**People with Disability Australia (PWDA)**

**Australian Law Reform Commission Issues Paper:**

**Protecting the Rights of Older Australians from Abuse**

**Submission**

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Contents

About People with Disability Australia 2

Introduction 3

Rights based analysis 5

The United Nations Convention on the Rights of Persons with Disabilities 6

Responses to questions raised in issues paper 16

Elder Abuse 16

Social Security 22

Aged Care 25

The NDIS 31

Superannuation 33

Financial Institutions 34

Family Agreements 34

Appointed decision-makers 35

Public Advocates 37

Health Services 37

Forums for redress 39

Criminal Law 40

About People with Disability Australia

1. **People with Disability Australia Incorporated** (PWDA) is a national disability rights and advocacy organisation of and for people with disability. We operate within the human rights framework and provide advice and information; individual, group and systemic advocacy; training and education; and a representative voice of people with disability in New South Wales, nationally and internationally. We were founded in 1980, in the lead up to the International Year of Disabled Persons (1981), to provide people with disability with a voice of our own. We have a fundamental commitment to self-help and self-representation for people with disability, by people with disability.
2. We have a vision of a socially just, accessible and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated. Our purpose is to be a leading disability rights, advocacy and representative organisation of and for all people with disability, which strives for the realisation of our vision of a socially just, accessible, and inclusive community.
3. We have a cross-disability focus – membership is open to people with all types of disability. Individuals with disability and organisations of people with disability are our primary voting membership. We also have a large associate membership of people and organisations committed to the disability rights movement. Our services are not limited to members; they are available to people with all types of disability and their associates.
4. We are governed by a board of directors, drawn from our members across Australia, all of whom are people with disability. We employ professional staff to manage the organisation and operate our various projects. Many of our staff are also people with disability.

Introduction

1. PWDA welcomes the Australian Law Reform Commission’s Inquiry into Protecting the Rights of Older Australians from Abuse and notes that this timely examination relates strongly to the recent national focus on violence prevention more broadly. The NSW Legislative Council Inquiry into Elder Abuse[[1]](#footnote-2) and the Senate Inquiry into Violence, Abuse and Neglect of People with Disability in Institutional and Residential Settings[[2]](#footnote-3) are two key examples of how the experiences of violence against people with disability, including older people, have recently been explored. PWDA is heartened that the Terms of Reference of this inquiry highlight the significance of the Senate Report and its recommendations, due to the high levels of participation of people with disability and their representative organisations in that inquiry. PWDA’s submission to the Senate Inquiry, and to the Australian Law Reform Commission Report *Equality, Capacity and Disability in Commonwealth Laws,* are attached.
2. PWDA’s following response to the issues paper draws upon our long history of advocacy around the structural practices which lead to violence, abuse, neglect and exploitation of people with disability. Throughout this submission, the term ‘violence’ or ‘elder violence’ will be used to refer to what is typically called ‘elder abuse’. This is because the term ‘abuse’ is often used in institutional and residential settings to refer to violence, which ultimately trivialises, normalises and downplays the perpetration of various types of violence.[[3]](#footnote-4)
3. From the outset, it is important to recognise that some older people have experienced disability from a young age, whereas others may have acquired disability as a result of ageing. However, there are many similarities between services for and institutional responses to people with disability, and those targeting older people. Responses such as aged care facilities, nursing homes, locked wards and hospice care provided for older people resemble disability specific responses, such as residential institutions, group homes, boarding houses and respite care services in many ways. This submission will primarily discuss elder violence experienced in such institutional and residential facilities.
4. In 2012 approximately 1.7 million people over the age of 65 reported having disability.[[4]](#footnote-5) This means that just over half (52.7%) of respondents over the age of 65 reported having some form of disability.
5. Since 2010, the number of people over the age of 65 in Australia has increased by almost 20 percent.[[5]](#footnote-6) With projections estimating that people over the age of 65 will comprise 22 percent of the Australian population by 2061,[[6]](#footnote-7) it is clear that the number of older people with disability will also grow. It is thus important that all policy responses, legislative changes and practices in relation to this cohort are disability responsive.
6. Research indicates that 75 percent of reported cases of elder violence involve older people with cognitive impairment.[[7]](#footnote-8) Older people with disability are at a heightened risk of experiencing elder violence due to intersectional discrimination. This occurs when various forms of discrimination, such as ageism, ableism, sexism, racism or classism, intersect to create new and unique forms of discrimination.[[8]](#footnote-9)
7. Due to their experience of intersectional discrimination, older people with disability often experience elder violence in a range of unique ways, such as:
* Financial violence: stealing money; forcing someone to change their will; taking control of money; property or investments; misusing Power of Attorney; or refusing to pay for essential medication, support services and disability related equipment.
* Physical violence: physical assaults; the use of physical restraints; or the use or misuse of medication as restraints.
* Sexual violence: sexual assault; demanding sexual activities; or inappropriate touching during care giving.
* Psychological or emotional abuse: restraint, harassment; humiliation; intimidation; verbal abuse; forced isolation; threatening institutionalisation; threatening to withdraw care or medication; threatening violence against the person; their family, their pets or support animals; denying or trivialising the person’s disability; preventing contact with family, friends and community; or preventing access to services.
* Neglect: withholding food, water, medication, support services or disability related equipment; or refusing or delaying assistance when it is immediately required.
1. The intersectional discrimination and violence experienced by older people with disability requires an integrated response to ensure that experiences of this cohort are acknowledged and responded to appropriately. The acquisition of disability in old age is fluid, and individuals may not have firm diagnoses of their age-related impairments. In order to ensure no diagnosis is required to get an appropriate response, existing legislation, policies, structures and practices should be disability neutral and disability responsive, fully incorporating the experiences of all older people. In order to achieve this, a strong and inclusive human rights based approach is required; one that emphasises, understands, promotes and protects the basic human rights of all people.

Rights based analysis

1. The Terms of Reference of this inquiry are based upon the principle that all individuals have rights, and that Australia is party to a number of international agreements regarding the rights of older people.
2. When considering elder violence, it is vital that the human rights of older people with disability are at the forefront of discussions. The following table uses select articles from the *United Nations Convention on the Rights of Persons with Disabilities* (CRPD) to illustrate how experiences of elder violence violates many rights of older people with disability.
3. However, it must be noted that while the CPRD is the main internationally recognised instrument outlining the application of human rights law to people with disability, it is not the only document relating to people with disability, or to older people. An intersectional response requires consideration of all human rights instruments to which Australia is a party,[[9]](#footnote-10) as well as those to which we are not. Particularly relevant in discussions of elder violence are the UN Principles for Older Persons,[[10]](#footnote-11) for instance. This document could be used to guide the ways in which elder violence is prevented, identified and addressed, ensuring that the rights of older people are at the forefront of any approaches.

### The United Nations Convention on the Rights of Persons with Disabilities

| **Article number** | **Common ways in which older people with disability experience the violation of these rights** | **Recommendations for implementing rights** |
| --- | --- | --- |
| Article 8 – Awareness-raising | * Older people with disability often reside in institutional settings which are closed off from community involvement and oversight.
* The wider community is often oblivious to the experiences of these individuals, and as there is severely limited interaction with older people with disability, communities may be unaware of how to interact with these individuals. They may hold prejudices or stereotypes about older people with disability, which may impact their willingness to intervene if they suspect elder violence is occurring.
* There is limited public awareness around the issue of elder violence more broadly, and how members of the community should respond if they suspect this is occurring.
 | * A clear and nationally consistent definition and response to elder violence must be established.
* A public awareness campaign about elder violence should be built into existing domestic and family violence prevention strategies.
* A ‘no wrong door’ local community response approach, similar to programs run in the UK, should be analysed and considered for implementation in Australia.
 |
| Article 9 – Accessibility | * People with disability often experience barriers to access; to physical locations, to transport, to information, to methods of communicating and to services. These barriers to accessibility can prevent them from leaving violence.
* Individuals residing in residential facilities may have limited access to phone services, or may have difficulty physically leaving the premises without assistance.
* Older people with disability may find that information about elder violence and leaving violence is inaccessible to them.
 | * Universal design principles should be implemented to ensure older people with disability have equal access to their communities.
* All information about violence should be available in alternative formats such as large print, easy English, Braille or accessible online formats.
* Domestic and family violence services and refuges should all be accessible for older people with disability.
* All courts and tribunals must be fully accessible.
 |
| Article 12 – Equal recognition before the law | * Substitute decision-making arrangements, both informal (whereby family and friends make decisions without the input of the person they’re making the decision for) and formal (including guardianship, where decisions revolve around the ‘best interests’ of the person), directly contravene this right.
* Substitute decision-making and guardianship arrangements can lead to ill-treatment, forced institutionalisation and an increased risk of violence.
* People with disability have the right to access any supports they may need to exercise their legal capacity, and to express their rights, will and preferences.
 | * A nationally consistent supported decision-making framework should be developed that promotes and supports people to assert and exercise their legal capacity.
* More information on legal capacity and the implementation of Article 12 can be found in our response to the ALRC Inquiry: Equality, Capacity and Disability in Commonwealth Laws (2014) attached.
 |
| Article 13 – Access to justice | * People with disability often experience barriers to justice and complaints systems.
* Automated telephone systems, centralised intake systems and form based complaints systems are often inaccessible for people with disability.
* Staff in institutional and residential settings may act as gatekeepers, limiting police responses to violence.
* Police officers may not be equipped to take statements from people with disability.
* Police may fail to investigate, as they might also have narrow ideas about what constitutes a reliable witness. This may result in police officers not recommending cases involving older people with disability for prosecution.
 | * Police officers, judicial and prison staff should receive robust and recurrent training on the supports available (as provided in state and territory legislation) to people with disability when providing evidence.
* Police officers, judicial and prison staff should also receive training on the reliability of people with disability as witnesses to address some of the commonly held stereotypes and myths around witness competency.
* All complaints systems should be flexible, provide support with using the service if required, and be as accessible as possible. They should also use a ‘no wrong door’ approach, providing warm referrals where a complaint needs to be been directed to a more appropriate complaints body.
* Witness intermediaries should be introduced across Australia, to support the participation of people with disability in legal proceedings.
 |
| Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment | * The use of restrictive practices, including physical, mechanical, environmental or chemical restraint, seclusion and isolation occurs in many mainstream and disability specific settings.
* Restrictive practices can foster dangerous internal cultures within residential and institutional settings, in which the rights of residents are denied and violated, often for the convenience of staff.
* Due to the use of restrictive practices, older people with disability may fear even more severe forms of violence, may feel consistently unsafe or feel as though all staff members are untrustworthy.
 | * The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector must focus on changing services, systems and environments rather than looking to how and when restrictive practices may be used.
* The use of all types of restrictive practices in every setting, not just disability services, should be eliminated.
* The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) must be ratified and implemented.
* A nationally consistent ratio for staff to care recipients should be developed and enforced in all aged care settings.
 |
| Article 16 – Freedom from exploitation, violence and abuse | * Older people with disability frequently experience violence in institutional and residential settings.
* Information about violence and what constitutes a crime may be denied to older people with disability by service providers or boarding house proprietors, decreasing the likelihood of these individuals reporting their experiences.
* Staff gatekeeping and dangerous internal cultures limit the ability of older people with disability to disclose experiences of violence, as they may fear violent repercussions for speaking out.
 | * An independent, statutory, national protection mechanism should be established, under specific purpose legislation, and with broad functions and powers to protect, investigate and enforce findings in relation to all forms of violence against people with disability, regardless of the setting in which it occurs and regardless of who perpetrates it.
* Criminal justice responses often categorise violence as personal violence or domestic and family violence. In cases of elder violence, some of the domestic and family violence processes are much more appropriate and effective, providing better responses and outcomes for older people with disability.
* Current compulsory reporting of physical and sexual assaults perpetrated against residents of aged care facilities should apply to all aged care services, not just approved providers under the *Aged Care Act 1997*.
* Victims support funding across all jurisdictions should develop payments modelled on the Victorian Family and Domestic Violence Crisis Response Initiative, extended to elder violence.
* Aged care accreditation standards must be changed to an outcomes-based model, focussing on the quality of care experienced by care recipients rather than service policies and procedures.
* The Quality and Safeguards Framework for the NDIS should be nationally consistent, and people with disability should be involved in all aspects of its design. It must be embedded in a human rights framework, and supported decision-making must be one of its key elements and guiding principles.
 |
| Article 19 – Living independently and being included in the community | * A large proportion of houses in Australia are inaccessible and inappropriate for people with disability. This, alongside a lack of support to live independently, can limit the ability of people with disability to live in the community.
* When care and services are tied to accommodation, people are effectively forced to live in segregated settings.
* People living in institutional settings experience a much higher risk of violence, as there is typically a lack of independent oversight and response mechanisms in place to deal with violence in these settings.
 | * Housing regulation, including the Building Code of Australia, should be amended to require a baseline level of accessibility and modifiability in all new homes, ensuring that older people can age in place, visit friends and family and generally remain included in their communities as they age, rather than being forced into institutional settings associated with higher risks of violence.
* Older people with disability should be able to choose where they live, and with whom.
* Older people with disability should be encouraged and supported to live in the community, establishing and retaining natural support systems where possible.
* Consumer Directed Care packages should be available within all forms of aged care.
 |
| Article 22 – Respect for privacy | * In residential settings, staff have access to the bodies and personal space of clients, and they often control most, if not all, aspects of their lives. Staff may control, for instance, when residents shower, eat and sleep, what they eat, how they are dressed, who assists them and who they live with.
* When personal boundaries are consistently invaded by support workers, staff and other residents, people with disability may believe they have no right to privacy. This may prevent them from reporting these experiences, or other experiences of violence, neglect and exploitation.
 | * The privacy of older people with disability should be respected in all settings, and especially in residential and institutional settings.
* Residential and institutional settings should revise and amend policies or practices that permit staff to enter the rooms of residents without knocking or otherwise respecting the right of residents to privacy.
* Aged care staff and support workers must receive mandatory training and ongoing professional development on the human rights of older people to whom they are providing care.
 |
| Article 25 – Health | * In some cases, boarding house proprietors employ health professionals to be responsible for all of their residents. This means that people with disability living in boarding houses are not always afforded a choice in regards to their health professional.
* This limits the oversight of boarding house practices, and is concerning considering the potential for overmedication or chemical restraint in these settings.
 | * Older people with disability should be ensured access to appropriate health services, including adequate bulk-billing services.
* The health care provided to older people with disability should be of the same quality or standard as is provided to others.
* Health professionals should receive mandatory training on recognising and responding to elder violence.
 |
| Article 27 – Work and employment | * Australia ranks 21st out of 29 OECD countries for employment participation of people with disability. People with disability comprise 8.8% of the workforce in Australia.
* People with disability between the ages of 55-64 have the lowest labour force participation rate of all age groups, at 40.9%, whereas labour force participation for people without disability aged 55-64 is 74.7%.
* Rates of employment of people with disability in the public service are very low, with only 3.1% of Australian Public Service employees reporting they have disability.
 | * Reasonable accommodations should be provided to people with disability in the workplace, and remuneration for work performed should be fair. This includes the payment of superannuation.
* The Commonwealth government should take steps to address ageism and ableism, by employing more people with disability and older people in the Australian Public Service.
 |
| Article 28 – Adequate standard of living and social protection | * In Australia, 45% of people with disability live in or near poverty.
* Social and public housing across Australia is often not only unaffordable, but inaccessible for people with disability. This can result in people with disability feeling forced into institutional or residential settings.
 | * The Disability Support Pension (DSP) must provide people with disability with enough funding to fulfil an adequate standard of living, taking into consideration any costs associated with disability support and equipment which are not covered by schemes such as the NDIS.
* A review of the DSP 10 year waiting period for migrants with disability should be performed, to examine the impacts on older people and whether these arrangements fulfil our human rights obligations.
* Official Community Visitors should have access to information about boarding house payments to ensure social security payments such as the DSP are not being appropriated by boarding house proprietors.
 |
| Article 31 – Statistics and data collection | * The Australian Bureau of Statistics Personal Safety Survey does not disaggregate by disability, and is not administered in institutional residential settings. The experiences of individuals living in these settings, as well as those requiring communication support, are thus excluded by this survey.
* The Disability, Ageing and Carers survey relies on carers and support workers to answer on behalf of people with disability
 | The Australian Bureau of Statistics should modify its research methodology, sampling techniques and research design to ensure that people with disability are comprehensively included in the collection of data.Administrative data collected by services, institutional settings and the police should disaggregate by disability to help form a baseline of information about violence levels against older people with disability. |

Responses to questions raised in issues paper

### Elder Abuse

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

As outlined in the introduction above, older people with disability may experience elder violence in a range of ways, at the hands of a variety of perpetrators and in many settings. When describing elder violence, it is important to consider the harm, distress and ongoing consequences emerging as a result of this violence. The issue around intention clearly relates to whether elder violence is considered to be criminal or non-criminal conduct, yet regardless of the intent of the perpetrator, it is vital that violence experienced by older people is recognised and responded to appropriately.

As outlined in the *Toronto Declaration on the Global Prevention of Elder Abuse,[[11]](#footnote-12)* the expectation of care and trust should be emphasised within the definition of elder violence. Older people with disability who are entrusting their partners, family members, carers, support workers or co-residents with aspects of their care and support should be able to rely on these individuals. The perpetration of elder violence breaches this trust and can have devastating impacts on the individual experiencing violence, and may have significant ongoing effect on the support structures around the individual. These impacts must be recognised and approached in a way that supports the needs and desires of the older people who have experienced violence.

However, considering the significant national focus on domestic and family violence at the moment, it is worthwhile looking more closely at conceptual frameworks and processes involved in this type of violence and how it relates to elder violence. Building on work in the domestic and family violence sector, it is clear that relationships and settings in which elder violence occurs often have similarities with the dynamics of intimate partner relationships. This is in part due to the levels of interdependence involved, as well as the closed settings in which elder violence and domestic and family violence typically take place. As such, any form of relationship in which one person takes advantage of the other’s trust and dependence, using coercion, control and violence, could be classified as domestic and family violence. In answering forthcoming questions, we will refer back to this notion of using domestic and family violence responses and frameworks to approach issues of elder violence.

In addition, consistent definitions around the age range of the cohort referred to as ‘older people’ should be established and implemented across jurisdictions and within government and non-government agencies. As outlined in the issues paper, this definition must reflect commonly held understandings about ‘older people’ from different backgrounds or who identify as Aboriginal and Torres Strait Islander.

**PWDA recommends that a clear and nationally consistent definition and response to elder violence must be established.**

**PWDA recommends that a public awareness campaign about elder violence be built into existing domestic and family violence prevention strategies.**

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

Standardised responses should be implemented across jurisdictions with regards to best practice responses to elder violence. In addition, the best practice legal responses to elder violence are those that can be used as preventative measures as well. A key example of this would be ensuring that the legal capacity, rights, will and preferences of older people and people with disability are respected and upheld. All people should be provided whatever supports they require to make their own decisions, express their will and preference, and to participate in legal proceedings.

This is especially important to note as the concepts of legal capacity and supported decision-making are raised repeatedly throughout this issues paper. If legal capacity was routinely and robustly upheld and respected, with arrangements in place to assess the adequacy of supports provided to the decision-making of older people, experiences of elder violence would likely be more evident. Subsequently, cases of elder violence that require a legal response may be less prevalent.

In the existing system, guardianship or administrative arrangements may fail to implement human rights principles. In addition, guardianship and administrative orders can emerge as a result of elder violence, as a mechanism that aims to protect older people from the perpetrator of violence. The fact that people may be denied their rights when engaging with guardianship and administration may mean that they don’t readily seek access to civil and administrative mechanisms even where they are needed for their protection from violence. It is also highly problematic that one of the core responses to elder violence, which is already a violation of the rights of older people, may 'double-down' on this breach of human rights by implementing substitute decision-making.

In relation to substitute decision-making, it is vital to note that ‘best interests’ and ‘will and preferences’ are different concepts. While guardians and administrators are often directed to consult with the person, their family members, carers and advocates to ascertain what is happening in their life and what they think or feel about certain decisions, they are ultimately still making ‘best interests’ decisions on behalf of the person. While guardianship laws and accountability mechanisms are necessary to ensure these actors are exercising their authority and decision-making powers appropriately, this does not alter the fact that the decisions being made rarely reflect the rights, will and preferences of the person under these orders.

In a formalised and human-rights-compliant supported decision-making framework, in line with our submission to the ALRC inquiry into *Equality, Capacity and Disability in Commonwealth Laws* (attached), a representative would only be appointed where supports are not sufficient for the individual to express their will and preference. In such cases, the representative would need to investigate, based on the previous opinions, decisions, views and preferences of the person, what their will and preference would be. If this is not possible, the representative would need to employ human rights principles to make decisions.

In order to ensure all people with disability are being provided with an appropriate level and type of support, an independent third party should be created to oversee these processes. A nationally consistent body with oversight of supported decision-making processes could help ensure that people with disability are receiving adequate and appropriate support.

Another element of best practice legal response to elder violence would be the use of witness intermediaries. Witness intermediaries, usually highly skilled and experienced professionals in the area of communication, are currently used extensively in the UK to assist children and people with disability to participate in criminal processes. The use of intermediaries in the United Kingdom has been highly effective. Witness intermediaries are available from the beginning of the investigative process, with the intermediary ideally being called in before a first interview to conduct an assessment of any communication needs, including the person’s differentiation between truth and untruth.

The intermediary then provides advice to the police, and helps them plan the interview, from the set-up of the room, to the rapport building and how to pose the questions. The intermediary is present for the police interview to assist if communication breaks down. Prior to the case reaching court, the intermediary produces an extensive report outlining their findings, assessment and any recommendations. The judge, on the basis of that report, develops a sense of what is required in the courtroom to enable a witness to give their best possible evidence. In most circumstances, the intermediary is present at the ground rules hearing, in which the judge decides which of the intermediary’s recommendations are to be followed. Counsel will be given direction regarding their questioning. Intermediaries are also allowed, during the trial, to alert the judge to potential communication breakdowns if they feel a certain question is beyond the comprehension of the witness.[[12]](#footnote-13)

**PWDA recommends that a nationally consistent supported decision-making framework be developed, that promotes and supports people to assert and exercise their legal capacity.**

**PWDA recommends that witness intermediaries be introduced across Australia, to support the participation of people with disability in legal proceedings.**

**PWDA recommends that an independent, statutory, national protection mechanism be established, with broad functions and powers to protect, investigate and enforce findings in relation to all forms of violence against people with disability, regardless of the setting in which it occurs and regardless of who perpetrates it.**

* 1. The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning: a) ATSI; b) CALD; c) LGBTIQ; d) PWD; and e) people from rural/regional/remote communities.

The following case studies illustrate the experiences of some of PWDA’s individual advocacy clients. These case studies have all been anonymised to protect the identity of the older people with disability who have experienced elder violence in a range of settings.

**Case study: Patricia**

Patricia, a woman in her 80s, is residing in an aged care facility against her will. Patricia is under guardianship arrangements, with a publicly appointed representative is in control of her health and accommodation decisions. Patricia feels as though the Public Guardian is restricting her daughter’s visits to her in the aged care facility.

Patricia has also reported to her daughter that she had been assaulted by staff members on a number of occasions. The police are currently investigating the incident, and Patricia is still residing in the same facility.

**Case study: Janice**

Janice is a woman with psychosocial disability. She migrated to Australia from China with her husband, and is currently in her 50s. Janice experienced physical and psychological violence most of her life, with the beatings getting much more severe after migrating to Australia. She managed to escape her violent husband, and entered into a catatonic state due to the trauma and her schizophrenia.

Janice was then placed in a nursing home, where she spent most of her time in bed, and was non-verbal. She made a slow recovery as she began to feel safe in this setting However, when a new verbally aggressive co-resident moved in, Janice withdrew and became non-verbal once more. She would regularly wet the bed, wouldn’t feed herself and withdrew from interactions with staff and other residents. Janice has no family in Australia, and so her matter was taken up by the Public Guardian.

**Case study: Gavin**

At his guardianship tribunal hearing, it was discovered that Gavin’s pension was still being directed to the boarding house in which he used to live. He had believed that the proprietor would sort it out for him, and get it redirected to Gavin and his family.

However, Gavin doesn’t know what his pension is, or how much money he is owed by the boarding house. This is because the proprietor completely controlled Gavin’s finances, and made financial decisions on his behalf. For instance, he arranged for Gavin to make a will. This was at the boarding house. It is unclear how much control or input Gavin had over this process.

**Case study: Jonathan**

Jonathan, a man in his mid-fifties, was severely assaulted at the boarding house in which he lived for 7 years. He was assaulted by a co-resident, who stabbed him with a knife. It was a very bad cut, but he was not taken to the hospital immediately. Eventually, he was hospitalised and had an operation.

Conflicting stories were presented of the incident. The doctor from the boarding house stated that there were no knives in the vicinity of where the incident happened but that Jonathan had fallen on a sharp door knob. This incident was not properly investigated, and Jonathan’s family was not notified.

**Case study: Maggie**

Maggie is a 56 woman with Down syndrome. She lives alone in a flat and receives some in-home support. Maggie’s brother, John, got in contact with PWDA after Maggie was left money in their father’s will. Two of Maggie and John’s brothers, Matthew and Sam, were appointed to manage this money for Maggie, but John was concerned that Sam is using that money for his own purposes. John also claimed that Matthew and Sam are not allowing Maggie to use the money for reasonable purposes.

John and Maggie have both raised these concerns with their brothers. However, Sam recently told Maggie that if she didn’t stop causing trouble, she would be put into a nursing home. John wanted PWDA’s assistance for mediation, so that all siblings could have an input into how Maggie’s money would be spent.

**Case study: Ned**

Lisa asked PWDA to help her frail, elderly parents, as she believed they were being exploited financially. Her father, Ned, has dementia and Alzheimer’s disease, and her mother, Joanne, was also in receipt of disability services. Ned and Joanne were living with Lisa’s brother Geoff. Ned and Joanne were totally dependent on Geoff for care, support and all of their transport.

It came to light that Geoff was attempting to assume full control of Ned’s assets, and had made a guardianship application to become his parents’ financial manager. In addition, Geoff had obtained statements from two GPs stating that Ned was unable to look after his assets, despite the fact that Ned had never been to see these doctors. Ned wanted to seek the advice of his lawyer, but Geoff did not allow him to visit.

When PWDA spoke with Ned’s lawyer, the extent of the violence and exploitation became clear. Ned’s lawyer stated that Geoff had been restricting all contact that Ned and Joanne had with Lisa; Geoff would often mock his father, and put him down; Ned felt like a slave in Geoff’s home, as he didn’t want to live there, yet was forced to do so; that Geoff charged Ned and Joanne rent; and that Geoff had Ned and Joanne’s passports in his possession, and was not allowing them access to these and other important documents.

PWDA encountered significant barriers to the provision of advice and advocacy, as Geoff screened calls between Ned and his advocate. This further isolated Ned and Joanne, meaning that they were not informed of changes to their guardianship arrangements. Lisa applied for guardianship to challenge Geoff’s claims, but ultimately a public guardian was appointed to assist Ned to make financial and lifestyle decisions.

**Case study: Sergio**

Sergio is a 51 year old man with intellectual disability and autism who resides in a not-for-profit group home. His co-resident, Isaac, started displaying ‘challenging behaviours’ as a result of working with one particular staff member. To manage Isaac’s ‘challenging behaviours,’ management instructed the staff member to cease working with Isaac and instead, begin working with Sergio.

Isaac eventually disclosed that he had been physically assaulted by the staff member. He reported this to the police, telling them that the support worker had kicked him, and that he had also broken a camera over Sergio’s head.

The police failed to investigate the assault as they did not perceive either Sergio or Isaac to be credible witnesses. The disability service then stated that as the police would not investigate, they could not dismiss or discipline the staff member who was accused of assault.

Sergio’s sister supported him to leave the group home, organised counselling and found a respite place until he could get more permanent accommodation. Sergio’s sister wanted to ensure the issue was investigated and responded to appropriately for the sake of the other residents who still resided in the group home and who were at risk of being assaulted by the staff member. Sergio’s sister reported the matter to the National Disability Abuse and Neglect Hotline.

The case was not thoroughly investigated because Sergio was under guardianship and the guardianship body couldn’t proceed as he was no longer living in the house in which the assault occurred.

* 1. 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?

As with data collection of other forms of violence, there is a huge underreporting of elder violence. There are many gaps in evidence, due in part to the exclusionary methodologies of surveys and a failure to disaggregate data by disability. For instance, the Personal Safety Survey, administered by the Australian Bureau of Statistics, is not performed in residential and institutional settings. In addition, the experiences of people who may require some form of communication support, such as people with intellectual disability, and some members of the Deaf/deaf/hearing impaired communities, are excluded from this survey. This means that the experiences of older people with disability are essentially excluded from national data around the prevalence of violence.

**PWDA recommends that the Australian Bureau of Statistics modify its research methodology, sampling techniques and research design to ensure that people with disability are comprehensively included in the collection of data.[[13]](#footnote-14)**

It would appear that the current national focus on domestic and family violence would provide an opportunity for more data to be obtained around elder violence. However, it is unlikely that data drawn from existing domestic and family violence services would provide a comprehensive picture of violence experienced by older people with disability, as these services often do not disaggregate their data by disability or age. Additionally, depending on the state, domestic and family violence may not include elder violence, and so people are not eligible for these services.

State and territory based criminology or crime statistics bodies, such as BOCSAR (Bureau of Crime Statistics and Research) in NSW, can give some indication of violence experienced by people in a range of settings, yet national data on the experiences of older people appears to be lacking or inconsistent. This may be due to different agencies and organisations having varied definitions of what constitutes ‘older people’, as well as narrow definitions of what constitutes domestic and family violence and/or elder violence.

**PWDA recommends that administrative data collected by services, institutional settings and police be disaggregated by disability, to help form a baseline of information about violence levels against older people with disability.**

### Social Security

* 1. 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?

We have limited information on how Centrelink is able to identify and respond to individuals experiencing elder violence. However, we are aware that many of our clients in boarding houses have had their Disability Support Pension (DSP) sent directly to boarding house proprietors. Often, financial managers will inform Centrelink to make these direct payments. Some boarding house proprietors actually require this arrangement to be set up as a pre-requisite for residency. This relates to the broader issue of legal capacity and ‘best interests’, as outlined in response to question two.

This is a form of financial violence, as these individuals are only provided with limited amounts of their money by the boarding house proprietor, as ‘comfort money,’ which may then be denied to the resident as a strategy for controlling behaviour. In many cases, our clients were unaware of how much their DSP was, and how much more they should have been receiving from the proprietor.

Changes should be made to Centrelink and oversight processes to prevent this from happening. For instance, ensuring that Official Community Visitors have access to information about boarding house payments would likely draw attention to financial exploitation experienced by the residents at the hands of the boarding house proprietor or staff members. Individual advocates are routinely denied this information, by financial managers and boarding house proprietors alike. Having an independent and authoritative form of oversight of these payments and allowances would help identify and respond to instances of elder violence in closed settings in a more timely fashion.

**PWDA recommends that the Disability Support Pension thoroughly take into consideration the costs associated with disability support and equipment. The adequacy of current eligibility criteria must also be reviewed, to ensure that all people with disability have enough funding for an adequate standard of living.**

**PWDA recommends that Official Community Visitors across Australia be granted physical access to boarding houses and similar insecure residences, and access to information about boarding house payments to ensure social security payments such as the Disability Support Pension are not being appropriated by boarding house proprietors.**

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

The use of payment nominees relates to issues of legal capacity and supported decision-making as outlined in question two. Payment nominees are designed to act in the ‘best interests’ of the client, yet this undermines the rights, will and preference of people with disability. Instead, these processes should be removed – within Centrelink and within National Disability Insurance Scheme (NDIS) processes – and funding directed to ensuring that people with disability are instead supported to make their own decisions and manage their own money. Supported decision-making processes would allow people with disability more control over their assets, their DSP and any NDIS payments.

**PWDA recommends that Centrelink and NDIS processes should promote supported decision-making arrangements and move to implement these supports.**

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

There is a tendency to shut older people out of decision-making processes, either formally or informally. Carer payments provide an opportunity for people to formalise the relationships of care they may have with their families, and thus provide the opportunity for clarification of expectations and informal oversight of some decision-making processes. Centrelink and other social security related organisations could be well placed to ask older people and people with disability what arrangements are in place. This may involve a consideration of any family agreements when determining carer payments.

Processes must be in place to identify and rectify any instances of carer fraud, whereby carers are claiming to support people with disability but are actually failing to do so. Training packages, more support and more regular reviews may go some way to ensuring carers are acting appropriately and providing sufficient support to older people with disability. In addition, Centrelink representatives could perform a risk assessment, which might check whether they’ve seen the older person, whether they’ve met them, and whether there is formality around the arrangements they have with their families. If the carer is resistant to having the person with them while talking to Centrelink, or is otherwise declining to engage with other components of Centrelink’s risk assessment, this could be further investigated.

**PWDA recommends that Centrelink use their risk assessment processes to identify and respond to elder violence.**

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

Income management may be able to provide some protections against the perpetration of elder violence, yet this should not be in the form of an income welfare card. As highlighted above in relation to people living in boarding houses, income management can also increase the risk of financial abuse in particular situations.

Income and financial management often takes control and responsibility off people instead of providing them with support to develop skills and supports. If a financial counsellor was made available, in some instances, financial management may not be required. As a first step, older people should be supported to develop their financial literacy, taking the continuum of support into consideration. This could mean starting off with a higher levels of financial management, which are gradually decreased as the financial manager or trainer works alongside the individual to support them to become independent managers. It is vital that older people and people with disability are in control of their financial decisions, and support should be provided to ensure that this is the case. This highlights yet again the significance of a fully developed supported decision-making framework.

**PWDA recommends that financial management should be proportional and time limited, and designed to ensure that older people are appropriately supported to move towards independent income and financial management.**

* 1. 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?

In order to access the Age Pension and DSP, individuals are required to have resided in Australia for 10 years. For access to other forms of income support, the waiting period is significantly less, at 2 years.[[14]](#footnote-15) As a result of these extended waiting periods, older people migrating to Australia may be forced to cohabit with relatives or in-laws, and may be totally financially reliant on these family members. Such forced cohabitation and reliance may increase these individual’s risk of experiencing elder violence. Changes must be made to residency requirements and waiting periods for social security payments to ensure that all residents of Australia have access to adequate income support to fulfil Australia's obligation to provide a reasonable standard of living to all residents.

In addition, access to the National Disability Insurance Scheme (NDIS) is restricted to citizens only, with permanent residents not receiving any support through the Scheme. This means that older migrants with disability must pay or do without disability support. This has a substantial impact on their standard of living, for example impacting on whether they can maintain household and personal hygiene. It may also mean that migrants with disability are disproportionately dependent upon informal supports, including from family. This can represent a higher risk of experiencing violence, including financial exploitation, where family members require payment for the provision of support. Even where elder violence is not a consequence, over-reliance on these informal supports may impact on relationships with family in negative ways. All permanent residents must receive timely and appropriate disability supports.

**PWDA recommends a review of the ten year waiting period for the Disability Support Pension, focussing on fulfilling the human rights of migrants with disability.**

**PWDA also recommends an investigation of the barriers to equal access to disability support services experienced by migrants with disability.**

* 1. 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?

No comment.

### Aged Care

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

Attitudes, cultures and practices in aged care need to recognise the human rights of residents. Far too often, older people with disability experience elder violence at the hands of home care workers, support workers, staff in residential facilities and co-residents in residential institutions. However, there is limited data on the perpetration of this violence.

However, we know that closed institutions bring with them higher levels of violence.[[15]](#footnote-16) Data on violence in closed aged care settings is limited, as approved providers are only mandated to report certain types of assaults. Co-resident violence, for instance, is not part of the approved aged care provider compulsory reporting requirements.[[16]](#footnote-17) However, data from the NSW Bureau of Crime Statistics and Research (BOCSAR) and the NSW Ombudsman’s Disability Reportable Incidents Scheme illustrates that there is a significant amount of violence occurring in closed settings such as boarding houses, supported group accommodation, nursing homes and aged care facilities.[[17]](#footnote-18)

As mentioned in the table and in response to question four, surveys around disability and violence typically do not provide an accurate depiction of the reality of violence and the violation of human rights.

For instance, instead of asking questions around how many hours of care people with disability and older people receive each day - questions which are usually answered by support workers rather than people with disability or older people themselves - the Disability, Ageing and Carers survey administered by the ABS should be revised to instead look at the extent to which residential institutions are fulfilling the rights of people with disability.

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

One way of identifying, responding to and mitigating some of the risks older people with disability face in aged care settings is to ensure that community based aged care assessment programs are utilised. The government agency responsible for health services should engage with new and existing community based programs and types of review to provide an external form of oversight, with independent actors verifying that individuals receiving aged care are being provided the appropriate level and type of support.

In addition, the issues paper outlines that people receiving aged care have ‘user rights’ that are provided by a set of principles. While these rights and responsibilities are important, and it is vital they are upheld, it is worth noting that many of these rights, and more besides, are also detailed in numerous human rights instruments.

**PWDA recommends that aged care staff and support workers receive extensive training on the human rights of the older people to whom they are providing care, including training on the CRPD, ensuring recognition that any breach of these *User Rights Principles* constitutes a violation of the residents’ basic human rights.**

In line with this rights based approach to aged care, the assessment of risk must be altered. Rather than assessing what is commonly referred to as the ‘inherent vulnerability’ or ‘risk’ of the individual, and how individual characteristics, conditions or experiences to contribute to this, risk assessment must rather identify structural and systemic ways in which individuals may be made more vulnerable to elder violence. For example, if an individual has no family or friends, they have fewer people to whom they may report potential violence. Similarly, if they have high communication needs, disclosure may be difficult unless a particular alternative communication device or system is available to them. This approach ensures that an individual is not held responsible for failures in support system.

* 1. 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?

As outlined in question two, supported decision-making processes should be utilised as best practice. This would involve changes to aged care laws and legal frameworks to ensure that decisions cannot be made on behalf of a care recipient, but rather, the recipient of care must be thoroughly supported and included within all decision-making processes.

* 1. 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?

The introduction of Consumer Directed Care to all new home packages provided a shift to home care service delivery. In this model, older people and people with disability are placed at the centre of decision-making processes, and are supported to identify their needs and what supports they want. It is important that all older people with disability, especially those living in residential or institutional settings, have genuine control over what care they receive, when they receive it, who is providing the care, and so on. Providing people with this choice and control will help prevent services implementing informal forms of substitute decision-making and undermining the rights, will and preferences of their residents.

However, in the transition towards the NDIS, there are concerns that older people are experiencing a reduction in their choice and control. For example, with the recent changes to NSW Home Care, we have had numerous calls from older people with disability requesting assistance as they have been denied home care support but are not eligible for the NDIS or for Aged Care. Many people with disability no longer have access to home care supports, and a number of these have been forced into nursing homes as they haven’t been provided with any alternatives.

The supported decision-making model outlined above in question two would assist in ensuring that this choice and control were exercised.

As part of any consumer-directed support model, a risk assessment ought to be performed in the planning stages. If someone is assessed to be more vulnerable to violence due to certain structural or systemic factors, more support or oversight may be required. For instance, more regular reviews may be performed on the level of funding or support they are receiving, and whether this is appropriate.

**PWDA recommends that Consumer Directed Care packages be available within all forms of aged care.**

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

It is important to provide staff with training as not only a way of recognising and responding to elder violence, but also as a way of preventing it. In our experience delivering training, once the staff of disability services are aware of the ways in which practices and procedures make people with disability more vulnerable to violence, they are more willing for residents to receive training and support in relation to these issues.

**PWDA recommends that induction processes and professional development training be coordinated across the nation, with staff receiving mandatory training on topics such as the rights of residents, supported decision-making and consent, recognising and responding to violence and complaint handling processes.**

For some individuals receiving aged care, this may be the first time they are receiving assistance from an organisation in this manner. As such, they may not be aware of their rights or how to make a complaint. Providing training to recipients of aged care services on the ways in which they can protect themselves, respond to or report elder violence would go some way to safeguard them from these experiences.

Changes must also be made to existing accreditation standards. These are currently not outcomes-based, meaning that the quality of care provided by aged care facilities is being assessed solely based on the service’s policies and procedures. This focus on inputs and policies, instead of practices and outcomes may increase the likelihood of staff mistreating or providing sub-standard care to residents, as they are not being assessed on these treatments.

This ultimately means that aged care services are operating according to a medical model of care, rather than a social model focussed on the outcomes and benefits certain practices have on the lives of clients. Outcomes-based accreditation processes would also align more closely with the model of consumer directed care, as it would provide older people with more accurate information about the quality of care they would receive at that service.

**PWDA recommends that the requirements and responsibilities of all aged care providers be consistent across Australia, to ensure a reliable quality of care for all older people, regardless of where they are receiving care. This would require nationally consistent ratios for staff to care recipients, as well as ensuring that all staff meet a minimum qualification threshold.**

**PWDA recommends that aged care accreditation standards be changed to an outcomes-based model, and that accreditation information be readily available to the public to ensure older people with disability are able to make fully informed choices.**

**PWDA recommends that all older people receive training on elder violence, such as what constitutes elder violence, what avenues are available for support, what reporting mechanisms exist and how to access them.**

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

Aged care facilities often environmentally restrain their residents, as they are typically locked and the movement of residents is either partially or completely restricted. Residents may be restrained physically, through the removal of wheelchairs or other mobility aids. Restrictive practices may also involve the use of mechanical restraints, whereby residents are tied down and are unable to move. We have had significant experience with chemical restraint being used in boarding houses and aged care facilities, overmedicating residents and using sedatives to make residents more compliant with staff, and thus easier for them to manage. The use of all these forms of restraint is a type of violence, in addition to making older people with disability much more vulnerable to additional violence.

Data on the use of restrictive practices is difficult to ascertain, as different states and territories have different systems of authorisation, which apply only in particular settings and may exclude other settings in which restrictive practices occur. Often these are overseen by the guardianship framework, with older people with disability having no say over their treatment under these orders.

Furthermore, the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector, by providing guidance on how to respond to these issues, essentially amounts to tacit approval of these practices. Tangible steps must be taken to eliminate the use of these practices in all settings within a reasonable timeframe. Focus must be on environmental or service factors that may be causing individuals to respond or behave in ways that raise questions around the use of restraint. Once identified, any necessary changes to environments, services, procedures and policies must be made in an attempt to address individual behaviour.

**PWDA recommends that the use of restrictive practices in aged care be eliminated, as they constitute a violation of the right of older people with disability to be free from torture or cruel, inhuman or degrading treatment or punishment.**

**PWDA recommends that the Australian Government ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and implement mechanisms to prevent people from being mistreated in closed settings.**

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

Currently, approved providers must report allegations of ‘reportable assaults’ to the police and the Department of Health within 24 hours.[[18]](#footnote-19) However, this may not always occur. Institutions are often protective by nature and may act as gatekeepers. Staff may believe their gatekeeping is in the best interests of the care recipients. For instance, staff may intercept phone calls from family or friends, or prevent contact with advocates, community visitors or external supporters. The rationale often provided in these instances is that the resident wouldn’t understand what was occurring, or they might get upset or agitated. This is problematic, as it reduces the number of people the resident has contact with, and thus the number of people to whom they may disclose elder violence.

Concerns arise when considering the exemptions from reporting, including reportable assaults committed by a recipient of aged care who has cognitive impairment.[[19]](#footnote-20) These assaults should still be responded to formally, and the aged care facility should ensure these are addressed appropriately. We have concerns where the aged care provider puts in place arrangements to ‘manage’ the behaviour or care of this resident, especially as the sole response to a violent incident. Oftentimes, these forms of behaviour management involve the use of restrictive practices, such as limiting the resident’s access within or outside of the facility, or medicating the resident to make them more compliant. Instead, the precursors for the assault should be assessed, taking into consideration why the individual acted in the way they did, and a positive behaviour management plan be put in place.

While we acknowledge the issue of criminalisation of people with cognitive impairments, co-residents should have their assaults taken seriously and should be given the opportunity to report to the police. Individuals should be supported to engage in the justice system, as violence is violence, and people with disability are entitled to a justice system response on an equal basis to others. There should not be two forms of justice: one for people without disability, and one for people with disability.

**PWDA recommends that current compulsory reporting of physical and sexual assaults perpetrated against residents of aged care facilities should apply to all aged care services, not just approved providers.**

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

Older people with disability must be made thoroughly aware of the complaints mechanisms available to them. Information must be provided about the internal complaints processes, including who will respond to complaints, what the process involves, how long it might take and what types of outcomes might be expected. This information must be provided in accessible formats, including in Braille, Easy English and pictorial versions. In addition, older people with disability should have supports available to help them through the process of making a complaint.

Often, for people moving into aged care facilities, this will be their first experience of institutional living. They must be informed of their rights and responsibilities, and of the mechanisms that work to support and protect them. They must also be informed of the strategies in place to protect them from violence, and how they can and should complain if these strategies are ineffective.

A ‘no wrong door’ approach to complaints should be implemented across the board, meaning that complaints don’t have to be formal to be taken seriously, and that warm referrals are provided to the correct complaints body. Information about making complaints should be disseminated to all members of the community as part of a public awareness campaign, and complaints raised by members of the community should be taken seriously and be subject to investigation.

Compulsory reporting of physical and sexual assaults perpetrated against residents of aged care facilities should apply to all aged care services, irrespective of their funding source. In addition, aged care facilities should be encouraged to engage external investigators when responding to complaints. Implementing an additional layer of oversight and scrutiny could ensure that responses to allegations of elder violence are appropriate, proportionate and not biased by internal staff or cultures. This external and independent body could be that of the jurisdiction’s Ombudsman.

**PWDA recommends that all complaints systems be flexible, accessible and provide support to participate where required.**

**PWDA recommends that older people with disability receive training on complaints mechanisms available to them.**

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

When sanctions are in place, the current system is to send a letter to the residents of the sanctioned aged care facility. This letter and subsequent information should be provided in accessible formats where required. The issues should be clearly explained and residents should be given ample opportunity to engage in discussion around any further problems or queries they would like to raise. Aged care facilities should approach this as a consultation process, ensuring that their residents have a say in how the problems or issues for which they were sanctioned are addressed. This is important, as by the time a sanction has been made, the residents of the home are already at serious risk.

The safety of the residents receiving care should be paramount, above the reputational risk to the organisation, and sanctions should have serious repercussions for the aged care facility. If an aged care home receives a sanction and residents decide they want to leave, this should be permitted and they should be provided with alternative accommodation or service providers of their choosing.

**PWDA recommends that an independent advocate be made available to every resident in an aged care home that has received a sanction.**

* 1. 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?

The role of an independent advocate is vital to safeguarding the rights of people with disability, identifying violence, and facilitating access to justice and a thorough complaints process. Independent advocates must be granted permission to enter any aged care facility or disability service, as currently, they are often denied access by services or proprietors. Due to the current, quite limited number of organisations funded to provide individual advocacy, it is difficult for people with disability, including older people, to access this support.

The benefits of each jurisdictions Official Community Visitor programs must be investigated, considering which arrangements result in better outcomes. For instance, in NSW the Official Community Visitors are paid, meaning visits take the form of a quasi-audit. In Victoria, on the other hand, these are voluntary roles. The argument is that these Community Visitors are not beholden to an employer, and thus may have more freedom or flexibility to make rigorous checks. More regular visits and meaningful engagement, alongside training on how to identify elder violence through behavioural changes, would improve the ability of Official and unofficial community visitors to recognise and respond to elder violence.

**PWDA recommends that Official Community Visitor programs and other types of community oversight be sufficiently resourced for a substantial number of visits, in order for these individuals to build meaningful and trusting relationships with the residents of these institutional settings.**

**PWDA recommends that mainstream and disability specific government and non-government advocacy services be fully funded and responsive to the needs of older people with disability receiving aged care.**

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

No comment.

### The NDIS

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

The NDIS is a once in a generation change to how disability services operate in Australia, and should be an opportunity for people with disability to exercise choice and control over what services and supports they receive. However, we have a number of concerns around how this is being executed in practice. Some of the issues we have with the implementation of the NDIS indicate possible avenues for the perpetration of elder violence and other forms of violence.

For instance, we are hearing of issues around the planning process and the implementation of plans. ‘My First Plan’ is often nothing more than a rollover of the same services the person with disability is currently receiving. This plan is routinely being devised with little or no consultation, and does not take into consideration the various additional services that the individual may be entitled to, or may desire. Reports of such rolling over of services and plans is concerning, as it indicates that some of the major services are becoming a one-stop shop within the NDIS. Robust and independent oversight is required to prevent this from happening. Protections should be put in place to ensure that more than one service is involved in the participant’s life, for instance, and that natural supports are maintained wherever possible.

In other cases, the NDIA or a contractor will seek to contact residents of boarding houses or other residential institutions, only to be told by staff or proprietors that these residents are unable to discuss their plans with them. As representatives from the NDIA or contracted organisations have limited disability awareness or expertise, this has resulted in these individuals taking this information at face value, rather than questioning this gatekeeping behaviour. This has on occasion led to boarding house proprietors becoming plan nominees for the residents of their house. This not only undermines the provision for supported decision-makers within the *National Disability Insurance Scheme Act 2013* (Cth), but is a huge conflict of interest which can result in significant financial violence and exploitation.

Individual advocacy services must remain external to the NDIS. An independent advocate will often support people with disability on a host of issues, not just around the provision of services and support. Individual advocacy must thus remain external to the NDIS to ensure people with disability receive support on issues relating to education, employment, violence, neglect, exploitation, discrimination and legal issues.

**PWDA recommends that individual advocacy services remain external to the NDIS.**

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

We are concerned that there is currently no Quality and Safeguards Framework for the NDIS, though recognise that there is one in development with the Department of Social Services. Instead, the NDIA is currently using existing state and territory frameworks. These are inadequate, and obscure the rates of elder violence.

The risk assessments currently undertaken by NDIA staff and contractors revolve around the ‘vulnerability’ of the person. As mentioned above (in question 12), this should instead involve an assessment of the environmental and service based factors that may be increasing that individual’s risk of experiencing violence. In such cases, more regular reviews of plans or of plan nominee arrangements may be useful, as might the consideration of how additional services or supports could be integrated into the individual’s plan (to increase connections and oversight where sole services are providing all types of support).

Plan nominees may be suspended or cancelled by the CEO of the NDIA, provided they have reasonable grounds to make these changes. This higher level of oversight, while important, may mean that the conduct of plan nominees will fly beneath the radar and not be scrutinised as closely. In relation to plan nominees, it is worth noting that while we disagree with guardianship legislation and appointed decision-makers, if there was a choice between having a guardian or a boarding house proprietor as the plan nominee, the guardian would be the better choice. This is because the guardian is still technically bound by the ‘best interests’ approach to decision-making, whereas boarding house proprietors may make decisions based on self-interest.

In addition, we have concerns regarding self-management. If an individual self-manages and chooses to receive service from an unregulated provider, that service is not bound by registration to the NDIA, nor the Quality and Safeguards Framework. All services should be audited and accredited, with sanctions associated with the failure of these processes. Any single instance of violence should risk the registration status of a service, in order to implement a zero tolerance to violence policy. Indeed, a legal framework should be developed to make it the board’s responsibility to ensure that the service is free from any form of violence.

**PWDA recommends that the Quality and Safeguards Framework is nationally consistent, robustly enforced and thoroughly communicated to participants of the NDIS.**

**PWDA recommends that people with disability be involved in all aspects of the design of the Quality and Safeguards Framework, to ensure that its design, implementation and evaluation is responsive to the needs of the cohort it is supposed to protect.**

**PWDA recommends that the Framework be embedded in a human rights framework, and must contain strong references to the human rights of people with disability, as outlined by the CRPD and the NDIS Act.**

**PWDA recommends that the Framework also include measures to promote and support people with disability to assert and exercise their legal capacity, by safeguarding against violence and exploitation occurring in informal and formal supported decision-making arrangements.**

**PWDA recommends that supported decision-making be a key element of the Framework, directing the actions of NDIA planners, registered providers and complaints bodies, among others.[[20]](#footnote-21)**

### Superannuation

* 1. 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?

There is quite stringent regulation around the superannuation industry.[[21]](#footnote-22) Superannuation funds often have strict access requirements, numerous checks and limitations on transfers between superannuation funds.

Stricter access requirements and more comprehensive checking processes as seen in this industry, could also be implemented by other financial institutions such as banks, or even in social security payments. In addition to these industry restrictions, all types of financial violence could be mitigated through the use of supported decision-making alongside an independent oversight body that assesses the appropriateness of the supports being provided.

### Financial Institutions

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

Financial violence against older people with disability is quite common, yet there is limited information available regarding the exact statistics. However, anecdotally, PWDA is aware of a number of cases in which family members or boarding house proprietors have financially exploited people with disability. Some examples of these are provided as case studies in question three.

* 1. 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?

Financial institutions such as banks could identify and respond to elder violence. This could be achieved by raising awareness of financial violence in the wider community, and providing staff of financial institutions with training around how to detect financial violence, and how to intervene once it is identified. Older people could also receive training on how to protect themselves, and what response mechanisms are in place to address past or current experience of financial violence.

**PWDA recommends the creation of a nationally consistent approach to monitoring and reporting financial exploitation, to ensure that responses of financial institutions are appropriate when they suspect cases of elder violence.**

The question around implementing reporting requirements is an interesting one. This could perhaps work in collaboration with Ombudsmen in each jurisdiction, and could potentially link into (or extend) the work of the Financial Ombudsman Service Australia.

### Family Agreements

* 1. What evidence is there that older people face difficulty in protecting their interests when family agreements break down?
	2. What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?

Family agreements involve a certain level and expectation of trust. As our understanding of elder violence is that of a trusted relationship where there is the expectation of care and/or support, breaching family agreements would thus constitute elder violence.

It is important to normalise the formalisation of family agreements. Families should thus be encouraged to write out any family agreements they construct, or at the very least, acknowledge the oral agreement in a basic document. A standard format or readily available kit would be beneficial, based on will kits available at newsagencies, for example. A kit such as this could support families to think through any issues or questions that may come up, stepping them through key considerations to ensure everyone is on the same page prior to entering into a family agreement. The independent supported decision-making oversight body proposed in question two could also play a role in assessing how these agreements were developed.

**PWDA recommends the creation of a readily available kit, devised to support families to think through and document family agreements.**

### Appointed decision-makers

Substitute decision-making should be eliminated, and the focus should instead be on supporting people to make decisions, exercise their rights and to express their will and preference. Key conceptual issues around legal capacity and substitute and appointed decision-makers have been raised previously in question two.

* 1. 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?

We regularly support clients who are under substitute or appointed decision-making arrangements, and are concerned by the concept of ‘best interests’ that is inherent to guardianship. As mentioned above, people with disability must be recognised as having legal capacity, and are entitled to the supports necessary for them to express their will and preference.

These arrangements can easily contribute to violence, exploitation and ill-treatment, as substitute or appointed decision-makers often fail to respect and promote the rights, will and preference of older people with disability. When considering the use of powers of attorney and appointed decision-making in boarding houses, this is often the case. Some institutions require their residents to have a power of attorney prior to moving in, as they believe this makes their job easier, allowing them to liaise with families or substitute decision-makers rather than the residents themselves. This also contributes to some of the gatekeeping around these types of institutional settings.

In our experience, powers of attorney are often untrained, and don’t always understand their responsibilities. Powers of attorney and other appointed decision makers often have limited knowledge around the dynamics of violence, including how to recognise it and how to intervene. It is vital that powers of attorney receive appropriate training on their role and what their limitations are. In addition, many powers of attorney fail to ask, and don’t even consult the person with disability to try to ascertain what decisions they would like made on their behalf.

**PWDA recommends that powers of attorney receive training on supported decision-making, their responsibilities and the dynamics of violence.**

* 1. 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?

PWDA is opposed to the continued use of substituted and appointed decision-making arrangements across Australia. However, if this is to continue, a national register of decision-making instruments should be created, to ensure sufficient oversight of the actors and mechanisms involved in decision-making processes (such as powers of attorney, trustees, guardians and administrators). Accountability mechanisms and registration systems must be rigorous, to discourage people from taking advantage of their decision-making power and acting inappropriately.

Ideally, this register would emerge as an aspect of a national supported decision-making framework, and would require a thorough-going change of current systems and mechanisms. A new system would emphasise the importance of a continuum of support, available to everyone, to enable them to make decisions that reflect and express their rights, will and preference.

* 1. 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?

Expanding the duties and responsibilities of attorneys and appointed decision-makers could make it easier for these same individuals to mistreat or exploit older people with disability. Making any amendments or additions to these roles should be done in consultation with the very people these processes disproportionately affect – older people and people with disability.

As mentioned above, the reliance on appointed or substitute decision-makers must be addressed.

**PWDA recommends that supported decision-making processes be implemented, fully funded and subject to independent oversight in line with our recommendations in the attached submission.**

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

Guardianship arrangements continue to operate within a substitute decision-making framework. Older people and people with disability constitute a huge proportion of those under guardianship and administration arrangements. In NSW, for instance, the largest proportion of applications to the NSW Civil and Administrative Tribunal, Guardianship Division, were for people with dementia, at 44%.

The violence perpetrated under these arrangements could be prevented by eliminating their use in favour of a supported decision-making framework. For more information about this, see question two above, as well as PWDA’s submission to the ALRC report *Equality, Capacity and Disability in Commonwealth Laws*.[[22]](#footnote-23) In addition, case studies regarding elder violence within guardianship and administrative arrangements can be found in response to question three above.

### Public Advocates

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

While there may be benefits to extending the powers of public advocates to allow them to investigate and respond to allegations of violence, neglect or exploitation against people with disability, not every jurisdiction has a public advocate.

**PWDA recommends that every state have a public advocate with the capacity to undertake systemic and own motion investigations.**

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

Adult protection legislation should not be introduced, especially if it is similar to existing child protection legislation. Care needs to be exercised to ensure that any legislation around elder violence is not infantilising, and that it doesn’t impede the dignity and rights of older people. The same can be said for any legislation introduced to protect people with disability from violence, as these individuals often experience paternalistic attitudes which ultimately leave them more vulnerable.

**PWDA recommends that existing forms of investigations, reporting guidelines and mechanisms be strengthened and standards should be made consistent across Australia.**

### Health Services

Health services can play a key role in identifying and responding to elder violence. In 2005-2006, people aged 65-74 made approximately 8 visits to a General Practitioner, while those aged over 85 made approximately 9.5 visits.[[23]](#footnote-24) As such, health professionals are well placed to build relationships and trust with older people with disability, increasing their likelihood of recognising or responding to elder violence.

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

While the Clinical and Policy Guidelines provided by the World Health Organisation[[24]](#footnote-25) provide a foundational starting point, health professionals must also be trained in recognising and responding to violence that occurs outside of an intimate partner relationship.

Health professionals should be encouraged to understand that identifying and responding to elder violence is part of their core role. They should receive training to commence preliminary investigations if they suspect older people are experiencing violence. This could involve, for instance, asking older patients whether things are ok at home, or whether they feel anxious about anything. Health professionals should also give patients opportunities to talk freely and confidentially, without their support worker being present, to increase the opportunities for older people to disclose elder violence. Resources such as *Identifying and responding to family violence: a guide for general practitioners[[25]](#footnote-26)* may provide a useful framework for health professionals to start thinking more broadly about the role they play.

Training should also cover how elder violence may present at hospitals. Older patients from nursing homes, boarding houses or other residential settings presenting to hospital with pneumonia or poor nutrition, for instance, should be investigated as a possible case of elder violence or neglect.

In addition, robust referral pathways should be implemented, ensuring smooth information sharing processes from health professionals to services working on issues of violence prevention, such as domestic and family violence services and community legal services.

**PWDA recommends that all health professionals receive mandatory training on recognising and responding to elder violence in a range of settings.**

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

We note that codes of conduct and guidelines for medical professionals are available online, through the Medical Board of Australia.[[26]](#footnote-27) It is positive to see that these guiding documents are available in an accessible online format, yet providing these codes in easy English formats would also be beneficial. The code of conduct outlines that although it is targeted at doctors, it is also aimed to inform members of the broader community about what to expect from their doctors.

**PWDA recommends that information about medical professional codes of conduct be provided in easy English or pictorial formats to ensure that all people know what to expect from their health practitioners.**

* 1. 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?

There would be many benefits of establishing partnerships across different sectors in response to elder violence. Bridging health and legal sectors to address the legal needs of older people with disability experiencing violence would give these people more opportunities to respond to elder violence. This partnership could be strengthened even further by the presence of an independent advocate, or an elder violence expert.

Partnerships and broader models of bystander responsibility could also assist with the identification and response to elder violence. In the UK, a ‘no wrong door’ approach to adult and child safeguarding was established.[[27]](#footnote-28) This approach encouraged members of the community to express their concerns for the wellbeing of children and people with disability to doctors, chemists, pharmacists and other community actors. These groups were resourced to respond to these concerns, as they had been trained in recognising and responding to signs of violence. Public education campaigns that informed the community about these avenues were run to ensure people were aware that there were various places they could take their concerns. This approach has since been positively evaluated.

**PWDA recommends that a bystander responsibility ‘no wrong door’ approach be implemented nationally, to improve the identification of and response to elder violence in Australia.**

* 1. 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?

In order to appropriately recognise and respond to elder violence, hospitals, health services and the police must strengthen information sharing practices. Elder violence, like domestic and family violence, requires an integrated service response, and all agencies involved in responding to this violence must be on the same page.

The practices of It Stops Here Safer Pathway, the recent reform to NSW domestic and family violence services, could provide some guidance in this regard. Safer Pathway focuses on supporting the safety of individuals experiencing domestic and family violence, often tailoring support to meet their immediate and longer term needs. This is achieved through Safety Action Meetings, which involve key decision-makers from the Departments of Housing and Health, and representatives of domestic and family violence services. In these meetings, all stakeholders share information necessary to create a plan to support and maintain the safety of the person experiencing domestic and family violence.

The Safer Pathway system is based upon a shared risk assessment tool (the Domestic Violence Safety Assessment Tool), which provides a common language for all community services (as well as the police) to use in their efforts to support people experiencing violence. The referral system and information sharing protocols are clearly outlined in this system, meaning that all actors in this space are aware of what their responsibilities are and how they can work alongside other services.

**PWDA recommends that a system of information sharing, clear referral pathways and shared risk assessment frameworks, based on the NSW Safer Pathway model, be developed to support older people experiencing elder violence.**

### Forums for redress

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

As mentioned in question 17, it is important that there are different avenues for older people to explore in response to elder violence, however, we need to ensure we’re not preventing people from accessing criminal justice mechanisms where this is desired.

In addition, as outlined above in question two, those who seek remedy through civil and administrative tribunals may find themselves unwillingly subjected to guardianship or administrative arrangements.

* 1. 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?

**PWDA recommends that all courts and tribunals be fully accessible for older people with disability.**

All courts and tribunals should adhere to universal design principles, should all have hearing loops, and should ensure that the needs of older people with disability engaging with their services are appropriately met. This may involve changing procedures and practices to ensure additional support or assistance is provided to these individuals. In addition, any application forms, brochures or information about the procedural requirements and court processes should be readily made available in a range of accessible formats, including large print and Easy English. Support must also be available for people needing assistance filling in forms and negotiating court processes.

* 1. 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?

Alternative dispute resolution mechanisms such as mediation and conciliation may be effective as responses to elder violence, especially where family relationships are involved. However, the older person with disability must want to participate in these processes, and must be supported to engage in these mechanisms if necessary. In addition, if older people with disability decide to instead engage in criminal justice responses to the violence they have experienced, this must also be fully supported. Choosing between different options may be difficult, and older people should be provided with adequate decision-making support.

As an organisation, we have limited knowledge of the Elder Relationship Centre and the Seniors Mediation Program. We would recommend that any alternative dispute resolution mechanisms be fully accessible to all older people, and cater to the individual needs of clients.

### Criminal Law

Any reviews to existing criminal laws, or the creation of new laws, should involve thorough consultation with older people with disability, to ensure the experiences of this cohort are written into legislation, and any policies and practices emerging from these.

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

Creating specific offences within legislation regarding the perpetration of elder violence may draw greater attention to the experiences of this cohort. However, public awareness campaigns, education programs for older people and training programs for police and judicial officers would likely also have this effect.

**PWDA recommends that elder violence should be included as part of existing state and territory legislation regarding domestic and family violence.**

There are many correlations between elder violence and domestic and family violence, as these types of violence often occur in closed settings and can include crimes of a physical, emotional, sexual and financial nature. Rather than establishing new legislation in relation to elder violence, state and territory domestic and family violence legislation should actively incorporate the experiences of violence against all older people, and older people with disability in particular, within existing legislation.

For instance, the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) implements a broad definition of ‘domestic relationship’, one that is inclusive of relationships of paid or unpaid care. It also includes violence experienced at the hands of co-residents in residential facilities. As the experiences of older people with disability in these settings are captured by this legislation, these individuals are (theoretically) able to access appropriate domestic and family violence services and supports.

Including elder violence within domestic and family violence legislation would also ensure that older people with disability reporting ‘elder violence’ in these settings would automatically have access to appropriate domestic and family violence supports. Access to specific forms of collecting evidence, such as Domestic Violence Evidence in Chief or the Domestic Violence Forensic Unit collection of physical evidence would also be facilitated. Ensuring automatic access to such processes would likely increase access to justice system responses for this cohort.

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

Legislation in most jurisdictions outlines the duty of certain individuals to provide the ‘necessities of life’ for people in their care.

**PWDA recommends that all jurisdictions should have laws regarding the failure to provide ‘necessities of life’, clearly outlining the repercussions of causing harm or death through such acts of neglect.**

* 1. 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?

As mentioned above, elder violence should come under the wider umbrella of domestic and family violence legislation, policy and response. As such, domestic violence liaison officers or other relevant, trained police officers should be first responders to instances of elder violence, to ensure older people receive timely and appropriate support and assistance.

**PWDA recommends that the process of applying for protection orders be simplified to ensure this process and the protections it offers are accessible to all, especially for older people with disability.** **Appropriate supports must be available to help people with disability through this process, such as easy English or pictorial guides to the process, legal advice or assistance.**

Steps should be taken to ensure that defendants are aware of the significance of the protection order, and that any breaches constitute criminal offences. This may involve police having longer talks to defendants to ensure they’re aware of the provisions of the protection order, to communicate why the protection order is in place and that breaches will be dealt with seriously. In some areas of NSW, police officers are visiting applicants and defendants of apprehended domestic violence orders (ADVOs). The reasoning behind this is to ensure the applicant feels supported, believed and protected, and to make the defendant aware that the police are aware of the order and will respond appropriately to any breaches. These visits seem positive thus far, as they place the responsibility for upholding the ADVO back on the perpetrator and provide additional oversight which may prevent ADVO breaches and thus future violence.

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

Understandably, some older people with disability do not want to report their experiences to the relevant authorities. This may be because they are afraid of the repercussions of speaking out, they may fear losing their support services, or losing or damaging their relationship with the perpetrator. Others may be unable to report, due to gatekeeping of staff or an inability to contact police due to their isolation from the community.

However, in instances where older people with disability do not have any opportunities to report their experiences to the police, some intervention and support is required. In such cases, Official Community Visitors, and members of other community visitor programs, are vital. Forms of independent community oversight are required in institutional and residential settings, to ensure that people with disability who are experiencing violence are provided opportunities to speak out about their experiences.

PWDA believe that rather than a threshold-based mandatory reporting model, reporting of elder violence should be based upon a model similar to the current NSW Safer Pathway. In this system, Local Coordination Points perform follow ups to reports of violence, reaching out to offer support to people experiencing violence in all settings. This would allow older people with disability more dignity, as they would have the final say over whether they want or need support.

Resourcing the community adequately is a much better solution than creating punitive mechanisms to ensure that people report. Members of the community should know that when they’re reporting, they’re providing supports to the person in the violent situation, rather than necessitating a police investigation (although this may be part of the support). As mentioned in question 37 the introduction of a ‘no wrong door’ approach to elder violence may also mitigate some of the concerns around reporting.

* 1. 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?

**PWDA recommends that police officers and prosecutorial teams receive mandatory training on violence against people with disability.**

Training should cover how to recognise violence, respond to it and support people with disability through reporting and prosecution processes. This may help to address the reluctance of police officers to take reports or investigate cases involving people with disability. Addressing stereotypes and discriminatory attitudes at times held by police officers toward people with disability is the first step in increasing access to justice for this cohort.[[28]](#footnote-29)

**PWDA recommends that dedicated teams working on issues of domestic and family violence and elder violence be established.**

These teams should implement best practice responses, ensuring that regardless of age or disability, older people with disability who have experienced elder violence have access to justice on an equal basis with others. This may involve the use of witness intermediaries to ensure older people with disability are supported to make reports, give evidence and participate in justice processes fully.

It is unclear whether safety assessment tools used by the police and community sector in each jurisdiction explicitly reflect the needs of those who are most likely to experience violence. Within NSW, recent reforms to domestic and family violence responses leave much to be desired. For instance, the current Domestic Violence Safety Assessment Tool (DVSAT) used to determine whether people experiencing domestic and family violence are at significant risk, has no question around disability.

**PWDA recommends that safety assessment tools and guides used by the police and community sector in all jurisdictions must include a question around whether the victim relies on the perpetrator for care and/or support.**

As outlined in question 38, the DVSAT provides the police and the community sector with a shared understanding of risk and helps to break down the siloes between different parts of the violence response system. This should be rolled out in all jurisdictions, to facilitate a best practice, unified and collaborative approach to violence prevention across Australia.

As outlined in question two, a pilot program in the United Kingdom recommended that intermediaries be used to provide guidance to actors in the criminal justice system around the supports or communication needs of children and people with intellectual disability.

Furthermore, systems responding to these types of violence must be totally accessible for all individuals. If the police make note of someone’s disability or support needs when responding to reports of elder violence, subsequent responses (in terms of domestic and family violence service responses and legal responses, for instance) can ensure they meet the needs of the older person with disability requiring assistance.

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

**PWDA recommends that steps be taken to ensure all people with disability, children and older people have access to any supports required for them to participate in justice processes.**

These supports are often outlined in legislation, outlined for use by ‘vulnerable’ or ‘special’ witnesses. Court officials and prosecutors should receive training on the supports available for these groups of people, and should provide these supports whenever necessary. People with disability should receive information from the police around these supports, to ensure they are aware of the assistance they are entitled to while engaging in court processes. As discussed earlier, witness intermediaries would also provide a significant change to court processes, which would improve support for people who have experienced elder violence.

Regardless of whether a criminal response is pursued, victims of crime support schemes must be responsive to the needs of older people. Unfortunately, victims support funding is often limited and does not reflect the cost of disability support provision. This is discriminatory, as people with disability are often left with the choice between purchasing immediate needs (such as clothing) after leaving violence, and paying for disability support needs.

**PWDA recommends that victims support funding across all jurisdictions should develop payments modelled on the Victorian Family and Domestic Violence Crisis Response Initiative. This initiative provides $9,000 over 12 weeks for people with disability to use towards disability supports such as personal care, Auslan or sign language interpretation or assistance providing care for children.**

This specific funding would enable people with disability experiencing domestic and family violence and/or elder violence to access necessary disability supports after leaving violence.

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

PWDA has limited comment in response to this question, as people with disability are routinely denied access to justice, and subsequently, have limited involvement in sentencing processes. We are, however, aware that in homicides involving people with disability, the provision of care is routinely understood as a burden or a mitigating factor to the perpetration of violence. This often results in lower sentences for relatives or support workers who have killed people with disability under their care.[[29]](#footnote-30)

Sentencing should instead take into consideration the impact the elder violence had on the older person with disability, and any additional supports they may require as a result of their experience of violence. In addition, further investigation should be undertaken in relation to sentencing cases involving elder violence or violence against people with disability, and the issue of whether or not care is involved in matters other than homicide.

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

As mentioned, older people with disability may be reluctant to participate in criminal justice proceedings for a number of reasons. Alternatives, such as restorative justice or civil penalties, may be particularly useful and important in cases of intrafamilial violence. Where necessary, older people with disability must be supported to decide what action they would like to take in response to elder violence. However, services should not be able to influence this choice.

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

Older people with disability should be able to sue residential settings and aged care organisations if they experience violence in these settings. This avenue is not often pursued, as individuals may fear retribution by services and workers. However, suing the organisation or service, and using the money to move to another residential setting or receive services from another organisation, is a valid response to violence. Greater access to criminal and civil responses to elder violence may mean that services place greater focus on preventing violence against residents, as they may face financial repercussions or criminal charges if they don’t take steps to address violence.

While civil penalties in the form of fines or repercussions such as a reduction of or withdrawal of carer pensions may be effective punishments in certain circumstances, or in response to particular experiences of elder violence, it is vital that older people have the opportunity to engage with criminal proceedings if they desire.

**PWDA thanks the Australian Human Rights Commission for the opportunity to contribute to this Inquiry, and we would welcome further consultation on any of the matters raised in this submission.**

1. Final report available: [https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6063/Report%2044%20-%20Elder%20abuse%20in%20New%20South%20Wales.pdf](https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6063/Report%2525252044%25252520-%25252520Elder%25252520abuse%25252520in%25252520New%25252520South%25252520Wales.pdf)

PWDA’s submission to this inquiry available: <http://pwd.org.au/documents/Submissions/1602_NSW_Inquiry_into_Elder_Abuse_submission.doc> [↑](#footnote-ref-2)
2. Final report available: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report>
PWDA’s submission to this inquiry (as part of the Australian Cross Disability Alliance) available: <http://pwd.org.au/documents/Submissions/ACDASubSenInquiryViolenceInstitutions.doc> [↑](#footnote-ref-3)
3. French, P., Dardel, J., and Price-Kelly, S. 2010. ‘Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment’, *People with Disability Australia*. Available: <http://pwd.org.au/documents/pubs/RightsDenied2010.doc> [↑](#footnote-ref-4)
4. Australian Bureau of Statistics, 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2012. Available: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02012?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs%40.nsf/DetailsPage/4430.02012?OpenDocument) [↑](#footnote-ref-5)
5. Australian Bureau of Statistics, 3235.0 – Population by Age and Sex, Regions of Australia, 2015. ‘Australia growing greyer’, *Media Release* 18 August 2016. Available: [http://www.abs.gov.au/ausstats/abs@.nsf/MediaRealesesByCatalogue/72D4A8F0C7957E85CA257A6A0012F5A0?OpenDocument](http://www.abs.gov.au/ausstats/abs%40.nsf/MediaRealesesByCatalogue/72D4A8F0C7957E85CA257A6A0012F5A0?OpenDocument) [↑](#footnote-ref-6)
6. Australian Bureau of Statistics, 3222.0 - Population Projections Australia (2012 (Base) to 2101), 2013. Available: [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/13D196FB0DBECC3BCA257C2E00173FAD/$File/32220\_2012%20(base)%20to%202101.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/13D196FB0DBECC3BCA257C2E00173FAD/%24File/32220_2012%25252520%28base%29%25252520to%252525202101.pdf) (p4) [↑](#footnote-ref-7)
7. French, P., Dardel, J., and Price-Kelly, S. 2010. Op cit., p17. [↑](#footnote-ref-8)
8. For more information about intersectional discrimination, see Frohmader, C. and Sands, T. 2015 *Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings.* Australian Cross Disability Alliance (ACDA) Sydney, Australia. Available: <http://pwd.org.au/documents/Submissions/ACDASubSenInquiryViolenceInstitutions.doc> [↑](#footnote-ref-9)
9. Australia is a party to the seven key international human rights treaties: The *International Covenant on Civil and Political Rights* (ICCPR); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *Convention on the Rights of the Child* (CRC); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD); the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); and the *Convention on the Rights of Persons with Disabilities* (CRPD). [↑](#footnote-ref-10)
10. United Nations Principles for Older Persons, adopted by General Assembly resolution 46/91 on 16 December 1991. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx> [↑](#footnote-ref-11)
11. Available: <http://www.who.int/entity/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf> [↑](#footnote-ref-12)
12. For more information, see evidence provided to the Royal Commission into Institutional Responses to Child Sexual Abuse on 23rd and 24th March 2016, Case Study 38. Transcript (days 177 and 179) available at: [http://www.childabuseroyalcommission.gov.au/case-study/1c1a2449-93cd-4268-86da-7dd7e3272797/case-study-38,-march-2016,-sydney](http://www.childabuseroyalcommission.gov.au/case-study/1c1a2449-93cd-4268-86da-7dd7e3272797/case-study-38%2C-march-2016%2C-sydney) [↑](#footnote-ref-13)
13. This recommendation must be fulfilled in order for Australia to meet its human rights obligations as outlined by Article 31 of the Convention on the Rights of Persons with Disabilities. [↑](#footnote-ref-14)
14. Information about eligibility and waiting periods available: <https://www.dss.gov.au/about-the-department/international/policy/social-security-payments-residence-criteria> [↑](#footnote-ref-15)
15. For more information, see: Frohmader, C., & Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*.Australian Cross Disability Alliance (ACDA); Sydney, Australia. pp 69-70. Available at: <http://pwd.org.au/documents/Submissions/ACDA_Sub_Sen_Inquiry_Violence_Institutions.pdf> [↑](#footnote-ref-16)
16. As outlined in the Guide for reporting reportable assaults, available: <https://agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/guide-for-reporting-reportable-assaults> [↑](#footnote-ref-17)
17. NSW Bureau of Crime Statistics and Research (2015); NSW Ombudsman Disability Reportable Incidents Scheme presentation (2015). See also Robertson, J. 2016. ‘A thousand allegations of abuse for just 18 prosecutions, NSW Ombudsman reveals’, The Sydney Morning Herald, 31 August 2016. Available: <http://www.smh.com.au/nsw/a-thousand-allegations-of-abuse-for-just-18-prosecutions-nsw-ombudsman-reveals-20160830-gr4s0w.html> [↑](#footnote-ref-18)
18. As outlined in the Guide for reporting reportable assaults, available: <https://agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/guide-for-reporting-reportable-assaults> [↑](#footnote-ref-19)
19. Australian Government Department of Health, 2016. ‘When is an approved provider not required to report alleged or suspected assaults’ in *Guide for reporting reportable assaults*. Available: <https://agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/guide-for-reporting-reportable-assaults> [↑](#footnote-ref-20)
20. More information about PWDA’s analysis of the NDIS Quality and Safeguard Framework can be found at: <https://engage.dss.gov.au/wp-content/uploads/2015/06/NDIS_QSF_PWDA_WWDA_Final.pdf> [↑](#footnote-ref-21)
21. As provided in *The Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*. [↑](#footnote-ref-22)
22. People with Disability Australia, The Australian Centre for Disability Law and The Australian Human Rights Centre submission available: <http://pwd.org.au/documents/pubs/SB14-ALRC-Submission-PWDA-ACDL-AHRCentre.doc> [↑](#footnote-ref-23)
23. Australian Institute of Health and Welfare, Department of Health and Ageing. ‘Older Australia at a glance: 4th edition’, p viii. Available at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442454209> [↑](#footnote-ref-24)
24. Mentioned on page 39 of the issues paper, and also available: <http://apps.who.int/iris/bitstream/10665/85240/1/9789241548595_eng.pdf?ua=1> [↑](#footnote-ref-25)
25. Available at: <http://www.dvrcv.org.au/publications/books-and-reports/guide-for-general-practitioners> [↑](#footnote-ref-26)
26. Available at: <http://www.medicalboard.gov.au/Codes-Guidelines-Policies.aspx> [↑](#footnote-ref-27)
27. As outlined in Dr Sally Robinson’s evidence provided to the Royal Commission into Institutional Responses to Child Sexual Abuse on 20 July 2016, Case Study 41. Transcript (day 204) available at: <http://www.childabuseroyalcommission.gov.au/downloadfile.ashx?guid=a693684a-9c91-438a-af3b-11dd39d373ba&type=transcriptpdf&filename=Transcript-(Day-204)&fileextension=pdf> [↑](#footnote-ref-28)
28. For more information, see: Victorian Equal Opportunity and Human Rights Commission (2014) ‘Beyond Doubt: the experiences of people with disabilities reporting crime’, available: <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime> [↑](#footnote-ref-29)
29. Young, Stella. 2013. ‘Disability is no justification for murder’, The Drum, 3 September 2013. Available at: <http://www.abc.net.au/news/2013-09-03/young-kyla-puhle-death/4930742> . Further information to be available shortly, in a forthcoming publication by F. Sullivan. [↑](#footnote-ref-30)