

## Australian Law Reform Commission – Elder Abuse Issues Paper

FMC has addressed the most relevant questions to its practice in the submission paper however FMC would comment like to comment more broadly on the considerations of Elder Abuse as outlined in this issues paper.

There is very little in the way of preventative approaches to the issue raised or queried in the paper. There needs to be clear and consistent approaches to tackling Elder Abuse once it has occurred, including reparation, protection and support for victims as well as deterrence and consequence for perpetrators. When it comes to elder abuse there seems to be more grey as to what constitutes abuse than in other forms of family violence.

More effort needs to go into working out how to raise societal understanding of elder abuse, as well as offering opportunities for families, couples, individuals to plan for the future of the older people in their lives in a way that reduces the likelihood of elder abuse. FMC has found that often older people are not aware of the concept of elder abuse, and don't consider themselves victims of elder abuse, but they do want somewhere, someone to help them to improve their relationships with those around them, and to be able to raise any concerns in a non-threatening, non-confrontational approach that doesn't lead to them being threatened in return, or left without any sort of relationship or support from those they care about. A court setting is not such a place.

Recognition that life changes such as retirement, death of a partner, potential move to a nursing home or at least reduction in independent living skills are all precursors to possible elder abuse means that, as a society, we should use those times to provide extra support to reduce the likelihood that older people will be taken advantage of during these vulnerable times.

FMC Considers that the options for responding to elder abuse as outlined in this discussion paper are too narrow. There is not a lot of discussion about the complexity of elder abuse. Elder abuse is often more complex than other forms of family violence as it involves all the same attributes such as power differentials, fear, financial limitations, different types of abuse, etc. but it also includes a level of complexity with issues such as multiple parties with multiple conflicts of interest, co-morbidities and co-dependence between victim and perpetrator, potentially 70 - 80 years of family history and dynamic guiding family decision making, guilt if the perpetrator is the victim's own child, etc. Purely criminal punitive responses will not necessarily meet the needs of this group of victims. The victim will most likely not want this outcome, and therefore will not report. Victims need to know that their wishes will be taken into consideration and their relationships will be seen as relevant to the outcomes for them to feel comfortable in coming forward. That will take an approach that is different to current family violence approaches, and may well be more time intensive. Older people may place maintenance of their relationships with their children as their most important consideration. Service options for perpetrators are going to be a requirement for a holistic approach to elder abuse. An older person won't want to kick their child out of their family home if the adult child has nowhere else to go, so broader options are required to achieve positive outcomes for all involved.

### Question 27

In 2014 FMC commenced development of a Seniors Mediation Model (Seniors Conflict Resolution Services). Since then FMC has developed a suites of services for Seniors clients including the development of an Elder Abuse Prevention Service. FMC has undertaken mediation with a number of older clients who are struggling to protect their interests after family agreements break down. Their struggle comes from the factors below:

- Frequently the older person does not recognise the issue as abuse. A quote from a lady whom had purchased a home with her daughter and then placed into residential care demonstrates this. "My folly and their greed has led to this".
- Family relationships are complex and behaviour that may have been common place within a family for many years such as lending or giving a child money can continue as a norm. The issue

becomes the older person is no longer earning money and uses savings , superannuation or assets to continue this pattern often to their own material detriment.

- The older person is often in a state of distress and anxiety, confusion and depression themselves
- The person they are relying on for care is the same person who is taking financial advantage - they are in a bind.
- They may not have the full picture themselves of what is occurring – the alarm re financial abuse may have been raised by another adult child
- The financial agreements are loose, verbal, based on trust, non-contractual. They are open to interpretation and argument.
- They don't know where to go for help or are too ashamed to reveal their situation
- They don't want to involve lawyers or legal proceedings
- They may have a number of adult children who are in dispute and conflict between themselves and they may be hearing a number of competing and conflicting points of view and advice. We have seen a number of clients where their children (eg the siblings) have IVOs against each other. This family fracture makes it much harder for a senior to resolve family based financial arrangements.
- They are in a 'private' crisis with no recognisable path to resolve it – there is a lack of community education and normalisation of the potential pitfalls of family based financial arrangements, and what resources are available
- The family agreement may be with an adult child who still needs support from the senior; this burden of care makes resolution very difficult. An example of this would be: an adult child with mental health issues who has lived in the family home all their lives, while the senior is now needing to sell the family home to pay for residential care.

Family agreements are frequently made without the whole family consenting to the agreement and hence the agreements break down. These agreements are usually financial in nature and frequently do not involve external advice prior to be enacted. These agreements are loose, based on trust and are generally verbal and non-contractual. Older people often do not discuss these agreements made within the family and can become ashamed and embarrassed by what has occurred. Agreements made often favour one sibling causing extreme family conflict. FMC has witnessed many clients present in distress due to family agreements breaking down. For example:

A 78 year old women presented in acute emotional and financial distress as her daughter who had been providing her with monthly income stopped payments. This agreement has been made 18 years prior when the women and her husband has retired early from work. The couple relocated overseas to care for their daughter's children and did this for 10 years. The understanding was that the older women was to receive a monthly payment in lieu of her and her husband retiring early to care for the grandchildren. There was no written agreement nor had solicitors or mediators involved. The older person was too embarrassed to discuss this with anyone however her circumstances had reached a crisis.

In another case an 80 year old women had entered into an agreement with her daughter to sell the family home and to buy a new home with her daughter. No agreement or contract had been drafted. The older woman was to live in the house in a self-contained area. After a period of time the daughter asked the mother to leave and then placed her in residential care. The mother was in a less than ideal facility, had no access to finances and desperately wanted to be in an independent living unit. She had received no funds from the sale of the original house. Lawyers and courts were not an option to her so she contacted an advocacy service who then contacted FMC for the Seniors Mediation service.

Refer to Case Study attachment document.

## Question 28

Laws and legal frameworks protect the interests of parties to a legal agreement. FMC observation is that binding legal conditions placed upon a family agreements may hinder the good practice of an agreement because of perceived costs, legal risk, adversarial aversion and the feeling that a family '*should be able to sort things out*'. An alternative to the legal pathway is the FMC Seniors Conflict Resolution service that has at its centre the protection of the older person's rights and wishes. A mediated agreement pathway coaches the older person to have a voice and clear articulation of their issues. Too often as people age their role and voice within the family is diminished. These agreements can be made legally binding at the end of the process if desired. Older Australians should have the right to make agreements informed with their families, benefitting from a process that is inclusive, power balanced and not intimidating.

## Question 29

FMC's has provided services and mediation to a number of families in which family members have abused their power of attorney. Examples of this abuse are:

- POA transferring funds from the seniors account into their own personal accounts
- POA making purchases that service their needs, not the seniors e.g. buying a new car when the senior no longer drives; lengthy and expensive overseas holidays with POA as the companion which the senior might not be well enough to undertake.
- POA not paying for essential needs such as residential care bills and medical bills or not supplying funds for wellbeing such as haircuts, new clothes
- POA using funds from sale of senior's home to renovate/extend their own home with the plan of the senior moving in to live with them. When this arrangement falls through, POA not releasing the original funds to enable senior to purchase unit in residential care.
- POA moving into family home to live with senior, but not contributing to bills, maintenance or care of home
- POA instructing residential care staff to not allow visits from other family members
- POA taking out an IVO against other family members to prevent their contact with the senior
- POA isolating senior from their own family circle through presenting the POA as a special and exclusive relationship

The majority of cases seen by FMC Seniors Services have involved financial and emotional abuse perpetrated by either the nominated POA or decision maker. Frequently the POA has a poor understanding of their responsibilities and legal requirements to fulfil the role. FMC believes that prevention strategies are required to reduce the incidence of Elder Abuse.

An example to highlight education required is the daughter and care giver of a older client who was being financially abused and manipulated by her daughter approached her mother's GP to have him write a letter to our organisation to state the client was unable to participate in mediation services due to health issues. This did not raise any flags to the GP and he did not have a conversation with his patient (the older client ) regarding this merely listened to the advice and information being provided by the daughter.

Any prevention strategy would need to have the following as core objectives:

1. Increase community awareness of the legal responsibilities of fulfilling the role of a POA, including targeted education to GPs and health service providers who frequently act as a witness for POAs in hospital settings or GP surgeries
2. Increase community awareness of potential consequences if role is abused

3. Educate seniors re a range of options around family agreements, safeguards, things to consider/wishes to be made known before setting up POA
4. In any family agreement there must be clarity of intention and communication of the agreement between all family members is essential
5. Developing emotional resilience skills amongst the elder community so they feel empowered in their decision making and not prevailed upon by their family
6. Develop alternate pathways to resolve family conflicts other than the last resort of legal intervention and a court setting.

### **Question 35 Health services (and broader community services)**

FMC would suggest that this question be broadened out to include broader community services, including but not limited to health services. Certainly some health services such as GP's may be an early source of information and recognition of red flags about elder abuse, but also other community services such as HACC services, meals on wheels, community counselling services, churches and RSL / senior citizen groups, ACAS may all find themselves in a position where they suspect or are aware of factors that may suggest or hint at elder abuse occurring. In order for these frontline services to support older people at risk of elder abuse they need to be aware of options and for options to be available. Often, it is the people in these frontline services that are most trusted by the older person, which gives them strength and position to support the older person. But, they also often do not want to risk rocking the boat for the older person. They need to be confident that whatever action they take won't make the situation worse for the older person, and that whatever the next step is will be taken with care and consideration for the history, needs, fears and wishes of the older person.

### **Question 41: What ADR services are available, is there a need for more etc**

Currently there are few specialised services available to address Elder Abuse. There are a number of private Elder mediators and generic ADR services available.

The older person's aversion to taking formal legal action is a significant barrier to exposing situations of elder abuse. Having a pathway to resolution that was not court based such as the FMC service will be attractive to older people. The older person may have been suffering emotional abuse, vulnerable people need access to a number of services. The FMC model of needs assessment (not legal needs) and seniors counselling and empowerment responds to the older person in a deeper and more appropriate manner. In more complex situations if the senior and the POA each had a lawyer present whose aim was to support a private informal discussion while providing access to legal advice and experience, it could be invaluable. Options for resolution could be considered in that informed framework. With this in mind FMC has been developing partnerships with Seniors Rights Vic lawyers and Community Legal Centres.

FMC experience is that generic mediation services are not suitable to manage and prevent elder abuse for these clients as there are often considerable factors that need assistance prior to undertaking mediation such as a thorough assessment of the older person inclusive of their health and mental capacity, counselling and coaching to ensure the older person is able to express their views and needs and the ability through counselling to build resilience

. FMC developed an Elder Abuse Prevention Service in response to the high number of clients that were presenting for Seniors Conflict Services to FMC. The common themes amongst these clients included:

- High number of clients with depression and anxiety
- High number of female clients
- Most of the abuse was financial and emotional
- The other parties involved in the abuse were family members or care givers
- It was difficult to obtain the core issue from the older person
- The older person was frequently socially isolated from other family members

The Elder Abuse Prevention Service was developed as it became very clear that mediation alone would not work with these clients and families. This service is outcome focused and adopts a holistic multidisciplinary approach.

The central approach to the model focuses on the “voice of the older person” and ensuring their wishes are heard and they are able to have increased involvement in decisions regarding their care.

The FMC model incorporates specialised training in elder abuse and elder mediation; specialised intake assessment, risk and capacity assessment, individual support to senior throughout mediation; seniors counselling; financial counselling.

Where appropriate the FMC model can be enhanced by using our existing Legally Assisted Family Dispute Resolution model where lawyers are present with both clients during mediation of a conflict. The lawyers act to support negotiation, to offer counsel and informed advice and to bring a legal perspective. They do this within the context of supporting parties to reach agreement and explore different options for resolution.

Overview of

# Seniors Conflict Resolution: Elder Abuse prevention model

A relationship development & mediation service designed to empower the older person in a conflict situation. A preventative approach to Elder Abuse.

## Project Partners

1. Advocate groups - Seniors Rights Victoria
2. Community Awareness enablers- Community Legal Centre through awareness campaign (CALD) GP education and 'Matters of Trust' community workshops
3. Community Financial Literacy providers - Power of Attorney workshops for Seniors
4. Seniors services providers eg. DVA, RDNS, Transition Care, Local Council services

## Referral Response

FMC's Consumer Support Service is the first point of contact for consumers or referrers interested in our services.

- Respond to calls or emails
- **Assessment\*** conducted, client needs determined.
- \*Where risk of sexual, physical abuse, neglect detected immediate referral to an emergency service
- Case file commences & appointment booked

## These are the relationship development steps



The process is dependent upon the particular case attributes and may be terminated at any stage

## # 5 Outcomes



- The older person can expect
- greater clarity of roles within family
  - assume control of decisions affecting their future
  - significant reduction in stress
  - reduction in potential for elder abuse



Counselling Victoria