

National Older Persons Legal Services
Network

Submission to Australian Law Reform
Commission Elder Abuse Issues Paper 47

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Introduction

This submission is made in response to Australian Law Reform Commission's Issues Paper, Elder Abuse. The submission is made on behalf of the Older Persons Legal Services Network (the Network), which is a Network of the National Association of Community Legal Centres (NACLC).

NACLC is the peak national organisation representing community legal centres (CLCs) in Australia. Its members are the state and territory associations of CLCs that represent around 200 centres in various metropolitan, regional, rural and remote locations across Australia. CLCs are not-for-profit, community-based organisations that provide legal advice, casework, information and a range of community development services to their local or special interest communities. CLCs' work is targeted at disadvantaged members of society and those with special needs, and in undertaking matters in the public interest.

The Older Persons Legal Services Network is a Network of NACLC, with its members consisting of CLCs across Australia. The Network undertakes social justice campaigns and advocates for the human rights of older persons in Australia and internationally. The Network members that contributed to this submission have specialist expertise in seniors' rights issues and elder law.

This submission draws on many years of practical experience assisting clients, including in relation to elder abuse. It includes case studies from a number of CLCs. The Network also received pro bono support in the preparation of this submission.

In addition to this submission, a number of Network members and other CLCs have also made individual submissions to the Inquiry, including:

- Caxton Legal Centre
- Consumer Credit Legal Service
- Eastern Community Legal Centre
- Justice Connect
- Justice Connect Seniors Law and Cohealth
- Macarthur Legal Centre
- Mid North Coast Community Legal Centre
- Seniors Rights Service
- Seniors Rights Victoria
- The Advocacy and Support Centre (TASC)
- Top End Women's Legal Service
- Townsville Community Legal Service
- Welfare Rights Centre NSW

The National Welfare Rights Network has also made a submission, which the Network endorses.

This submission does not respond to all issues canvassed in the Issues Paper. Rather, it provides general comments on some of the key issues considered in the Issues Paper and responds briefly to a number of sections of the Issues Paper. The Network would welcome the opportunity to discuss these issues in more detail. The most appropriate contact person for this submission is:

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Overview

The Network welcomes this Inquiry and the opportunity to contribute to the work of the Australian Law Reform Commission (ALRC). The Network and CLCs across Australia have long assisted older people experiencing elder abuse and welcome consideration of these issues at a national level.

The Network has also welcomed recent Government attention on the issue of elder abuse, including the announcement of a National Plan that will include development of:

- measures to enhance the knowledge base, relating to: the nature and prevalence of elder abuse, risk factors, the effectiveness of existing prevention, and intervention and remediation measures and programmes at all levels of government
- measures to facilitate co-ordination, communication and sharing of practices
- options for a national elder abuse hotline
- pilot training programmes to educate frontline staff, and
- a national awareness campaign to educate and to change attitudes and values

As noted in the Issues Paper, there have been a number of other inquiries and reviews of relevance to this Inquiry, including for example the ALRC's previous work in the Equality, Capacity and Disability in Commonwealth Laws Inquiry and Report.

Rights-Based Approach

The Network supports the two framing principles for the Inquiry, namely that:

- all Australians have rights, which do not diminish with age, to live dignified, self-determined lives, free from exploitation, violence and abuse;
- laws and legal frameworks should provide appropriate protections and safeguards for older Australians, while minimising interference with the rights and preferences of the person.

Importantly, the Network considers that the first principle reflects a rights-based approach and supports the ALRC taking such an approach in this Inquiry. The Network suggests that the approach should be underpinned by the following:

- the knowledge that there is no normal older person, older persons are not a homogenous group and that old age is a social and societal construct, which continues to shift and evolve.
- recognition of the specific legal needs of older persons, and
- recognition that one of the key causes of elder abuse is entrenched ageism. Common manifestations of ageism include stereotyping, prejudice, discrimination, harassment and vilification as well as abuse, exploitation, neglect and violence and it is often intersectional.

With respect to the second principle, the Network notes the importance of developing laws and legal frameworks that seek to empower older people rather than being predominantly protectionist.

Finally, the Network emphasises the importance of having regard to the rights under relevant international human rights law, but also notes the current gaps in protection of the rights of older persons under international law and move towards development of a specific convention on the rights of older persons.

Key Elements of Reform

The Network considers that there are a number of key recommendations or areas in which the ALRC should make recommendations for reform in order to ensure laws and legal frameworks appropriately address and respond to elder abuse in Australia. These include for example:

- a national approach and nationally consistent laws
- dedicated funding and resources, particularly for legal and other support systems
- national research and data collection, and
- a national public awareness campaign

A National Approach

One of the key requirements in ensuring laws and legal frameworks are able to adequately respond to elder abuse is national consistency. The patchwork of laws across jurisdictions and lack of cross-recognition, particularly in areas including decision-making, mean the protections and remedies available to older people vary significantly. As a result, the Network supports mandatory registration of instruments such as powers of attorney and the development of a national register or regime. Some Network members have suggested that state and territory Births, Deaths and Marriages Registries may be an appropriate body to oversee such registers.

The Network commends the ALRC on its work in previous inquiries, including Equality, Capacity and Disability in Commonwealth Laws, particularly with respect to recommendations about the need for a national decision-making framework. The Network suggests that a national approach to elder abuse, including in relation to aged care, Centrelink, decision-making and similar should be a central part of the ALRC's approach to reform.

Recommendation: The Federal Government should work cooperatively with State and Territory Governments to require mandatory registration of instruments such as powers of attorney, and to develop a national register or regime of such instruments.

Funding and Resources

It has been estimated that the cost of elder abuse to the Australian health system will be in excess of \$350 million by 2025.¹ This figure does not consider the costs to other systems, including the legal system of elder abuse.

However, an issue that is not directly addressed in the Issues Paper and which is fundamental to attempts to implement reform in practice or to address and respond to elder abuse is the need for funding for services assisting older people. This issue is also mentioned later in this submission in the context of best practice responses to elder abuse.

While the Network welcomes the announcement by Attorney-General Brandis of \$15 million to develop the National Plan, funding cuts to other services assisting older people experiencing elder abuse, including CLCs will have a significant impact on the ability of these people to access the legal assistance they need. The importance of these services have been recognised in a range of reviews and inquiries, including for example the landmark 2007 Older People and the Law Report completed by the House of Representatives Standing Committee on Legal and Constitutional Affairs.²

In particular, CLCs play a key role in best practice legal responses and see hundreds of thousands of clients, including older people, each year. A holistic, multi-disciplinary approach can provide a model for prevention and remediation of elder abuse. This is typified by the CLC mixed service model which uses a combination approach of casework, community education and community development to address the issue. The breadth and nature of CLC work in this area is reflected in part in the

¹ See, for example, Relationships Australia, *January 2016: Elder Abuse* (January 2016) <<http://www.relationships.org.au/what-we-do/research/online-survey/jan-2016-elder-abuse>>.

² Parliament of Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older People and the Law* (2007) recs 38-40.

submissions to this Inquiry from CLCs across Australia. However, CLCs are facing a 30% cut nationally from 1 July 2017, which will have a direct impact on the ability of CLCs to provide legal assistance to older people. In light of these issue, the Network suggests that it is important that the ALRC consider and make recommendations about funding and resources of services (as part of best practice legal responses and access to laws and legal frameworks), including CLCs, that assist people experiencing elder abuse.

Recommendation: The Federal, State and Territory Governments provide funding and support to services assisting people experiencing elder abuse, including Community Legal Centres.

What is Elder Abuse?

Network members have coal-face experience of elder abuse in all Australian jurisdictions including its character (risk factors and consequences) and approaches to prevention, protection and remediation.

Despite the often hidden nature of elder abuse and a lack of prevalence data, available data indicates:

- between two and five percent of Australians over the age of 65 have experienced abuse³
- a majority of cases involve abuse by a family member,⁴
- financial and psychological abuse are the most common forms of abuse reported and often occur in tandem,⁵ and
- abuse is most likely to occur between ages 75 to 85.⁶

The broader issues in relation to elder abuse, including that it is multidimensional and spans across a range of policy and legislative frameworks, as well as the ongoing lack of awareness about elder abuse have been noted in the Issues Paper and submissions made by CLCs to the Inquiry. As a result, in this section the Network briefly addresses the definition of elder abuse and key elements of best practice legal responses to elder abuse.

Definition of Elder Abuse

Elder abuse is a multidimensional social, medical and legal problem stemming from a complex interplay of physical, psychological, social, medical, legal and environmental factors.

The Network considers the World Health Organisation (WHO) definition to be a useful starting point in defining elder abuse, but suggests it is limiting definition. Rather, the Network suggests that the ALRC should develop a definition of elder abuse, as it did in relation to family violence, to be adopted in relevant law and legal frameworks.

In developing a definition of elder abuse, the Network suggests the following should be considered and/or incorporated:

- the lack of data in relation to elder abuse
- any definition is context dependent
- any definition should be illustrative, not exhaustive

³ Wendy Lacey, "Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia", 36 *Sydney Law Review* [2014].

⁴ Rae Kaspiew, Rachel Carson and Helen Rhoades, 'Elder Abuse Understanding Issues, Frameworks and Responses' (Research Report No 35, Australian Institute of Family Studies, 2016); Wendy Lacey, "Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia", 36 *Sydney Law Review* [2014]. See also individual CLC submissions.

⁵ Rae Kaspiew, Rachel Carson and Helen Rhoades, 'Elder Abuse Understanding Issues, Frameworks and Responses' (Research Report No 35, Australian Institute of Family Studies, 2016). See also: Victorian Government, Department of Health, *Elder Abuse Prevention and Response Guidelines 2012–2014* (June 2012) 3.

⁶ Victorian Government, Department of Health, *Elder Abuse Prevention and Response Guidelines 2012–2014* (June 2012) 3.

- any definition needs to be broad enough to incorporate all types of abuse, while at the same time identifying a number of different forms of abuse so that this behaviour can be easily recognised by a wide variety of organisations and people
- any definition should include expectations and implications of trust
- any definition should include action or inaction as well as singular or repeated actions/inactions
- any definition should recognise the dynamics of elder abuse and that in some instances those are similar to the dynamics in family violence but be broad enough to encompass both abuse that might fall under family and domestic violence, but not be limited to those relationships
- age may not be an appropriate marker, given the impact of inequity on disability and life expectancy means that arbitrary age markers, such as age 65, are meaningless given differing life courses and for example given the gap in life expectancy experienced by Aboriginal and Torres Strait Islander peoples, and
- any definition should include examples.

Best Practice Responses to Elder Abuse

In considering best practice responses, it is important to note that legal needs research shows that age is strongly related to prevalence of legal problems, the strategies used to resolve them and whether or not they are finalised.⁷ Legal problems tend to reflect stages of life. Older persons are less likely to report legal problems, take legal action to enforce legal rights, recognise their legal needs and exhibit a lack of knowledge about the available pathways to legal resolution.⁸ Where older people commence action, they have low finalisation levels. It is also important to note that many legal remedies ultimately require the older people to be willing and able to report abuse and/or proactively seek legal assistance⁹ and that significant barriers often prevent older people from reporting abuse or seeking assistance to leave abusive situations.¹⁰

The Network submits that there needs to be stronger legal responses to address and respond to all forms of elder abuse. There are a range of elements of any best practice response, including the need for national consistency and/or model uniform laws and bodies with investigatory responsibility and powers. Most importantly however, like family violence, an integrated response to elder abuse is best practice.

There are many models available for consideration within Australia and in overseas jurisdictions. CLCs operate in a holistic, integrated and multidisciplinary way and many operate best practice response to elder abuse. A number of Network members are specialists in this area of work, including the Seniors Legal and Support Service (SLASS) Network in Queensland, which provides a useful model. For example, SLASS undertakes a range of activities and assist with:

- legal information and advice
- social work services
- short-term counseling
- advocacy
- a referral to other legal, consumer and support services
- representation in court or before tribunals (in certain circumstances).

Some examples of assistance provided by SLASS include:

- obtaining domestic violence protection orders
- developing safety plans
- supporting relocation to a place of safety

⁷ Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia, Access to justice and legal needs*; v. 7, 229.

⁸ *Ibid.*

⁹ Barbara Hamilton, "Be Nice to your Parents: or Else!", 8 *Elder Law Review* [2006].

¹⁰ *Ibid.*

- advice on appointing or revoking a power of attorney
- information on protective strategies to manage assets and prevent or stop financial abuse
- advocacy and negotiation on behalf of residents in retirement villages experiencing unfair contract terms and conditions, and
- advising on recovery of property or money following elder abuse or financial exploitation.

In addition to the direct services provided, SLASS regularly conduct community education and awareness sessions and campaigns around elder abuse. These sessions are targeted at those who encounter elder abuse in professional or employment roles. These include medical professional, allied health professionals, aged care workers, support and respite workers, Justices of Peace, and similar.

The use of Health Justice Partnerships to target elder abuse is another good example of ways in which CLCs are already engaging in best practice in this area,¹¹ this is discussed in more detail later in this submission.

As a result, funding and resources for CLCs and other service providers, an issue highlighted earlier in this submission, is a key element of developing and sustaining best practice responses to elder abuse.

Older People from Particular Communities—Case Studies

Many CLCs that have made individual submissions to this Inquiry have provided case studies relating to elder abuse experienced by older people from particular communities. The Network provides some additional case studies below in relation to older people from culturally and linguistically diverse communities.

Case Study

Mrs F from an Eastern European country married an Australian man in 2006 and moved to Australia to live with him. The husband had multiple extra-marital relationships and the relationship ended. Mrs F had been psychologically abused by her husband. She had limited savings and was forced to leave the unit he owned and in which she lived. The CLC social worker assisted Mrs F with urgent temporary housing and subsequently, successfully appealed a public housing decision to refuse her housing based on her ownership of an old unit in Hungary valued under \$30,000 and untenable. The CLC social worker assisted Mrs F to form social connections and feel resilient enough to proceed with her legal issues. All communications with Mrs F have been through an interpreter and the client's bilingual friend.

Lawyers from the CLC advised Mrs F as to her family law rights for property settlement and spouse maintenance. They entered into negotiations with the husband's private lawyers. They secured her right to remain in the unit until urgent housing was obtained. When negotiations for spouse maintenance and property settlement were unsuccessful they filed an Application in the Federal Circuit Court of Australia (FCCA). Preparation of the court documents was labour intensive in so far as everything had to be translated between Hungarian and English.

The CLC lawyer then prepared a "brief" to a family lawyer from the same CLC to appear on behalf of Mrs F at the first return date of her application in the FCCA. The CLC social worker attended to give Mrs F support. The duty lawyer engaged in lengthy negotiations to achieve a settlement in favour of Mrs F which was drafted up and approved by the Judge. The lawyer is further assisting the client with a debt issue.

¹¹ See, for example, submission from Justice Connect, a community legal centre with two Health Justice Partnerships.

Case Study

An eastern European client in her 60's was referred to the CLC. Mrs A, who spoke almost no English, was estranged from her alcoholic husband who was living downstairs in the same dwelling with her violent, widowed son and his children. Mrs A feared for her safety and the wellbeing of her young grandchildren. Using the Telephone Interpreter Service the CLC arranged for transport to bring Mrs A to and from the CLC office so she could speak freely. We were unable to book a face-to-face interpreter but were able to use one via the conference phone.

Mrs A described herself as suffering from depression and an obsessive compulsive disorder. She needed help because:

- her son threatened to kill her with a knife and behaved violently towards her
- Police called to the house and seemed to talk to the son who speaks English and appeared to do nothing to hear our client's side of the story
- she suspected that the Police and others were told by the son that she was mad and to ignore her
- she had loaned money to her son and needed it back
- she was worried that her grandchildren were inadequately cared for
- she felt she should move out of the home but had insufficient income and would be ineligible for social housing.

Mrs A presented in a distressed and emotionally unstable state. To help our client begin to progress we provided advice on how to get a divorce and property settlement. We also referred her to a bilingual support worker who could support Mrs A to have her child safety concerns listened to and to receive appropriate emotional and social support to reduce her isolation and improve her emotional health. We also discussed a safety plan with Mrs A so that she had practical strategies if threatened.

In subsequent contact our client asked for advice about applying for a domestic violence protection order. She was interested in a referral to a support service who were able to offer bi-lingual counselling support as well as help to apply for a DVO and seek alternative housing.

The partnership between the CLC and support service is working well for this client who will be able to extract herself from an abusive family. With long-term community support and counselling, we expect Mrs A will make a gradual recovery in terms of her mental health and become less socially isolated.

Case Study

A new resident came to an aged care home and was asked to sign a resident agreement. He could not read English as it was not his first language. He was not offered the assistance of an interpreter to assist him to understand what he was agreeing to. His contract stated that he agreed to allow the aged care provider to have a caveat on his title in the event he could not pay his fees.

Case study

An older single parent arrived in Australia under the aged parent sponsorship. She brought all her money to pay for the visa fees and deposited the money into a term deposit to access when her visa was finalised. The money was inappropriately managed by one of her children and all the money has spent. When the visa application was determined, the older person was not only without any money to pay for the visa fees but was also requiring more intensive health care and found herself at risk of becoming homeless because her children are refusing to care for her.

Case Study

In one case example through our service a woman from a Greek background and her husband, lived in their own villa. Their daughter encouraged them to sell their home and contribute to a granny flat on the daughter and son-in-law's property interstate. They followed the daughter's suggestion and 2 years

later the relationship broke down and they returned and began renting. The client was very distressed and was advised to place a caveat on the daughter and son-in-law's property protecting her right to claim an equitable interest (constructive trust) for the return of her contribution.

Case Study

The CLC had an enquiry from an elderly Vietnamese woman whose son had encouraged her to transfer the title of her house into the son's name. The son told her she could reside in the house for her lifetime until she passed away or required aged care. The elderly woman did not realize such a gift could impact on her age pension. A person on the age pension is unable to gift more than \$10,000 a year or \$30,000 over 5 years without it being deemed an asset and reducing the age pension. She also did not realize she had lost her security in her residence in that she was no longer on the legal title. If the son tried to evict her then she would have to take expensive action in the Supreme Court to try to claim an equitable interest in the property.

Data Collection—A National Research Agenda

As noted in the Issues Paper, there is limited data in relation to elder abuse in Australia. The Network suggests that a common definition may assist and suggests that there is a need for a national research agenda in relation to elder abuse that includes development of baseline and prevalence data that includes a national prevalence study about elder abuse. The development of a National Research Agenda by Australia's National Research Organisation for Women's Safety (ANROWS) in May 2014 as part of implementing the National Plan to Reduce Violence against Women and their Children provides an instructive model. Bipartisan government support for and funding of such research is important.

<p>Recommendation: The Australian Government should fund the development of a National Research Agenda in relation to elder abuse.</p>

Social Security

The Networks supports the submission made by the National Welfare Rights Network, another National Network of CLCs and the Welfare Rights Centre NSW, a CLC with specialist social security expertise. The Network also draws the ALRC's attention to submissions made in relation to social security and the role of Centrelink in other Network member submissions, including for example the Seniors Rights Service in relation to the role of social workers at Centrelink.

In addition to the issues and suggestions outlined in the National Welfare Rights Network submission, the Network considers that in addition to training for Centrelink staff and the identification of dedicated staff, Centrelink should review its publicly available information and develop additional resources on topics relevant to elder abuse (including for example family arrangements, asset for care arrangements, granny flat rules and similar). Centrelink should also run a national campaign designed to increase awareness about elder abuse (in particular financial abuse), interaction with Centrelink, and available assistance.

Granny Flat Arrangements

An ongoing issue for older people is the abuse is sometimes connected to 'granny flat arrangements' between family members. The circumstances where older people are at most risk of abuse is in the context of family arrangements.

Granny flat arrangements are typically situations where an older person has contributed resources towards a property owned by another family member.¹² This typically involves payments made by the older person by way of either:

- a deposit on a house
- contributions to a mortgage
- a lump sum payment for an extension/renovations to the house
- a lump sum payment to build a granny flat at the house, or
- contributions to amenities.

The Network has seen trends in granny flat arrangements which include a lack of formal documentation, a reluctance to obtain independent legal advice and failure to formally register an interest in the property. This has left older people in situations of extreme financial vulnerability, and ultimately may lead to financial and other forms of abuse. In some cases it can lead to homelessness and serious physical and mental health outcomes for older persons.

Due to the lack of formal arrangements and documentation, it becomes difficult for the older person to recover moneys contributed to the property or enforce an interest they have in situations where there has been a break down in their relationship with the other family member. It can also arise where the older person lives with a couple, like their adult child and spouse, who then separate, leaving the older person without any easy way to recover their contribution through the process of family law property settlement.

One real difficulty for older persons is how to access legal advice about family arrangements and formalise terms in family agreements or other relevant legal documents.

In order to address this issue in a preventative way, the Network suggests that Centrelink could develop an information sheet and template document or form for asset for care arrangements, granny flat arrangements and other arrangements which sets up a basic terms between family members entering into agreements of this nature. The form could require the older person and the participating family members to read the template and amend where necessary. It should invite them to obtain independent legal advice about the consequences of the arrangements.

Importantly however, the Network recognises that even if a standard set of terms are provided by Centrelink in order to record and formalise granny flat arrangements, there will always be circumstances where these arrangements are not formalised and therefore difficult to enforce. As a result, further legal remedies are required to protect elder people from abuse in granny flat arrangements.

Recommendation: Centrelink should develop an information sheet and template form for asset for care arrangements, granny flat arrangements and other arrangements which sets up a basic terms between family members entering into agreements of this nature.

Aged Care

Elder abuse occurs in residential, home and flexible care settings and as a result, responses and reforms need to consider each of these contexts. The Network suggests that a range of reforms to laws and legal frameworks are required to address elder abuse in aged care, including for example:

¹² Susan Barkehall Thomas, 'Families behaving badly: What happens when grandma gets kicked out of the granny flat?' 15 *Australian Property Law Journal* (2008), 154.

- the aged care framework, including the Accreditation Standards under the Quality of Care Principles 2014 should include a requirement that providers take measures to protect residents from violence, abuse and neglect
- development of a set of streamlined reporting rules and guidelines in aged care in relation to abuse
- additional training, support for and supervision of staff working in aged care, and
- consideration of the development of a standard aged care contract that includes a range of terms to protect residents (for example sometimes contracts do not include provisions in relation to complaints or security of placement).

Evidence of Abuse in Residential Aged Care Facilities

Elder abuse in residential aged care facilities is not well understood in Australia but can take many forms, including by:

- spouses who resides in the same facility
- spouses or family member who visit the facility
- staff who work at the facility or who visit the facility
- other residents of the facility, and
- other visitors to the facility

Against the backdrop of increasing reliance on aged care facilities, elder abuse is particularly complex to identify and address in aged care facilities. These complexities include:

- the presence of risk factors common to those in aged care such as age on entry, poor health, high levels of dependence, social isolation, cognitive impairments and/or depressive disorders;
- underreporting of elder abuse within aged care facilities by residents, families and staff, and
- operation of restrictive practices in some facilities.

Restrictive Practices

There is very limited data on the use of restrictive practices in aged care and a prevalence study should be included as part of the National Research Agenda suggested above.

The Network expresses serious concerns about the use of restrictive practices in aged care facilities and supports the recommendations made by the ALRC in the Equality, Capacity and Disability and Commonwealth Laws Inquiry concerning the need for a national approach to the restriction and elimination of restrictive practices in a range of settings.

Changes to Reporting Assaults

There are a number of key issues with respect to reporting of assaults in a residential aged care context. Network members have observed that the current reporting system regarding assaults is weak and does not currently achieve its stated purpose. Key difficulties include:

- the current system is limited to the Government funded residential care system
- there is significant underreporting and whistleblowers have reported loss of employment, victimisation and bullying and similar
- reporting mechanisms in relation to assaults between residents are discretionary if a resident with a cognitive impairment is the perpetrator and certain steps are taken, and are therefore problematic
- for a staff to resident assault to be recognised and reported, other staff members would need to report such behaviour and there needs to be a determination that the perpetrator used unreasonable force

In addition, the Network recognises the broader issues arising in relation to capacity, including for victims (including police willingness to pursue matters and giving evidence as a witness) and perpetrators (including for example unfitness to stand trial) discussed in the ALRC's Equality, Capacity and Disability Inquiry and supports the recommendations made as part of that Inquiry.

This is a complex area and while many members of the Network are opposed to mandatory reporting, the Network suggests that ALRC recommend a set of streamlined reporting rules and guidelines for aged care that incorporate the issues identified above as well as additional mandatory training for all staff in aged care facilities.

Recommendation: The Federal Government should develop a set of streamlined reporting rules and guidelines in relation to violence and abuse in aged care.

Financial Institutions

The Network notes that financial abuse is the most common form of elder abuse. Financial abuse is often generally accompanied by other forms of abuse, often psychological abuse called 'hybrid elder abuse'. As part of financial abuse, evidence indicates that elder abuse occurs in and through banking and financial systems.¹³

The Network suggests that given the key role financial institutions can play in preventing elder abuse, that financial institutions should take a leading role in reform, including through:

- the development of further fact sheets by the Australian Bankers' Association
- the development of mandatory standards or directions, building on the Australian Bankers' Association Guidelines on '*Protecting vulnerable customers from potential financial abuse*' and '*Responding to requests from a power of attorney or court-appointed administrator*'
- undertaking blind studies of their contested files to learn to identify red flags or potential abuse from their own work, cases and experiences, and
- further training of bank staff in relation to elder abuse, capacity and related issues.

There is also a potential need for legislative change, including for example to privacy and related laws to permit good faith disclosure by financial institutions to ensure compliance with mechanisms to protect against elder abuse.

The Networks broad suggestions in relation to national consistency earlier in this submission, including the establishment of a national register of powers of attorney, are also likely to assist financial institutions in responding to and addressing concerns about elder abuse. The Network supports the discussion of and recommendations made in relation to banking services in the ALRC's Equality, Capacity and Disability Inquiry and Final Report.

Finally, the Network also draws the ALRC's attention to a research report by the Loddon Campaspe Community Legal Centre, *Responding to the financial abuse of older people Understanding the challenges faced by the banking and financial services sector* that outlines a number of issues and possible solutions to these issues.

¹³ See, for example, Rae Kaspiew, Rachel Carson and Helen Rhoades, 'Elder Abuse Understanding Issues, Frameworks and Responses' (Research Report No 35, Australian Institute of Family Studies, 2016).

Family Agreements

As the population ages, increasingly older people who remain living in the community have, and will need to have, arrangements in place with family members, including both informal and formal 'assets for care' type arrangements. Against this backdrop however, research suggests that there is a high prevalence of elder abuse in the context of family relationships.¹⁴ As a result, greater education and awareness about the legal rights of older people in the context of assets for care arrangements, including mechanisms to assist where the relationship breaks down is vital moving forward.

In the experience of Network members, very few clients have formal written family agreements in place, in many cases because older people are reluctant to require such arrangements and because the costs associated with preparing such agreements are often prohibitive for CLC clients

However, where family agreements do exist the Network suggests that there is a need for greater formalisation and consistent regulation of such arrangements. For example, the Network suggests:

- consideration of how family agreements can be made more accessible, including in light of the cost of such agreements
- Centrelink should establish a register of family agreements with requirements for registration
- the development of a family agreement 'template' with a set of standard terms that can be provided to older people considering such an arrangement. For example, they should be: informed by independent legal advice and facilitated discussions between the family members to make sure agreements are appropriately adapted; in written form; outline the intention of the parties, allocation of financial contributions upon termination; and make provision for changes to the agreement
- consideration of the interest of an older person in property proceedings under the *Family Law Act 1975* (Cth) where a family member couple separates
- training of relevant professionals in relation to family agreements, the associated legal implications and how to engage with relevant legal and mediation services, and
- increased community legal education in relation to the agreements, including fact sheets and workshops

In addition, given a family agreement may impact on an older persons' eligibility for social security benefits, Centrelink should play a key role in the reforms outlined above given written family agreements which incorporate these elements are likely to provide greater clarity and potentially avoid adverse consequences for older people.

Appointed Decision-Makers

The experience of Network members is that many older people prefer, or have in place, informal arrangements with family members in relation to the management of their financial affairs. However there are of course, benefits to formalising decision-making arrangements as part of structures in place to avoid elder abuse. Unfortunately however, Network members also have experience of appointed decision-makers such as people holding powers of attorney using the instrument/appointment to perpetrate elder abuse.

Ensuring there is adequate training of appointed decision-makers; strong and accessible enforcement mechanisms; and other mechanisms to ensure decision-makers are accountable is central to attempts

¹⁴ See, eg, Wendy Lacey, "Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia", 36 *Sydney Law Review* [2014].

to reduce elder abuse in this context. However, as the Issues Paper noted, there is a balance between appropriate safeguards and excessive regulation of such decision-makers.

As noted above, the Network supports the development of a national approach, including uniform or at least consistent laws governing decision-making and the establishment of a national register of powers of attorney. In addition, the Network also supports the recommendations made by the ALRC in its Equality, Capacity and Disability Inquiry with respect to the need to shift to supported rather than substitute decision-making and the development of National Decision-Making Principles and Guidelines.

Health Services

Health professionals play a key role preventing, identifying and acting in relation to possible elder abuse. In Australia, the Legal Australia Wide Survey identified that people are most likely to seek the advice of a doctor, or another trusted health professional or welfare adviser, in relation to a legal problem. If health professionals can identify risks and possible legal issues early and refer people to appropriate services, this avoids issues spiralling out of control.

As a result, the Network suggests that the key change in this area is the need for regular and tailored education and training for all health professionals in relation to elder abuse.

Health Justice Partnerships

There are an increasing number of Health Justice Partnerships (HJPs) between CLCs and hospitals and health services across Australia and this is an area which has attracted recent government attention and investment.¹⁵ There is an increasing body of resources which highlight the importance of such models, including in identifying and responding to elder abuse.¹⁶ The Network directs the ALRC to submissions made by CLCs with current HJPs, such as Justice Connect Seniors Law, for more information on the practical operation of HJPs.

The Network suggests that the ALRC note the importance of HJPs as a multi-disciplinary approach to identifying and addressing elder abuse and the need for further research into HJPs as well as ongoing government support and funding for such partnerships across Australia.

Recommendation: The Federal, State and Territory Governments should support and fund the establishment and ongoing operation of Health Justice Partnerships between Community Legal Centres and hospitals/health services.

¹⁵ See, for example, Attorney-General of Australia, *Women's Safety Package Support Providers*, Media Release, 16 October 2015, accessed <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2015/FourthQuarter/16-October-2015-Womens-Safety-Package-Legal-Support-Providers.aspx>

¹⁶ See, for example, Justice Connect, *Working Together: A Health Justice Partnership to End Elder Abuse*, March 2016.

Forums for Redress

The Network notes this section is considered in a number of the Network member and CLC submissions to this Inquiry. The Network limits its comments to a number of very brief high level points about the accessibility and design of courts, tribunals and the legal system more broadly for older people:

- there is a need to ensure court and tribunal processes and procedures consider the needs of older people engaged in proceedings. For example, in some cases delays in resolution of legal problems mean older people do not live to see the outcome or benefit from legal remedies which highlights the need for the speedy resolution of matters
- some court and tribunal buildings are not physically accessible
- age is a factor in limiting compensatory damages, and
- many of the concerns that arise in relation to alternative dispute resolution processes in the context of family violence also arise in relation to elder abuse, including the power imbalance and risks associated for victims.

