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Submission in response to:

Australian Government

Australian Law Reform Commission

Elder Abuse Issues Paper

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Care Inc. Financial Counselling Service

& The Consumer Law Centre of the ACT

Telephone 02-62571788

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**Service information**

Care Inc. Financial Counselling Service and The Consumer Law Centre of the ACT (Care) has been the main provider of financial counselling and legal assistance on consumer credit matters for low to moderate income and vulnerable consumers in the ACT since 1983. Care’s core service activities include the provision of information, financial counselling, legal advice and advocacy for consumers experiencing problems with credit and debt.

Care also has a Community Development and Education program, provides gambling financial counselling as part of the ACT Gambling Counselling and Support Service (AGCSS) in partnership with lead agency Relationships Australia; makes policy comment on issues of importance to its client group and operates the ACT’s first No Interest Loans Scheme which was established in 1997. Across Care’s service delivery programs, the agency responds to over 2000 new requests for assistance every year.

We thank you for the opportunity to make comments on the issues paper. Our comments focus on the issue of **financial abuse** of older people as seen in the context of financial counselling and consumer credit legal assistance, with some specific comments on questions raised in the issues paper which relate directly to our areas of expertise.

**General background**

Care works with members of the ACT and region community from young adult to the elderly. We are seeing increasing numbers of older clients (from forty five years upwards[[1]](#footnote-1)) including Aboriginal and Torres Strait Islander (ATSI) clients and clients from culturally and linguistically diverse backgrounds (CALD). The primary reason people contact Care for assistance is when they are experiencing financial hardship and are unable to meet their commitments as they fall due. The majority of our clients are unsure of the options and remedies available to them. They may be struggling to pay credit facilities such as personal loans, credit cards or mortgages and also day to day expenses such as rent, utilities, medical costs, transport, education and food. Along with an inability to meet their financial commitments, many clients will be experiencing a range of increasingly complex personal circumstances. This can include high levels of stress, mental and physical ill-health, relationship breakdown, unemployment, family violence, effects of past trauma and addictions.

In our experience older clients generally approach Care at the suggestion of a family member, friend, neighbour or support service; they are less likely to have found the service via research such as the internet. A recent snapshot of clients taken from Care’s data collection revealed that over a five month period this year, approximately forty one per cent (41%) of new contacts were from older people.[[2]](#footnote-2)

For an older person to have contacted our service, they may have discussed their financial difficulties directly with family or supporters. Occasionally a family member has come across a letter or bill suggesting that the older person is not keeping up with payments; for example on a utility account. Generally we find that older people can be reluctant to seek help and when questioned as to the reasons for their reluctance to seek help they express a high degree of shame that they have been unable to keep paying their bills as they fall due.

The majority of Care’s older clients do not own any assets and have only a pension or other small income. From time to time we work with older clients who have a house that they own; however if they are dependent on a pension for income the property will inevitably be in need of repairs that they are unable to afford.

Older clients’ debts may have been in existence for decades when they approach our service. Some clients will have been paying large amounts in interest, if they have not been able to pay off more than the minimum amount due on debts, such as credit cards. We have worked with older clients who have gone without electricity, medication, food and other essentials to try and stem the tide of what can be an overwhelming deluge of debt.

Some older clients will have been extended credit when they clearly would have been unable to meet the ongoing repayments, and have been placed in a position where they fear being harassed (or have been harassed) by debt collectors if they have not met payments as they are due. We cannot stress too highly the efforts some older people make to continue payments on debts that are way beyond their means to service. Largely they are unaware of their rights unless they are in put in touch with a financial counsellor or consumer credit solicitor, or a family member has similar knowledge.

**Financial abuse of older people as seen at Care**

In our experience, older clients accessing either our financial counselling service or consumer credit service are unlikely to disclose financial abuse at point of first contact. This may be because of issues of shame as previously mentioned, because they do not identify what they are experiencing as financial abuse, or to protect a relationship with a person they are dependent upon.

Financial counselling services and consumer credit solicitors have always identified and worked with victims and survivors of various forms of abuse. However the current profile of these issues has rightly been raised within the broader community by recent instances of family and domestic violence. The recent Royal Commission into Family Violence (Victoria) makes specific recommendations on both financial abuse and abuse of older people.[[3]](#footnote-3). The raised profile makes it more likely clients will self-identify that they are experiencing family violence or abuse (including financial) or that they will be open to the possibility that this is what is happening to them and discuss it with a worker. It does, however, require a skilful and well trained worker to be able to sensitively work out with the client what is going on for them, particularly if it is a confronting issue such as financial (or other) abuse.

Where family or support people are implicated as perpetrators of abuse, our experience has been that the older person may be very reluctant to even consider the possibility that what they are experiencing is abusive. Where the older person is struggling to retain a sense of self and control of their life, even the possibility may be highly confronting. When the family member or supporter is present at interview, the situation becomes even more complex as raising financial abuse as an issue could lead to deterioration of a relationship that the older person perceives as vital, sometimes for survival. Further compounding the complexity are situations where the older person is experiencing anxiety, depression and a reduced sense of self-esteem, which could be as a result of abuse or unrelated to it, or they have reduced capacity to make decisions about their finances and may have given power to another party to act on their behalf. There can then be a lack of consideration or discussion about what the older person’s wishes are; or the older person is treated as though they are childlike by an abuser which further undermines their self-esteem.

We occasionally see a situation that was not originally financial abuse; such as an older person as guarantor on their adult child’s loan where the adult child is unable to repay the loan and the financial institution calls on the older person to make the repayments. While no financial abuse was initially intended, and the older person has consented at the time understanding their commitments as a guarantor, this can have devastating consequences financially for the older person and for the relationships involved, sometimes then leading to abusive behaviour from the adult child who wants the loan paid out by the parent. We have also seen the situation where the older person has guaranteed an adult child’s debt without understanding their rights and obligations, thinking they were a type of ‘referee’: this can lead to very difficult interactions between parties and possible abusive behaviour. These situations certainly not only call into question the conduct of the adult child, but also the financial institution, as to how the older person is informed and provided support to fully understand their rights and obligations.

Financial abuse can be very difficult to determine if there is a family relationship that appears reciprocal at first glance but on further examination is in fact one where the older person is being taken advantage of. This can include situations where an older person is expected to do tasks, such as child minding or cleaning, but where there is no recognition of the older person’s needs as to the amount of work expected and no payment or other support offered in return. It can also include cases where an older person is paying rent to a family member above what a reasonable person would expect to pay for a rented granny flat or similar accommodation. These complex situations can be difficult to unravel, and an older person may be reluctant to look at the possibility they are being financially exploited because they do not want to find that they have nowhere to live or be estranged from family.

**Responses to questions raised in issues paper**

1. **What is elder (financial) abuse?** Care regards financial or economic abuse as containing some or all of the following elements:

* Reduced financial security for the older person as a result of another person’s actions including fraud, misuse of their funds, deceiving an older person into signing documents that are financially detrimental to them, actions can be a one-off or a repeated action
* Adverse effect(s) on the older person, including psychological distress
* Prevention of access to material resources for the older person – this can include basic needs such as food or adequate accommodation
* Where the older person is expected to provide an unreasonable amount of services (such as child minding, pet-sitting or cleaning)
* Prevention of access to appropriate support services (including to financial counsellors and consumer credit solicitors) to inform older people of their rights
* Where the older person is excluded from decision making and discussion about financial matters that concern them.

Our service has seen the above elements in cases such as:

* where an older person would provide details of their bank account and the family member withdrew money to pay for the older person’s purchases but added an extra amount each transaction which they did not give to the older person
* an older person without a phone, who eventually contacted our service via a friend’s phone, after repeatedly asking her daughter if she could call our service to discuss her finances. She had suspicions that interest from a small investment she had was no longer being paid into her account
* a man who had assistance from his general practitioner to contact our service when he felt that his family was making decisions about his finances without including him or discussing it with him. He had become very depressed as a result of feeling that he was losing control of his life
* an elderly client who signed documents provided by their adult child not knowing that what they were signing was a transfer of land form, and the adult child then took the deeds
* an elderly client agreed to transfer proceeds from a house sale to an adult child on the loose arrangement of care and accommodation without obtaining independent legal advice. The arrangement broke down and the elderly client was forced out of the home and is now in financial distress.

**Q2. Key elements of best legal practice**

Key elements of best legal practice include the following:

* Independence from family members – lawyers need to properly identify who their client is and ensure that they act for the one party to the dispute only, and not the other family member/s
* Acting and taking instructions from the older client directly, without interference from any family members
* Understanding the role of supported decision makers where there are issues of capacity
* Lawyers having a better understanding of capacity (refer to the Qld and NSW Law Society Guides on capacity as being instructive)
* Being aware of how to best maximise a client’s ability to give instructions and understand the legal issues and consequences. Some examples include: using the time of day best suited to the client (usually mornings), using communication devices where required (such as hearing amplifiers for example), having a level of understanding of the client’s needs and setting appointment times accordingly, doing home visits where required
* Effective communication skills for the client base, including alternative methods of communicating to accommodate the client’s circumstances
* The use of independent interpreters and not family members, when the client is unable to speak English
* There is also a need for more funding for training about elder abuse in the legal community so that lawyers are better placed to identify the issues, knowing when conflicts of interest may arise and how to best maximise the capacity of their clients.

***Recommendation 1***

***Increased funding for training of lawyers to increase knowledge of issues around elder abuse, specifically conflict of interest and taking instructions from older clients.***

**Q3 Case study of financial abuse**

Our experience with financial abuse has shown across the spectrum of clients that there are particular client groups at more risk of financial abuse than others, given their particular disadvantage. Typically the client experiencing financial (or other abuse) abuse is female, and an increasing number of them are elderly. The case below is an example of an older woman experiencing financial abuse. Vulnerability such as being from a marginalised group, non-English speaking background, being elderly, experiencing family or other violence, suffering ill-health (both mental and physical) means that banks and financial institutions must be rigorous in ensuring they interact ethically with such clients and ensure that they take the time, using appropriate supports to ascertain a customer’s wishes, and inform them of their rights and obligations.

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| **Case study 1**  *Our client\* was a sixty five year old woman who had signed a guarantee against her home for her son’s business, several years earlier. She was referred to our service when she showed a letter she had received from the bank, to one of her friends at her church because it had a ‘red spot’ on it, and she did not understand the meaning of it. The client had basic English speaking and reading skills at the time she contacted our service. The letter related to a loan in her son’s name for which she was named as guarantor. When questioned as to how she came to sign as guarantor, she explained that at the time of signing the documents she had been unable to read the information or contract put before her but just did as she was asked. She further disclosed that she was also given no opportunity to take the contract away and seek independent legal advice prior to signing. Her understanding of what had occurred was that she thought she was attesting to her son’s ‘good character’ for the conduct of his business. At no time was she told her home (which had been her home with her now deceased husband, and was her only asset) was at risk if he did not repay the loan he was in fact applying for.*  *The client became highly distressed by the circumstances and the implications it might have for her financially, but more importantly to her, for the effect on her relationship with her son and his family, as she was very close to her two grandchildren. Initial conversations were around whether she could discuss with her son what was happening for him and why he was unable to pay the loan and she had been called upon as guarantor. However, the timeframe meant that there was also pressure on her to respond to the bank’s letter and she authorised the financial counsellor involved to contact the bank and obtain details of the amount sought. Copies of all the original documents were requested as well as a statement of any amounts owing. She expressed how stressful she found the situation and that if it was not a large amount, she would ‘just pay it’ so as to ‘keep the peace’.*  *The financial counsellor explained that it appeared as though she had signed the documents with out proper process or information and that she should seek legal advice to ascertain what her rights were, just in case she did not have to pay, or could not or did not want to pay, the debt. On finding that the amount requested was beyond her means, she sought legal advice. While a negotiated settlement occurred that ultimately made little impact on her financially, she said that her relationship with her son had been very damaged by what had occurred and she sensed a withdrawal of family members from her as a result of the situation, making her feel very alone.*  *\*client details de-identified* |

**Q4 Evidence and research needed**

In order to properly measure and ascertain the effects of financial abuse, a nationally enacted, consistent framework in respect of data collection is required with uniform definitions applied across jurisdictions. There is currently only piecemeal data collection and this appears to be spread across various agencies and stakeholders. The Victorian RCFV reported that there is very limited evidence on the prevalence of elder abuse in Australia. According to the Commission;

‘It has been estimated to affect five to six per cent of older people in Australia, while international studies contain disparate estimates of between one to ten per cent of older people.[[4]](#footnote-4)

The data collection framework should include

* incidence of abuse by abuse type, including financial and economic, with a view to quantifying economic loss as a result of elder abuse
* how notification occurred, self –reported or by a third party
* survivor profile including relationship to the perpetrator ; for financial issues – financial relationship(s)
* perpetrator profile, including financial profile

Data collection should enable research activities to inform the development of policy responses.

There should also be opportunity for linking data about elder abuse across industries, for example the health and medical sector, aged care, financial sector, utilities.

***Recommendation 2***

***A nationally implemented data collection framework and database, linking information about elder abuse across jurisdictions and sectors.***

**Q5 Social security – identifying and responding to elder abuse**

Social security staff that are contacted by elderly clients enquiring about issues such as gifting, granny flat arrangements or aged care – should have training to identify these issues as ‘red flags’ that alert them to the possibility that the older person may be at risk of financial abuse and can refer them to the appropriate legal or financial service. They should also have direct links to the Financial Information Service (FIS) within Centrelink so they can put the older person through to discuss the financial implications of any financial decisions they are thinking of making with a FIS officer. The FIS officers have a unique role within Centrelink and can offer a different kind of support to an older client without being as potentially intimidating as some other parts of Centrelink. Frontline staff should also refer directly to a Centrelink social worker if there is elder abuse or suspicion of it.

Where it is ascertained that elder abuse has occurred and, for example the older person is no longer living in a granny-flat arrangement the law needs to be more flexible as it is unfair for the older person to be penalised as having gifted money which impacts on their Centrelink entitlement and asset assessment for aged care. Likewise where an older person has gifted (cash) money to relatives under duress, this should also be dealt with by a less strict interpretation of the law, lest the older person be doubly penalised by circumstances beyond their control.

***Recommendation 3***

***Frontline Centrelink staff to be trained to recognise financial abuse of older people and to make appropriate referrals.***

***Recommendation 4***

***Where an older person gifts assets and this is later found to be due to elder abuse, the response by Centrelink should not further disadvantage the older person.***

**Q8 Income management**

An older person should not be forced into income management because their relatives misuse or defraud them of their money, the relatives should be dealt with instead of inadvertently punishing the older person by taking control of their money. Income management should only be considered in cases where all other methods have failed and it is needed to protect money from abusive relatives or support people. It must be done *only* with the informed consent of the older person. Imposing a condition such as income management on an older person when they do not request it is likely to lead them to feel that they are losing control of their lives and potentially risks imitating abusive financial behaviour. Our understanding of income management as a mechanism is that it has limited, if any, value and can potentially disempower individuals, an outcome that is at odds with older people maintaining a dignified lifestyle. A Parliament of Australia commentary on income management found that;

‘the early indications are that income management operates more as a control or protective mechanism than as an intervention which increases capabilities’.[[5]](#footnote-5)

Instead there is a suite of tools that Centrelink has available for people to help them manage their money; including budgeting and financial education and also Centrepay arrangements, which do not require income management. There are also sites such as ASIC’s Moneysmart website, and financial counsellors can assist people to explore other options for bill and account payments and debts.

***Recommendation 5***

***Income management not be used for older people unless it is voluntarily sought by the older person.***

**Q 24 Superannuation**

While we have not seen direct evidence of a client’s superannuation being at risk as a result of financial abuse, it is a potential source of abuse by a family member or other person, just as other income or assets are. An older person’s superannuation can be put at risk if they have bought an asset such as a house, and scenarios we have outlined above (such as a guarantee) occurs. There could be pressure on an older person who has an income stream from their superannuation fund to allow access to it by another person who then defrauds them of their money. This situation can potentially deplete the asset and may have implications for the income entitlements of the older person for Centrelink purposes.

**Financial institutions**

**Q 25 Evidence of elder abuse in the banking or financial system**

Financial abuse in the banking and financial system can occur either at the hands of a relative or other person that takes advantage of an older person; or it can occur as a result of inadequate systems in place in the banking and finance sector. Where older people have a level of trust in their family and/or in their bank, this can make financial abuse more possible as they don’t necessarily question what is happening. The ABA has already produced valuable resources for protecting vulnerable people in the banking system[[6]](#footnote-6) and Care is supportive of the information and strategies detailed in them. However the financial sector is far broader than just banks, and some of the more reprehensible behaviour we have observed comes from companies within the Small Amount Credit Contract (SACC) sector and similar products. We would also include in this sector those ‘rent-to-buy’ schemes that provide goods at vastly inflated prices and that trap customers into long term expensive, and in our opinion, highly financially abusive situations. These industries also have a responsibility to act ethically when interacting with elderly or other vulnerable customers. Like banks, they have an obligation to:

Not place the older person in a worse financial position by providing them with a loan or rental contract

Be alert for cases where there may be indications of financial abuse; check with the older person why they need to borrow – is it for their purposes? Is another person pressuring them? Is someone taking their money?

Not encourage repeat borrowing where there is even the slightest indication that the elderly person may struggle to meet repayments

Inform the older person what their rights are

Ascertain if the older person fully understands the amount they will pay for credit/rental goods

Provide support (ie explanation, interpreter, Braille)

Provide documents in formats older people can access

Slow the process down when needed

Refer to financial counsellors or consumer credit solicitors

Where a financial services staff member becomes aware or suspects that there may be financial abuse by a relative or other person, they have a duty to question whether the older person will be placed at financial disadvantage by continuing with a transaction even at the request of the older person. We acknowledge that it is a very difficult area to enter into, as issues of privacy arise (discussed in the next section), however, allowing a transaction to continue that disadvantages the older person is unacceptable.[[7]](#footnote-7) The possibility of abuse of older customers makes it vital that banks, other financial institutions and goods rental companies ‘raise awareness about financial abuse among (bank) staff; particularly those on the ‘front-line’ who are in a unique position to potentially detect the abuse.’[[8]](#footnote-8) Without such an approach, situations such as the following case study, which details more than one type of financial abuse happening at the same time, can arise:

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| **Case study 2**  *The client\* was a seventy one year old man whose only source of income was an Aged Pension. He lived in a government house and had a number of health conditions including arthritis and diabetes. He had maintained an active lifestyle including gardening, being a member of his local bowls club and regularly helped his daughter with her shopping and housekeeping tasks as she had low vision. When he came to our service, at his daughter’s suggestion, he had been falling behind in his rent and other bills. This was unusual for him as he said he generally managed very well. His daughter came to the interview with him and explained that she had answered the phone at his home one day when a ‘payday loan place’ rang asking for money.*  *According to the client who stated how embarrassed and ashamed he was of getting behind in his bills, that a friend at the bowls club had asked him if he would like to donate money to an overseas charity. The client said he wanted to, but also felt pressured as it seemed according to his friend, that the charity was desperate for money to assist war affected orphans. The client agreed to allow a deduction from his bank account by direct debit, believing that it was a ‘one-off’ donation. However the debit had continued and before he realised, all his small savings were gone and the amount being debited was eating into his regular income, meaning that his Centrepay deductions for rent, electricity and gas were not being paid. He had become so desperate for money that he approached the payday lender in the nearest shops and described them as being ‘nice and helpful’. He obtained two small loans to pay out some of his bills. He did not realise how much this would cost him or that he would end up in further financial distress and received no information from the payday lender about the contracts he signed. The payday lender should not have extended him credit in the first place as he was already clearly in financial difficulty. The financial counsellor assisted him to cancel the direct debit, and the matter of the overseas charity debit was referred (with his permission) to the police for investigation. The ‘friend’ that had suggested the debit had mysteriously left town and could not be traced; unfortunately he could not recover this money. He then saw the consumer credit solicitor who assisted him in having the amounts owing on his payday loans reduced significantly. He then worked with a financial counsellor to regain control of his other bills, a process which took over twelve months. \*client details de-identified* |

The scenario above, and other similar ones that can arise in our work with older clients demonstrate that a *relationship* is often the driver of situations that end up causing financial detriment to the older person. These situations should never be taken at face value by a bank or financial institution. This just allows financial abuse to continue, far better to intervene at the initial contact where suspicion of financial abuse arises than to delay and allow or possibly facilitate it to occur. If in the case study above, the payday lender had said they would not extend credit to the client in question, he may have sought help sooner for the debit that was making his life so hard. Instead, the effect of then accessing payday loans compounded and extended his financial difficulties.

In the above scenario, the client agreed that the matter of the overseas debt could be referred to the police. However, if it is a relative who pressures the older person into such a situation, or defrauds them of money by other means, the older person will likely be reluctant to refer to law enforcement agencies. This is a very complex situation, and needs further exploration. Issues of the older person’s relationship with the perpetrator generally dominate and many older people will not want to pursue the matter. Means to address such situations need to be identified that will not, wherever possible, cause further distress to the older person.

Bank or financial institution staff should always be looking as to whether the transaction fulfils the requirements of the older person and is not detrimental to their financial wellbeing. If they observe that the transaction appears to be of a financially abusive nature, they should be trained to sensitively make enquiries about the situation. For example if they come across instances where an elderly customer:

* reports that they are having money skimmed from their bank account because an adult child has set up internet banking for them and has access to their accounts
* appears to be being compelled to take out a joint loan with an adult child as the adult child could not obtain credit on his own, and the elderly client receives no benefit
* is obtaining payday loans as a result of a cash shortfall due to abuse or to provide to the abuser
* has been persuaded by an adult child to sign a guarantee for a loan to benefit the adult child and on default the elderly customer’s home can be taken
* signs documents provided by an adult child not knowing what they are signing, such as a transfer of assets
* if it is a new loan, bank staff need to enquire what the purpose of the loan is. Is it actually a loan the elderly person will get benefit from? This requires making reasonable enquiries (using a method such as an interpreter if needed) that the elderly person can understand and responding if it appears that the loan is not for the older person’s benefit (responsible lending)
* if a new loan is set up and the older person has limited involvement in the process, but is going to be a signatory to the loan, bank staff should provide opportunities for the older person to discuss the loan with them prior to signing
* where an older person is silent during a loan set up while another person does all the talking
* if it appears that an older person is under duress at any time, arrange a separate place and time to talk with the older person
* if bank staff find that an older person appears to have online account(s) or credit facility that they do not recall opening or having control over

Staff should also be alert for the following:

* where there are changes in the usual patterns of transactions on an account e.g. higher amounts or increased number of withdrawals, or changes to usual locations that withdrawals are made
* changes to internet banking registration or passwords
* Also to facilitate an older person feeling comfortable to discuss their concerns with a staff member they should be:
* offered a private space to conduct conversations, not an open space ‘office’ as used by some banks currently. This is at the very least inconsiderate and at worst a breach of privacy particularly if the older person has hearing or other difficulties
* bank staff should also ask older customers about a safe way to communicate with them if there is any suspicion of financial (or other) abuse. An older customer may not want staff to speak to any relatives or leave messages on their phone

Care notes the lack of sources of affordable specialist legal and financial advice available for older people who are considering (or are being pressured into) signing a guarantee, reverse mortgage or other similar financial product. Certainly the clients seen at Care are unable to afford such private legal advice and as a service that deals with people in debt, we are only seeing clients after they are in difficulty. We are unable to provide financial advice on any products. We would encourage government to consider funding free legal advice to provide this information. Our clients cannot even access basic information for themselves in the area of financial advice due to the closure of the National Information Centre on Retirement Investments (NICRI). While it did not provide individual financial advice, it was able to at least provide some information and outline the pitfalls for options being considered by clients. Given the service provided by NICRI has been subsumed by National Seniors; it is still available to older people who are able to afford the annual fee. Unfortunately, our clients generally cannot afford such a fee. While we are supportive of the service for those that can access it, we find it to be highly inequitable that access to this information is now based on ability to pay.

***Recommendation 6***

***Development of resources such as the ABA’s financial abuse guides for the broader financial services sector, with particular attention to the need for these in the SACC and Rent-to-Buy sectors.***

***Recommendation 7***

***Funding for the provision of free legal advice about products and services including reverse mortgages, guarantees, loans.***

**Q 26 What changes should be made to the laws and legal frameworks relating to financial institutions to identify improved safeguards against and respond to elder abuse?**

* More funding for training of financial staff around the issues to better identify red flags.
* Examination of the issues around the tension of privacy and abuse
* Training for financial services staff so they are better placed to respond where abuse is suspected
* Improved laws around SACC loans in relation to responsible lending. We note the Review into the SACC sector was handed down in March 2016, making a number of strong recommendations about responsible lending and other areas of concern[[9]](#footnote-9)
* Enforcement of responsible lending provisions and ensuring the older person actually benefits from the loan
* More funding for the Australian Securities and Investments Commission (ASIC) to prosecute systemic cases of bad practice
* More training for financial staff about the nature and scope of powers of attorney, which are tools for abuse

As discussed, an imbalance of power between an older person and a relative or other person who financially abuses them, can lead to the older person’s assets and security being at risk. Banks and financial institutions are in a unique position to support an older person to protect their interests if there is any suggestion of financial abuse and thus help prevent deterioration in the older person’s financial situation. Where it is clear that financial abuse has already occurred, there should be mechanisms available to the older person to *sever a contract* or where an older person had obtained a loan in their name only for another pperson’s benefit, this should give rise to the right to terminate the contract without penalty. Being able to sever a contract is one of the recommendations[[10]](#footnote-10) of the Royal Commission into Family Violence (Victoria, 2016). We note there is also a recommendation to reform the National Credit Code to include violence as a ground for financial hardship.

Banks and financial institutions should also offer the following to their older customers to assist them to be as financially independent as they are able to be:

* Funded training to up-skill the elderly in respect of internet banking
* Financial services should be more adaptable to alternative methods of communication for elderly clients without imposing additional costs on them, e.g., access to statements in alternative formats,
* Provision of independent interpreters, not using family members as translators
* Better scrutiny of powers of attorney and documents to ensure there has been no fraud
* Regular reviews of authorities on an older person’s account to ensure they are still what the older person wants
* Systems in place to ensure that there are effective notices relating to an older customer’s wishes on computing systems across branches.

**Privacy issues**:

Care acknowledges that there is a tension that currently arises where a staff member of a bank or financial institution becomes aware of an issue of financial abuse and feels that they should act upon this information in some way. If staff disclose suspected abuse to a third party there is currently no protection from liability. In our opinion consideration could be given to obtaining written consent prior to engaging in financial transactions with older people, as to the actions of the financial institution, should financial abuse be identified. Consideration should also be given to whether reporting should be voluntary or mandated, and what level of immunity (particularly in cases of mistaken abuse) will be provided to staff of financial institutions.

Staff should be provided training on the following points:

* how to approach the older person who is the victim of the financial abuse, and where possible to obtain their permission to disclose
* where to refer the person for support and information
* where a possible breach of privacy may occur under the National Privacy Principles if the staff member discloses to a third party what their concerns are, without the consent of the older person

***Recommendation 8***

***Financial services sector to consider developing a protocol for written consent from an older person entering into loan contracts, to disclose elder abuse should it come to light, to appropriate agencies.***

**Financial Hardship:**

Much of the work of consumer credit solicitors and financial counsellors at Care concerns clients who are experiencing financial hardship. Given the nature of financial abuse it is likely that hardship applications from at least some elderly customers of banks or financial institutions will arise as a result of financial abuse. A new hardship application from an older person should therefore be a ‘red flag’ for staff to consider and investigate the circumstances around such an application.

Care recommends that there be specially trained staff that can work with older customers to elicit information about the reasons for the hardship applications. These staff should be able to respond and provide assistance in the hardship area without making older clients go through the sometimes numerous hoops required to obtain hardship assistance more generally.

In our opinion, the main-stream banking sector has developed some useful hardship policies and continues to refine its hardship processes. This is now a model adopted by a number of other sectors where hardship (and financial abuse) arises, such as utilities. We would again stress however, that those providers that sit outside the mainstream such as SACC lenders continue to provide very poor hardship responses, and generally appear to have little interest in meaningfully engaging with clients, including older ones, around hardship. This is in itself is financially exploitative and the resultant stress – financial and psychological- can take an enormous toll on the client.

***Recommendation 9***

***Financial services sector to train and employ specially trained staff to respond to hardship requests from older customers.***

**Q 39 Civil and administrative tribunals**

In our opinion, civil and administrative tribunals could have greater jurisdiction to hear matters related to elder abuse, including financial abuse. The court system can often appear overwhelming for older clients who find the formality and adversarial nature intimidating; this is especially the case where they are in dispute with a family member. Older clients we have acted for, in the ACT Civil and Administrative Tribunal on various matters, find the less formal process easier to deal with. While they will still require legal assistance, it can also be more inclusive of their other chosen supporters such as financial counsellors, social workers or friends, putting the older person more at ease with proceedings.

***Recommendation 10***

***Civil and Administrative tribunals to have greater jurisdiction to hear matters related to elder abuse, including financial abuse matters.***

***Recommendation 11***

***A national awareness raising campaign directed at older people on elder abuse issues including financial abuse. Such a campaign should be aimed at alerting older people in particular, but also the broader community, to what financial abuse is and where to get help.***

1. Care is using the same definition of ‘older persons’ as described on p15 of the Elder Abuse Issues Paper [↑](#footnote-ref-1)
2. Care database: Client age information from 1/3/16 to 31/7/16 [↑](#footnote-ref-2)
3. Royal Commission into Family Violence (Victoria) 2016: Volume IV Chapter 21 & Volume V Chapter 27 [↑](#footnote-ref-3)
4. VRCFV Vol. 5 p.94 Footnote 13 re Blakey [↑](#footnote-ref-4)
5. <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/IncomeManagement> [↑](#footnote-ref-5)
6. <http://www.bankers.asn.au/consumers/financial-abuse-prevention> [↑](#footnote-ref-6)
7. see Loddon Campaspe Community Legal Centre *Responding to the Financial Abuse of Older People*

   *August 2008 p 32* [↑](#footnote-ref-7)
8. <http://www.bankers.asn.au/consumers/financial-abuse-prevention> Industry guideline – Protecting vulnerable customers from potential financial abuse [↑](#footnote-ref-8)
9. <http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2016/SACC%20Final%20Report/Key%20Documents/PDF/SACC-Final-Report.ashx> [↑](#footnote-ref-9)
10. Royal Commission into Family Violence, (Victoria, 2016). Summary and Recommendations p.119 [↑](#footnote-ref-10)