. Older people who face language barriers and have few or no natural supports in place, can be tricked or coerced into signing documents they do not fully understand. A common tactic used by suspected abusers is by giving false information to the older person about consequences for not signing, such as the "government will take your house away and put you into a nursing home". Many isolated and vulnerable older people, who had believed that they will be cared for in older age, are often left open to the perpetrators of abuse. ARAS is also concerned that any systemic changes to an elder abuse system will need to be independent of government as many older people from
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CALD backgrounds express fear of engaging with support services that are part of the 'government'.

ARAS recently had an example of how our medical/legal system may be ethnocentric in the assessment and management of elder abuse and as a result has further disempowered the older person in question. When they are subjected to a medical assessment of their decision making capacity they are forced to undergo testing that is highly questionable without appropriate adjustments for language and culture. As these adjustments were not factored into the equation the person was found to lack capacity which then made it impossible for them to alter their will or revoke their Power of Attorney. This forced the person into the position of having to be placed at the mercy of a tribunal despite the fact that they could clearly articulate their wishes in their own language.

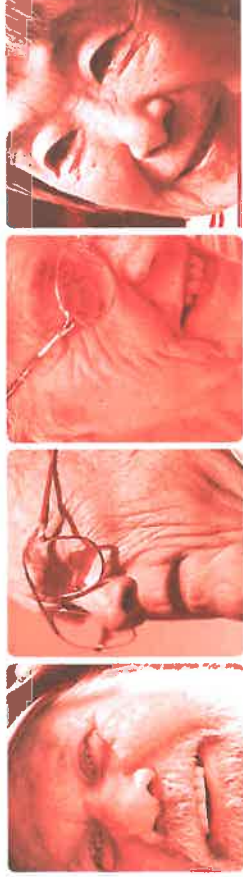
Access to independent interpreters and information /assessments which have been appropriately translated is also critical to ensure older people can exercise their rights and also live free from elder abuse.

SA Elder Abuse Prevention Phone Line

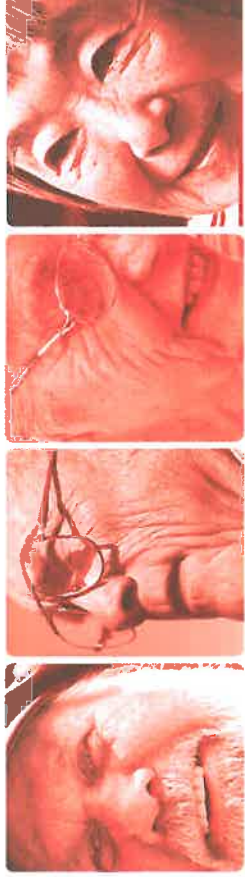
In late 2015 ARAS commenced the South Australian Elder Abuse Prevention Phone Line trial. The Phone line provides a state-wide point of contact for information, advice and referral to other services such as the office of the Public Advocate, Legal Services Commission, Public Trustee, SAPOL as well as ARAS Advocates. During the short timeframe since implementation the types of issues raised by callers to the phone line include but are not limited to:

- o Frail older person has been taken to her son's remote rural property to live. The son has sold the older person's house. Family members suspect financial and psychological abuse, and have been refused access to the older person.
- o CALD older person taken by daughter to Trustee organisation to make a Will in her favour.
- o Daughter reportedly bullying Father into lending her money
- o Older person experiencing physical abuse by son
- o Daughter states her father is being abused/neglected by her step-mother
- o Daughter concerned re her sister not upholding her responsibilities as EPOA for their father
- o Daughter concerned for welfare of her father who has Parkinson's disease. Caller states her step-mother is not caring for him properly
- o Caller states mother has been cut off from the rest of the family by his sister.
- o Older person is being intimidated by her neighbour.
- o Son reports financial abuse of father by his partner.
- o Neighbour concerned about welfare of older person with dementia who she states is "allowed to wander the streets unaccompanied"

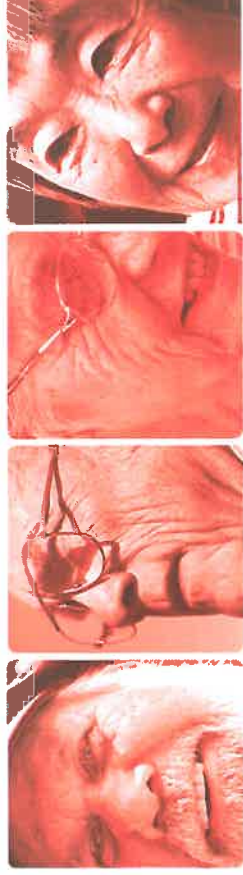
Please note that the case studies above are a compilation of examples and fictitious. Any similarity is entirely coincidental. ARAS is 3willing to provide



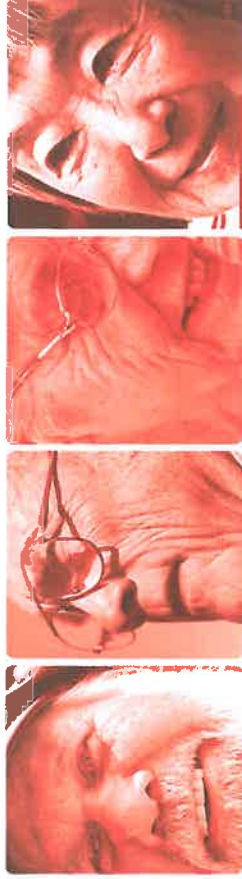
	further case studies to the ALRC.
Question 4 The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?	See ARAS responses to Question 2 & 11. Additionally ARAS believes consideration for : • ABS national survey of Elder Abuse (similar to the Women's Safety Survey of 1996) that has the potential to reveal the extent and nature of elder abuse. ARAS is also aware that a Prevalence Study is being undertaken in South Australia by <i>Professor Wendy Lacey</i>, Dean & Head of School, Public Law & Human Rights Research Group, SCHOOL OF LAW, UNIVERSITY OF SOUTH AUSTRALIA.
Social Security Question 5 How does Centrelink identify and respond to people experiencing or at risk of experiencing	ARAS experience from consumer reports to our service about Centrelink include but are not limited to: • Centrelink staff are too willing to accept the word of people presenting to them and not verifying or asking for proper documentation; • Carer's payment are being made to nominees but the care recipients are not receiving the care; • Centrelink staff speaking with older person in front of other person (who may be the alleged abuser) ensuring the older person cannot speak freely about their situation — no privacy or confidentiality accorded to the older person; • Barriers to older people being able to access Centrelink as services are being centralised and online; • That older people are not IT savvy and are subsequently handing over information such as access to their 'my gov accounts' to sons/daughter or



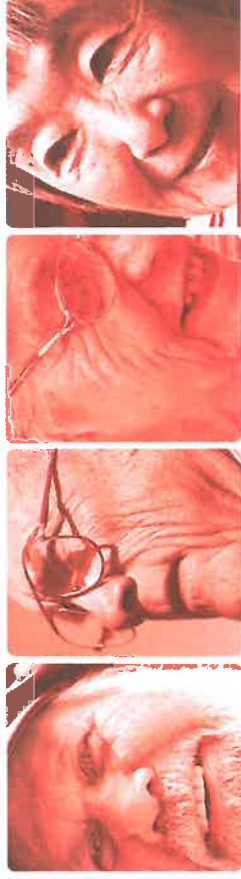
elder abuse? What changes should be made to improve processes for identifying and responding to elder abuse?	others to access. This scenario does not support older people remaining in control and may be a contributing factor to potential elder abuse as access to information and accounts is being made easier. • ARAS is generally of the view that Centrelink staff require education and training about 'elder abuse recognition and responding' as well as understanding the role/meaning of various documents such as Enduring Power of Attorney & Advance Care Directives. Ensuring that the older person is interviewed by themselves in a private place when they are nominating other persons to act on their behalf. Centrelink staff need to be clear when various nominations and legal documents authorising others to act come into being operational.
Question 6 What changes should be made to laws and legal frameworks relating to social security correspondence or payment nominees to improve safeguards against elder abuse?	ARAS generally believes that consideration should be given : • Ensure that the older person's money is sent into their bank accounts; • A screening tool could be used for detecting when an older person is vulnerable or at risk of being abused – this could be triggered when aged pension age is reached; • If the screening tool indicates risk then CentreLink Social Worker could be allocated to discuss with older person options for safeguards including : ○ Direct debit of certain Bills – ARAS hears many stories of older person's phone being cut off because their nominee (the abuser) hasn't paid phone bill ensuring that they remain socially isolated from other family and friends; ○ Income Management may be considered an option to ensure that the older person is at least receiving essentials such as food and medication; ○ Centrelink can provide information regarding 'centrepay' or services that would assist the older person such as financial counselling.
Question	



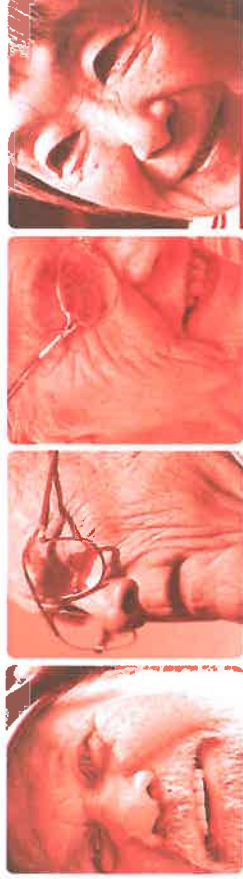
7 What changes should be made to the laws and legal frameworks relating to social security payments for carers to improve safeguards against elder abuse?	ARAS generally believes that consideration should be given to ensuring that Centrelink staff are aware of services in the community and are trained to discuss and refer to appropriate staff. ARAS is aware of reports that some carers accept payment of the Carers Payment and subsequently fail to deliver the support to the older person. ARAS generally believes that consideration should be given to greater accountability for carers receiving a Carers payment.
Question 8 What role is there for income management in providing protections or safeguards against elder abuse?	ARAS believes that consideration should be given to income management however ARAS is of the view that income management is inappropriate as a one size fits all response to all older people. Individual assessment is required on a case by case basis. Income Management should be considered for those who are at risk and vulnerable and should not be seen as an overly interventionist response if we are trying to safeguard the older person against elder abuse.
Question 9 What changes should be	ARAS generally believes that consideration should be given : • Cases should be assessed on an individual basis. If an older person is being abused by their immigration sponsor there should be means for the older person to access income support; • More needs to be done for those who enter the country on an 'assurance of support' provided by family;



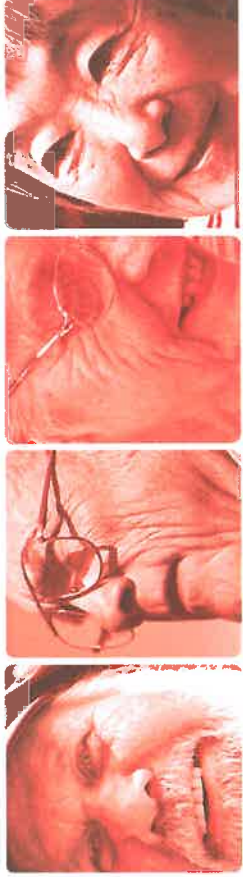
made to residence requirement s or waiting periods for qualification for social security payments, or the assurance of support scheme, for people experiencing elder abuse?	• The older person has very limited options to escape from the abusive situation with no money and nowhere to go; • Older people with no or limited English language skills are very vulnerable and have no choice but to go back home after being abused. • There is no consequence for the alleged abuser; • Having to wait for some kind of support for 10 years is impossible test. If the government has agreed to bring people to Australia then we have a responsibility to ensure of their health and safety is properly provided. Example Case Studies • Older person from a CaLD background was approved under the support of her daughter to live in South Australia. The older person was abused, physically, psychologically and abuse of neglect by the supporter that is her own daughter. The older person had to ask for food from her neighbour and was not allowed to use the toilet. Her daughter told her she was using too much water and had to toilet in a bucket. This has had a very devastating effect on the older person and had no choice but to think about going back overseas. Her grandson had to pay for her ticket back home. • Another case where the daughter syphoned hundreds and thousands of dollars from the older person's account who went back home with virtually no money left.
Question 10 What other risks arise in social security laws and legal frameworks with regard to elder abuse? What other opportunities exist for providing protections	ARAS considers that a hefty penalty should be imposed if the 'assurance of support' is not given. Perhaps information needs to be provided on the breach of their role and the consequences.



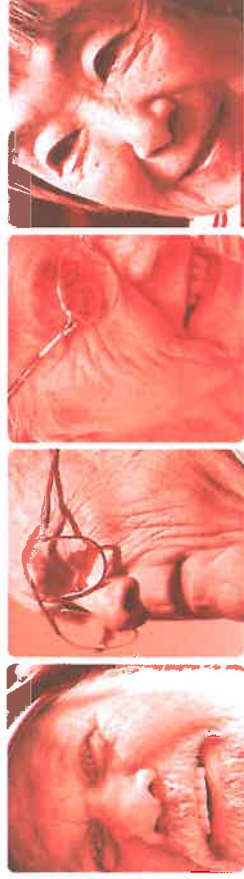
and safeguards against abuse?	
Aged Care	
Question 11 What evidence exists of elder abuse committed in aged care, including in residential, home and flexible care settings?	ARAS believes that evidence exists from a number of sources including but not limited to: • Reports to the Aged Rights Advocacy Service & other Advocacy/Elder Abuse Prevention Units in other jurisdictions; • Reports to the SA Elder Abuse Prevention Phone Line & other jurisdictions equivalent phone lines; • Reports to Aged Care Complaints Commissioner (Annual Report); • Reports to the Compulsory Reporting Line (Reported into the Operation of the Aged Care Act); • Various jurisdictional grant funding reports; • Relevant jurisdictions websites such NSW Health Complaints Commission Website which publishes public statements and prohibition orders • Consideration should be given to reviewing court documents including but not limited to: - o Coronial Inquest Findings in each jurisdiction; - o Guardianship and Administration Tribunals in each jurisdiction; - o Industrial Relations Tribunals. Jurisdictions might consider whether general court transcripts headers across all jurisdictions should include age of victim/complainant or other key word – ‘elder abuse’ that would facilitate easily searching case records & identifying elder abuse. More recently evidence exist of serious assault in SA Residential Aged Care Facility: http://www.abc.net.au/7.30/content/2016/s4507208.htm ARAS remains concerned that in terms of compulsory reports – the numbers are recorded in the various report but we have no transparent information about the outcome of such reports and whether there are any barriers to prosecutions, evidence considered unreliable, false allegations or other relevant information.
Question 12 What	ARAS generally believes that consideration should be given to ACAP and Assessors: • Identifying and responding to elder abuse including a clear referral pathway to a specialist elder abuse non-government/ non service provider



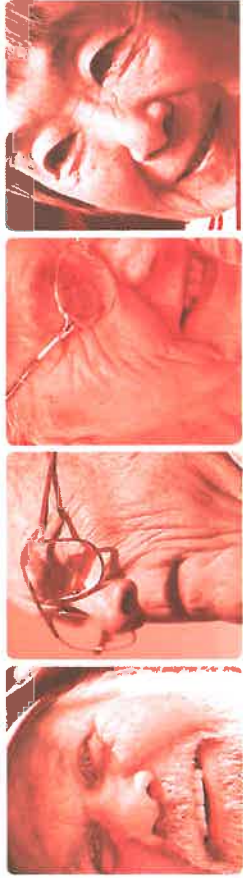
t further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?	organisation; • Having clear processes to ensure that ACAT Assessors know who their client is; • Incorporating questions in the ACAT assessment process about elder abuse; • Compulsory reporting to Aged Care Complaints Commissioner; • Mandatory training of identifying and responding to elder abuse. ARAS would recommend that the above is critical because ARAS has specifically worked with people where the ACAT assessors have taken information from a family member (as opposed to directly from the older person) who the older person has identified as the abuser. Another example :ACAT phones to do an assessment and it is cancelled by the abuser and sometimes the older person is even threatened to cancel the assessment. This should be a red flag. The assessors have a responsibility to get back to the doctor to respond to this collaboratively. Perhaps an application should be made to SACAT to safeguard the older person from possible neglect.
Question 13 What changes should be made to aged care laws and legal frameworks to improve safeguards against elder abuse arising from decisions made on behalf of a	ARAS Generally believes that consideration should be given: • Making elder abuse a stand- alone prosecutable offence; • Powers of Attorney /Substitute decision-makers should be held accountable (i.e. prosecuted if they misuse an older person's funds or act outside their responsibilities); • Consistency of language and powers between various statutes would be useful; • Consideration of extending Mandatory/Compulsory Reporting; • To all forms of abuse in Residential Aged Care noting that financial abuse is a significant issue. Removing the exception to report as it currently stands. ARAS experience suggests that Enduring Power of Attorney & Substitute Decision makers have a limited knowledge of their own obligations. Additionally ARAS experience is that Service Providers including health professionals need to ensure they understand the law and their requirement to seek consent from a substitute decision maker if the older person is unable to give valid consent. Consideration needs to be given to implementing an Adult Protective Service legislative framework – we currently have child protection and domestic violence services but no specific service to elder abuse. Australia needs a comprehensive national framework for protection against elder abuse.



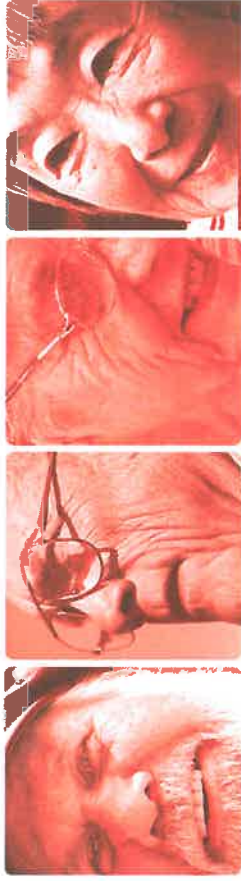
care recipient?	
Question 14 What concerns arise in relation to the risk of elder abuse with consumer directed aged care models? How should safeguards against elder abuse be improved?	ARAS considers on the one hand it is important to support the older person in choosing the services they wish and having control over the funds to provide that service. On the other hand there may be significant risk to the older person from financial abuse. The risks of CDC are dependent upon what model(s) are actually implemented. There are legitimate concerns if a person can access funds that they are required to self-manage. This may provide additional incentive for financial abuse or exploitation if the situation isn't monitored in some way. Tightening on Enduring Power of Attorney laws may provide some further protections.
Question 15 What changes to the requirement concerning quality of care in aged care should be made to improve safeguards	ARAS generally believes that consideration should be given to: • Clearer accountability pathways between the Department, AACQA & ACCC in terms of reporting into the outcomes/gaps and barriers of current compulsory reporting requirements • Consideration of implementing penalties or compensation should the Charter of Rights be breached; • Option to have CCTV camera in a resident's room with control of the camera resting with the older person or their representative; • Mandatory/Compulsory training of elder abuse awareness and responding; • Compulsory training of all managers of how to respond to a report of suspected or alleged elder abuse; • Enhanced police checks that take into account whether a person has been charged (perhaps <i>Working with Older People Certificate</i> similar to the Working with Children Certificate); • Extending Compulsory reporting to all areas of elder abuse ;



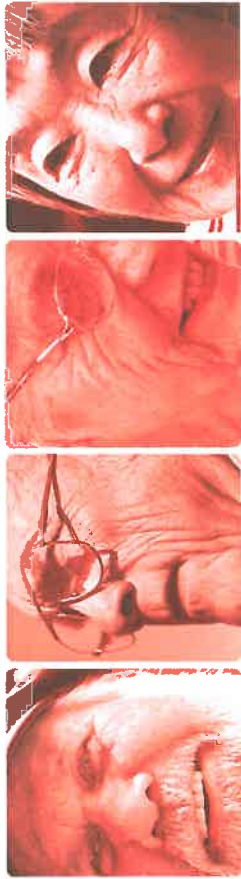
against elder abuse?	• Revoking the exception to compulsory reporting by older people with a cognitive impairment; • Care Workers Register; • Staff ratios.
Question 16 In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse?	ARAS generally believes that consideration should be given: • Regulations should clearly stipulate the specific circumstances, and the evidence required for restrictive practices; Restrictive practices must be assessed in context and the rights and wishes of an individual must be given due consideration. There is a belief that all restraint is bad or wrong when in reality this isn't always the case. Sometimes 'restraint' is requested by an individual for their own safety or piece of mind and that request is denied because the RACF has a no restraint policy. Once again a resident's right to make choices about their own life and their right to take risk is ignored. Any regulation must take into account safety considerations and the wishes of those that it affects. ARAS is also aware of a particular issue in South Australia which with section 32 Powers which suggests that each Resident residing in a 'secure dementia unit' or is unable to leave the Residential Aged Care Facility when they wish is considered to be detained and should by the letter of the law have a SACAT Guardianship Order with section 32 Powers in place. http://www.opa.sa.gov.au/resources/restrictive_practices. ARAS believes that this requirement is not generally enforced and if done so may lead to significant issues for SACAT as well as the current Coroners Court. The broader concern as to a person's right to not be detained against their will and have the opportunity to be brought before a court to consider whether they have been deprived of their liberty should also be considered. There does appear to be a 'greyness' in the law in South Australia in terms of what may be considered 'chemical restraint' or 'medical treatment' and this will in turn determine who may be able to consent to such treatment. ARAS is generally of the view that only the older person or their substitute decision maker should be consenting to medical treatment as is currently the requirement. However if a person has not formally appointed a substitute decision maker then a list of persons is provided for in the Act. The last person currently listed is a person 'charged with the day to day care of an older person' may consent. However under the regulations they are specifically excluded from consenting to 'chemical restraint'. ARAS receives reports where the substitute decision maker hasn't been consulted about care changes or medical treatment. ARAS believes the broader issue of consent needs to be considered.



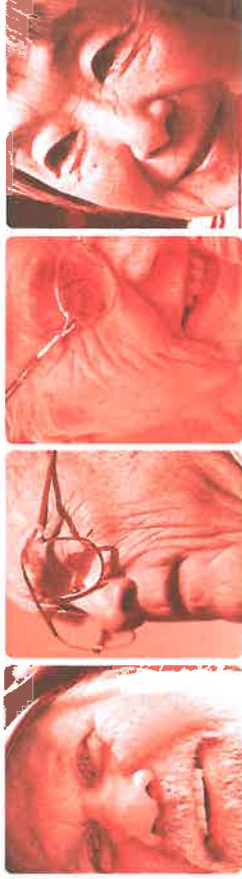
Question 17 What changes to the requirement for reporting assaults in aged care settings should be made to improve responses to elder abuse?	ARAS believes consideration should be given to: • Compulsory reporting extended to all categories of abuse; • Extending reporting to Home Care noting that older people are potentially remaining at home for longer periods whilst receiving higher levels of care and increasingly vulnerable; • Ensuring the right to self-determination is also considered; • All assaults should be reported regardless of whether or not the perpetrator has a cognitive impairment. • There also needs to be some type of feedback loop between State police and the Dept of Health so that reports and outcomes can be tracked and evaluated. Currently we have no idea of the outcome of the current reports. What were the issues – lack of evidence, false allegation, evidence considered unreliable because complainant is a person living with dementia; • Police require education about compulsory reporting and may have little understanding of why people are reporting based only on suspicion without any other evidence. • Staff training on forensic wound identification, preservation of evidence and crime scene preservation. This may contribute to having reliable evidence to back up suspicions or allegations of physical and sexual assault.
Question 18 What changes to aged care complaints mechanisms should be made to improve responses to elder abuse?	ARAS would like clarity about the fact that if a service provider has a responsibility to provide a safe and secure environment then all elder abuse should potentially fall into the realm of the ACCC. However there is limited information about how ACCC manages elder abuse and appears to be limited interaction with elder abuse prevention teams. Consideration should be given as to how the different agencies work together. ARAS is concerned that the ACCC may rush to resolve complaints based on a reconciliation and early resolution model. This model may not suit a more sophisticated evidence gathering model that may be required to uncover elder abuse. Older people also need to know that ACCC is an independent umpire and they should be advised that they may request ‘as a right’ an advocate to support them with the complaints process..
Question 19 What changes to	ARAS generally considers that there does need to be a penalty/sanction when a breach of a person’s human right occurs. Alternatively consideration should be given to a mechanism for the ACCC or delegate of the Department of Health for compensation or the waiving of care fees of the older person if they have been abused /care needs not met and there was a failure by the service provider.



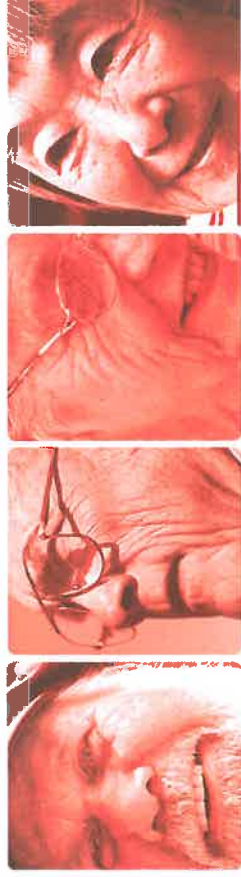
the aged care sanctions regime should be made to improve responses to elder abuse?	
Question 20 What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification of and responses to elder abuse?	ARAS currently provides advocacy support to older people across the current spectrum of aged care services. This includes support for older people at risk of or who are experiencing elder abuse. However ARAS remains concerned about our ever expanding client base with decreasing /limited funding. In real terms the NACAP funding has failed to keep pace with the requirements for support from advocates resulting in the decreasing number of advocates. Being resourced for a longer period of time – such as for five years would be welcome and would provide certainty to staff about job security noting that advocates are highly skilled professionals as well as allowing for business certainty such as entering into contracts. It is important to ensure that Advocacy services are adequately resourced to provide direct advocacy services as well as education sessions to both residents/clients as well as service providers. ARAS consumers/ clients tell us that they hear advocates give education talks about their rights and provide real life examples and in turn they feel confident in raising their concerns with an advocate. ARAS suggests that each jurisdictional advocacy service should be resourced and funded adequately to provide a minimum of 1 resident and staff talk /RACF as well as 1 client/staff talk per service provider in a location; such as suburb, region, country town to ensure that all older people have access to information about their rights, entitlements as well as living a life free from abuse. Consideration should be given to whether a levy is applied as part of accreditation which is used to ensure independent education from Advocacy services about rights, entitlements and elder abuse is made available to all residents/clients and staff. Consideration could also be given to expanding Advocacy Services role to be part of an adult protective service. Given ARAS current expertise and knowledge in this area the Advocacy services are well placed if adequately resourced to move into such a role. In terms of the community visitors scheme ARAS believes that the current purpose of the scheme to visit an older person and to alleviate loneliness is



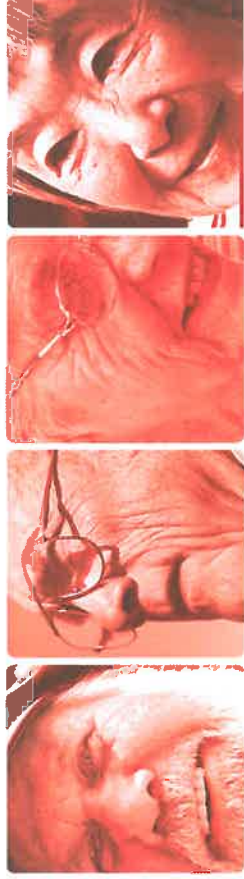
	essential to ensuring older people do not live in social isolation. ARAS believes it would also be beneficial for community visitors to receive education and training about elder abuse.
Question 21 What other changes should be made to aged care laws and legal frameworks to identify, provide safeguards against and respond to elder abuse?	See previous answers including the need for national frameworks and consistent laws across jurisdictions.
National Disability Scheme	
Question 22 What evidence exists of elder abuse being experienced by	



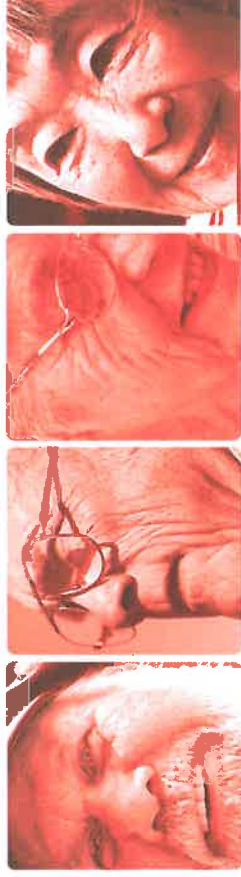
participants in the National Disability Insurance Scheme?	
Question 23 Are the safeguards and protections provided under the National Disability Insurance Scheme a useful model to protect against elder abuse?	
Superannuation	
Question 24 What evidence is there of older people being coerced,	ARAS has been contacted by clients in regards to pressure, threats and coercion from family members to withdraw their Superannuation with the benefits going to the abuser and not the older person. At such an age, the older person cannot save the money again and is left financially devastated. There is no known agency who can deal with this form of abuse re superannuation funds. Current laws do not seem to be an adequate response to abuse in the context of superannuation funds. The outcome is that the government providing financial support to the older person who is left with no superannuation and no one to investigate and to retrieve the funds lost.



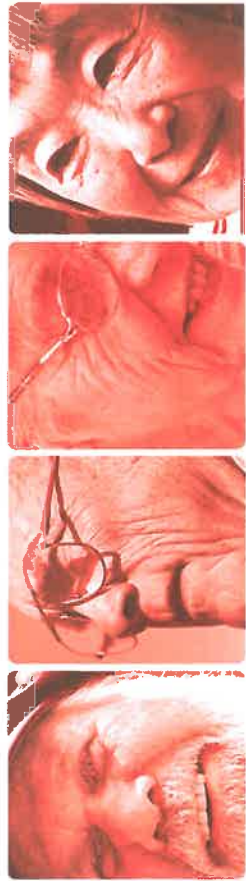
defrauded, or abused in relation to their superannuation funds, including their self-managed superannuation funds? How might this type of abuse be prevented and redressed?	
Financial Institutions	
Question 25 What evidence is there of elder abuse in banking or financial systems?	ARAS receives many reports of financial abuse which has some form of involvement with the banking sector including but not limited to: • Reports of older people without mental capacity being taken to the bank to make withdrawals; • Use of ATM cards without consent; • Financial Institution will accept an Advance Care Directive when dealing with an alleged abuser instead of a POA document; • Financial Institutions also do not speak directly to the older person but instead to the person who presents at the bank with them regarding information about the older person's account; • Bank teller provides the alleged abuser a form to be a signatory on the older person's account and it is obvious that the older person does not understand what it is happening and what permission they have just given; • An older person (has mental capacity) never received any mail or bank statements and decided to go to the bank to ask for their account balance was denied by the bank teller as they normally deal with the son. The older person was then escorted out the door by bank security. The older



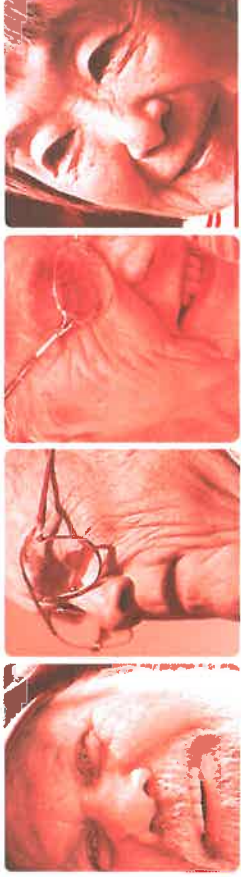
	person left feeling very upset and humiliated; • Another elderly gentleman (mental capacity assessment by a geriatrician) revoked his son as POA went to the bank with the assessment and a letter of revocation from a legal service. The bank manager would not acknowledge the revocation form or the letter from the legal service as the bank manager knew the son; • Alleged abusers accessing older person's banking details by internet banking with information and statements being redirected to the alleged abuser.
Question 26 What changes should be made to the laws and legal frameworks relating to financial institutions to identify, improve safeguards against and respond to elder abuse? For example, should reporting requirements be imposed? Family	ARAS generally believes that consideration should be given: • Public education is extremely important of any prevention strategy and perhaps bank can educate their customers by providing them written information on how they can safeguard themselves from financial abuse; • Monitoring of transaction trends to alert people of uncharacteristic transactions. • Compulsory reporting (internally). The Australian Banker's Association developed an online education assessment tool but believe this has not been taken up by bank staff – it is only voluntary. There must be mandatory training for all staff on financial abuse and yes reporting requirements should be imposed. Should be flagged on the banks system when there is a POA so that if someone else presents a POA it could be picked up straight away. Registrations of POA to assist in establishing the authenticity and currency of this legal document would assist with this. Greater accountability for banks facilitating transactions made by the alleged abuser. Currently, an older person can walk into a bank and be coerced into signing a bank authorisation by someone new and unknown to the bank teller and continue with the transaction providing the abuser with \$50,000 in cash. The teller has a responsibility to their customers to further follow up in investigating prior to allowing the transaction to be finalised.



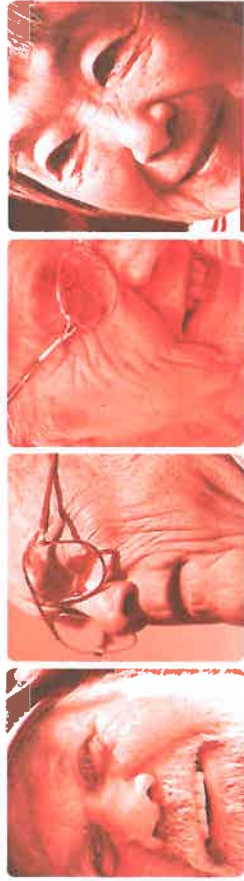
Agreements	
Question 27 What evidence is there that older people face difficulty in protecting their interests when family agreements break down?	Reports to ARAS and the Elder Abuse Prevention Phone Line of verbal agreements that are broken. Cases have been reported where the older person has invested a great deal of money into the granny flat only to end up homeless when her son or daughter's marriage breaks down or the relationship between the older person and their child breaks down. Usually the person enters into an informal agreement in preference to entering aged care or financial gain or increase in capital value on the property for the son or daughter in exchange for care. There seems to be a general lack of community awareness and information when it comes to granny flats and family agreements including the consequences of any family breakdown – there are formal documents available through the Legal Services Commission but there is no promotion of these products.
Question 28 What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?	ARAS generally believes that consideration should be given to: • Formalising family agreements via legislation; • Legislation having provision for enforcement or compensation; • National framework to provide education /toolkit to families undertaking such an agreement;. Information from Seniors Rights Victoria about family agreements is a good resource that could be made available across jurisdictions. ARAS understands that in 2007, Older People and the Law, the House of Representatives Standing committee on Legal and Constitutional Affairs concluded that family agreements warranted a greater deal of formalisation and some form of regulation with the recommendation that there be an investigation of legislation to regulate family agreements. ARAS understands that the Australian Government accepted these recommendations in principle.
Appointed Decision	



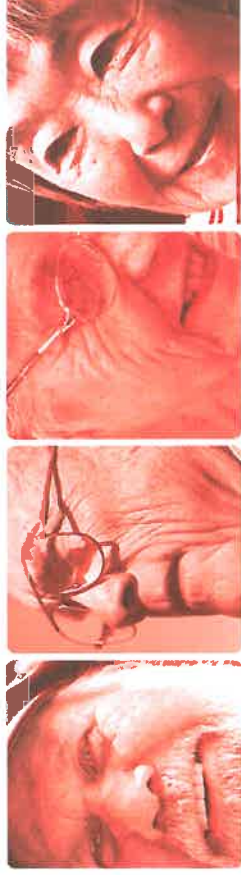
Makers	
Question 29 What evidence is there of elder abuse committed by people acting as appointed decision-makers under instruments such as powers of attorney? How might this type of abuse be prevented and redressed?	ARAS has received reports to ARAS Advocates and the Elder Abuse Prevention Phone Line. I refer to data provided for the last ten years. Financial abuse is a significant issue and misuse by an Enduring Power of Attorney is also an issue. ARAS also received reports that Substitute Decision Makers are not being consulted in terms of consent for care when the older person is not able to consent.
Question 30 Should powers of attorney and other decision-making instruments	ARAS is of the view that registration of an Enduring Power of Attorney/ Advance Care Directive is essential. ARAS view is that a government department such as the Attorney General's Department would be appropriate. Other options could be the relevant Public trustee, office of the Public Advocate or Land title office.



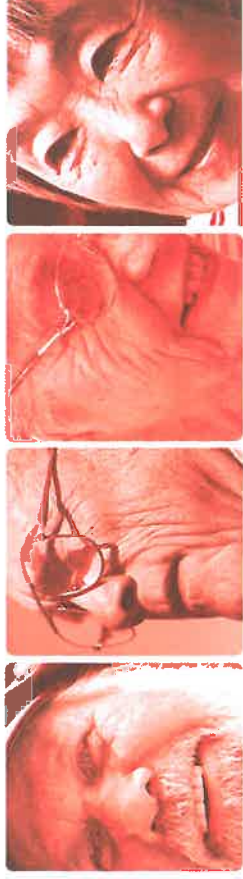
be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?	
Question 31 Should the statutory duties of attorneys and other appointed decision-makers be expanded to give them a greater role in protecting older people from abuse by others?	ARAS experience of the number of Attorneys potential abusing older people would make us caution against expanding the role. Additional accountability mechanisms with private guardians and administrators should be in place with periodic reporting and auditing of decisions.
Question 32 What evidence is	ARAS has reports to ARAS Advocates and the Elder Abuse Prevention Phone Line. See also question 29. See previous reference in Q.29. ARAS generally believes that consideration should be given:



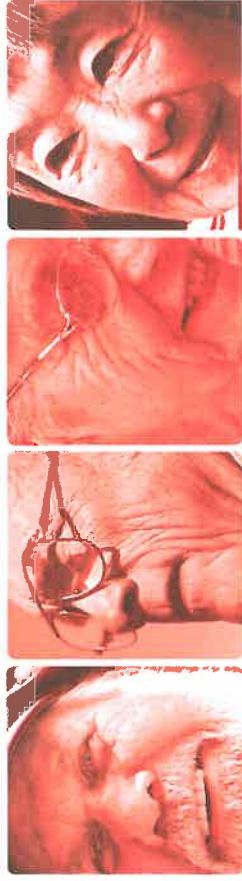
there of elder abuse by guardians and administrato rs? How might this type of abuse be prevented and redressed?	• Periodic reporting by guardians and administrators and auditing of bank statements/records should be stated in a POA as a safeguard. • Training would benefit attorneys who do not fully understand their powers and responsibilities and warning of legal consequences of the misuse of POA. A recommendation is for a POA to sign a declaration stating that they will comply with their responsibilities and duties and not abuse their position of trust. A new offence for dishonestly obtaining or misusing a POA has also been suggested. • Information of preventative strategies needs to be promoted throughout communities. • More education to communities on the roles of administrators and guardians with easier access to legal services for advice before signing such documents. • Consumers need to have easy access to advocacy services which have been set up to provide information about their rights and to assist them to protect those rights. Such as the right to revoke a POA to prevent further abuse, once capacity is established. This right is not known by many consumers. • Changes need to be made to strengthen the legislation and heavier penalties for those who do abuse. • Education and awareness of the roles and responsibilities of the POA with training for Donees. • Training for JPs/solicitors witnessing these documents. • Banks and Financial institutions should ask for proof (of loss of mental capacity) when a POA has been activated.
Public Advocate Question 33 Wha t role should public advocates play in investigating and responding to elder abuse?	It is important for Office of the Public Advocate (OPA) to continue its role to provide a protective service for those who cannot speak for themselves due to dementia or diminished capacity. This group is more vulnerable when there are family members in conflict in regards to making financial and caring decisions. Perhaps this role should be extended to those who need assistance even though they have the capacity to make decisions but are not able to, due to family pressures and undue influence from family members. More staffing resources should be available to appropriately investigate to respond upon receipt of a complaint particularly entry onto premises with a focus on providing support services to assist in circumstances of suspected or actual abuse.



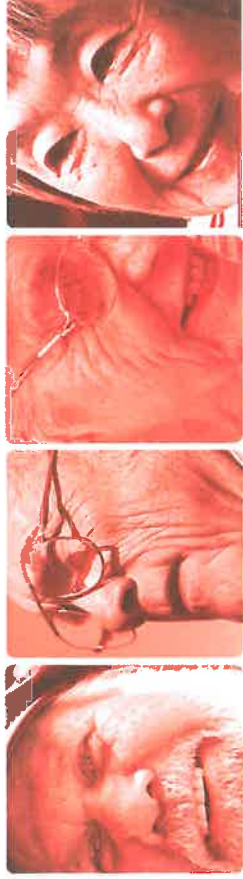
Question 34 Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?	ARAS is generally of the view that an Adult Protective Service should be considered such as in other international jurisdictions. A report could be made to a government department who in turn could refer the report to a non- government adult protective service that could partner with the Police and other services to investigate the report and provide support as necessary.
Health Question 35 How can the role that health professionals play in identifying and responding to elder abuse be improved?	ARAS is generally of the view that Health professionals have a role: • Compulsory training in identifying and responding to all forms of elder abuse • Training included in undergraduate programs and Certificate-level qualifications • Health assessment tools to include section on elder abuse; • Elder Abuse 'Toolkit' for health professionals (i.e. a tool that outlines what to do next, when elder abuse has been identified) • Include questions about elder abuse in annual health assessments of older people
Question 36 How should professional codes be improved to	ARAS generally believes that consideration should be given: • Elder abuse should be included in codes of ethics for health professionals and social workers; • Elder abuse should be addressed in key competencies for health workers and social workers; • Following training, all health and allied health professionals should have better communication and clinical skills to be able to identify referral pathways to respond to elder abuse; • As with the example given re Justice Connect Seniors Law and co-health in north western Melbourne to help older people experiencing elder



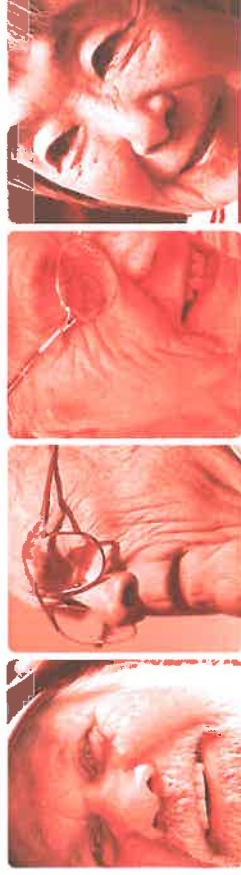
clarify the role of health professionals in identifying and responding to elder abuse?	abuse, this may be the only time that an older person can speak openly about their home situation in a safe environment with a lawyer and a health professional present at the same time, giving the older person easier access to legal advice without the alleged abuser present.
Question 37 Are health-justice partnerships a useful model for identifying and responding to elder abuse? What other health service models should be developed to identify and respond to elder abuse?	ARAS generally believes that considerations should be given • Health-justice partnerships; • Health organisations should also partner with agencies that work specifically with the issue of elder abuse; • Being provided advice from a legal perspective and a health professional in a safe environment without the presence or knowledge of the alleged abuser, providing the older person with a co-ordinated response immediately. The health-justice partnership is a model that could work in SA; • Advocacy in a health setting where the older person can discuss their abusive situation in a health setting and be provided with advocacy support could also work; • Advocacy in health settings or councils in rural and remote having a greater presence in areas providing a model of care of those involved to identify pathways for intervention based on the preferences of the older person when undertaking safety planning.
Question 38 What changes	ARAS generally believes that consideration should be given: • Care worker registration;



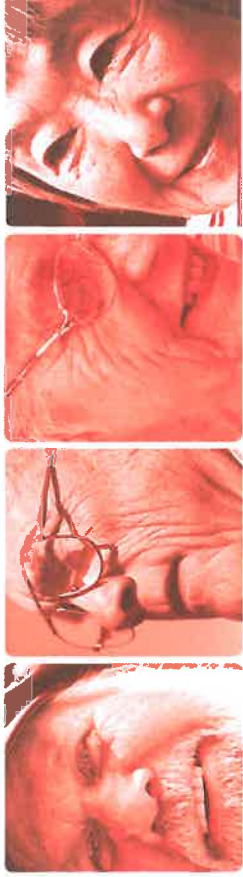
should be made to laws and legal frameworks, such as privacy laws, to enable hospitals to better identify and respond to elder abuse?	• A training framework to identify the roles and responsibilities of staff including health and allied health professionals’; • Perhaps a consent form signed by the older person when there is suspected abuse in order to respond to the abuse collaboratively, as soon as possible. • If the older person is at risk then it warrants information sharing without consent of the older person – Information Sharing Guidelines.
Forums for Redress	
Question 39 Should civil and administrative tribunals have greater jurisdiction to hear and determine matters related to elder abuse?	ARAS is generally believes considerations should be given: • Adult protection systems; • Expanding jurisdiction as addressing financial abuse may involve very costly and complex applications to courts, especially in regards to financial abuse and could be heard through SACAT. • Particularly in the areas of service provision orders, protection orders and removal and placement of orders as well as accessibility issues and changes to procedural requirements to take into account the vulnerability of a party or witness; • If a person has capacity or capacity is questioned and is vulnerable matters related to elder abuse should be considered to be heard through SACAT due to family threats and strong family influences; • Ensuring that the relevant tribunal has transparent processes and independent support from an Advocate; • It would also be useful if the tribunal could order compensation.
Question 40 How can the physical design and	ARAS generally believes consideration should be given: • The use of technology would enhance access for rural and regional communities and could encourage those reluctant to enter the court system to take action. Many older people may be deterred by the formality of a courtroom, and be intimidated by procedures. • Aboriginal people may be disinclined to become involved with the legal system, and CALD older people may have particular sensitivities to the



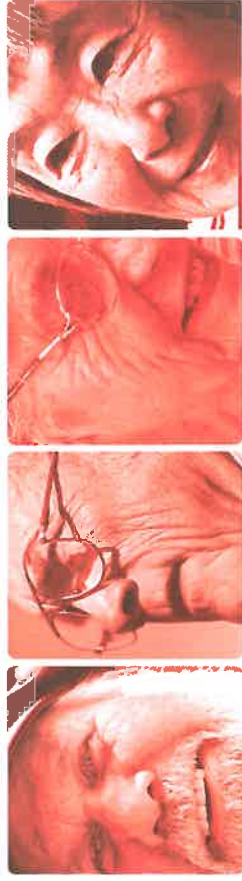
procedural requirement s of courts and tribunals be improved to provide better access to forums to respond to elder abuse?	traditional court system; • Tele or video conferencing to provide better access to respond to elder abuse particularly those in rural and remote areas or for those who cannot attend due to health needs.
Question 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? Criminal Law	ARAS generally believes that consideration should be given: • Dispute resolution services and mediation services. These should be limited to financial abuse and guardianship issues, not physical abuse and sexual assault. • Office of the Public Advocate would be the appropriate location – Mediation Resolution Service prior to going to SACAT; • Relationship Australia – Elder Relationship Centre – pilot program. • There should be options available for people living outside the metropolitan area.



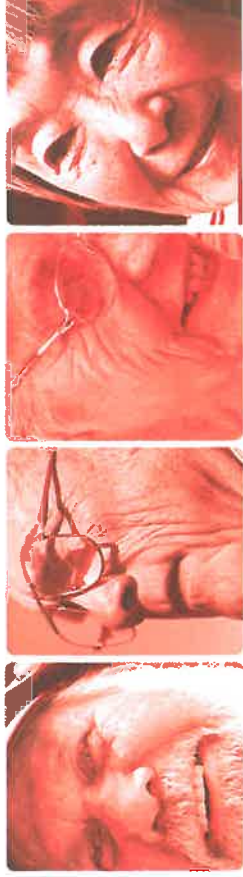
Question 42 In what ways should criminal laws be improved to respond to elder abuse? For example, should there be offences specifically concerning elder abuse?	ARAS generally believes consideration should be given: • Having specific elder abuse offences as we currently have laws for child abuse and Domestic Violence situations; • Learning from these models giving the constant increasing numbers of older people being abused; • Learning from these models giving the fact that these issues have been out longer in the community compared to elder abuse; • Although there are distinct differences between child abuse, domestic violence and elder abuse, these are all matters dealing with human rights issues and responses should be equally as important; • Consideration of reversing the burden of proof.
Question 43 Do state and territory criminal laws regarding neglect offer an appropriate response to elder abuse? How might this response be improved?	ARAS believes that the current laws do not provide an appropriate response to the neglect of older people. Consideration of an Adult protective Service would assist in potentially addressing this gap.
Question	ARAS believes that currently Intervention Orders are not being used as widely as they could be & changes may need to be made to give a greater effect to



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?	such orders.
Question 45 Who should be required to report suspected elder abuse, in what circumstance s, and to whom?	ARAS believes consideration should be given to a broad range of people to report elder abuse including but not limited: • Aged Care Service providers • Health professionals; • SAPOL; • Bank Staff; • Office of the Public Advocate; • Public Trustee • Advocacy Services; • Elder Abuse prevention Phone Lines.
Question 46 How should the	ARAS believes considerations should be given to: • Mandatory education identifying and understanding elder abuse for all Police as they are often first responder or who people will seek to report



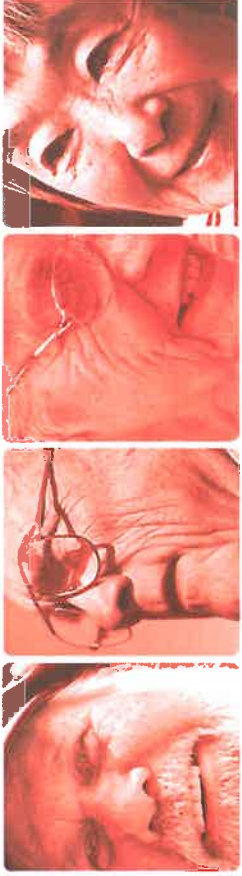
police and prosecution responses to reports of elder abuse be improved? What are best practice police and prosecution responses to elder abuse?	to; • A similar policy of mandated response to report domestic and family violence and should include elder abuse. • Criminal laws to be reviewed to ensure that elder abuse is susceptible to prosecution. • A dedicated elder abuse unit like a family violence unit to investigate elder abuse including financial abuse. • Where the alleged abuser is living in the older person's home, SAPOL is unable to evict the abuser due to rights of tenancy particularly if the older person is a risk of harm. • Older people who have decided to take on an Intervention Order against a family member are often discouraged by police to take this path
Question 47 How should victims' services and court processes be improved to support victims of elder abuse?	ARAS believes the court system should support advocates who can assist and support older people with special needs through the court processes. The Court systems should take into account older people's needs and fast track any cases to ensure that evidence can be given in a timely manner and possibly before any potential cognitive decline may occur. Improving funding to victims support and counselling services due to the level of psychological abuse experiences. The specific needs of the older person should be considered (cf - younger people experiencing family violence).
Question 48 How should sentencing laws and practices relating to	ARAS believes that sentencing laws relating to elder abuse should be strengthened. The recent 7.30 Report case led to a sentence of 3 weeks being finally served. ARAS believes that is inadequate.



elder abuse be improved?	
Question 49 What role might restorative justice processes play in responding to elder abuse?	ARAS believes that restorative justice may have a role in relation to financial abuse and neglect.
Question 50 What role might civil penalties play in responding to elder abuse?	ARAS believes that many people may consider civil action rather than criminal charges. If severe penalties are put in place, particularly financial abuse, this may act as a deterrent. Currently there is no requirement to pay back the monies owed unless the older person takes the alleged abuser to court

Other Comments:

Any changes to laws or legal processes should be considered with consideration to Aboriginal and CALD communities as well as all other special needs groups including but not limited to LGBTI community, Care leavers, Veterans and rural and regional communities in mind.



Also of importance is the need to consider an older person's right to self-determination when notions of compulsory reporting are discussed.