91. TASC National

Name of organisation: TASC National

 Question 1

TASC supports the World Health Organisation’s definition of elder abuse and its constituent elements as presented in the Toronto Declaration on the Global Prevention of Elder Abuse.

Question 2

Best practice dictates that we must first identify who our client is in elder abuse matters as it is often not always as straight forward as in other legal matters (i.e. is it the older person themselves, a legally authorised representative or appointed attorney).  This can be further complicated when we receive referrals from third parties.  It is always best practice for our organisation to meet first with the older person directly in order to make an assessment of their matter and their capacity.

Delivering best practice means ensuring accessibility to our and other legal services and facilitating opportunities for support.

Best practice responses should: accommodate and allow for variations in communication styles; support the maximisation of capacity; and, incorporate collaborative practice with other disciplines (e.g., social work) where appropriate.

Legal advice and the presentation of options should be done in plain English and clients should be made aware of referral options which allow for their financial standing.

Question 3

The following examples of elder abuse are those most frequently encountered by TASC Toowoomba Seniors Legal and Support Service.  These acts of elder abuse have occurred across all demographics.

**Examples of financial abuse include**:

* the transfer of a house or property;
* misuse and overextension of EPA powers relating to financial matters including invoking powers without the requisite loss of capacity;
* theft and inappropriate accessing of bank accounts;
* pressured gifting;
* financial exploitation by Solicitors, Financial Service Providers and retail services;
* the act of professionals taking instructions from other family members and neglecting the input or instructions of the older person; and
* unsubstantiated or inappropriate claims about the capacity of the older person resulting in disempowerment of the older person in controlling their own finances.

**Examples of psychological and emotional abuse include:**

* threats of abandonment;
* enforced social disconnection from friends, family member and the community;
* acts resulting from carer fatigue or lack of capacity of carer to undertake the caring role;
* verbal abuse by family members or people in a position of trust;
* threats of forcing the older person into an unwanted action or choice, particularly in terms of accommodation choices, early entry into a nursing home and financial decisions;
* EPA or other party in a position of trust misrepresenting to the older person the extent of their control over the older person; and
* inappropriate use of restrictive practices and preventing the older person to participate in decision-making effecting their own lives.

**Examples of physical abuse include:**

* neglect, particularly relating to living conditions and medical care;
* the older person being forced to participate in actions not appropriate for their current health status (Examples: older person forced to eat all food on plate to avoid wastage, resulting in older person regularly regurgitating after meals; older person being forced to stand or move when not physically able to do so); and
* older person being slapped by a family member or carer.

Question 4

Further research is needed in rural communities about the lack of avenues to report elder abuse and/or access to appropriate services for assistance.

Front line organisations and service providers (e.g. GPs, social workers, hospitals, financial institutions, financial advisers) who have direct links to older people and their personal circumstances should be “harvested” for the statistical and testimonial evidence they can provide.

Consideration should be given to identifying matters that are being referred to organisations for assistance, for example, SLASS, Seniors Rights, QADA, Public Guardian, Public Trustee, QPILCH, QCAT, respite centres and the instances where the organisation/s are unable to assist due to organisational or funding guidelines or other. This information could be integral to identifying gaps in the types of matters that are “falling through the cracks”.

Seniors hotline and elder abuse hotline statistics may also serve as sources of statistical evidence.

More research should also be conducted to identify the number of older males suffering from elder abuse, in particular emotional abuse, so that appropriate resources and assistance can be identified and further developed.

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Question 11

The evidence of elder abuse in aged care settings observed by the TASC Seniors Legal and Support Service has included:

Accounts from clients:

* verbal accounts of older people who experienced psychological abuse relating to their lack of  power and control and participation in decision-making; and
* verbal accounts of older people who experience verbal abuse such as yelling or inappropriate labelling of the older person’s behaviour or expression of their needs or wishes.

Evidence and information received from third parties/organisations:

* referrals and case information received from Queensland Aged and Disability Advocacy (QADA); and

records of financial discrepancies and incorrect charges to residents for aged care fees.

Question 12

It is not necessarily a matter of ‘should’ they play a further role, but ‘could’ they play a further role in identifying and responding to people at risk of elder abuse. However, it appears that aged care assessment programs have limited resources to extend their services to identify and respond to elder abuse specifically. In addition, in our experience, older people may be reluctant to engage with the Aged Care Assessment teams and therefore, there would be difficulty establishing the level of trust required to assist with and respond to those at risk of elder abuse**.**

There are usually a number of health providers involved in the process for Aged Care Assessments (e.g. older people are often referred for assessment by GPs, allied health professionals etc.), and therefore there may exist more appropriate opportunities for those care providers to identify and respond to elder abuse as there is often already a relationship of trust.

Question 13

* Checking/liaising with the older person
* Free compulsory education/information for attorneys
* Upholding the objectives of the principles of the Guardianship and Administration Act 2000 which support and uphold the right of a person to make their own decisions. Additionally, increased recognition of and emphasis on moving from substitute decision making to supported decision making; enabling and supporting people to make decisions for themselves where appropriate and to exercise their legal capacity.
* Education of staff in aged care around enduring power of attorney’s; i.e. what decisions can and cannot be made, when and how powers are invoked etc.
* Assessments around capacity
* Major contracts are required to enter aged care facilities, there should be an obligation to obtain independent legal advice prior to executing.

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Question 21

* Introduction of a national enduring power of attorney register.
* In Queensland, there is currently an absence of any specific criminal or sentencing laws that deal with the scope and complexity of elder abuse. In particular we often hear from clients of a reluctance of Queensland Police to become involved in or investigate what are seen to be “family matters” and unfortunately often receive limited assistance, if any.
* The process of making a criminal complaints should be reviewed to ensure that when older people make a complaint of elder abuse that police officers have the skills and abilities to communicate with, optimise capacity of and maximise participation of the older person in the complaint process. For example, we have had a client who was a resident of a nursing home who phoned Queensland Police and made a formal complaint regarding physical abuse by staff at their residential facility. The police officer involved phoned the manager at the facility directly and asked them if there was abuse happening, which was denied by the manager, whom also indicated that our client simply “complained a lot” resulting in the matter subsequently not being pursued any further by police without any further reference to the older person.

This is just one example of many, highlighting a reluctance of Queensland Police to become involved in matters of abuse involving older people where the alleged perpetrator is either a family member, carer or staff of a residential aged care facility.

* In relation to financial elder abuse matters, the equitable jurisdiction of the Supreme Court of Queensland is often the only jurisdiction within which clients could pursue compensation in these types of claims; which is often a lengthy process and a significant expense to older clients who often have little funds available to pursue these matters, nor the time to await an outcome.  The introduction of a specific tribunal or extension of the jurisdiction of the Queensland Civil and Administrative Tribunal to determine these types of matters would be beneficial to address and respond to financial elder abuse which is so prevalent.

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Question 27

The TASC SLASS team has had direct involvement in cases where the older person is experiencing, or at risk of experiencing, significant financial disadvantage or exploitation related to family agreements in which the initial terms are not documented, honoured, or are challenged by the other party.

This has included cases in which the older person has contributed funds to the purchase of a home for other family members based on the agreement that the older person will reside in a granny flat, or have permanent accommodation within the home.  After a period of time, the older person has then been asked to leave, or has felt significant pressure to go into residential aged care against their wishes. These types of matters are often initially identified by home support services, health professionals or other family members external to the agreement and/or living arrangements.

The older person’s understanding of the terms of the original agreement are often challenged or discounted, particularly when there is a lack of written documentation. In our experience there is often a reluctance for the older person to obtain legal advice or to formally document any agreements.

The older person’s financial standing is often negatively impacted.  Care and support options, legal avenues and future accommodation for the older person may all be compromised by the reduced financial status.

Question 28

Implementation of a positive obligation/requirement to provide Centrelink or Taxation department with proof of a documented agreement and/or a certificate of independent legal advice at least in relation to family arrangements/gifts of significant sums of money etc. where they would have an impact on the income and asset assessment of the older person.

Question 29

The TASC Seniors Legal and Support Service frequently deals with cases where elder abuse is committed, or there are expressed concerns of the likelihood elder abuse will be committed, by people appointed under an Enduring Power of Attorney.

Preventative actions for consideration include:

* Increased emphasis on education and explanation of the EPA document, and the extent of its powers, to the older person prior to the document’s execution.  We have received significant anecdotal evidence from SLASS clients that, at the time their EPA document was executed, a full and comprehensive explanation of the documents, the terms within and the powers it vested was not prioritised or conducted.  Many clients speak of trusting the Solicitor, Justice of the Peace, family member or other involved party and they just followed the instruction to “sign here.”
* Increased emphasis on education and explanation regarding capacity. Capacity or incapacity for a specific matter not “blanket” capacity or incapacity for every type of matter. Often there is confusion about what capacity is.

An assessment by a medical practitioner in relation to current capacity for one type of matter, i.e. “financial matters” is often interpreted to be a blanket assessment of complete incapacity which often leads to the older person not being consulted or included in decisions/making process.

* Minimising/excluding rather than maximising inclusion – as required under the guardianship principles
* Proof/evidence of incapacity to be provided, not just a copy of the EPOA. Often not requested or provided.
* Lack of accountability for actions/inactions – perhaps introduction of an obligation for annual reporting (for non QCAT appointed decision makers) and consequences for those found to be breaching the Act.

Question 30

* Powers of attorney and other decision-making instruments should be registered.
* The hosting and management could be managed by Births Deaths and Marriages or Department of Natural Resources and Mines as the mechanism of registration of instruments already exists within that framework in relation to dealings with property and is widely accessible.

Question 31

In our experience, more often than not the perpetrators of elder abuse are appointed attorneys.  Accordingly, we would be reluctant to support any expansion of the powers of attorneys that would interfere with the rights of the older person and the right to be involved in all decision making, as appropriate, be protected at all times.

Question 32

The majority of elder abuse matters TASC SLASS have handled have involved enduring powers of attorney, statutory attorneys, or abuse by parties that are not appointed in any formal manner.

Whilst we have not directly seen cases of elder abuse at the hands of appointed guardians and administrators, we acknowledge that there may be incidences of this occurring.

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Question 41

**Mediation**

Older people experiencing conflict or elder abuse do have a number of options for mediation. Private mediation is available however, this is often costly and there may be limitations on the willingness of all parties to participate, which may negatively impact the likelihood of any successful or appropriate outcomes.

The Department of Justice and Attorney General do offer free mediation services however in our experience, there is limited awareness of the availability or scope of these services. Increased information and awareness of the types of matters that DJAG mediate would be beneficial.

Additionally, it would be beneficial to review the report on the outcomes and recommendations of the Elder Relationship Service pilot being run by Relationships Australia, which commenced on 28 January 2016, to guide the implementation of any future alternative dispute resolution mechanisms to respond to elder abuse.

In order to provide for regional, rural and remote older people’s needs, there should be alternative means of accessing any mediation service established, such as by telephone, video conference and where appropriate, by location specific outreach visits.

Emphasis would need to be given to how any alternative dispute resolution mechanism will allow for the relationship and power imbalance inherent in matters of elder abuse will be addressed, which often leads to or prevents older people from seeking assistance in the first place.

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Other comments?