The Relevant Officer

Australian Law Reform Commission

*by email only to* ***elder\_abuse@alrc.gov.au***

Dear Sir/Madam

**ACT GREENS COMMENTS ON THE ALRC DISCUSSION PAPER No. 83**

**ELDER ABUSE INQUIRY: PROTECTING THE RIGHTS OF OLDER AUSTRALIANS FROM ABUSE**

Please find **attached** a submission on discussion paper no. 83 titled “Elder Abuse” on behalf of the ACT Greens.

Please note that where this submission does not address specific recommendations in the discussion paper, it does not necessarily indicate tacit support or lack of support, but rather that we have focussed on a subset of issues where we feel we can contribute to the debate.

I trust this may be of assistance and I would welcome an opportunity to discuss these issues in more detail.

Yours sincerely

**Caroline Le Couteur MLA**

ACT Greens Member for Murrumbidgee

ACT Greens Spokesperson for Planning, Transport, City Services, Housing, Arts, Animal Welfare, Community Services, Women, Seniors and Social Inclusion

**LIST OF RECOMMENDATIONS**

1. The ACT Greens strongly support proposal 3-3, that is: that public advocates or public guardians should have the power to require that a person, other than the older person: (a) furnish information, (b) produce documents, or (c) participate in an interview; relating to an investigation of the abuse or neglect of an older person.
2. The Greens support the introduction of an oversight board, such as the “Safeguarding Adults Board”.
3. The ACT Greens support the proposal to set up a public register of Enduring Powers of Attorney, to ensure sufficient safeguards are in place to ensure data privacy and security.
4. The ACT Greens support the suggestion contained in the discussion paper that the Code of Banking Practice be reviewed to require banks to train their staff in the nature and impact of domestic and family violence, including economic abuse, and in identifying customers who may be experiencing domestic and family violence when making an application for credit.
5. The ACT Greens support proposals 11-10 and 11-11 regarding the establishment of an “Official Visitors” scheme for residential aged care. We note that this is a significant gap in the ACT, as the ACT Government has an Official Visitors Scheme for other areas of institutional care, but as aged care is largely a federal matter, oversight would best be managed by the Commonwealth.

**INTRODUCTION**

The ACT Greens note the recent Australian Institute of Family Studies report which indicates the intergenerational nature of elder abuse which differentiates it from other forms of family violence. The most common form of abuse within families is adult children abusing parents. (“Elder abuse: Understanding issues, frameworks and responses”, Rae Kaspiew, Rachel Carson and Helen Rhoades)

The report estimates that between 2% and 10% of older Australians may be subject to elder abuse but notes that these statistics remain sketchy. It is probably under-reported. A combination of fear, shame and loyalty on the part of the affected older person results in a reluctance to seek help and contact the authorities about abusive family members.

In general, the ACT Greens believe that older people have the right to high quality health and aged care services regardless of their income, status, background or location.

We strongly believe that older people have the right to live with dignity, feel safe and live free from abuse, neglect and violence.

We want accessible information for older people about government services and community services and the provision of information and services in a manner that is appropriate and respectful of different levels of skills in and exposure to digital technology.

We would like more awareness of and services to support the growing number of older people affected by dementia including supporting mainstream organisations and the community to become dementia friendly.

We believe that there is an urgent need for the government and community organisations to improve the safety of older people in their homes, in service settings and in the broader community.

This submission does not attempt to cover all the elder abuse issues raised in the discussion paper. We have commented on a subset of issues where we feel we can contribute to the debate.

**CURRENT ARRANGEMENTS IN THE ACT**

During our research, we have identified the following problems with arrangements currently in place in the ACT for the prevention and reporting of elder abuse:

1. The Older Persons’ Abuse Prevention Referral and Information Line currently only operates during business hours;
2. After hours, an answering service is provided;
3. From publicly available information, this advice line acts as a referral service. There is no case management;
4. The service is not well publicised or well known;
5. The service has no investigative functions; and
6. It does not have a crisis response service.

**SUGGESTED IMPROVEMENTS**

The Greens support the introduction of an oversight board, such as the “Safeguarding Adults Board” which exists in England and Wales. This Board would include a representative from the local health area, a representative from the police, and someone from the ACT Government.

1. The Safeguarding Adults Board’s purpose would include:
   1. assuring itself that local safeguarding arrangements are in place as defined by the UK *Care Act 2014* and statutory guidance;
   2. assuring itself that safeguarding practice is person-centred and outcome-focused;
   3. working collaboratively to prevent abuse and neglect where possible;
   4. ensuring agencies and individuals give timely and proportionate responses when abuse or neglect have occurred; and
   5. assuring itself that safeguarding practice is continuously improving and enhancing the quality of life of adults in its area.

**POWERS OF ATTORNEY**

1. Currently, there is no way that institutions such as banks will know if a Power of Attorney has been revoked.
2. A rogue attorney could go along to a bank and withdraw funds using a document that has been revoked.
3. A register should be used by banks, aged care facilities, hospitals and lawyers to ensure that the Power of Attorney is up to date.
4. There is also the need for much more education on the need for Powers of Attorney and for them to be done early whilst the person is still of a sound mind
5. A Power of Attorney should be clearly written and in plain English. Interpreter services should be used where required.
6. In the ACT, JPs have the power to witness a Power of Attorney
7. JPs are often reluctant to witness a Power of Attorney because of the serious consequences of the document being misused by a rogue attorney
8. JPs in the ACT need more support and training in this area.
9. There is currently no compensation scheme in the ACT for a person who has been affected by the activities of a rogue attorney
10. It is suggested that the ACT Civil and Administrative Tribunal (ACAT) be given the jurisdiction to hear applications for compensation where someone has suffered loss as a result of a rogue attorney.
11. It is suggested that if a national system of registering Powers of Attorney is established, it should be simple and relatively cheap.
12. It is worth noting that if a national scheme is established and is being promoted, consideration should be given to establishing and promoting a registration system for Advanced Care Directives.
13. In the UK, the cost for registering a Power of Attorney is 110 Pounds (approximately $180). If we are going to establish a register, we would need to consider concessional rates for people on low incomes or those receiving Centrelink benefits. It is important that the cost does not act as a disincentive to people to register their Power of Attorney.
14. In the UK, there is a form which can be completed by a person making a Power of Attorney. The form is called “Form to notify people”. It is a form for people who may wish to object to the granting of the Power of Attorney to a certain donee or donees. The person to be notified may be the donor’s lawyer or doctor for example. The reasons for notifying this person can be because:
    1. They don’t believe the donor has the mental capacity to make a Power of Attorney.
    2. There was fraud or the donor was pressured to make the Power of Attorney.
    3. An attorney is acting above their authority or against the donor’s best interests.
15. It is suggested that a similar form be introduced in Australia as part of the registration process.

This would give the opportunity for anyone with concerns about the donee of the Power of Attorney to raise those concerns at an early stage.

**BANKS & FINANCIAL INSTITUTIONS**

1. Training on elder abuse should also be provided to accountants and financial advisors to enable them to be alert to signs of financial abuse. It should also provide them with enough information to be able to refer a person suspected of experiencing elder abuse to the right advice and support information.

**OFFICIAL VISITOR**

The ACT has Official Visitors for Children and Young People, ACT Health (Mental Health), Corrections, Disability and Housing (Homelessness) who visit persons staying in institutions owned, operated or funded by the ACT Government known as a visitable place. There is currently no official visitor for older people in the ACT.

The ACT Greens support the proposal contained in the Discussion Paper:

The *Aged Care Act 1997 (Cth)* should provide for an ‘official visitors’ scheme for residential aged care. Official Visitors’ function should be to inquire into and report on:

1. Whether the rights of care recipients are being upheld;
2. The adequacy of information provided to care recipients about their rights, including the availability of advocacy services and complaints mechanisms; and
3. Concerns relating to abuse and neglect of care recipients.

**CONCLUSION**

We note that Legal Aid in the ACT is receiving a growing number of calls in relation to elder abuse and many of these cases require urgent action. This is consistent with the trend throughout Australia.

We believe that the issue of elder abuse requires urgent attention and a significant increase in resources.

We thank you for the opportunity of providing a submission to the Discussion Paper. The ACT Greens will continue to advocate for the interests of our senior citizens.