

**SUBMISSION TO: AUSTRALIAN LAW REFORM COMMISSION INQUIRY INTO ELDER ABUSE**

**SUBMISSION BY: OLDER PERSONS ADVOCACY NETWORK**

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**AUTHOR: JOINT SUBMISSION**

**Introduction**

The Older Persons Advocacy Network (OPAN) welcomes the Australian Law Reform Commission inquiry into elder abuse. While some of the members of this network will be submitting their own organizational submission, this particular submission, is a brief submission that specifically addresses points #11 and #20 of the inquiry.

This submission highlights some key issues that hopefully are of interest to the Commission. It is not an exhaustive submission and all member organisations of OPAN are happy to provide more detailed information should the Commission like any aspect of this submission expanded upon.

**Older Persons Advocacy Network**

This submission has been developed jointly by the nine advocacy agencies that make up OPAN – Older Persons Advocacy Network.

OPAN agencies are the current providers of the National Aged Care Advocacy Program and many are also the providers of HACC/CHSP Advocacy Services in their respective states and territories. OPAN’s advocacy services are underpinned by the following principles:

* Advocacy services are independent of service delivery and free from any *real or* perceived conflict of interest.
* Advocacy services ensure that consumers are placed at the centre of the process and the advocate acts at the consumer’s direction.
* Advocacy agencies ensure that their services are accessible to all potential consumers with strategies in place to overcome barriers to access to all special needs groups.
* Advocacy services are available to consumers at all points along the aged care journey from contemplation and initial contact with the aged care service system including home care to end stage residential aged care.

**The members of OPAN are:**

• Aged Rights Advocacy Service (ARAS) – South Australia

• Elder Rights Advocacy (ERA) – Victoria

• Advocacy Tasmania Inc. – Tasmania

• Seniors Rights Service – NSW

• ACT Disability, Aged and Carers Advocacy Service (ADACAS) – ACT

• Aged and Disability Advocacy Australia – Queensland

• Aged and Disability Advocacy Service, Darwin Community Legal Centre – NT

• Aged Care Advocacy Service, CatholicCare – NT

• Advocare – Western Australia

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**OPAN’s RESPONSES TO QUESTIONS #11 and #20 OF THE INQUIRY**

**Question 11: What evidence exists of elder abuse committed in aged care, including in residential, home and flexible care settings?**

**Case Study – Financial Abuse**

An aged care resident received a bank statement of purchases from her credit card. Following an internal investigation by management, and the bank, a staff member was interviewed by police and the spending was linked to her. The resident lost faith in the aged care facility and relocated to another aged care home and her health deteriorated rapidly.

**Case Study – Financial Abuse**

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 – Disability**

A man in his 80s who was blind contacted SRS. He resided in Department of Housing Accommodation. He appointed his nephew his enduring power of attorney. Over the course of 3 years his nephew would empty his uncle’s bank account each pension day on the premise he was making withdrawals for his uncle’s shopping. He would only give his uncle basic supplies (‘Weetbix’ and bread) and spend the rest of the pension money on himself.

The fraud was discovered when the Home Care Service Provider intervened to assist him with his shopping and discovered the theft. The older person sought advice from SRS and was advised to revoke the power of attorney which he did. The matter was also reported to NSW Police for investigation.

It is unlikely the funds will be recovered due to difficulties in gathering evidence of sufficient probity to prove the case. Even if evidence is obtained, recovering funds from the nephew, who is also on benefits and lives in Department of Housing, is difficult.

**Case Study – “Granny Flat Arrangement”**

In 2010 Mr and Mrs P. ( P ) then aged 75 and 73 respectively, received the age pension which was their only income. They owned their own home valued at $800K but found they could not afford to service the mortgage over their home. Balance owing to the Bank was about $230K. P entered into an oral agreement with their daughter and son in law whereby P would contribute $500K from the sale proceeds of their home to the purchase of a new larger house, the title of which was to be put into the names of the daughter/SIL. In return for their financial contribution P would acquire a right of residence in the new house for life. The financial arrangement was never reduced to writing nor did P obtain any independent legal advice. Moreover P did not lodge a caveat on the title to protect their equitable interest in the house. P did, however, later on notify Centrelink of the financial arrangement they had entered into. Centrelink determined that their contribution of $500K in return for a right of residence for life was allowable in accordance with Centrelink’s granny flat rules. As there had therefore been no ‘asset deprivation’ there was no reduction in P’s age pension.

Some years later there was a falling out in the relationship between P and their daughter/SIL. P were told to vacate the house and that none of their contribution to the purchase price would be refunded. P’s daughter/SIL alleged that the contribution had been a gift. In 2015, P sought assistance from Seniors Rights Service. A grant of legal aid was made which funded an advice and representation by Counsel. Action was commenced in the Supreme Court of NSW for recovery of the contribution of $500K plus interest and costs. The matter settled 4 weeks before the final hearing date on satisfactory terms whereby P recovered most of their contribution.

**Case Study – Financial Abuse**

Michael was a 62 year-old indigenous man living in a remote community who came to our attention through his care worker. The worker had been concerned that Michael had considerable savings in his bank account and was worried that a member or members of his family might take his key card and access the money. She had been holding his key card for safekeeping but this was against provider policy. She was instructed to give the card back. Her concerns were realized when the grandson got hold of the card and spent most of the money on a spending spree interstate. Michael was left with not enough funds to purchase much needed goods which had been ordered from the nearest large town and were expensive due to transport costs. Michael was upset with his grandson but didn’t want to make a fuss about it.

**Case Study – Financial Institution**

Grace came to our attention through her granddaughter. Grace was 84 years of age, was in respite care after a fall, and would most likely need permanent care. Up to this point Grace, with some help from her granddaughter, had been quite independent and appeared able to care for herself. Grace owned her house, which the granddaughter was confident could be sold to pay the Refundable Accommodation Deposit to an aged care facility and Grace would still have sufficient personal spending money. On examining the finances, the granddaughter found Grace had taken out an $80,000 bank loan two months earlier, had two credit cards with substantial debts, had bought expensive jewelry and made withdrawals from an ATM at the local casino. She was astounded that she had frequented a casino, as he had never known her to gamble. On assessment it was found that Grace had dementia. She queried the role of the bank in not asking questions as to why at 84 years of age, Grace would be approved for an $80,000 loan on top of her credit card debts. She felt that this should have rung alarm bells with the bank.

**Case Study – Accommodation**

Lois was and indigenous woman referred by the local hospital where she had been staying until suitable accommodation and a carer could be found. The hospital advised us that accommodation had been found and her cousin would care for her. The cousin had applied for the carers pension. Lois was discharged with the cousin to temporary accommodation, while permanent accommodation could be found for her, her cousin and her cousin’s children. The hospital contacted us again to say tell us the accommodation provider had advised the hospital that Lois was not being cared for by the cousin, who left her with the children while she went out all day, sometimes not returning until the following day. Lois was not able to remain at the accommodation under those circumstances and was readmitted to hospital. The hospital contacted Centrelink to advise of the carer’s change of circumstances.

**Case Study – Value of Advocacy**

Amy is an older person living with dementia in residential aged care. Amy contacted an advocacy service for support, concerned that her son had taken a large sum of her money for himself. The son was Amy’s power of attorney and enduring guardian. When the son became aware that Amy had contacted an advocacy service, he told the aged care facility that Amy was not allowed to speak with the advocacy service further and attempted to legally prevent Amy from accessing support. While the advocacy service was able to continue supporting Amy to have the matter reviewed, she was especially vulnerable throughout the process. She could not easily access information about how her power of attorney was managing her finances and her diagnosis of dementia was used against her when she tried to access support.

**Case Study – Abuse at Aged-care Facility**

Margaret was a person living in residential aged care following an injury, which severely impacted her mobility and ability to communicate however, it did not affect her cognition. Margaret was extremely unhappy and would regularly attempt to leave the aged care facility. Each time Margaret left, staff would force her to return and eventually put her in a secure dementia unit where she could not leave. Margaret did not have a guardian and while she experienced major barriers to communicating effectively with staff, she was able to make decisions for herself. The advocacy service was able to support Margaret to communicate with the aged care facility and assisted her to investigate other options. While the aged care facility had a duty of care to Margaret, she had no guardian and nothing had removed her right to make decisions or experience liberty without being restrained in a secure dementia area.

**Case Study – Sexual Abuse**

A hospital Social Worker contacted ARAS with concerns for Mrs D. D is 75 years and lives at home with her son. She had a stroke six months ago and needed help with her personal care including showering. Her son had been her carer since she returned home from hospital after her stroke. Mrs D had complained to her daughter that her son sexually abused her when he showered her. Although ashamed of what was happening to her, Mrs D had tried to talk about the abuse with her son but he just ignored her concerns and continued the abuse. She had been so anxious about showering that she hadn’t showered for four days until one morning when her son was out. She tried to shower herself but fell in the shower and sustained a broken arm and bruises. She laid on the shower floor with the water running for two hours before her daughter found her. Mrs D was given information about her rights as well as information about support services so that she can continue to live at home independently. She was also given the option of reporting her son to the police.

**Case Study – Psychological Abuse**

Mrs M is 85 years old and had been living independently in her Housing SA home until a recent illness. Due to her GP's recommendation, her two sons moved her out of her home and she was forced to live with her oldest son and his wife. She feels that her wishes weren't considered when this was done which upset her greatly. She was unhappy living with her son and daughter-in-law because her daughter-in-law didn't want her in her home and she verbally abused Mrs M. Mrs M’s grandchildren were also verbally abusive towards her. They say that she smells and they refused to eat at the kitchen table with her. This made her feel devalued as a person. Her son denied that she was being treated badly and had threatened to put her in a nursing home if she kept complaining. Mrs M wanted to live on her own in an independent living unit. When no-one was home, Mrs M contacted ARAS to ask for assistance to find alternative accommodation.

**Case Study – Financial Abuse**

Mrs T had difficulty with her mobility and relied on her daughter who had Power of Attorney to make withdrawals from her bank account. Mrs T decided that she would like to purchase an electronic lounge chair for more comfort and ease of getting in and out of a chair. The cost of this electronic chair was over $2,000. Her daughter talked her out of purchasing such a chair saying that it was being too extravagant. An argument then erupted between Mrs T and her daughter when Mrs T was assessed for needing both a hearing aid and a pair of reading glasses. Her daughter also refused to purchase these items. Mrs T became very unhappy with her daughter controlling her finances and began suspecting that her daughter would not withdraw large sums of money as this would reduce her daughter's inheritance. Mrs T sought help from a service provider who informed her about ARAS.

**Case Study – Social Abuse**

Everyone thought S was very good to his mother. He took her for drives each weekend and since he moved into his mother's home, she always praised him for the meals he cooked and how he helped her with the cleaning. However, friends started to miss her at the local club where they would always meet every Thursday. When they phoned home, the son would always answer the phone and would give them an excuse as to why his mother couldn't speak to them. Her friends found this to be very strange as she used to contact them by phone regularly before the son moved in. Finally a friend went to visit her but the son told her that his mother was lying down and couldn't see her. Irene was close by and overheard what her son had said to her friend at the door. She intercepted and invited her friend to come in. After social contact was re-established, her friend was able to give her information about ARAS if she needed support in the future.

**Case Study – Physical Abuse**

Mr. J lived in his own home with support services. A, his only child, was unemployed and visited his father on pension days when Mr. J would withdraw large sums of money to pay for food and utility bills. A would verbally abuse and physically threaten his father until he handed the money over to him. Mr J did not make any reports to the police because his son was already well known to police due to previous drug offences. On the last occasion his son visited him, his son was very intoxicated when again, he began physically threatening his father. Mr J tried to stand up to his son's physical threats but was brutally assaulted. Mr J was found on his lounge room floor bleeding when his service provider called for an ambulance and admitted him to hospital. Mr. J shared his concerns with the service provider and with his permission, contacted ARAS.

**Case Study – Abuse and Neglect**

M (A's long-term friend) had visited A at least twice a week since A's husband died and she moved in with her daughter. A's mobility was limited. She spent most of her days sitting in a recliner chair and was only moved around with assistance from others. A's daughter was also her carer. Two weeks ago, M went to visit A at her daughter's home but there was no answer. This was unusual, so she returned home and tried to phone A. There was no answer. She tried to visit A the following day but again, no one was home. She began to worry and wondered if A had become ill and gone to hospital. She tried to phone A, but again without success. On the third visit when she knocked on the door, she heard a voice call out that sounded like A. M called the police from A's neighbour's phone. The police entered the house and found M sitting in the recliner chair in incontinence pads that were soaked and soiled. There was a glass of water on a table near A but she couldn't reach it.

Alicia was placed in emergency respite when the manager contacted ARAS.

**Case Study – ACT Civil and Administrative Tribunal Intervention**

Ten years ago Lily was diagnosed with various health problems. Although Lily continued to live in her own home and went to work each day, she suffered from some mental health issues, eventually resulting in Lily being admitted to hospital. Her good friend Mary ensured that she was cared for and was able to access the appropriate medical support that she needed. Over the years Lily’s mental health continued to deteriorate until she was eventually diagnosed with early onset dementia. One day she suffered from an episode that resulted in her admittance, once again, to hospital. The situation was so critical that her doctors did not expect Lily to make it through the night. The staff at the hospital contacted Mary as Lily did not have any other family who could support her. They requested that Lily sign an Enduring Power of Attorney (EPOA) so that Mary could be empowered to make all decisions on Lily’s behalf while she was in hospital.

Once Lily was discharged from hospital the hospital staff encouraged her to move into an aged care facility so that Lily could receive the support that she needed. Around the time of Lily’s admittance into the aged care facility a work friend advised Lily to appoint her son Clive as her EPOA, so that she could ensure that her welfare and finances were being taken care of when she moved into the aged care facility. Lily signed the EPOA without anyone realising that the EPOA appointing Mary was still active.

Initially Clive visited Lily regularly, often bringing clothes and toiletries that he had purchased for Lily. These visits eventually ceased altogether. As the years went by Lily’s dementia grew worse. When her pharmaceutical bills went unpaid the management of the aged care facility attempted to contact Clive, without success.

The staff of the nursing home telephoned Mary, who was a frequent visitor, explaining that they were unable to contact Clive and that Lily’s pharmaceutical bills were not being paid. They further advised Mary to contact ADACAS for advocacy support. An advocate visited Mary and Lily, to understand the problem. The advocate subsequently telephoned the bank that held Lily’s bank account and was able to confirm that money was regularly being withdrawn, although no money was being spent on meeting Lily’s needs. It was furthermore confirmed that the pharmaceutical bill was in arrears and that no effort was being made by Clive to ensure that this bill was paid.

It was evident that the current EPOA held by Clive needed to be revoked. The advocate supported an application being made to the ACT Civil and Administrative Tribunal (ACAT) to revoke the EPOA held by Clive and to ensure that Mary was able to support Lily to manage her affairs. The advocate prepared the supporting documents for the hearing, including statements from Lily’s doctor advising that Lily had already been diagnosed with dementia before signing the EPOA appointing Clive. Considering these circumstances, it was clear that the EPOA appointing Clive was invalid.

The advocate attended the Tribunal hearing with Lily, who felt very nervous. Clive did not attend the hearing but was interviewed by the Tribunal member by teleconference call. Clive admitted that for the past six years he had been spending Lily’s money for his own personal use and that he had even given some of her money to his housemate. A few days before the hearing he had written a cheque from his mother’s account to pay for his car registration.

On the basis of the evidence before her the member revoked the EPOA held by Clive, stating that the case constituted a clear case of financial abuse of an elderly person. As it was a civil matter the member clarified that she was unable to proceed with considering the criminal ramifications of Clive’s actions.

Mary was once again granted EPOA of the management of Lily’s financial affairs. Upon further investigation it was discovered that Lily had no money left in her bank account as Clive had spent it all.

**Case Study – Financial Abuse**

Marina is an 80-year old woman from a European background. She came to Australia with her husband in the early 1950s and they prospered. Marina worked in the business and was a driving force behind its success. When her husband died Marina was left reasonably financially secure and owned her own house in an expensive part of Canberra. Marina has a daughter living abroad and a son living in Canberra. Marina has no cognitive impairment and manages her own affairs; however in late 2011 Marina had a bad fall and broke her leg and her arm resulting in long stays in hospital. Marina’s son has four daughters who are now getting too old to share bedrooms and was looking to up size his house and move to a “better” area but needed additional finance to purchase such a property.

Marina’s recovery period was going to be long but she started to progress well physically. Being in hospital with the only visitors being her son and occasionally daughter in law and grandchildren she became isolated and started to lose confidence in her ability to live alone. When her son made her an offer to live with them, sell her house and invest in their new property under a granny flat arrangement with Centrelink, it seemed tempting. Marina had been groomed by her son over a long period of time to believe she could not manage living alone any longer. A property was found by her son with a flat attached, Marina was taken from hospital to look at the flat and returned to the hospital all within the space of a few hours. She had no opportunity to discuss a major financial decision or the suitability of the property with an independent person. Based on promises of the support the family would give her and her now complete loss of confidence in her ability to care for herself Marina agreed and invested in the son’s new property.

The arrangement was doomed from the start, the promised care and support never eventuated and the flat could not have been more unsuitable. By the time ADACAS became involved Marina was locked in to the Centrelink granny flat arrangement for five years and a large sum of money was paid to the son to secure the granny flat interest. Centrelink applies a deprivation rule if the granny flat arrangement is terminated before five years has elapsed unless the reasons for leaving could not have been foreseen at the time of entering into the agreement. The ADACAS advocate was able to support Marina and help her establish a new independent living arrangement. It could so easily have been a disaster for this client locked into isolation and despair for the last years of her life. This case highlights the hidden nature of financial abuse of older persons.

**Case Study – Caveats in Home Care Agreements**

We have found ‘standard form’ agreements for Home care clients being prepared by a large legal firm containing caveats against the consumer’s home in the event that fees are not paid. Fees for home care would generally be 17.5% of the aged pension, and for part pensioners or self-funded retirees paying an income tested fee, a maximum of $10,000 per year. The clause is as follows:

“*for the purpose of securing your obligations under this Agreement, including your payment obligations, you charge your interest in the Home (the person’s own home this seems to mean).and acknowledge our right to lodge a caveat over the title to the Home to protect our interest under this Agreement*”.

The legal advice obtained was that this may constitute an unfair term under consumer law as follows:

 *‘an unfair term is one which would meets three criteria - causes a significant imbalance in the parties’ rights and obligations arising under the contract; causes detriment; and is not reasonably necessary to protect legitimate interests’*

While we obtained legal advice from a large law firm’s Special Counsel that this may constitute a breach of consumer law, and could be taken to the ACCC. They asserted that providers had an existing contractual right to collect fees, and could restrict services if fees were not paid, so such extreme caveats with no restriction were unfair, we have not had the agreement from clients to do so at this point. We note that the providers’ legal firm continues to assert that this clause is not against the Aged Care Act. We have had carers (especially younger partners of people with dementia), who have been extremely distressed by the possibility that the family home could be under threat in the event that they fell into arrears with fees. Some clients have obtained legal advice and refused to sign the agreement without striking out the clause, which has worked in some instances. The Department, and the Aged Care Complaints Commissioners Office say this may only be able to be handled through consumer affairs, as it is not covered by the Aged Care Act.

**Question 20: 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?**

OPAN believes that the best option for creating a nationally consistent, accessible and flexible end-to-end aged care advocacy program is to build on the existing NACAP and HACC Advocacy services that are currently provided by the nine OPAN services.

In considering the strengths of what is presently being delivered, we would highlight:

* A high level of knowledge and expertise in aged care and CHSP/HACC service delivery in each jurisdiction.
* A detailed understanding and experience in working with the relevant legislation and service standards for both residential and community care.
* A trained and experienced advocacy workforce seasoned in providing independent, individual advocacy services to older people and their families.
* Highly developed networks which include consumer organisations, carers organisations, service providers (both individual providers and through their peak bodies), special needs groups (e.g. CALD, ATSI, LGBTI and dementia specific) again as individual agencies and peak bodies but also commonly through direct contact with specific communities, government agencies (e.g. ACCS and DoH) and statutory authorities (Aged Care Quality Agency).
* Synergies that are gained from either providing other associated services or programs ourselves (e.g. aged care legal services, elder abuse prevention, disability advocacy, retirement village advocacy, ATSI specific advocacy, guardianship advocacy) or through colocation (e.g. colocation with community legal services).

With seven of the nine OPAN agencies already funded (in some cases for almost 30 years) to provide both NACAP and HACC/CHSP advocacy the end-to-end advocacy program is already three quarters built. It just remains that funding for Victoria and Central Australia needs to be provided along with improved funding for NSW in relation to CHSP advocacy funding – these jurisdictions are clearly underfunded for CHSP advocacy. Further some OPAN member organisations do not receive equitable funding based on population size and therefore do not have capacity to deliver services from large regional locations despite large and diverse populations across these states.

OPAN notes that elder abuse can ‘play out’ differently in diverse communities. Also, elder abuse can often be under-reported in some CALD, LGBTI and ATSI communities. OPAN values the specifically funded special needs advocate positions that some member state and territory organisations receive as it provides for the establishment and continuation of appropriate networks leading to greater access for clients from special needs groups. It allows for continual internal training and support to advocates to ensure consistent and effective service delivery to these client groups across the organisation and the accessibility for clients whose preference is an identified advocate to support them. The advantage of having specifically funded special needs advocates within the OPAN service ensures the expertise of advocacy support and consistent advocacy approach is maintained across aged care advocacy and equitable access is achieved throughout the sector. All OPAN member organisations should be resourced to the capacity to effectively provide much-needed advocacy services to all special needs populations based on each jurisdiction’s population diversity.

In regards to the Community Visitors Scheme the scheme operates in all States and Territories and provides support to older people by funding community organisations to recruit and train volunteers and match them up with a person receiving Commonwealth funded aged care services. They do not provide advice or advocacy but play an important role in ensuring older people’s quality of life is enhanced. This is a valuable service to older people and needs to continue alongside the advocacy services role as they are distinct and separate.

The original Community Visitors Scheme as envisaged by Chris Ronalds in her report was more in line with the model as described in Victoria, and was to work with the National Aged Care Advocacy Program (NACAP). The promotion of the independent NACAP services could easily be carried out by Community Visitors as part of their existing visiting and support services to aged care homes, and care recipients. Many of our existing contacts provide feedback as part of our QA process, and say ‘I wish I had known about you earlier’ so given the extent of the Community Visitors Program, this seems a good opportunity to ensure consumers are aware of the support advocacy can provide.