

18 August 2016

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

E-mail: [info@alrc.gov.au](mailto:info@alrc.gov.au)

Dear Executive Director

**RE: SUBMISSION ALRC - ELDER ABUSE INQUIRY**

I refer to the discussion paper published earlier this year and the questions raised by the paper. I thank you for the opportunity to comment on this very important issue. The Anti-Discrimination Commission's (ADC) responses on a limited number of questions are set out below.

**What is elder abuse?**

**Question 1** To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse:

- harm or distress;
- intention;
- payment for services?

*The ADC's experience in the area of complaint resolution and advocacy for equality of opportunity for vulnerable groups across the Northern Territory is that the impact of the conduct is far more relevant than the intention of the person or family member perpetrating the abuse. It is important in an area where attitudes need to change to ensure societies condemnation of financial abuse, neglect and psychological abuse of older Australians. It is the impact on these vulnerable people rather than the intention of those abusing that should be the focus. Proving intention moves the focus away from the vulnerable older person to the perpetrator.*

**Question 3** The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning:

- Aboriginal and Torres Strait Islander people;
- people from culturally and linguistically diverse communities;

- lesbian, gay, bisexual, transgender or intersex people;
- people with disability; or
- people from rural, regional and remote communities.

*The NT ADC's view is that far too little is known about the general prevalence in Australia of elder abuse. Further, that any prevalence studies must include a focus on Aboriginal and Torres Strait Islander people in all settings, urban, rural and remote, as the anecdotal evidence we are aware of is that elder abuse is occurring but takes different forms and has different solutions in specific communities.*

*Also NT CALD communities which are smaller and more dispersed need to be reflected in research. As do the experiences of current older LGBTI community members who are a generation who experienced a world where homosexuality was a criminal offence etc. and have very particular place in history and may be particularly vulnerable to be re-traumatised in an aged care setting or when needing to invite providers into their homes.*

**Question 4** The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?

*As other groups such as COTA have suggested there is a very real need for an Australia specific National Elder Abuse Prevalence Study, including as set out above, the groups listed in Question 3.*

## **Social security**

**Question 7** What changes should be made to the laws and legal frameworks relating to social security payments for carers to improve safeguards against elder abuse?

*The issues that we hear are around what monitoring or oversight is possible when a person is provided with a carer's pension to ensure that care is actually provided. The stories conveyed involve arrangements where a person is paid a carers pension but no care is provided. The suggestion is that this is an area to be considered as a potential point of oversight to ensure that care is provided and that neglect of older people can be monitored.*

**Question 8** What role is there for income management in providing protections or safeguards against elder abuse?

*The area of concern that we hear most often is the abuse of the basics cards from community advocates such as Darwin Community Legal Service (DCLS). Family taking and using all of the money on an older person's basic card, so they are left with no money for personal items which can then lead to issues for the older person as they "humbug" others for these items in the care environment they are in that then leads to other concerns.*

## **Aged care**

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

*Whilst community advocates convey that abuse does occurs in aged care facilities due to mandatory reporting, the scope is unknown. The Advocates such as DCLS*

*only become involved if a matter remains unresolved and the issues are raised with them. The prevalence in homes and flexible care settings is unknown in the NT as the information we have is that these environments are not currently monitored.*

**Question 16** In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse?

*The comprehensive proposed National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector should be considered for use in the Aged care sector.*

**Question 17** What changes to the requirements for reporting assaults in aged care settings should be made to improve responses to elder abuse?

*There needs to be a broadening of the requirements to include other forms of elder abuse.*

**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?

*The community visitor role in Aged Care is more a social inclusion program rather than an advocacy role to assist with reporting of abuse, matching older people with community visitors with similar interests to take them on outings etc. The role is unlike the Community Visitor Program in the Northern Territory which visits, monitors and advocates for those in Mental Health facilities, forensic disability etc., which provides both individual and systemic advocacy.*

*However the advocacy in aged care is undertaken by those who provide advocacy under the Aged and Disability Program – such as in Top End DCLS, however the resourcing needs to be adequate to undertake such a role, and the advocacy role needs to be independent of those who deliver services.*

*Programs that visit both elderly in aged care facilities and in homes which aged care services are delivered need to establish relationships and trust etc. which would optimise the potential for the disclosure or detection of signs of elder abuse.*

## **Superannuation**

**Question 24** What evidence is there of older people being coerced, defrauded, or abused in relation to their superannuation funds, including their self-managed superannuation funds? How might this type of abuse be prevented and redressed?

*The stories told by community advocates, include superannuation payments being part of the array of financial abuse experienced by older people in the NT. Large sums of money paid out at the end of a person's working life, which end up in savings accounts enliven the potential for abuse by being spent by family outside of the control of the older person.*

*Education campaigns, which include financial literacy, about other options rather than large Superannuation payments being placed in key card accounts etc., for older people and those who provide support services to older people may provide some level of structural protection for large sums of money paid to older Territorians, particularly those in vulnerable demographics.*

## **Financial institutions**

**Question 25** What evidence is there of elder abuse in banking or financial systems?

*A review of the available material in the Australian and New Zealand jurisdictions is in line with NT Elder abuse line findings that financial abuse is one of the most common types of elder abuse. The question is whether there are structural and educational approaches that can be taken by financial institutions to minimise the harm, raise triggers, for further discussion, whilst protecting rights of older people to make their own decisions.*

*Stories conveyed included older people being accompanied very closely, physically by family or friends to withdraw large amounts of money, or older people with dementia incurring large debts etc.,*

*Approaches such as structural triggers for discussions when debts are incurred or withdrawals made in certain circumstance, Also education on conditions such as dementia, from groups such Alzheimer's Australia to financial institutions and staff.*

## **Family agreements**

**Question 27** What evidence is there that older people face difficulty in protecting their interests when family agreements break down?

*The material we have discussed with community advocates mostly involve informal arrangements, handing over key cards, basic cards to family members. These arrangements are open to abuse. The question is, once the issue is raised with the older persons do they see this as abuse. The focus should be on the impact of the arrangement and its breach etc. on the older person.*

**Question 28** What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?

*There needs to be access to conciliation services so that family agreements and resolutions can be worked through at the lowest possible level and so that vital relationships can be maintained if possible and resolutions both parties can live with in less serious areas of financial or inappropriate use of the property of older people.*

*Commencing civil litigation or even appearing before a Tribunal can be overwhelming and not within the reach of older people and may take too long or be too expensive so that in fact there is no remedy. A varied array of ways to resolve the break down in informal family agreements needs to be available. From informal and formal conciliations, to work towards agreed solutions, to assistance to recover money, houses etc. in Tribunals and Courts.*

## **Appointed decision-makers**

**Question 30** Should powers of attorney and other decision-making instruments be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?

*The NT has a relatively new process in place under the Advanced Personnel Planning Act for substitute decision makers to be appointed for both financial and health decisions with the individual with capacity, setting out whom and the scope of the decisions able to be made. The Plan can also be registered with the Public Trustee. At present 250 plans have been registered since the scheme commenced in*

*March 2014 but it is unknown what percentage of the total plans have been registered as registration is voluntary.*

*The Advanced Personnel Planning Act does not provide for auditing of the decision makers as a matter of course, without a complaint etc.*

*The Advanced Personnel Planning Act provides a criminal offence for improper exercise of authority by decision makers etc., under section 78 and a number of other offences. The Act also provides for an array of oversight of decisions made by the decision maker by NTCAT however the application is initiated by affected adults or other interested people etc. At present we are unaware if the powers have been utilised. It is worth noting that the proceedings are to be conducted in private.*

## **Public advocates**

**Question 33**      What role should public advocates play in investigating and responding to elder abuse?

*The NT does not have a Public advocate position; we have new Guardianship of Adults Act which commenced 28 July 2016. However in the NT it is not a generalised office and doesn't offer a public advocate role.*

*A public advocate could however provide a vehicle for third party reporting to encourage intervention where concerns of abuse are reported. Such a model should provide for resolution focused interventions aimed at supporting the person being cared for rather than a punitive, compliance or aggressive approach.*

**Question 34**      Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?

*A campaign addressing societal attitudes to older people, and elevating the value we place on older people rather than seeing them as a burden, plus education to raise awareness of the signs of elder abuse and to suggest ways to prevent it including inclusion and support of older people in the day to day life of the community are a higher priority than the time to obtain agreement across jurisdictions on elder abuse laws.*

## **Health services**

**Question 35**      How can the role that health professionals play in identifying and responding to elder abuse be improved?

*There is a significant role for health care providers as trusted source of information for older Australians, particularly General Practitioners (GP). The issue is the availability and prominence of education of General Practitioners when obtaining their fellowships on the signs etc., of elder abuse and their role in identifying it. To compliment this is the idea of having legal services co-located in GP practices to assist with various legal issues of elder abuse, domestic violence etc., as one stop shop.*

*In the NT the role of Aboriginal Controlled health services having a legal clinic co-located so that legal advice on elder abuse can be obtained in one visit in a culturally safe environment etc., and also provide a source of education for the community on elder abuse, signs and what can be done etc.*

**Question 37** Are health-justice partnerships a useful model for identifying and responding to elder abuse? What other health service models should be developed to identify and respond to elder abuse?

*See at Question 15.*

**Question 38** What changes should be made to laws and legal frameworks, such as privacy laws, to enable hospitals to better identify and respond to elder abuse?

*Privacy laws need to reflect new partnerships and assist in ensuring the safety of older people and not as a barrier to the sharing of information*

### **Forums for redress**

**Question 39** Should civil and administrative tribunals have greater jurisdiction to hear and determine matters related to elder abuse?

*The role of NTCAT under the NT Advance Personal Planning Act needs to be considered. However there is also a need for education and training for Tribunal support staff and judicial officers who sit on these Tribunals to be aware of signs of elder abuse and how to appropriately provide services to traumatised people etc.*

**Question 40** How can the physical design and procedural requirements of courts and tribunals be improved to provide better access to forums to respond to elder abuse?

*Courts and Tribunals need to be designed to comply at minimum to the Disability Access Standards etc.*

**Question 41** What alternative dispute resolution mechanisms are available to respond to elder abuse? How should they be improved? Is there a need for additional services, and where should they be located?

*There is a need to enhance the services available from potential providers to resolve the issues at the lowest possible level by using methods such as conciliation, mediation, to having access to community legal services and being adequately funded to advocate for elders in more traditional legal forums, such as Tribunals and Courts.*

### **Criminal law**

**Question 42** In what ways should criminal laws be improved to respond to elder abuse? For example, should there be offences specifically concerning elder abuse?

*Many criminal assault type offences under the NT Criminal Code have as an aggravation, age and vulnerability of the victim. However it is less clear whether criminal offences to deal with the financial abuse are sufficient, and whether the restitution provisions are broad enough to ensure that older people who have money or property taken are paid restitution.*

**Question 43** Do state and territory criminal laws regarding neglect offer an appropriate response to elder abuse? How might this response be improved?

*The NT Criminal Code has an offence of failure to provide the necessities of life – s183, Negligence causing harm section 174G.*

**Question 46** How should the police and prosecution responses to reports of elder abuse be improved? What are best practice police and prosecution responses to elder abuse?

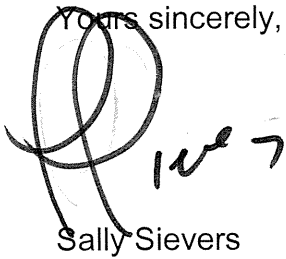
*There is a need for education and training on the signs and communication with older people and various vulnerable groups as outlined in Question 3.*

**Question 49** What role might restorative justice processes play in responding to elder abuse?

*Restorative Justice could play a key role as a remedy, as like conciliation, the older person would be able to express and articulate the impact of the abuse on them and then also be in control of how the matter is to be redressed. It also allows for individualise resolution, but also time to express to the abuser how the conduct has affected the older person.*

Please do not hesitate to contact me to explore any of the matters raised above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sally Sievers', with a large, stylized initial 'S'.

Sally Sievers

Anti-Discrimination Commissioner

Northern Territory Anti-Discrimination Commission

