

Protecting Seniors Wealth

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President Professor Rosalind Croucher AM

Australian Law Reform Commission

Dear Professor Rosalind Croucher,

Re: ALRC Elder Abuse Inquiry – Discussion Paper response

It is with great concern for the safety and wellbeing of our growing elder senior citizens that we have outlined key points for consideration. The information available to us indicates a focus on setting clear and strong boundaries to protect elders is paramount.

For the past six years we have collected information and conducted investigations and interviews into the often complicated situations that occur, by speaking with the victims at length, who have been financially abused, and as a result suffered numerous other forms of abuse.

The areas outlined, once established, could assist to reduce the rapidly growing and unwanted trend of elder abuse. An ongoing campaign is necessary to create more awareness and educate the abusers (the perpetrators), those who have experienced and suffered the indignity of abuse, and the general public to assist avoid abuse in the future.

Expedience and a commitment to following through to ensure the effectiveness of the campaign against elder abuse will be key to protect our elder senior citizens who deserve respect, and to live comfortably with their dignity in-tact. I commend everyone involved for assisting to expose this huge problem and for their commitment to improving systems. I welcome an opportunity to speak on this issue. Thank you.

Yours sincerely,



Anne McGowan

CEO, Protecting Seniors Wealth

Encl.

ELDER ABUSE SUBMISSION (DISCUSSION PAPER)

1. **THE LAW** - Tougher penalties for those who carry out elder abuse (including financial elder abuse) is paramount. A new law would deter abusers and potential abusers, and help set strong boundaries to deal with the increase in elder abuse. The introduction of an Elder Justice Law, making it a criminal offence to abuse or financially abuse an elder person could play a significant role in reducing the abuse.

No one should be above the law. However, with the system as it is now, the perpetrators feel the risk is minimal. Those who abuse elder people are cunning, greedy and manipulative, and they lie well in order to gain access to an elder’s finances and carry out abuse. For this reason, they are often difficult to detect.

***Elder Justice Law***

A new elder justice law would not only deter a high percentage of abusers, once it was made obvious by communicating a clear message that abusers would be prosecuted, to the full extent of the law, and that it could become public knowledge at some stage (named and shamed), this would present a very strong deterrent.

Financial abuse is more often committed by family members or people they know. Without adequate training, it can be difficult to recognise and prove. The perpetrators know this, and encourage others who also lack discernment, to carry out the same disrespectful low acts of abuse. They even brag about it to their friends or even think they have the right to do so. Such is the mind -set of the abusers. A clear message needs to be sent that it will not be tolerated.

***Change of Laws to enable reporting of Abuse***

The financial services industry, who are often presented with elder clients being financially abused, are in a unique position to help take action or report abuse so that action could be taken to assist that older person. Changes to the laws that prevent them from reporting such abuse is imperative in order to stop the abuse. Aged care providers and the legal profession are also in unique positions to help their clients avoid abuse.

***Elder Abuse Agency (Adult Protection Agency)***

In addition, if an elder abuse agency was created for them to report the abuse, one that would essentially deal promptly with Elder Abuse and Financial Elder Abuse, and one that could act swiftly and effectively to step in and assist the elder person, we would see more consistent better outcomes right across the board. It would assist the service industries who help seniors manage their finances, including the financial service industry, aged care providers and the legal profession.

***A register for legal documents***

One main reason for suggesting a Register for legal documents – Wills and Power of Attorney, is that with regard to financial abuse and all the other forms of abuse that often take place during financial elder abuse situations, is that there is not a way to check if legal documents are already in place. If this could be done, it would allow the legal profession to check and may help with a duty of care to protect elder clients.

When an elder person is being financially abused, once the perpetrators are initially successful at gaining access to an elder’s affairs, they often proceed with the intention of “accessing all their finances” by engaging a lawyer to draw up new legal documents (even if there may already be legal documents in place). They will pursue the matter until they find a lawyer who either unknowingly, (some may have suspicions), proceed to draw up new legal documents. Often by this time the elder is too afraid to speak up, for numerous reasons, and just signs the documents.

A register would provide a way to consider a duty of care for the elder person, especially if the new lawyer engaged to draw up new documents realised the elder person has had legal documents in place for some years with their own long term lawyer. Surely this would be a “red flag” to a possible financial abuse situation, and they could even communicate with the lawyer on that register to check. A register could prevent further financial abuse of an elder person. This tactic is also part of the “Inheritance Impatience” trend, and a register could help prevent the ‘unwanted’ abuse.

1. **EDUCATION PROGRAMS** – A commitment to an ongoing education programme for senior citizen communities, and those who genuinely help and care for them would highly benefit them. One that would create awareness around the prevalence and complexities of financial abuse and abuse of any kind, would be key.

Senior elders often don’t see the abuse and financial abuse coming – they simply don’t think it will happen to them. Sadly, it happens all too often, especially where there’s money involved. In many situations, what appears to be reasonable people can suddenly turn into predators in order to ‘get the money’.

The ideal education program would inform of how abuse occurs, and

that it is not acceptable, and will not be tolerated, and advise them

how to take appropriate action to report it, or better still, prevent it

happening in the first place. Again, awareness is key to prevention,

and preventing it is ultimately preferably to the trail of destruction

that an elder can fall victim to when subjected to financial abuse or

abuse of any kind.

1. **AWARENESS CAMPAIGNS** – A campaign that would send a clear message to the general public, that elder abuse of any kind is simply not acceptable. The campaign could remind people that elders have rights, and they should be revered and honoured and treated with respect.

This campaign, for example, if a law was introduced making it a criminal offence to abuse an elder, could be included material (sending a strong message) around the introduction of this law.

IMPORTANT BACKGROUND INFORMATION TO CONSIDER:

* When the Elder Justice Act was enacted in the US, federal funding for programs and justice regulations was made available for community education, awareness campaigns, training for law enforcement personnel, and Adult Protective Services. These services are available to millions of seniors across the U.S.

* The Elder Justice Act was the first step in the U.S. toward creating a better, safer world for the senior community. Much training, research, education and implementation of programs are still to follow and take place as part of an ongoing initiative with effective outcomes and successful strategies.
* Studies have shown that victims of financial exploitation, or neglect, are three times likely to die prematurely. This is understandable as the tactics of abusers are often ruthless and carried out without care for an elder and frail person. They have difficulty standing up to the abusers or taking action to prevent it.

Recent research was conducted by True Link (a U.S. financial planning company). The True Link Report on Elder Financial Abuse 2015, reveals that **seniors lose $36.48 billion each year** to elder financial abuse – more than twelve times what was previously reported. What’s more, the highest proportion of these losses – to the tune of **$16.99 billion a year** – comes from deceptive but technically legal tactics designed to specifically take advantage of older Americans.

Reference: True Link - Research

<https://www.truelinkfinancial.com/research>

The introduction of new legislation, changes to laws, education programs, awareness campaigns, all designed to better protect, serve, and advance the rights of victims of elder abuse and exploitation by establishing a program to encourage the States to hold offenders accountable, and enhance the justice system to investigate and take action to stop abuse.

As the opportunity presents itself to do something significant – a longer term ‘big view’ plan would certainly be preferable to a ‘Band-Aid’ approach.

An overview follows for the purpose of providing an example to consider for Australia. While considering, it would be prudent to also take into account the high level of “inheritance impatience” and how best to set strong effective boundaries to prevent that occurring to the elder community.

Obviously this is a huge growing problem worldwide. In the U.S. they have already taken steps to deal with the high level of elder financial abuse, taking into account the rapidly growing ageing population - who have their own finances for their lifestyle, and their future care.

OUTLINE OF U.S. STRATEGY

The introduction of the Elder Abuse Act resulted in the following requirements of these departments:

* **Department of Health and Human Services - t**he Act requires that this department oversee the development and management of federal resources for protecting our seniors from elder abuse. In part, the act requires the following:
* Establishment of the Elder Justice Coordinating Council
* Establishment of an Advisory Board on Elder Abuse
* Establishment of Elder Abuse, Neglect, and Exploitation Forensic Centers
* Enhancement of Long-Term Care
* Funding to state and local adult protective service offices
* Grants for long-term care ombudsmen programs and for evaluation of programs
* Programs to provide training
* Grants to state agencies to perform surveys of care and nursing facilities.

These efforts focus on education, research, leadership and guidance in establishing programs to stop elder abuse. Additionally, the Elder Justice Acts directs the U.S. Department of Justice (DOJ) toward actions to prevent elder abuse.

* **Department of Justice**

The prosecution of abusers has been a challenge. As part of the Elder Justice Act, this department is tasked with dedicating resources, studying and evaluating existing laws, and providing grants to local and state agencies. Their directives include:

* Develop objectives, priorities, policies and long-term plans for elder justice programs
* Conduct a study of state laws and practices relating to elder abuse, neglect and exploitation
* Make available grants to develop training and support programs for law enforcement and other first responders, prosecutors, judges, court personnel and victim advocates
* Ensure that DOJ dedicates sufficient resources to the investigation and prosecution of cases relating to elder justice

Studies have shown that victims of financial exploitation, elder abuse or neglect have been found to have three times the risk of dying prematurely. Reported incidents of abuse in care facilities, both long term and daycare, have skyrocketed in the past decade. The Elder Justice Act creates a nationwide database and program for background checks for the employees of care facilities. The act also requires that any elder abuse perpetrated in a long-term care facility be reported immediately to law enforcement.

In the U.S. under The Elder Justice Act, grants are available to state and community agencies to create and promote awareness programs that focus on scams, online fraud and abuse.

CONCLUSION

Seniors as they age often become vulnerable to local, national and even international scams that target their investments, homes, money and other assets. The aging population needs education on what to verify before providing anyone with access to their accounts for any reason.

Financial elder abuse by family members, or new friends and even neighbours, is not a new occurrence – it has been happening for many years. But the rapidly increasing rate and sense of greed and entitlement has emerged more so in recent years and needs to be addressed promptly.

Too many elders have suffered devastating and traumatic experiences due the fact this growing problem has not been dealt with accordingly.

We are exposing a ***huge problem*** area that will only escalate and worsen - boundaries to prevent this abuse will greatly assist to minimise the abuse.

A recent survey conducted by the Investor Protection Trust in the U.S. found that 1 in 5 elders are subjected to financial swindles, and while the level of financial abuse was still high, the systems they put in place are beginning to be effective.

Before the Elder Justice Act was enacted in the U.S., federal funding for programs and justice regulations was not available. Now, community education, awareness campaigns, training for law enforcement personnel, and Adult Protective Services are available to millions of seniors.

While much research, training, education and implementation of programs still needs to take place, the Elder Justice Act is the first step toward creating a better, safer world for our senior community.

References:

Investor Protection Trust (U.S.) - Research

http://www.investorprotection.org/ipt-activities/?fa=research

National Legal Resource Centre (NLRC)

How does the Elder Justice Act (in the U.S.) address elder abuse?

<https://nlrc.acl.gov/Legal_Issues/Elder_Abuse/Elder_Justice_Act.aspx>

USC University of California – School of Gerontology

What constitutes the Elder Justice Act (In the U.S.)?

<http://gerontology.usc.edu/resources/articles/what-is-the-elder-justice-act/>

Protecting Seniors Wealth – Guide Publications

More on the predators and criminals who want to separate elders and future generations from their hard earned money and assets …

<http://protectingseniorswealth.com.au/protecting-seniors-wealth-ebook/>

True Link - Research

<https://www.truelinkfinancial.com/research>

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