

## 3. A National Plan to Combat Elder Abuse

---

### Contents

Summary	59
A National Plan to Combat Elder Abuse	60
Why a national plan?	60
Leadership	65
Implementation	66
Goals	67
Promoting autonomy and agency of older people	69
Addressing ageism and promoting community understanding of elder abuse	76
Achieving national consistency	87
Safeguarding at-risk adults and improving responses	89
Building the evidence base	93

### Summary

3.1 The ALRC recommends that a national plan be developed to combat elder abuse. It builds upon significant Australian Government commitment to protecting the rights of older Australians.<sup>1</sup> It is a capstone recommendation of this Report and provides the basis for a longer-term approach to the protection of older people from abuse. The Plan will provide the opportunity for future planning and policy development in an integrated way. Much work already undertaken and in train, both at the Commonwealth level and in states and territories, together with recommendations in this Report, may be seen to constitute strategies in implementation of a national commitment to combat elder abuse.

3.2 This Report focuses on strategies for legal change and development that are important in protecting the rights of older Australians. However, the insights gathered through consultations and submissions demonstrate that a wider range of actions is also critical to addressing elder abuse. A national planning process offers the opportunity to develop strategies to combat elder abuse that complement, support and extend beyond legal reforms, such as: national awareness and community education campaigns; training for people working with older people; elder abuse helplines; and future research agendas.

---

<sup>1</sup> Senator the Hon George Brandis QC, Attorney-General, ‘Protecting the Rights of Older Australians’ (Media Release, 15 June 2016).

3.3 Elder abuse involves complex social problems and needs to be addressed at an intergovernmental and community level over the long term. This chapter suggests a conceptual template for a National Plan and provides a wide range of examples from stakeholders, drawn from over 400 submissions—sharing ideas, illustrations, suggestions and urgings.

3.4 The recommendations in this Report should also form part of the National Plan described in this chapter, substantially addressing many of the legal questions in relation to elder abuse.

## A National Plan to Combat Elder Abuse

**Recommendation 3–1** The Australian Government, in cooperation with state and territory governments, should develop a National Plan to combat elder abuse. The Plan should:

- (a) establish a national policy framework;
- (b) outline strategies and actions by government and the community;
- (c) set priorities for the implementation of agreed actions; and
- (d) provide for further research and evaluation.

### Why a national plan?

3.5 National plans to guide reform and action have facilitated long-term strategic and whole-of-government responses to a diverse range of issues in Australia, including in relation to family violence and child protection. The momentum for national approaches in these areas has led to frameworks and plans developed through the Council of Australian Government (COAG) processes.<sup>2</sup> A plan provides a framework for action, identifying priority reform areas against a set of goals or objectives. It also provides the opportunity to establish specific performance indicators and monitoring mechanisms to ensure accountability, as well as a basis for measuring progress. National plans also support the development of a common understanding of issues, priorities and strategies in areas where there are diverse stakeholders.

3.6 The ALRC uses the concept of a ‘national plan’ in a broad sense—to emphasise the need for a *national* approach to elder abuse and to provide a coordinating framework for state and territory initiatives as well as those at the Commonwealth level.

3.7 In the 2015 report of the Australian Institute of Family Studies, *Elder Abuse: Understanding Issues, Frameworks and Responses*, (the AIFS Report) Rae Kaspiew,

---

<sup>2</sup> See, eg, Department of Social Services (Cth), *National Framework for Protecting Australia’s Children 2009–2020—Third Three-Year Action Plan, 2015–2018: Driving Change: Intervening Early* (2015); Department of Social Services (Cth), *Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and Their Children 2010–2022* (2016).

Rachel Carson and Helen Rhoades identified the importance of a national plan in relation to elder abuse.

The WHO emphasised the importance of having comprehensive data-driven national action plans to ensure effective violence prevention. However, it noted that while many of the surveyed countries reported having national action plans for child maltreatment (71%) and intimate partner violence (68%), fewer than half (41%) had addressed elder abuse. The report noted that such plans are an important ‘way for countries to articulate how violence impacts the health, economic viability and safety and security of a nation’, and provides direction for policy makers about what needs to be done, including the identification of objectives, priorities, assigned responsibilities, a timetable and an evaluation mechanism.<sup>3</sup>

3.8 The development of a national action plan was widely supported by stakeholders in this Inquiry.<sup>4</sup> As one stakeholder commented, a national plan was imperative in the context of Australia’s ageing population. Based on his experience in prosecuting elder abuse matters in California, he said that ‘Australia can prepare for the avalanche of new cases that will inevitably arise by developing a national plan’.<sup>5</sup>

3.9 National plans or frameworks exist for issues related to or overlapping with elder abuse, notably, the *National Plan to Reduce Violence Against Women and Their Children, 2010–2022* (Family Violence National Plan). The Family Violence National Plan is described as a ‘framework for action’, over a 12-year horizon to be implemented through four three-year plans, called ‘Action Plans’: to bring together ‘the efforts of governments across the nation to make a real and sustained reduction in the levels of violence against women’.<sup>6</sup> The background report, described as ‘the Plan of Action’<sup>7</sup> set the framework by identifying seven ‘core values’; six ‘outcomes’ to be delivered through 25 ‘strategies’ and 117 ‘actions’.<sup>8</sup>

3.10 The significant attention already on issues concerning family violence has provided, as St Vincent’s Health Australia observed, ‘a climate of opportunity’, for a national consideration of elder abuse.<sup>9</sup> Where child abuse and family violence are now ‘firmly at the centre of public policy debates’, said the Welfare Rights Centre (NSW),

3 Rae Kaspiew, Rachel Carson and Helen Rhoades, ‘Elder Abuse: Understanding Issues, Frameworks and Responses’ (Research Report 35, Australian Institute of Family Studies, 2016) [8.5].

4 See also the 2016 recommendation by the New South Wales Legislative Council, General Purpose Standing Committee No 2, that there be a ‘comprehensive, coordinated and ambitious approach to elder abuse’: Legislative Council General Purpose Standing Committee No 2, Parliament of New South Wales, *Elder Abuse in New South Wales* (2016).

5 P Greenwood, *Submission 304*.

6 Council of Australian Governments, *National Plan to Reduce Violence against Women and Their Children 2010–2022* (2011) foreword.

7 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and Their Children, 2009–2021* (2009) iv.

8 The core values are listed as: safety; community responsibility; equality and diversity; responsiveness; justice; durability; knowledge and accountability. The ‘outcomes’ are: communities are safe and free from violence; relationships are respectful; services meet the needs of women and their children; responses are just; perpetrators stop their violence; and systems work together effectively: Ibid 15.

9 St Vincent’s Health Australia, *Submission 345*.

‘[p]lacing elder abuse on the national agenda must also be a priority. Elder abuse is an issue that, finally, has come of age’.<sup>10</sup>

3.11 However, it was also recognised that elder abuse cannot simply be subsumed into family violence prevention strategies. Women’s Domestic Violence Court Advocacy Services NSW Inc said that,

whilst in a general sense elder abuse shares commonalities with other forms of domestic and family violence, it also has unique features that set it apart. As such, elder abuse requires a singular focus and dedicated, systematic response if it is to be effectively addressed.<sup>11</sup>

3.12 It was critical to ‘fill the gaps’ in existing frameworks and plans to include elder abuse, urged Disabled People’s Organisations Australia (DPO Australia). The recommended National Plan ‘must intersect and build on’ the approaches not only in relation to family violence, but also in relation to disability: the National Disability Strategy; the National Disability Insurance Scheme (NDIS); and its Quality and Safeguarding Framework.<sup>12</sup> Carers NSW added the perspective of carers: a National Plan would provide ‘a good opportunity to consider the convergence of issues and strategies regarding abuse, neglect and exploitation in ageing, disability and carer contexts’.<sup>13</sup>

3.13 COTA noted that this ALRC Inquiry would not only ‘lay the ground for’, but also ‘give greater impetus to’, ‘an overdue national response to law reform, service delivery and cultural change to protect older people from elder abuse’.<sup>14</sup> Similarly, the Office of the Public Advocate (SA) said that the development of a national plan, in helping to raise public awareness of the prevalence of elder abuse, would ‘create the conditions necessary to facilitate stronger safeguards against the abuse of older people’:

[a] national plan may also create a foundation for enhancing consistency amongst the States and Territories. The process of reporting and responding to elder abuse requires nationally consistent procedures and, ideally, the longer-term goal of national legislative reform.<sup>15</sup>

3.14 The ageing population in Australia creates a particular impetus for specific action. The Queensland Law Society urged that:

[o]lder people as a group are deserving of special consideration, support and protection from abuse. Considering that the proportion of ageing residents in Australia is steadily increasing, substantial law reform is required to protect this growing demographic.<sup>16</sup>

---

10 Welfare Rights Centre NSW, *Submission 184*.

11 Women’s Domestic Violence Court Advocacy Services NSW Inc, *Submission 293*.

12 Disabled People’s Organisations Australia, *Submission 360*. Citations omitted.

13 Carers NSW, *Submission 321*.

14 COTA, *Submission 354*.

15 Office of the Public Advocate (SA), *Submission 347*.

16 Queensland Law Society, *Submission 159*.

3.15 Plans to address elder abuse have been developed elsewhere. In 2014 the World Health Organization reported that 41% of the countries included in its *Global Status Report on Violence Prevention* had national plans on elder abuse, and 17% had conducted national surveys.<sup>17</sup>

3.16 For example, the Government of Québec released a *Governmental Action Plan to Counter Elder Abuse 2010–2015* (the Québec plan).<sup>18</sup> This plan followed other work directed towards countering violence against women, against youth and against children.

3.17 These plans are illustrative of approaches that can be used to inform the national planning process to combat elder abuse. They provide a structured and systematic way to build a plan.<sup>19</sup> Reflecting such approaches, in this Report the ALRC uses a taxonomy that distinguishes: guiding principles, goals, strategies and actions.<sup>20</sup>

### ***Bringing together existing work***

3.18 A commitment to combating elder abuse is already evident in a range of initiatives across the states and territories as well as the Commonwealth. A National Plan will capture and consolidate this work.<sup>21</sup> In doing so, Legal Aid NSW observed, a national plan would ‘encourage a strategic, consistent response to elder abuse across Australian jurisdictions’.<sup>22</sup> The value of a national plan process would be to locate and frame these initiatives within a coherent national framework. It will also provide the opportunity for identifying short, medium and long-term priorities.

3.19 Stakeholders reiterated the importance of continuing the commitment to existing initiatives.<sup>23</sup> The Financial Planning Association, for example, supported the development of a national plan as a commitment by all governments ‘to tackle this issue as a matter of urgency in the face of an ageing population’, but also added that ‘this will take time and money and should not distract from the implementation of steps to address elder abuse which must be done as a priority’.<sup>24</sup>

---

17 World Health Organization, *Global Status Report on Violence Prevention* (2014) 78.

18 Government of Québec, *Governmental Action Plan to Counter Elder Abuse 2010–2015* (2010).

19 Other examples of analogous approaches, using the device of a ‘framework’, include: Australian Health Ministers’ Advisory Council, *A National Framework for Advance Care Directives* (September 2011); Australian Government Attorney-General’s Department, Access to Justice Taskforce, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009). ‘Strategy’ is also used to describe plans: see, eg, Australian Securities & Investments Commission, *National Financial Literacy Strategy 2014–2017*.

20 The Family Violence national plan uses ‘core values’ for principles; and ‘outcomes’ for goals.

21 See, eg, the work by organisations such as Australian Institute of Family Studies, the Age Discrimination Commissioner of the Australian Human Rights Commission, Offices of Public Advocates and Public Guardians, the National Ageing Research Institute and state and territory departments responsible for elder abuse strategies.

22 Legal Aid NSW, *Submission 352*.

23 See, eg, Aged Rights Advocacy Service Inc, *Submission 285*.

24 Financial Planning Association of Australia (FPA), *Submission 295*.

3.20 St Vincent’s Health Australia noted that, notwithstanding the ‘lack of a national policy’, all jurisdictions have adopted ‘a human rights approach to elder abuse, as opposed to a protective and mandatory reporting approach’.<sup>25</sup> This consistency of approach provides the basis for a shared understanding and complements the approach taken in this Inquiry.

3.21 The Office of the Public Advocate (Vic) considered that the ‘coherent policy and action framework’ of a national plan would be ‘a crucial step towards enhancing rights protections for older Australians’.<sup>26</sup>

3.22 A national planning process would help to ameliorate the problems of the distribution of powers in a federal system in which many issues that arise in a consideration of ‘elder abuse’ sit across federal/state jurisdictional lines. The Darwin Community Legal Service Aged and Disability Advocacy Service said that a national approach would facilitate an appreciation of ‘the complexities of addressing the issue of Elder Abuse across a range of jurisdictions’.<sup>27</sup>

3.23 The Benevolent Society submitted that a ‘holistic national approach is a pressing priority’ and a national plan would be ‘a critical element of a broader national agenda on older Australians’.

There is currently no national plan for older Australians which incorporates a broader agenda like tackling ageism, financial security and housing, work and training, mobility and transport, social inclusion and participation, preventing and responding to abuse, and fostering age friendly environments.<sup>28</sup>

3.24 Developing a National Plan will also provide the opportunity to continue and focus national conversation and engagement. Anglicare (SA) suggested that a national approach would ‘promote improved governance through consistent practice’ and would lead to ‘increased awareness and improved response to elder abuse through the embedding of a consistent supportive framework’.<sup>29</sup> The ability of a national plan to create a nationally consistent framework was also emphasised by the Australian Nursing and Midwifery Federation:

The essence of the issue is recognition that elder abuse does occur, and then the establishment of laws and policies which mitigate, and ultimately eradicate, such ill-treatment. A National Plan will ensure such recognition of elder abuse and provide a nationally consistent framework through which to establish credible reforms and actions for mitigation.<sup>30</sup>

3.25 The Office of the Public Advocate (Qld) stressed the importance of engaging with the issue of elder abuse in a ‘multi-faceted’ way:

---

25 St Vincent’s Health Australia, *Submission 345*.

26 Office of the Public Advocate (Vic), *Submission 246*.

27 Darwin Community Legal Service Aged and Disability Advocacy Service, *Submission 316*. Chapter 2 discusses the federal context for elder abuse law reform in more detail.

28 The Benevolent Society, *Submission 280*.

29 AnglicareSA, *Submission 299*.

30 Australian Nursing and Midwifery Federation, *Submission 319*.

A national plan provides an opportunity to address and improve culture and community attitudes, federal and state government policy, and on-the-ground supports and responses. The plan should also encompass subsets of the Australian population such as people with disability or mental health issues, people with impaired decision-making capacity, Indigenous Australians and people with different cultural backgrounds.<sup>31</sup>

3.26 There is clear commitment and support for a National Plan to combat elder abuse in Australia. The next questions are how a national plan should be developed, and what shape it should take.

### Leadership

**Recommendation 3–2** The National Plan to combat elder abuse should be led by a steering committee under the imprimatur of the Law, Crime and Community Safety Council of the Council of Australian Governments.

3.27 The National Plan to combat elder abuse needs clear leadership. The ALRC recommends that the planning process should be led by a steering committee. The Law, Crime and Community Safety Council (LCCSC) of COAG has established a working group to discuss current activities to combat elder abuse in Australian jurisdictions, consider potential national approaches, and consider the findings of this Inquiry.<sup>32</sup> The LCCSC is well placed to take a lead role in coordinating a planning process. The important role that COAG can play, expressing a commitment of all governments at a senior level, was identified by stakeholders.<sup>33</sup> The Age Discrimination Commissioner is well placed to lead a number of strategies and actions of the Plan, involving key stakeholder groups.

3.28 The National Older Persons Legal Services Network emphasised that it was important for COAG to be responsible, because of:

- The need for national leadership to establish elder abuse as a national priority requiring both ‘whole of government’ and ‘whole of community’ responses;
- The limited sources of Commonwealth power to legislate elder abuse measures;
- The traditional role of COAG in developing model, uniform laws in areas of high public importance; and
- The particular need for uniformity of state and territory laws with respect to personal autonomy, including powers of attorney, guardianship and administration laws.<sup>34</sup>

31 Office of the Public Advocate (Qld), *Submission 361*.

32 Law, Crime and Community Safety Council, *Communiqué*, 19 May 2017. See also *The Coalition’s Policy to Protect the Rights of Older Australians* <[www.liberal.org.au/coalitions-policy-protect-rights-older-australians](http://www.liberal.org.au/coalitions-policy-protect-rights-older-australians)>.

33 See, eg, Eastern Community Legal Centre, *Submission 357*; Financial Planning Association of Australia (FPA), *Submission 295*.

34 National Older Persons Legal Services Network, *Submission 363*.

3.29 The need for coordination and leadership was identified as an important issue by stakeholders. As the Financial Services Council observed:

We are cognisant that the nature of implementation and governance of these reforms will be paramount to their effectiveness given the complex nature and environment in which elder abuse manifests itself across different jurisdictions.<sup>35</sup>

3.30 The Combined Pensioners and Superannuants Association (CPSA) urged that the implementation of a National Plan be ‘overseen by an appropriate body or department’, emphasising that ‘[t]here is a strong need for leadership on policy issues affecting older Australians, particularly around elder abuse’.<sup>36</sup>

### **Implementation**

3.31 Strategies for implementation, including accountability mechanisms,<sup>37</sup> are vital to the success of a National Plan. As Leading Age Services Australia observed, ‘[w]ithout implementation strategies, any Plan will stay just that—a plan’.<sup>38</sup>

3.32 The Law Council of Australia (Law Council) emphasised the need for ‘independent scrutiny’ of the Plan, ‘informed by relevant human rights standards applicable to older persons’.<sup>39</sup> Responsibility for implementation must also be identified. DPO Australia said that the Plan requires that

a designated body has responsibility for the implementation of the Framework, reporting directly to the Council of Australian Governments (COAG). Such an integrated and responsive approach is required to address elder abuse.<sup>40</sup>

3.33 Others suggested the need for a specific ‘national body’ to oversee implementation of the National Plan.<sup>41</sup> The Eastern Community Legal Centre argued that ‘funding of an independent national peak body’ was crucial to the development and implementation of the national plan.<sup>42</sup>

3.34 The issue of funding for the success of a National Plan was also raised. Legal Aid NSW, for example, urged that a plan ‘should be properly resourced to ensure meaningful outcomes for older people’.<sup>43</sup> Similarly, the Office of the Public Advocate (Qld) observed that

any law reform and policy proposals must offer genuine outcomes and be effective in addressing the elder abuse, exploitation and neglect. This requires careful policy and

35 Financial Services Council, *Submission 359*.

36 Combined Pensioners and Superannuants Association, *Submission 281*.

37 Carers NSW, *Submission 321*.

38 Leading Age Services Australia, *Submission 377*. See also Legal Aid NSW, *Submission 352*; Disabled People’s Organisations Australia, *Submission 360*.

39 Law Council of Australia, *Submission 351*.

40 Disabled People’s Organisations Australia, *Submission 360*.

41 Aged Rights Advocacy Service Inc, *Submission 285*. Seniors Rights Victoria said that there needs to be a national body comprised of organisations already working in the elder abuse field to facilitate coordination, communication and sharing of best practice, citing the example of ‘Elder Abuse Action Australia’: Seniors Rights Victoria, *Submission 383*.

42 Eastern Community Legal Centre, *Submission 357*. See also Justice Connect Seniors Law, *Submission 362*.

43 Legal Aid NSW, *Submission 352*. See also Victorian Multicultural Commission, *Submission 364*.



legislation development, appropriate funding and implementation and cooperation between Commonwealth and state governments.<sup>44</sup>

3.35 The ALRC recognises that recommendations in this Report may have funding and resourcing implications, particularly where expansion of existing roles, new roles, and additional training obligations are involved. The Australian Government commitments and funding are also acknowledged, in relation to developing a national elder abuse hotline; developing pilot training programmes; a study into the prevalence of elder abuse; and developing a national awareness campaign.<sup>45</sup>

## Goals

**Recommendation 3–3** The National Plan to combat elder abuse should identify goals, including:

- (a) promoting the autonomy and agency of older people;
- (b) addressing ageism and promoting community understanding of elder abuse;
- (c) achieving national consistency;
- (d) safeguarding at-risk adults and improving responses; and
- (e) building the evidence base.

**Recommendation 3–4** The National Plan should take into account the different experiences and needs of older persons with respect to:

- (a) gender;
- (b) sexual orientation;
- (c) disability; and
- (d) cultural and linguistic diversity.

The Plan should also take into account the experiences and needs of:

- (a) older Aboriginal and Torres Strait Islander people; and
- (b) older people living in rural and remote communities.

3.36 The ALRC identified two framing principles for this Inquiry: dignity and autonomy; and protection and safeguarding. These are discussed in Chapter 2. These framing principles underpin all the law reform recommendations in this Report. They start from a position of respecting and supporting individuals in their choices and in the

44 Office of the Public Advocate (Qld), *Submission 361*. See also, eg, Eastern Community Legal Centre, *Submission 357*.

45 Senator the Hon George Brandis QC, Attorney-General, ‘Protecting the Rights of Older Australians’ (Media Release, 15 June 2016).

exercise of their rights, but also providing safeguards against elder abuse. The ALRC considers that the National Plan to combat elder abuse should be guided by similar principles and inform its goals.

3.37 A National Plan to combat elder abuse should address, among other matters, goals such as those identified in Recommendation 3–3. These goals are not completely discrete areas and they are suggested as indicative of key objectives of the National Plan. The National Plan should then identify a range of strategies and actions in pursuit of these goals. The ALRC’s recommendations in this Report are situated within this framework. Throughout this Inquiry, stakeholders identified many initiatives that could reflect these goals, and these are mapped against them in the discussion below.

3.38 The National Plan should take into account the different experiences and needs of older people, including from Aboriginal and Torres Strait Islander communities, and across gender, sexual orientation, disability, cultural and linguistic diversity.

3.39 Seniors Rights Victoria emphasised the need to recognise that the term ‘older people’ is a wide one and ‘encompasses a diverse group of people from various generations, cultural backgrounds, and gender and sexual identities’:

How these different groups approach and respond to elder abuse (including the terminology used) will be important aspects of a national plan, which must consider the unique needs of older people.<sup>46</sup>

3.40 Seniors Rights Victoria also noted that older people may belong to one or more of these groups and therefore may experience ‘additional or compounded layers of disadvantage’.<sup>47</sup>

3.41 The difficulties for those who live in regional and remote communities also needs to be a specific focus of consultations. Maria Berry said that a problem in smaller country areas was that people ‘don’t voice up as the fear of repercussions and having to remain living in an area where everyone knows everyone’ and that regional areas face problems of ‘social isolation’.<sup>48</sup>

3.42 Peak bodies representing the interests of older people and/or who work with older people should be involved in consultations. These include, for example: seniors rights legal and advocacy services; elder abuse advocacy groups; aged care advocacy services; nurses and health practitioners; law societies and community legal centres; and banking and financial service groups.<sup>49</sup>

---

46 Seniors Rights Victoria, *Submission 383*. See also Disabled People’s Organisations Australia, *Submission 360*.

47 Seniors Rights Victoria, *Submission 383*.

48 M Berry, *Submission 355*.

49 Suggested, eg, by: Seniors Rights Victoria, *Submission 383*; Australian College of Nursing, *Submission 379*; National Legal Aid, *Submission 370*; National Older Persons Legal Services Network, *Submission 363*; Law Council of Australia, *Submission 351*; Speech Pathology Australia, *Submission 309*; Seniors Rights Service, *Submission 296*; Aged Rights Advocacy Service Inc, *Submission 285*.

### Promoting autonomy and agency of older people

3.43 Autonomy and dignity are essential framing principles in the Inquiry and should be promoted in any plan to combat elder abuse. This goal is focused on the empowerment of older people and was endorsed by stakeholders. Seniors Rights Victoria emphasised the centrality of the principle of autonomy to any national plan:

The autonomy, dignity and agency of all people of any age is of importance to a well-functioning society. In previous eras elder abuse has often been approached within a protectionist framework that considered older people, by virtue of their age, as vulnerable, dependent and unable to make suitable decisions regarding their own safety and care. In more recent times elder abuse has been approached with a rights-based and empowerment framework that focuses on supporting the older person's desires and needs.<sup>50</sup>

3.44 St Vincent's Health Australia explained that the 'empowerment model'

assumes all adults are competent to make informed decisions, unless proven otherwise, and that they have a right to self-determination and informed choice. This approach empowers and encourages older people facing abuse to take action through information, education and advocacy, but does not compel the older person to take action.<sup>51</sup>

3.45 The Eastern Community Legal Centre similarly noted the importance of ensuring that empowerment and the right to self-determination were 'paramount to every recommendation'.<sup>52</sup> The New South Wales Ombudsman similarly welcomed the development of a National Plan, 'including its principal goal to promote the autonomy and agency of older people'.<sup>53</sup> Seniors Rights Victoria urged that 'a core goal' of a National Plan should be 'to promote the autonomy, dignity and agency of older people and this goal should be considered at every point including primary prevention, early intervention, and response'.<sup>54</sup>

3.46 Stakeholders strongly supported the focus on autonomy. The Combined Superannuants and Pensioners Association, for example, agreed with 'a focus on the agency and autonomy of older people as the key principle underpinning the National Plan, as well as the conceptualisation of elder abuse as a human rights issue'.<sup>55</sup> As one stakeholder, a social worker, observed, '[t]he voices of older people, and caregivers, need to be heard and be respected in matters pertaining to decisions that may impact on them':

Preventative measures need to involve older people themselves as well as their caregivers. Older people are not a homogeneous group. They are as different as any other age group in society, with life-long differences in intellect, competence, and

50 Seniors Rights Victoria, *Submission 383*.

51 St Vincent's Health Australia, *Submission 345*.

52 Eastern Community Legal Centre, *Submission 357*.

53 NSW Ombudsman, *Submission 341*.

54 Seniors Rights Victoria, *Submission 383*.

55 Combined Pensioners and Superannuants Association, *Submission 281*. See also AnglicareSA, *Submission 299*.

need for independence. Although generally appreciative of support, they want to maintain as much control as possible.<sup>56</sup>

### ***Supporting older people’s autonomy and agency***

3.47 Stakeholders in this Inquiry provided many illustrations of ways that the goal of promoting the autonomy and agency of older people could be put into action. One strategy under this goal should be focused on supporting older people in understanding and exercising their rights. The ALRC considered such issues in detail in the *Equality, Capacity and Disability in Commonwealth Laws* Report, when developing National Decision-Making Principles.<sup>57</sup>

3.48 The Report included the Principle of Support with guidelines.<sup>58</sup> The guidelines provide an illustrative approach to the framing of ‘support’, particularly in the context of people who may have impaired decision-making ability. The Report also acknowledged the vital role played by informal supporters and support networks in the decision-making of people with disability.<sup>59</sup>

3.49 Carers also play a key role in supporting older people to participate in their communities and in exercising their rights.<sup>60</sup> As in the Disability Inquiry, stakeholders in this Inquiry drew attention to the vital and positive role that carers play—and stressed the importance of not viewing carers in too negative a light. As observed in one submission:

I hope that any safeguards that are introduced to protect the elderly also respect the unpaid, time-consuming, thankless tasks many carers undertake out of love, duty or necessity. ... I just hope that any changes which are introduced to protect the elderly do not hinder carers who are doing the right thing. It is hard not to be hurt by the current discussion in the broader community about how younger relatives exploit their elders, with no mention of the disinterested help many younger relatives do provide.<sup>61</sup>

3.50 Another suggested that making it harder may discourage people from taking on caring responsibilities: ‘punishing those of us who are doing the right things for the sake of a few bad eggs makes a difficult situation that much more complicated and could prevent people from stepping up to care for the elderly’.<sup>62</sup>

---

56 K Needs, *Submission 250*.

57 See ch 2.

58 Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) 67–75, rec 3–2.

59 *Ibid* [4.50]–[4.51].

60 Carers Victoria, *Submission 348*; Carers NSW, *Submission 321*; Name Withheld, *Submission 311*; Dr Kelly Purser, Dr Bridget Lewis, Kirsty Mackie and Prof Karen Sullivan, *Submission 298*; Women’s Domestic Violence Court Advocacy Services NSW Inc, *Submission 293*; Assets Ageing and Intergenerational Transfers Research Program, The University of Queensland, *Submission 243*; Carers Queensland, *Submission 236*. A statistical snapshot is included in ch 2.

61 S Dunlop, *Submission 220*.

62 Y Lawrence, *Submission 202*.

3.51 Similarly, a ‘very experienced Director of Nursing’, quoted by the Lutheran Church of Australia, said that

most families or carers will go a long way to support and assist their frail elderly relative or friend. I am of the view that a goodly portion of alleged mistreatment of the elderly is a combination of ignorance of the ageing process combined with an extremely frail, needy and sometimes forgetful person who is struggling.<sup>63</sup>

3.52 The ACT Disability Aged and Carer Advocacy Service emphasised the need to ensure that support for decision making was available to older people experiencing or at risk of elder abuse, and that this was a ‘viable and sustainable safeguard for older people’.

Support can be provided by a range of people or organisations already known to the person, or through community organisations that specialize in this area, including advocacy services.<sup>64</sup>

3.53 A number of stakeholders made suggestions about how ‘support’, as a strategy, might work in action. FMC Mediation and Counselling Victoria (FMC) noted that ‘support’ when accessing elder abuse services contains a number of dimensions:

At all points ... the older person needs to be supported. Supported emotionally, supported with information about next steps and what is happening, supported with the provision of options and the opportunity to determine what they wish to happen next.<sup>65</sup>

3.54 Supporting older people to understand and protect their rights may require specific initiatives focused on communication. Speech pathologists said that specific consideration should be given to ‘supporting older people with cognitive and/or communication difficulties’, which ‘may negatively impact on an individual’s ability to voice their concerns, to self-advocate, and to disclose/report harm done to them by another’:

Speech Pathology Australia strongly supports the need for legal reform and a National Plan to address elder abuse that is equipped to protect older adults with communication, swallowing and mealtime related disabilities. Any Plan or framework developed must have adequate provisions and safeguards in place to address the barriers that people with communication difficulties face in navigating the aged care system and engaging with complaints processes.<sup>66</sup>

3.55 Older people from culturally and linguistically diverse (CALD) backgrounds may need targeted assistance to support their agency. This is particularly the case given that, as the Australian Research Network on Law and Ageing (ARNLA) noted, the ability to communicate in English ‘may worsen due to natural ageing or more serious health issues such as dementia’. They emphasised the need for free National Interpreter Services for this group of older Australians.<sup>67</sup>

---

63 Lutheran Church of Australia, *Submission 244*.

64 ACT Disability Aged and Carer Advocacy Service (ADACAS), *Submission 269*.

65 FMC Mediation & Counselling, *Submission 284*.

66 Speech Pathology Australia, *Submission 309*.

67 Australian Research Network on Law and Ageing, *Submission 262*.

3.56 The Victorian Multicultural Commission suggested that the following strategies would assist the effectiveness of community education:

- Availability of translated materials
- The use of terms (oral and written) which have meaning and context for culturally diverse seniors
- Use of pictorial literature in the form of CALD storyboards for people with low level literacy
- Use of qualified interpreters for all interactions.<sup>68</sup>

3.57 The Aged Rights Advocacy Service (ARAS) emphasised that it was ‘extremely important’ to understand ‘the nuances, perspectives and language associated with elder abuse’ when providing support to CALD communities, and gave the following example:

An older gentleman from a CALD community was admitted to hospital due to being physically and verbally abused by his son. He broke down speaking to the Social Worker when he was told that he could be discharged to go home. The elderly gentleman was also concerned about his wife who was also living with the son. He did not want to go back home. Social Worker contacted ARAS and an Advocate visited the gentleman in the hospital with a professional interpreter and spoke about his rights and options and alternative accommodation, such as independent living. Safety strategies that included an Intervention Order were also discussed. The Advocate spoke about social support networks for him and his wife that are culturally appropriate.<sup>69</sup>

3.58 Darwin Community Legal Service Aged and Disability Advocacy Service said that language and ‘cultural mores’ are barriers to appropriate assistance in both CALD and Aboriginal and Torres Strait Islander communities. They urged that

[w]here possible this should be provided by members of those communities. It is therefore important that adequate culturally appropriate resources are provided to effectively address Elder Abuse.<sup>70</sup>

3.59 The Federation of Ethnic Communities’ Councils of Australia (FECCA) also stressed the importance of education targeted at CALD communities to support older people in understanding elder abuse and how they can exercise their rights. FECCA suggested that information should be provided in ethnic media about ‘rights, different types of elder abuse, and how individuals can seek help and also endeavour to address stigma and shame in relation to elder abuse’.<sup>71</sup>

3.60 Other stakeholders referred to specific groups that may need targeted education to promote their autonomy and self-agency. ARNLA gave the example of lesbian, gay, bisexual, transgender and intersex (LGBTI) seniors:

---

68 Victorian Multicultural Commission, *Submission 364*.

69 Aged Rights Advocacy Service Inc, *Submission 285*. ARAS referred to its report: Aged Rights Advocacy Service Inc, *Accessing the Aged Rights Advocacy Service to Prevent Elder Abuse—A Conversation with Members of Two Culturally and Linguistically Diverse Communities* (November 2013).

70 Darwin Community Legal Service Aged and Disability Advocacy Service, *Submission 316*.

71 FECCA, *Submission 292*.

The rights of LGBTI+ people in Australia have been part of significant public debate in recent times, especially in regards to marriage equality. However, little attention has been paid to the experiences of older LGBTI+ people; particularly those entering or already in aged-care facilities. LGBTI+ seniors are far more vulnerable to interactions with care-givers than their heterosexual and cisgender counterparts. Lack of education and understanding of how the law operates has resulted in many LGBTI+ seniors being unaware of how the legal system can be used to protect themselves against elder abuse and discrimination. Furthermore, historical discrimination has also made many LGBTI+ seniors unwilling to engage with the legal system. Issues of concern regarding elder abuse include legal protection for older LGBTI+ people and their families of choice especially in times of crisis, rights of same-sex partners, wills, superannuation, supported and substitute decision making, and end of life issues.<sup>72</sup>

### **Promoting financial literacy**

3.61 Support in developing older people's financial literacy was also seen as a key need. Given the high incidence of financial abuse of older people,<sup>73</sup> supporting older people through enhancing financial literacy was a strategy expressly identified by those working in the financial sectors.<sup>74</sup> For example, the Australian Bankers' Association (ABA) agreed with the ALRC that financial literacy was itself a safeguard from abuse, and suggested that

a national awareness campaign, with a focus on improved information and education, will be vital to reducing the risks of abuse as well as the consequences. As part of the ABA's Financial Abuse Initiative, consumer fact sheets have been developed to help raise awareness of financial abuse and provide customers with some tips about how they can protect themselves.<sup>75</sup>

3.62 The Financial Services Council (FSC) said that the experience of FSC members suggested that a lack of awareness 'significantly contributes to the increased prevalence of elder financial abuse'. The Council recommended, therefore, that

[t]he development of a long-term strategy on improving financial literacy and increasing awareness on how to manage personal wealth is integral to the alleviation of elder financial abuse.<sup>76</sup>

3.63 The FSC also emphasised that a lack of understanding by many older people regarding what constitutes elder abuse 'is a significant contributor to its increasing prevalence'. Referring to successful campaigns on issues such as family and domestic violence, and responsible drinking, the FSC suggested that strategies in the National Plan:

72 Australian Research Network on Law and Ageing, *Submission 262*. Citations omitted.

73 See ch 2.

74 The 2007 House of Representatives Standing Committee on Legal and Constitutional Affairs also recommended that there be national initiatives to promote financial literacy particularly among older people: House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Older People and the Law* (2007) rec 8.

75 Australian Bankers' Association (ABA), *Submission 365*.

76 Financial Services Council, *Submission 359*. 'Awareness is a key to prevention': Protecting Seniors Wealth, *Submission 312*.

should address how public education campaigns target communication to the elderly, and ensure that education on elder abuse is simple and palatable allowing it to be easily understood and communicated.<sup>77</sup>

3.64 Financial literacy issues may be a particular problem in certain communities. ARNLA, for example, reported that

CALD seniors may also suffer due to a lack of (or declining) community networks, computer illiteracy and transport related difficulties. The ‘digital divide’ in particular may enhance difficulties accessing services.<sup>78</sup>

3.65 Good examples of strategies for increasing financial literacy and advocacy for older Australians include the National Financial Literacy Strategy 2014–2017 and the National Financial Literacy Action Plan, led by the Australian Securities and Investments Commission (ASIC).<sup>79</sup> Acknowledging that improving financial literacy is ‘a long-term behavioural change initiative’, requiring ‘a multi-faceted approach and sustained action over time to bring about gradual improvement’, the strategy

provides a practical framework for action to guide and encourage all those with a role to play in improving financial literacy for Australians.<sup>80</sup>

3.66 Such initiatives are informed by the work of the Organisation for Economic Co-operation and Development (OECD) and its International Network on Financial Education. Among other things, the OECD has developed principles on national strategies for financial education.<sup>81</sup>

3.67 The AIFS Report observed that measures like ASIC’s National Financial Literacy Strategy and MoneySmart program,

together with strong regulatory regimes and industry codes of conduct that are aimed at encouraging awareness of elder abuse among both financial institution professionals and clients, are in turn directed at putting safeguards in place to prevent elder financial abuse.<sup>82</sup>

### ***Recommendations in this Report***

3.68 In this Report, many recommendations are about promoting the autonomy and agency of older people. In a sense, all reforms aimed at reducing elder abuse will also support people’s autonomy, because elder abuse undermines autonomy, making it more difficult for people to make choices about their own lives and to pursue what is important to them. Therefore, recommendations that safeguard against abuse may also be considered as promoting autonomy.

77 Financial Services Council, *Submission 359*. See also SMSF Association, *Submission 382*.

78 Australian Research Network on Law and Ageing, *Submission 262*. See also Consumer Credit Legal Service (WA) Inc, *Submission 301*.

79 Australian Securities & Investments Commission, *National Financial Literacy Strategy 2014–2017*; Australian Securities & Investments Commission, *Financial Literacy Action Plan*.

80 Australian Securities & Investments Commission, *National Financial Literacy Strategy 2014–2017*; Australian Securities & Investments Commission, *ASIC’s Role* <[www.asic.gov.au](http://www.asic.gov.au)>.

81 OECD, *National Strategies for Financial Education OECD/INFE Policy Handbook* (2015).

82 Kaspiew, Carson and Rhoades, above n 4, 38.



3.69 Some recommendations, however, are particularly targeted at empowering people to protect themselves from abuse and seeking to ensure that they are supported to make decisions that reflect their rights, will and preferences:

- **Chapter 4 (Aged Care)**—the incorporation into the *Aged Care Act 1997* (Cth) of provisions dealing with supporters and representatives as set out in the ALRC’s National Decision-Making Principles;<sup>83</sup> and that an approved provider cannot require a care recipient to have appointed a decision maker for lifestyle, personal or financial matters;<sup>84</sup>
- **Chapter 5 (Enduring Appointments)**—emphasising that a person should be able to determine the scope and extent of their enduring appointments and not be required to give broader or unlimited powers to be able to effect certain transactions; and requiring that appointed decision makers support and represent the will, preferences and rights of the principal;<sup>85</sup>
- **Chapter 7 (Superannuation)**—reviewing the rules in relation to binding death benefit nominations in APRA-regulated superannuation funds;<sup>86</sup> and, in the context of self-managed superannuation funds, planning for the possibility of cognitive impairment;<sup>87</sup>
- **Chapter 8 (Wills)**—improving the understanding of legal practitioners of the dynamics of elder abuse and risk factors of undue influence and how to safeguard against them in the making of wills and other advance planning documents;<sup>88</sup>
- **Chapter 9 (Banking)**—considering how banks can provide information to older customers about financial abuse and discussing with customers how they might protect themselves;
- **Chapter 10 (Guardianship and Financial Administration)**—supporting those who are the subject of an application for guardianship or financial administration to participate in tribunal processes as far as possible;<sup>89</sup>
- **Chapter 12 (Social Security)**—a principle of direct contact by Centrelink staff with people of Age Pension age who are entering into arrangements with others that concern social security payments;<sup>90</sup> and

---

83 Rec 4–12.

84 Rec 4–13.

85 Rec 5–1.

86 Rec 7–1.

87 Rec 7–2.

88 Rec 8–1.

89 Rec 10–2.

90 Rec 10–3.

- **Chapter 14 (Safeguarding Adults at Risk)**—placing particular emphasis on the importance of adult safeguarding agencies working closely with the people they support, and only acting with their consent, except in limited circumstances.<sup>91</sup>

### **Addressing ageism and promoting community understanding of elder abuse**

3.70 The National Plan should address ageist attitudes to older people. Stakeholders identified a range of attitudinal problems concerning older people. As the Law Council of Australia observed, ‘changing attitudes to behaviour’ was critical in combating elder abuse.<sup>92</sup> Part of this understanding is about what older people themselves understand, and strategies that promote autonomy and self-agency are directed to this goal. Another component concerns attitudes and understanding within the broader community. Many stakeholders identified ‘ageism’ as a problem: as a cause of, and exacerbating factor in, elder abuse; and in inhibiting effective responses to elder abuse.

#### ***Ageism and elder abuse***

3.71 ‘Ageism’ was identified as an underlying issue that contributes to abuse.<sup>93</sup> Seniors Rights Victoria, for example, said that

[a]geism affects how older people are treated in all aspects of life, including the workforce, within family life, and as public figures. The promotion of respectful intergenerational relationships is a way of combating ageism and demonstrating that Australia does not condone elder abuse or the mistreatment of older people.<sup>94</sup>

3.72 Common manifestations of ageism include ‘stereotyping, prejudice, discrimination, harassment and vilification as well as abuse, exploitation, neglect and violence and it is often intersectional’.<sup>95</sup> One submission referred to ageism as ‘an habitualized acceptance of a double standard in society, when it comes to different levels of respect that are accepted as normal’.<sup>96</sup> A particular example was the labelling of older people as ‘bed blockers’ in hospitals, as though they were somehow less deserving of hospital resources.<sup>97</sup>

3.73 Townsville Community Legal Service Inc identified ‘benevolent prejudice’ as one of the most ‘entrenched forms of ageism’:

It is the tendency to pity, seeing older people as friendly but incompetent. It is superficially positive but ultimately reinforces inferiority. It positions older persons as

91 Rec 14–4.

92 Law Council of Australia, *Submission 61*.

93 See, eg, Seniors Rights Victoria, *Submission 383*; Australian Research Network on Law and Ageing, *Submission 262*; National Older Persons Legal Services Network, *Submission 180*; Seniors Rights Victoria, *Submission 171*; UnitingCare Australia, *Submission 162*; Office of the Public Advocate (Qld), *Submission 149*; Aged and Community Services Australia, *Submission 102*; Quality Aged Care Action Group Incorporated, *Submission 28*.

94 Seniors Rights Victoria, *Submission 383*.

95 National Older Persons Legal Services Network, *Submission 180*.

96 H MacGillivray, *Submission 272*.

97 Quality Aged Care Action Group Incorporated, *Submission 28*.

frail, easily duped and needing protection rather than vital, active and independent. It keeps older persons in an inferior position. It is embedded in public policy.<sup>98</sup>

3.74 ARNLA suggested that

ageism is a strong normative influence generally in society, and is also prevalent in health care settings, where older persons constitute the majority of the patient population. Unconscious attitudes about the worth of older persons, and judgments on lifestyle, are evident particularly when frailty is present.<sup>99</sup>

3.75 Seniors Rights Victoria submitted that ageism was the ‘principal driver’ and ‘underlying condition of elder abuse’, contributing to ‘the marginalisation of older people and the way society condones certain behaviours towards older people (such as limiting decision-making and independence or controlling finances)’. They said, moreover, that the ‘impact of ageism, and the consequential erosion of older people’s rights, is far broader than personal repercussions endured by an older person’.<sup>100</sup>

3.76 Townsville Community Legal Service Inc urged that

[L]aw reform must be driven by the need to combat ageism in all manifestations: Stereotyping (incompetence, illness, and irrelevance); Prejudice (benevolent or hostile); Discrimination, harassment and vilification; and Abuse, exploitation, neglect and violence.<sup>101</sup>

3.77 It also said that ‘the impact of ageism is amplified where it also involves another “ism”’: ‘Much of the research on elder abuse validates that gender and race can exacerbate ageism as is common with intersectional discrimination’.<sup>102</sup>

3.78 Research undertaken by the Age Discrimination Commissioner in 2013 drew attention to the damaging effects of negative stereotypes or misconceptions about older people; and that ageist attitudes were deeply ingrained and evident in all aspects of Australian society.<sup>103</sup> ‘We are invisible’, said Adam Johnston, referring to the experience of older people with disability.<sup>104</sup> If ageism is not tackled, Dr Kelly Purser et al argued, ‘the promotion of stereotypes of older people as being incompetent, slow and an economic burden becomes a self-fulfilling prophecy’.<sup>105</sup>

3.79 The experience in Australia is not unique. The Québec plan drew attention to the role that ageism plays in elder abuse:

Similar to sexism and racism, ageism is defined as a set of negative or hostile attitudes towards a person or group of persons due to their age which gives rise to prejudicial acts and social disenfranchisement. Ageism includes all forms of discrimination and segregation based on age. Higher rates of elder abuse tend to be found in societies with a high prevalence of ageism. Since ageism occurs in all spheres of life, some

98 Townsville Community Legal Service Inc, *Submission 141*.

99 Australian Research Network on Law and Ageing, *Submission 262*.

100 Seniors Rights Victoria, *Submission 383*.

101 Townsville Community Legal Service Inc, *Submission 141*.

102 Ibid.

103 Australian Human Rights Commission, *Fact or Fiction? Stereotypes of Older Australians, 2013* (Research Report, 2013).

104 A Johnston, *Submission 45*.

105 Dr Kelly Purser, Dr Bridget Lewis, Kirsty Mackie and Prof Karen Sullivan, *Submission 298*.

researchers have suggested that it could impact the proper implementation of adequate support services for seniors in situations of abuse. The unwillingness of seniors to denounce abuse may signal that they have internalized a form of ageism into their own behaviour.<sup>106</sup>

3.80 As ageism plays such a central role in elder abuse, strategies need to be directed towards counteracting it. Stakeholders suggested a range of ways in which ageism can be addressed, and ways to prevent elder abuse through community awareness and education campaigns, and training. Townsville Legal Community Service Inc noted, for example, prevention programs introduced in states and territories ‘aimed at raising awareness, educating those at risk of abuse or offending and offering remedial and support services’, but ‘wider rollout’, ‘greater visibility’ and improved resourcing were needed, supported by ‘a national public awareness and education campaign’.<sup>107</sup>

#### ***Public awareness and education campaigns***

3.81 The importance of developing a national awareness campaign to educate and change attitudes and values was identified as part of the Australian Government’s policy in protecting the rights of older Australians and initiatives to address elder abuse.<sup>108</sup> One of the key elements in the themes underpinning approaches to prevention of elder abuse identified by the AIFS Report concerned ‘changing the values and attitudes among the broader community’.<sup>109</sup>

3.82 Public awareness raising was also strongly emphasised by stakeholders. UnitingCare Australia, for example, suggested that, because ageism ‘lies at the heart of elder abuse’, ‘effective elder abuse prevention can only be achieved with the support of education and awareness programs that deal with the negative perceptions and assumptions about ageing and older people’.<sup>110</sup> The focus needs to be both about addressing ageism in its various manifestations, and about improving understanding about what is elder abuse. Any awareness campaign needs to highlight discriminatory attitudes towards age that may contribute to trivialising, excusing or justifying elder abuse.

3.83 By way of comparison, the Québec plan included a focus on improving the understanding of elder abuse, through ‘communication strategies, tools and training’:

106 Government of Québec, *Governmental Action Plan to Counter Elder Abuse 2010–2015* (2010) 30. Citations omitted.

107 Townsville Community Legal Service Inc, *Submission 141*.

108 *The Coalition’s Policy to Protect the Rights of Older Australians*, above n 32; Senator the Hon George Brandis QC, Attorney-General, ‘Protecting the Rights of Older Australians’ (Media Release, 15 June 2016).

109 Kaspiew, Carson and Rhoades, above n 4, 38. See also Legislative Council General Purpose Standing Committee No 2, Parliament of New South Wales, *Elder Abuse in New South Wales* (2016) rec 1; Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (2016) rec 153; House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Older People and the Law* (2007) recs 7, 18, 22, 40.

110 UnitingCare Australia, *Submission 162*. The Respect for Seniors program was referred to as a program that ‘focuses on building respect for older people, valuing their contributions and challenging common assumptions’.

In order to reduce the incidence of elder abuse, we must increase the level of vigilance and knowledge about the problem among seniors, caregivers and the population at large.<sup>111</sup>

3.84 The Québec plan included a public awareness campaign—‘to demystify the problem of elder abuse by reporting its incidences and strip it of its taboo status’.<sup>112</sup>

3.85 The Northern Territory Anti-Discrimination Commission said that a campaign ‘addressing societal attitudes to older people’ was crucial:

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.<sup>113</sup>

3.86 The Law Council emphasised that any national plan should include ‘a strong education component ... with a view to combating any negative “ageist” attitudes—that is, stereotyping of and discriminating against individuals based on their age—towards older people’.<sup>114</sup> Similarly, the Eastern Community Legal Centre urged that addressing ageism should be acknowledged as a ‘key priority’ under a national plan.<sup>115</sup>

3.87 One social worker referred to disrespect of older people, ‘as a consequence of spoken and unspoken expressions of ageism’, and its silencing effect:

Older people are aware of being vulnerable to abuse, although it may not be named as such. ... Older people are unlikely to complain, as many are unsure of their rights, and are uneasy about ‘making waves’, due to apprehension over possible humiliation or retaliation if they speak up or complain within care situations, particularly residential aged care.<sup>116</sup>

3.88 Another observed that, not only was there a need for a greater awareness and understanding of ‘what ageism and mutual respect look like in practice’,

[d]evelopment of protective factors against abuse, such as positive self-image, sense of identity, self-efficacy, self-respect, coping skills, a sense of personal control, resilience, assertive communication, conscious ageing, a sense of belonging, recognition of benevolent ageism, respectful relationships, lifelong learning, and what respectful behaviours look like, needs to be adequately addressed both in the community and in aged care facilities.<sup>117</sup>

3.89 The Office of the Public Guardian (Qld) said that ‘a key element’ of the public education strategy would be ‘educating the community to see elder abuse as criminal behaviour that should be referred to the police and prosecuted, and where possible avoided through the use of early intervention strategies’.<sup>118</sup>

111 Government of Québec, *Governmental Action Plan to Counter Elder Abuse 2010–2015* (2010) 45.

112 *Ibid* 51.

113 Northern Territory Anti-Discrimination Commission, *Submission 93*.

114 Law Council of Australia, *Submission 351*.

115 Eastern Community Legal Centre, *Submission 357*.

116 K Needs, *Submission 250*.

117 *Ibid*.

118 Office of the Public Guardian (Qld), *Submission 384*.

3.90 Protecting Seniors Wealth considered that a public awareness campaign ‘would send a clear message to the general public, that elder abuse of any kind is simply not acceptable’ and to ‘remind people that elders have rights, and they should be revered and honoured and treated with respect’.<sup>119</sup>

***Culturally appropriate information***

3.91 Any public awareness campaigns should involve targeted material that considers the dynamics and experiences of particular groups, including older people from: Aboriginal and Torres Strait Islander communities; CALD communities; and LGBTI communities. ARAS provided the following example:

ARAS experience with the Aboriginal Mentoring Camp suggests that opportunities for connection between generations should be fostered to combat ageism and encourage respect for older people. ... a similar program to Our Watch ‘the line’ could be developed to combat ageism and abuse. ARAS has developed a number of resources in recent times that support positive messages about ageing but also how to prevent abuse as older people age.<sup>120</sup>

3.92 FECCA and the Ethnic Communities’ Council of Victoria stressed the importance of culturally informed awareness campaigns, targeting CALD communities by using ethnic media.<sup>121</sup>

3.93 The Australian Association of Gerontology and the National Ageing Research Institute (AAG and NARI) agreed that there was a need for strategies ‘directed towards understanding the specific experiences of older people from diverse groups’ and provided the following examples:

AAG is working with the National Aboriginal Community Controlled Health Organisation (NACCHO), Federation of Ethnic Communities’ Councils of Australia (FECCA), and the National LGBTI Health Alliance (Alliance) to develop and implement a *Diversity Framework* that will address the high level principles and common issues that affect diverse groups, with the creation of specialist action plans for each of the CALD, ATSI and LGBTI communities. ... The framework will make a valuable contribution to addressing the specific needs of older people from diverse groups.<sup>122</sup>

***Public awareness raising in this Report***

3.94 In this Report the ALRC also addresses the importance of public awareness raising about elder abuse in a number of specific contexts, including:

119 Protecting Seniors Wealth, *Submission 312*.

120 Aged Rights Advocacy Service Inc, *Submission 285*. ARAS referred to: <https://www.ourwatch.org.au/What-We-Do/The-Line>.

121 Ethnic Communities Council of Victoria (ECCV), *Submission 306*; FECCA, *Submission 292*. See also Seniors Rights Service, *Submission 296*.

122 Australian Association of Gerontology (AAG) and the National Ageing Research Institute (NARI), *Submission 291*. The Eastern Community Legal Centre (ECLC) provided an example of an education project, ‘Matter of Trust’, aimed at assisting people from CALD backgrounds: Eastern Community Legal Centre, *Submission 357*.

- **Chapter 8 (Wills)**—discusses the importance of community education about the importance of seeking appropriate information and professional advice in relation to advance planning documents;
- **Chapter 9 (Banking)**—discusses the role banks might play in educating the community about the risks of elder financial abuse, including ensuring Australians make informed choices about guaranteeing loans and ‘who they share their personal details with and the potential consequences of doing so’;<sup>123</sup> and
- **Chapter 10 (Guardianship and Financial Administration)**—includes measures towards improving public awareness about the nature and seriousness of the roles of being a substitute decision maker appointed by someone to act on their behalf.

### *Training to recognise and respond to elder abuse*

3.95 Stakeholders also stressed the importance of training, in addition to public awareness raising, and that it needs to be directed to many groups. For example, there should be efforts to ensure that insights are shared between family violence services who work with older people and dedicated elder abuse services, to promote best practice in services for older people in both areas of service provision.

3.96 The Victorian Royal Commission into Family Violence considered that ‘building the capacity of Seniors Rights Victoria to provide expertise to support other service providers including family violence services ... would facilitate better referrals, mutual learning and ultimately better outcomes for older people who are experiencing family violence’.<sup>124</sup> Family violence services, including women’s legal services, will likewise have particular expertise in supporting older women experiencing family violence. For example, Women’s Legal Services Australia offered insight into the possible correlation between intimate partner violence and elder abuse, noting that

Anecdotally, our legal casework experience suggests there may be a link between intimate partner violence and elder abuse in cases where the perpetrator of intimate partner violence (the son), once excluded from the family home, will move in with his parents and commit elder abuse.<sup>125</sup>

3.97 Stakeholders also identified a number of specific groups of people who should receive elder abuse training.

3.98 **Substitute decision makers:** ARNLA referred in particular to substitute decision makers:

Research carried out by members of ARNLA has revealed the extent to which these decision-makers struggle with prioritising the will and preferences of persons for

123 Consumer Credit Legal Service (WA) Inc, *Submission 301*.

124 Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (2016) 92. See also Women’s Domestic Violence Court Advocacy Services NSW Inc, *Submission 293*. Women’s Legal Services may have particular expertise in family violence used against older Aboriginal women: see, eg, Top End Women’s Legal Service, *Submission 87*; Women’s Legal Services NSW, *Submission 53*.

125 Women’s Legal Services Australia, *Submission 343*.

whom they have decisional responsibility. This challenge is well documented in the literature, and needs to be addressed to ensure that those who are in the position of taking decisions for older persons who have lost capacity are guided by clear, robust and understandable guidance which places presumptive weight on the will and preferences of the older person.<sup>126</sup>

3.99 ARNLA stressed the need for resources for supporters and substitute decision makers, noting

the dearth of support and resources for ‘supporters and representatives’ required to bridge the gap between law and practice. ARNLA recommends that attention be given to sustainable resources to educate and support this population with their challenging role, especially at times of family or professional conflict; where community resources are unavailable to give effect to preferences; and for end of life decision-making.<sup>127</sup>

3.100 The ALRC makes specific recommendations directed towards training for substitute decision makers. **Chapter 5 (Enduring Appointments)** considers the appointment of people as substitute decision makers under advance planning instruments, including enduring powers of attorney and enduring guardianship appointments. **Chapter 10 (Guardianship and Financial Administration)** considers the appointment of substitute decision makers, as guardians or financial administrators, by tribunals. In both cases the ALRC discusses the need for substitute decision makers to understand fully their roles and responsibilities.

3.101 In relation to substitute decision makers chosen by a person for themselves, the ALRC recommends that a number of safeguards should be included in state and territory legislation, including restricting conflict transactions, setting out in simple terms the types of decisions that are outside the power of a person acting under an enduring document, and mandating basic requirements for record keeping.<sup>128</sup> This is also carried into a longer-term suggestion, in Chapter 5, for a model agreement for the appointment of substitute decision makers, including appropriate guidance on what conflicts are, and how they may be managed by the people in designing their enduring documents.

3.102 With respect to private guardians or administrators appointed by tribunals, stakeholders highlighted the importance of ensuring training was available through both online and face-to-face modes of delivery, particularly for guardians and financial administrators living in rural and remote regions. There was also an emphasis on the need for the available material to be developed in a culturally sensitive manner and available in a range of community languages. A specific way of reinforcing understanding is considered in **Chapter 10 (Guardianship and Financial Administration)**, which includes a recommendation that all newly appointed private guardians and financial administrators be required to sign an undertaking with respect to their responsibilities and obligations.<sup>129</sup>

---

126 Australian Research Network on Law and Ageing, *Submission 262*.

127 Ibid. See also UnitingCare Australia, *Submission 216*.

128 Rec 5–1.

129 Rec 10–1.



3.103 In **Chapter 12 (Social Security)**, the ALRC suggests that one action under the recommended elder abuse strategy should be to identify opportunities for Centrelink to enhance understanding by making clear the roles and responsibilities of all participants to arrangements with people of Age Pension age that concern social security payments. This may be accompanied, in appropriate circumstances, by information on support and assistance that may be available. Specific matters that are also discussed include payment nominees. Here, it is recommended that payments to nominees should be held separately from the nominee's own funds, in a dedicated account nominated and maintained by the nominee.<sup>130</sup>

3.104 **Frontline staff:** The Australian Government has committed to developing pilot training programmes for frontline staff.<sup>131</sup> Stakeholders identified a number of important groups in frontline roles that should be the focus of training, health and aged care, banking, and social security.

3.105 The NSW Nurses and Midwives' Association, for example, emphasised the importance of considering the training needs of workers and community members in the development of the National Plan.<sup>132</sup> Speech Pathology Australia considered that training for all health professionals and workers who deal with older people should be mandatory, so that they can recognise and respond to elder abuse—particularly in relation to older people with cognitive or communication impairments.<sup>133</sup> Townsville Community Legal Service Inc suggested that training should be directed to 'key areas of industry, professions and the community'.<sup>134</sup>

3.106 Carers NSW included among those who should receive training: service providers, My Aged Care staff, Regional Assessment Services, Aged Care Assessment Teams, and other stakeholders.<sup>135</sup> Training for aged care staff was identified as an important issue by many stakeholders.<sup>136</sup>

3.107 How aged care training should emphasise self-agency was discussed by another stakeholder:

aged care training appears to focus on doing 'to' and 'for' residents and community clients, rather than including strategies designed to develop older people's capacity, and to understand what they see as important for their wellbeing.<sup>137</sup>

130 Rec 12–2.

131 Senator the Hon George Brandis QC, Attorney-General, 'Protecting the Rights of Older Australians' (Media Release, 15 June 2016). See also Legislative Council General Purpose Standing Committee No 2, Parliament of New South Wales, *Elder Abuse in New South Wales* (2016) rec 1; Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (2016) 90.

132 NSW Nurses and Midwives' Association, *Submission 248*. See also Public Trustee of Queensland, *Submission 249*.

133 See also S Biggs, *Submission 235*; Aged and Community Services Association, *Submission 217*.

134 Townsville Community Legal Service Inc, *Submission 141*. See also Public Trustee of Queensland, *Submission 249*; Aged and Community Services Association, *Submission 217*.

135 Carers NSW, *Submission 321*. See also FMC Mediation & Counselling, *Submission 284*.

136 See, eg, Australian Dispute Resolution Advisory Council Inc, *Submission 303*; Seniors Rights Service, *Submission 296*; Aged and Community Services Association, *Submission 217*.

137 K Needs, *Submission 250*.

3.108 ARNLA noted that, in addition to training, organisational policies of health and aged care services also required attention, ‘as they may underpin certain practices that could work against supported decision-making approaches, such as risk aversion rather than risk minimisation’.<sup>138</sup>

3.109 St Vincent’s Health Australia gave an example of training and education for health professionals about elder abuse ‘and the role they play in advocating for their patients to improve health and legal outcomes’ as part of ‘health justice partnerships’ established in Melbourne and Sydney.<sup>139</sup>

3.110 Banking staff was another group of frontline workers identified by stakeholders. For example, the Consumer Credit Legal Service (WA) (CCLSWA) said that banks ‘are at the forefront of most financial transactions, and as such are in the best position to detect elder financial abuse’:

This is particularly so in situations where the elderly person enters into a transaction without independent legal advice by trusting those close to them or where their signature is forced or forged in order for the perpetrator to receive a benefit. Training staff members can include the development of educational programs designed to reduce the risk and incidence of financial elder abuse. ... Studies show that cyclical and repetitive training sessions are more effective in enhancing memory retention and individual knowledge.<sup>140</sup>

3.111 CCLSWA referred to the online training module for elder abuse prevention developed by the Victorian Government that had been ‘widely accessed since its launch in March 2015’, and although it was not specifically designed for bank staff, ‘it can be accessed by anyone working with elderly people to identify and respond to elder abuse’.<sup>141</sup>

3.112 Another key frontline group of workers that required improved elder abuse awareness training are Centrelink staff. Women’s Domestic Violence Court Advocacy Services Network Inc said, for example, that Centrelink staff should receive further training specific to:

identifying the signs of elder abuse (including subtle signs of abuse); understanding the unique barriers to older people finding greater safety; understanding the different language that an older person may use to raise concerns or to minimise abuse that they are suffering and to conduct (or refer to a social worker within the department) to conduct an assessment to identify the older persons current needs and risks to safety.<sup>142</sup>

3.113 In **Chapter 4 (Aged Care)**, the ALRC considers the qualifications and skill mix of aged care workers, as well as the need for training and education for aged care workers, including personnel working in aged care assessment teams, in principles for

---

138 Australian Research Network on Law and Ageing, *Submission 262*.

139 St Vincent’s Health Australia, *Submission 345*.

140 Consumer Credit Legal Service (WA) Inc, *Submission 301*.

141 *Ibid.*

142 Women’s Domestic Violence Court Advocacy Services NSW Inc, *Submission 293*. See also Carers NSW, *Submission 321*.

ensuring that decisions about a person's care give effect to that person's will preferences and rights.

3.114 Training to enable frontline staff in Centrelink to identify signs of elder abuse and to respond with appropriate referrals is discussed in **Chapter 12 (Social Security)**. The need for training for banking staff is considered in **Chapter 9 (Banking)**.

3.115 **Professionals:** One of the key elements in the themes underpinning approaches to prevention of elder abuse identified by the AIFS Report concerned changing the values and attitudes 'among professionals and individuals who interact with elders'.<sup>143</sup> Similarly, in its *Global Status Report on Violence Prevention*, the World Health Organization identified strategies to prevent elder abuse as including:

efforts to raise professional awareness and train practitioners; inform the public about how to identify the signs and symptoms of elder abuse and where help can be obtained; and improving policies and practices in residential care facilities for elderly people. There is, however, very little research on the effectiveness of any such programmes in preventing elder abuse, and this is a critical gap to fill.<sup>144</sup>

3.116 The Financial Planning Association suggested that training to identify and respond to elder abuse must not just be

for people working with older people in traditional care-giver roles, but for professional service providers such as financial planners, lawyers, and accountants, and all Australians. It will take the Australian community as a whole to help identify and overcome distress and harm caused by all forms of elder abuse.<sup>145</sup>

3.117 The finance consulting firm, Aged Care Steps, emphasised the importance of training as a prevention strategy, and identified financial advisers as often 'in the front line of identifying potential cases of financial abuse'. The training for financial advisers should include: 'education of warning signs, red flags, how to report, who to report to and how to manage suspicious cases'.<sup>146</sup>

3.118 The Brotherhood of St Laurence said that training about elder mistreatment and protection should be made mandatory for relevant professions—'at professional and vocational level plus for continuing professional development (CPD)':

Ageing and thereby elder abuse are often left to the end of the core training curriculum and are therefore poorly attended where these clash with exam preparation. Where CPD is provided this should, as far as possible be inter-professional in nature. Improved education and training needs to be supported by aged care systems that include place based training and support for workers in residential and community settings.<sup>147</sup>

3.119 The ALRC makes recommendations about the training of lawyers and financial planners to ensure that they understand the nature of elder abuse and how they can act

143 Kaspiew, Carson and Rhoades, above n 4, 38.

144 World Health Organization, *Global Status Report on Violence Prevention* (2014) 78.

145 Financial Planning Association of Australia (FPA), *Submission 295*.

146 Aged Care Steps, *Submission 340*.

147 Brotherhood of St Laurence, *Submission 232*. See also Aged Care Steps, *Submission 340*; S Biggs, *Submission 235*.

to safeguard people in situations, especially where being subjected to pressure to make or change transactions in particular ways. **Chapter 8 (Wills)**, for example, identifies the importance of training for legal practitioners and other professionals involved in advance planning instruments, both as an aspect of supporting the autonomy of people in making such instruments and also as a protection against abuse. **Chapter 11 (Health and NDIS)** considers health professionals and how their ability to identify and respond to elder abuse may be addressed, for example through training that focuses on issues such as better recognising elder abuse, improved referral pathways, and the interaction between the role of health professionals and privacy laws.

3.120 The Ethnic Communities Council of Victoria (ECCV) identified interpreters as another group of professionals needing training on elder abuse and prevention, including ‘clarifying professional ethics and the relationship of duty of care and impartial interpreting’.<sup>148</sup>

3.121 **Police:** Eastern Community Legal Centre supported ‘enhanced police training’ in relation to elder abuse as a particular strategy.<sup>149</sup> Many stakeholders supported increased police training as a mechanism to enhance the criminal justice response to elder abuse.<sup>150</sup>

3.122 Seniors Rights Victoria suggested that, as well as information ‘specific to each profession’, training should include:

- the rights, autonomy and dignity of older people
- the similarities and differences to other forms of family violence
- risk factors of elder abuse, and how to identify it
- how to support an older person where elder abuse is suspected
- the proper use of Enduring Powers of Attorney and supported decision-making
- referral pathways and access to support services.<sup>151</sup>

3.123 Seniors Rights Victoria also emphasised that significant commitments to resourcing ‘existing and new’ initiatives will be required ‘from all levels of government’.<sup>152</sup>

---

148 Ethnic Communities Council of Victoria (ECCV), *Submission 306*.

149 Eastern Community Legal Centre, *Submission 357*. The ECLC set out in detail what police training would involve.

150 See, eg, Office of the Public Guardian (Qld), *Submission 384*; Women’s Legal Services Australia, *Submission 343*; Speech Pathology Australia, *Submission 309*; Justice Connect, *Submission 182*; Eastern Community Legal Centre, *Submission 177*; NSW Ombudsman, *Submission 160*; National Seniors Australia, *Submission 154*; Australian Association of Social Workers, *Submission 153*; ACT Disability, Aged and Carer Advocacy Service, *Submission 139*; Macarthur Legal Centre, *Submission 110*; Australian Bankers’ Association, *Submission 84*; Alzheimer’s Australia, *Submission 80*; Law Council of Australia, *Submission 61*; Legal Aid ACT, *Submission 58*.

151 Seniors Rights Victoria, *Submission 383*.

152 Eastern Community Legal Centre, *Submission 357*.

3.124 In **Chapter 13 (Criminal Justice Response)**, the ALRC concludes that existing criminal laws generally adequately cover conduct which constitutes elder abuse, and does not recommend the enactment of specific offences. However, the chapter highlights other avenues for improving criminal justice responses, including: police responses and providing appropriate assistance for witnesses who require additional support to participate in the criminal justice system. In **Chapter 14 (Safeguarding Adults at Risk)**, the ALRC makes recommendations relating to adult safeguarding laws aimed at safeguarding and supporting adults ‘at risk’. These laws would provide adult safeguarding agencies a role that is complementary to police, aimed at improving responses to elder abuse.

### Achieving national consistency

3.125 To make systems work together effectively to combat elder abuse, a key element was identified as consistency: a consistent national approach, with consistent laws and coordinated responses. The national planning process itself will contribute towards fostering a consistent national approach. There are also many recommendations in this Report that reflect this goal—particularly in relation to state and territory laws.<sup>153</sup>

3.126 A need for consistent laws was a dominant theme among stakeholders.<sup>154</sup> As National Seniors observed:

It makes little sense that the legal frameworks to protect older Australians from abuse differ across the various states and territories. National laws or at the least nationally consistent laws are required to reduce confusion and improve protections for older people.<sup>155</sup>

3.127 ‘Without a consistent national approach’, remarked the Office of Public Guardian (Qld),

the governing legal framework will remain a combination of inconsistent and disconnected Commonwealth and state or territory law, amounting to a piecemeal approach to the protection of the interests and rights of persons who are vulnerable to abuse, and will likely result in gaps in safeguards.<sup>156</sup>

3.128 The Law Council acknowledged the difficulty in developing national laws, in the context of the division of responsibility between the Commonwealth and states and territories.<sup>157</sup> However, it urged that ‘national implementation of the ALRC’s

---

153 There are many ways national consistency may be achieved, including for example through state and territory cooperation, or by requiring states and territories to achieve national consistency as a condition of Commonwealth funding provided under s 96 of the *Australian Constitution*.

154 See, eg, Seniors Rights Victoria, *Submission 171*; Seniors Rights Service, *Submission 169*; Queensland Law Society, *Submission 159*; National LGBTI Health Alliance, *Submission 156*; National Seniors Australia, *Submission 154*; Townsville Community Legal Service Inc, *Submission 141*. National consistency was also a consistent theme of recommendations in *Older People and the Law*: see, eg, House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Older People and the Law* (2007) recs 16, 19, 25, 28.

155 National Seniors Australia, *Submission 154*.

156 Office of the Public Guardian (Qld), *Submission 173*. See also NSW Trustee and Guardian, *Submission 120*; Law Council of Australia, *Submission 61*.

157 See ch 2.

recommendations that promote greater harmony could significantly relieve the complexities that exist within discrete state and territory schemes'.<sup>158</sup>

3.129 The goal of consistency within and across states and territories 'should be a primary focus of the National Plan', said Seniors Rights Victoria, given that elder abuse and the mistreatment of older people 'is currently addressed through interventions and support delivered in different contexts including within the legal system, law enforcement, health care, aged care, family violence services, and a range of community services'.<sup>159</sup>

3.130 The AAG and NARI agreed that 'a national approach, with consistent laws and coordinated responses is a key element in addressing elder abuse' and noted that NARI had received a grant to develop an 'Action Plan on Elder Abuse' for Victoria.<sup>160</sup>

3.131 The ABA recommended that a nationally consistent approach should include the financial sector, and that this would 'assist banks, and other institutions to understand and meet the various laws, deal with the expectations of their customers and their agents across jurisdictions, improve collaboration between relevant agencies and provide greater certainty for customers'.<sup>161</sup>

3.132 Stakeholders provided examples of problems created by differences between states, and particularly in cross-border areas and that a National Plan 'must take into account all individual areas and incorporate issues relevant to these areas eg rural, remote and metropolitan'.<sup>162</sup>

3.133 State Trustees emphasised the importance of coordination:

There will be a critical need for co-ordination between governments at all levels, particularly given that most of the activity to actually combat elder abuse will occur at a state or local level, through public advocates and guardians, tribunals, public trustees, health workers, geriatricians, advocates, and police.<sup>163</sup>

3.134 Similarly, Legal Aid ACT observed that an 'integrated framework is key to addressing elder abuse in a consistent and efficient manner'.<sup>164</sup>

3.135 Several chapters in this Report deal with state and territory laws and make recommendations that reflect the goal of achieving national consistency, including:

- **Chapter 5 (Enduring Appointments)**—state and territory laws regarding enduring powers of attorney and enduring guardianship and including a recommendation for a new national model form of appointment and online register;

---

158 Law Council of Australia, *Submission 351*.

159 Seniors Rights Victoria, *Submission 383*.

160 Australian Association of Gerontology (AAG) and the National Ageing Research Institute (NARI), *Submission 291*.

161 Australian Bankers' Association (ABA), *Submission 365*.

162 See, eg, M Berry, *Submission 355*. The submission referred to the Albury/Wodonga area.

163 State Trustees (Vic), *Submission 367*.

164 Legal Aid ACT, *Submission 223*.

- Chapter 5 (Enduring Appointments) and Chapter 10 (Guardianship and Financial Administration)—civil and administrative tribunal jurisdiction;
- **Chapter 6 (Family Agreements)**—arrangements broadly involving property and care;
- **Chapter 10 (Guardianship and Financial Administration)**—appointment of guardians and financial administrators by state and territory tribunals;
- Chapter 13 (Criminal Justice Response); and
- **Chapter 14 (Safeguarding Adults at Risk)**—new legislation for safeguarding adults at risk.

### **Safeguarding at-risk adults and improving responses**

3.136 Improving the response to elder abuse is a key safeguarding goal. Stakeholders provided many examples of how responses to elder abuse could be improved: effective interagency responses; clear reporting and referral pathways; and accessible services. The ALRC’s recommendations about redress pathways and new laws for safeguarding at-risk adults are also directed towards this goal.

#### ***Effective interagency responses***

3.137 The idea that there should be ‘no wrong door’ was a theme in submissions with respect to improving the response to elder abuse. AAG and NARI said:

consideration needs to be given to how to ensure that people experiencing elder abuse will be directed to the most appropriate service regardless of where they initially seek help (ie a *no wrong door* approach). This will require knowledge sharing and referral protocols between organisations that ‘deal with older people’ and organisations that deal with other relevant forms of abuse. For example, centres against sexual assault and family violence support organisations will have a range of responses and services that may be appropriate for older people in some circumstances.<sup>165</sup>

3.138 The New South Wales Ombudsman suggested that ‘an effective interagency response to this issue can be relatively straightforward, provided that the body taking the lead role has access to the right information, adequate powers, and the cooperation and support of key government and non-government stakeholders’.<sup>166</sup>

3.139 The Older Women’s Network (NSW) said that what was necessary was ‘a national framework and protocols enabling interagency and collaborative work between older people, community based agencies and service providers’: this would assist ‘in ensuring consistent and constructive responses to older people experiencing violence and abuse across Australia’.<sup>167</sup>

---

<sup>165</sup> Australian Association of Gerontology (AAG) and the National Ageing Research Institute (NARI), *Submission 291*. See also People with Disability Australia, *Submission 167*.

<sup>166</sup> NSW Ombudsman, *Submission 341*.

<sup>167</sup> Older Women’s Network NSW, *Submission 136*. The OWN said there were sound state-based frameworks, including, in NSW: Department of Family and Community Services (NSW), *Preventing and Responding to Abuse of Older People: NSW Interagency Policy* (2014). This document guides service

## 3.140 Seniors Rights Victoria noted that

[e]vidence shows that the most effective responses are multidisciplinary interventions that empower the older person and support them in their decision-making. These usually involve legal services (where necessary) supported by advocacy or case management that can make referrals to health and other social support services. This is the most effective way of achieving positive long-term outcomes that the older person can maintain. An example of a successful multidisciplinary intervention program is health justice partnerships. It is important for the funding to support the continuation of existing services, and the funding of new ones where necessary.<sup>168</sup>

## 3.141 Professor Simon Biggs emphasised that collaboration among agencies was required:

Any national plan should encourage inter-professional and interagency collaboration as elder abuse can include a complex of interdependent factors involving social work, the police, health care, financial institutions and NGOs.<sup>169</sup>

3.142 However, there also need to be ‘clearly defined roles’ for those who were the ‘key agencies and sectors’ responding to allegations of elder abuse: including ‘law enforcement, health system, Public Advocates and Guardians’.<sup>170</sup>3.143 COTA submitted that ‘a small national secretariat’ was required ‘to facilitate communications between elder abuse services, enhance their capacity and service network activities’.<sup>171</sup>3.144 **Chapter 14 (Safeguarding Adults at Risk)** emphasises the value of multi-agency and multidisciplinary cooperation in protecting and supporting at-risk adults.***Clear reporting and referral pathways***3.145 The Commissioner for Senior Victorians urged that there should be ‘clear reporting pathways and responses to ensure abuse, when identified and reported, is addressed’.<sup>172</sup> The Office of the Public Advocate (Qld) stressed that ‘complaints mechanisms are integral to a comprehensive system of safeguards for older people’.<sup>173</sup>3.146 The value of helplines was emphasised.<sup>174</sup> COTA, for example, advocated setting up ‘a national Hotline with a single phone number, through which older persons can access advice and obtain professional support and assistance on their own behalf or others’.<sup>175</sup>


---

responses and provides the framework under which service providers can develop their own policies and guidelines, to ensure protection, support for care recipients.

168 Seniors Rights Victoria, *Submission 383*. See also Aged Rights Advocacy Service Inc, *Submission 285*.

169 S Biggs, *Submission 235*.

170 Carers NSW, *Submission 321*.

171 COTA, *Submission 354*.

172 Commissioner for Senior Victorians, *Submission 187*.

173 Office of the Public Advocate (Qld), *Submission 149*.

174 Financial Services Council, *Submission 359*; COTA, *Submission 354*; M Winterton, *Submission 336* (in relation to people under guardianship or administration orders); Aged and Community Services Association, *Submission 217*; UnitingCare Australia, *Submission 216*. See also Legislative Council General Purpose Standing Committee No 2, Parliament of New South Wales, *Elder Abuse in New South Wales* (2016) rec 1.

175 COTA, *Submission 354*. See also Financial Services Council, *Submission 359*.



3.147 The Australian Government has identified the development of a national elder abuse hotline as an express commitment in its national plan.<sup>176</sup>

3.148 In **Chapter 12 (Social Security)**, the ALRC identifies the need for the Department of Human Services (Cth) to develop a specific elder abuse strategy to assist frontline staff to identify and escalate referrals of elder abuse.<sup>177</sup>

3.149 In **Chapter 4 (Aged Care)**, to improve responses to elder abuse and enhance safeguarding, the ALRC recommends a new scheme for reporting serious incidents in aged care and for independent oversight of an approved provider's investigation of and response to serious incidents. The chapter also includes recommendations in relation to a range of other safeguarding strategies, including reforms relating to: the suitability of people working in aged care—enhanced employment screening processes; ensuring that unregistered staff are subject to the proposed National Code of Conduct for Health Care Workers; regulating the use of restrictive practices in aged care; and national guidelines for the community visitors scheme regarding abuse and neglect of care recipients.

3.150 **Chapter 14 (Safeguarding Adults at Risk)** recommends the introduction of adult safeguarding legislation in states and territories for the safeguarding and support of at-risk adults who are unable to protect themselves from abuse.

#### *Accessible services*

3.151 Improving the response to elder abuse requires making services and forums more accessible.<sup>178</sup> The advocacy group, TASC, observed that delivering best practice means 'ensuring accessibility to our and other legal services and facilitating opportunities for support'.<sup>179</sup> The Legal Services Commission of South Australia said that 'often there was confusion or misunderstanding about where an individual can seek recourse'.<sup>180</sup> The Housing for the Aged Action Group said that older people 'want services that are easy to access and engage with'.<sup>181</sup>

3.152 For CALD groups, accessing services is difficult because of the 'limited culturally proficient mainstream services and ethno-specific services with limited capacity that are accessible to provide assistance to seniors who experience elder abuse':

Many mainstream services are not adequately funded or resourced to provide culturally appropriate or language specific services to culturally and linguistically diverse seniors.<sup>182</sup>

---

176 Senator the Hon George Brandis QC, Attorney-General, 'Protecting the Rights of Older Australians' (Media Release, 15 June 2016).

177 Rec 11–1.

178 It was also pointed out that there may be a lack of understanding about what services are available that might be addressed through community education: Consumer Credit Legal Service (WA) Inc, *Submission 301*.

179 TASC National, *Submission 91*.

180 Legal Services Commission SA, *Submission 128*.

181 Housing for the Aged Action Group, *Submission 21*.

182 Ethnic Communities' Council of Victoria Inc, *Submission 52*.

3.153 The ECCV advocated ‘a culturally responsive elder abuse prevention framework in responding appropriately and sensitively to issues associated with culturally diverse traditions and expectations and to ensure high impact across Australian population groups and communities’. In particular, this would require ‘optimal usage of interpreters and translation materials’ and ‘multicultural capacity building’.<sup>183</sup>

3.154 Particular challenges are presented in improving the response to abuse of older people in remote Aboriginal and Torres Strait Islander communities. The National Aboriginal and Torres Strait Islander Legal Services stressed the importance of ‘culturally safe and joined up services’.<sup>184</sup>

3.155 Women’s Legal Services NSW provided an example of a program for Aboriginal women that is a good illustration of an action within a national plan: the Aboriginal Women’s Legal Program (IWLP):

This program delivers a culturally sensitive legal service to Aboriginal women in NSW. It provides an Aboriginal legal advice line, participates in law reform and policy work, and provides community legal education programs and conferences that are topical and relevant for Aboriginal and Torres Strait Islander women. An Aboriginal Women’s Consultation Network guides the IWLP. It meets quarterly to ensure we deliver a culturally appropriate service. The members include regional community representatives and the IWLP staff. There is a representative from the Aboriginal Women’s Consultation Network on the WLS NSW Board.<sup>185</sup>

3.156 The importance of a multidisciplinary approach, ‘not limited simply to a legal approach’, was also urged by ARAS:

Elder Abuse presents a range of complex legal, jurisdictional, policy, professional and structural challenges which requires a cross sectoral approach between government agencies, private banking sector, advocacy services and non- government organizations providing services to older people.<sup>186</sup>

3.157 The adult safeguarding agencies recommended in **Chapter 14 (Safeguarding Adults at Risk)** would have a role in improving access to services. In most cases, safeguarding and support should involve working with the at-risk adult to arrange for health, medical, legal and other services. In some cases, it might also involve seeking court orders to prevent someone suspected of abuse from contacting the at-risk adult. Where necessary, adult safeguarding agencies should lead and coordinate the work of other agencies and services to protect at-risk people from abuse.

### **Redress**

3.158 The ALRC includes a number of recommendations that concern avenues for legal redress to improve responses to elder abuse. One group of recommendations

---

183 Ethnic Communities’ Council of Victoria (ECCV), *Submission 306*.

184 National Aboriginal and Torres Strait Islander Legal Services, *Submission 135*. A case study was included, supplied by the Central Australian Aboriginal Legal Aid Service. See also M Alexander, *Submission 64*.

185 Women’s Legal Services Australia, *Submission 343*.

186 Aged Rights Advocacy Service Inc, *Submission 285*. Citations omitted.

concerns expanding the jurisdiction of state and territory civil and administrative tribunals, in relation to:

- any cause of action, or claim for equitable relief, that is available against a substitute decision maker in the Supreme Court for abuse, or misuse of power, or failure to perform their duties and the power to order any remedy that the Court could order in such cases—**Chapter 5 (Enduring Appointments)**;<sup>187</sup>
- resolving family disputes involving residential property under an ‘assets for care’ arrangement—**Chapter 6 (Family Agreements)**.<sup>188</sup>

3.159 In the area of family agreements, the ALRC discusses the problems generated by the often informal, and often verbal, nature of these arrangements, leading to problems of enforceability if the arrangements unravel. To encourage people to formalise these arrangements, the ALRC recommends that, for the purposes of calculating an entitlement to the Age Pension, the *Social Security Act 1991* (Cth) should be amended to require that a ‘granny flat interest’ be expressed in writing.<sup>189</sup>

### Building the evidence base

**Recommendation 3–5** There should be a national prevalence study of elder abuse to build the evidence base to inform policy responses.

3.160 Policy change to address elder abuse requires a sound evidence base. A key strategy is to undertake a study to provide reliable data about the prevalence of elder abuse. Other research is also needed to improve the evidence base. The Australian Government has committed to a study ‘into the prevalence of elder abuse to better understand the problem’.<sup>190</sup>

3.161 At the time of completing this Report, in May 2017, the first step towards a prevalence study was presented to the Attorney-General’s Department—the *Elder Abuse Prevalence Scoping Study* (Scoping Study).<sup>191</sup> The study set out to:

- provide options for achieving a nationally applicable definition of elder abuse;
- examine the potential of existing Australian studies for elder abuse research; and
- develop methodology options for research into the nature and prevalence study of elder abuse in Australia.<sup>192</sup>

187 Rec 5–2.

188 Rec 6–1.

189 Rec 6–2.

190 Senator the Hon George Brandis QC, Attorney-General, ‘Protecting the Rights of Older Australians’ (Media Release, 15 June 2016). See also Legislative Council General Purpose Standing Committee No 2, Parliament of New South Wales, *Elder Abuse in New South Wales* (2016) rec 1.

191 Lixia Qu et al, ‘Elder Abuse Prevalence Scoping Study’ (Australian Institute of Family Studies, unpublished).

192 Ibid 53.

3.162 The Scoping Study proposed a two-stage research program, the first stage of which ‘aims to operationalise a nationally applicable definition of elder abuse for data collection by generating research evidence on the nature of elder abuse’ to:

- develop standardised measures of elder abuse for consistent data collection;
- identify appropriate approaches directed at engaging with professionals and with various groups of older people who would not be adequately captured in prevalence research; and
- develop a research plan for studies based on secondary data analysis and to conduct this research accordingly.<sup>193</sup>

### ***Limitations of existing data***

3.163 As NARI and the AAG explained, most current data about elder abuse comes from phone lines, longitudinal studies (physical abuse of women) and individual research projects, ‘which makes it impossible to extrapolate to the wider population’.<sup>194</sup> Moreover, a number of stakeholders suggested that elder abuse is underreported.<sup>195</sup> Western Australia Police noted the problem of determining the prevalence of elder abuse due to underreporting. They suggested that some of the reasons included:

that the victim is dependent on the perpetrator for their daily care and is fearful that reporting may see them placed in a residential care facility, the shame associated with being a victim of elder abuse, fearful of jeopardising relationships with family, and fear of retaliation. There may also be the inability of the older person to access police services to be able to report crime, and the inability to be able to communicate what has been happening to a police officer due to the abuser being the primary carer, the presence of cognitive impairment, or language and cultural barriers. Due to the lack of awareness, individuals may not be aware that elder abuse is a crime. The presence of these factors will impact on the distortion of prevalence of elder abuse and the ability of policing organisations to adequately respond and implement strategic responses.<sup>196</sup>

### ***Prevalence study***

3.164 The ALRC commends the Australian Government’s initiatives towards a national prevalence study of elder abuse in Australia and recognises that the Scoping Study is a significant first step. A prevalence study will assess the extent to which elder abuse occurs at a population level, to provide baseline information and support planning and projection about the future incidence of elder abuse. Without an appropriate evidence base to guide best practice models, there is the potential ‘that strategies which lack evidence could cause more harm’.<sup>197</sup>

---

193 Ibid 3.

194 National Ageing Research Institute and Australian Association of Gerontology, *Submission 65*.

195 See, eg, Australian Bankers’ Association (ABA), *Submission 365*; Disabled People’s Organisations Australia, *Submission 360*; Speech Pathology Australia, *Submission 309*; WA Police, *Submission 190*; L Barratt, *Submission 155*; State Trustees Victoria, *Submission 138*; Macarthur Legal Centre, *Submission 110*.

196 WA Police, *Submission 190*. See also, eg, Disabled People’s Organisations Australia, *Submission 360*; Speech Pathology Australia, *Submission 309*; Macarthur Legal Centre, *Submission 110*.

197 Cochrane Public Health Group, *Submission 54*.

3.165 Stakeholders were strongly supportive of a prevalence study to improve the evidence base. As one stakeholder observed: ‘This is vital. We always need data to show where resources can be best used.’<sup>198</sup> Moreover, as Seniors Rights Victoria urged, ‘[w]ithout proper understanding of the severity and frequency of each type of elder abuse it is impossible to measure the effectiveness of a National Plan to address it’.<sup>199</sup>

3.166 While supporting a prevalence study, Justice Connect Seniors Law also emphasised the importance of investment in the shorter term:

we recommend an immediate investment in developing the evidence base to promote more robust identification and responses to elder abuse. This will, ultimately, improve the accuracy of a prevalence study.<sup>200</sup>

3.167 There are a number of important considerations to be addressed in designing a prevalence study. Data collection is assisted by a common definition of elder abuse. The WHO description of ‘elder abuse’ is a common reference point:

Elder abuse can be defined as ‘a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person’. Elder abuse can take various forms such as physical, psychological or emotional, sexual and financial abuse. It can also be the result of intentional or unintentional neglect.<sup>201</sup>

3.168 The AAG and NARI pointed to a number of other things to be considered in establishing a prevalence study:

- Data collection needs to distinguish between suspected, reported and confirmed abuse and consideration of who is reporting the incident. ...
- Elder abuse occurs in a variety of settings (home, community, aged care, hospitals, etc) and each have unique challenges for data collection.
- Lack of awareness around what constitutes elder abuse—some older people may not recognise their situation as abusive, while some professionals may not be able to identify abuse being experienced by their clients.
- Staff from agencies identifying potential abuse can be reluctant to label a situation abusive without further investigation or evidence, which could lead to under reporting.
- How to identify occurrence of neglect and self-neglect.
- How a person’s cognition and capacity can affect their ability to identify and act on abuse.
- Diversity of older people and communities ... What is considered abusive behaviour may differ depending on cultural norms of different communities, which can affect knowledge of extent. ...

---

198 P Greenwood, *Submission 304*.

199 Seniors Rights Victoria, *Submission 383*.

200 Justice Connect Seniors Law, *Submission 362*.

201 World Health Organization, *The Toronto Declaration on the Global Prevention of Elder Abuse* (2002). See discussion in ch 2.

- The consequences of reporting abuse—the inherent power imbalance between individuals and institutions may discourage people from reporting abuse, making it difficult to accurately measure.
- Types of abuse—prevalence is likely to vary between different types of abuse.
- Any attempt to establish prevalence of various types of elder abuse should also try to gather as much information about perpetrators or potential perpetrators as possible.<sup>202</sup>

### ***Mapping existing data***

3.169 Mapping existing sources of data relating to abuse of older people, ensuring that these are consistently collected and collated, will be an important part of improving the evidence base.<sup>203</sup> For example, it will be important to ensure that elder abuse helplines have systems in place to collect data to support improvements in such services and provide knowledge about the characteristics and needs of the people who use them. It is also necessary that there is ongoing collection and reporting of relevant data by aged care providers, complaints bodies, financial institutions, law enforcement agencies and guardianship tribunals.<sup>204</sup>

3.170 St Vincent’s Health Australia said that data collection ‘is a fundamental driver in safeguarding vulnerable older people’.

The availability of health service data on the prevalence of elder abuse cases is rare. Through monitoring and auditing St Vincent’s Hospital Melbourne is able to guide improvements. Audits of Vulnerable Older Person notifications made as St Vincent’s since the inception of its new policy, and related case information, have assisted in the review of the current model of care and informed further policy review, process and practice improvements, and training requirements based on data collected over a four year period.<sup>205</sup>

3.171 Inconsistencies in data collection across states and territories were identified as an issue by the Office of the Public Advocate (SA), saying that it was important ‘to address the practical issues and barriers associated with undertaking this exercise’. Challenges identified were:

arriving on definitional agreement and also research methodology which accounts for incidence of abuse which does not result in criminal conviction or other formal process of resolution.<sup>206</sup>

---

202 National Ageing Research Institute and Australian Association of Gerontology, *Submission 65*. Supported by, eg, Carers Victoria, *Submission 348*. See also Dr Kelly Purser, Dr Bridget Lewis, Kirsty Mackie and Prof Karen Sullivan, *Submission 298*; S Biggs, *Submission 235*; National Seniors Australia, *Submission 154*; Townsville Community Legal Service Inc, *Submission 141*; Northern Territory Anti-Discrimination Commission, *Submission 93*.

203 Organisations and government departments have ‘different data collecting systems and differing criteria as to what is elder abuse’: Office of the Public Advocate (SA), *Submission 170*. An ‘agreed minimum dataset and a process for sharing of information across States’ was identified as crucial to expanding knowledge: Australian and New Zealand Society for Geriatric Medicine, *Submission 51*.

204 Australian Association of Gerontology (AAG) and the National Ageing Research Institute (NARI), *Submission 291*.

205 St Vincent’s Health Australia, *Submission 345*.

206 Office of the Public Advocate (SA), *Submission 347*.

3.172 Stakeholders were strongly supportive of building on existing initiatives—‘tapping into the wheel already there’.<sup>207</sup> The FSC noted a range of informal information capture initiatives about financial abuse:

a number of institutions and organisations keep informal data on elder financial abuse, however privacy laws and a lack of harmonized strategy between groups results in information that is incomparable or incomplete. Alongside a national prevalence study, clear guidelines on the kinds of data that can be collected by particular organisations in light of their responsibilities to the public, may contribute to the gathering of a wider set of empirical data for future policy decisions.<sup>208</sup>

3.173 The Eastern Community Legal Centre noted that existing family violence data could be mined for information about elder abuse:

where data is already being collected in relation to family violence by relevant agencies including the police, local governments, hospitals, aged care and health services, incidents of elder abuse should be clearly and separately collected as a distinct subset of this data.<sup>209</sup>

3.174 A problem with existing data sets, however, according to DPO Australia, is the lack of disaggregation.

Updated and reliable quantitative, disaggregated data around the violence, abuse and neglect of older people and people with disability is critical and urgently required. ...

Data should ... be disaggregated by a number of categories, including disability, gender, ethnicity, race and age, to ensure thorough consideration of intersectional discrimination and violence. Recent research that shows that 75 percent of reported cases of elder abuse involve older people with cognitive impairment would likely indicate a higher prevalence if such inclusionary and accessible data collection methodologies were utilised.<sup>210</sup>

3.175 FECCA also pointed to the need for disaggregation—in relation to ‘ethnic background, level of English language skills, visa status, financial situation and living situation (eg living with family)’:

The inclusion of these factors will assist to build an evidence base about the prevalence of elder abuse in CALD communities. Strategies would also need to be put in place to ensure that CALD communities are adequately and proportionally represented in the study. These strategies could include engaging older people and their families through community networks, ethno-specific community organisations, and provision of other supports such as language services and transport.<sup>211</sup>

3.176 ASIC drew attention to another kind of disaggregation, in relation to ‘different cohorts of older Australians (variously categorised as seniors, retirees, 55+ or 65+), particularly in relation to financial decision-making’. In response, ASIC is undertaking a ‘segmentation analysis’ of the 55+ cohort, to assist its understanding of:

207 M Berry, *Submission 355*.

208 Financial Services Council, *Submission 359*.

209 Eastern Community Legal Centre, *Submission 357*.

210 Disabled People’s Organisations Australia, *Submission 360*.

211 FECCA, *Submission 292*.

- the financial needs and concerns of Australian seniors and the ways in which seniors currently approach financial decision making, including barriers and enablers;
- current sources of financial/money management information and key gaps in awareness and knowledge about where to go and how to access such information;
- communication approaches and key messages that will be most effective in targeting this segment;
- the broader engagement of family members/carers and significant others who may support senior Australians in their financial decision making; and
- key characteristics (including gender differences) within the seniors' segment, the relative size of key segments and implications for ASIC MoneySmart's offering to this market.<sup>212</sup>

3.177 The Scoping Study examined a number of existing and ongoing studies of elder abuse in Australia 'to assess their potential to augment the national prevalence study by providing access to their data, which will allow greater focus on particular issues and populations'.<sup>213</sup> The Scoping Study reported that existing datasets—for example, the Australian Bureau of Statistics (ABS) Personal Safety Survey and Survey of Disability, Ageing and Carers—were useful and could provide relevant information and insights through secondary data analysis. However, the study also noted that there was scope to add items that reflect the elder abuse definition to existing surveys in future data collections. The ALRC agrees that this is a constructive and timely suggestion, particularly for major data collections held and conducted by the ABS. As the authors of the Scoping Study conclude:

The advantages of negotiating to include questions in existing studies relate not only to cost-effectiveness but also to relatively shorter lead times for implementation. There is also scope for this approach to provide opportunities for triangulation on key questions within the overall research program. More generally, studies involving other sensitive topics, including personal safety, may help to inform data collection methods, given the similarly sensitive nature of questions relating to elder abuse.<sup>214</sup>

### ***Further research***

3.178 Stakeholders also said that, while much excellent research had been undertaken, much further research was needed, not just a prevalence study.<sup>215</sup> Aged and Community Services Association, for example, observed that the National Plan must include 'a comprehensive research program linked to policy and practice outcomes'.<sup>216</sup> The AAG and NARI identified a range of their relevant work that assists in the

---

212 Australian Securities & Investments Commission, *Submission 143*.

213 Qu et al, above n 191, 11.

214 Ibid 23.

215 See, eg, Australian Association of Gerontology (AAG) and the National Ageing Research Institute (NARI), *Submission 291*; Seniors Rights Victoria, *Submission 383*; S Biggs, *Submission 235*.

216 Aged and Community Services Association, *Submission 217*.



identification of gaps in the evidence base.<sup>217</sup> National Legal Aid referred also to the Australia-wide survey (the LAW Survey) from the Law and Justice Foundation of NSW in 2012, which ‘yielded both instructive data and a platform for future research, and the results of ongoing work continue to inform access to justice service delivery’.<sup>218</sup>

3.179 The ALRC agrees that there needs to be extensive research and evaluation in relation to elder abuse, including several distinct elements concerned with: identifying risk factors, identifying gaps, and assessing existing responses. The following are suggestions from stakeholders under these headings.

3.180 **Risk:**

- the risk factors for elder abuse—for both people experiencing abuse and people perpetrating abuse;<sup>219</sup>
- the risk, protective factors and needs of particular groups in the community, including Aboriginal and Torres Strait Islander people, CALD people, LGBTI people, and those living in regional and remote areas;<sup>220</sup>
- analysis of the groups of people perpetrating elder abuse—including, for example, the percentage who are the older person’s children, spouse/partner or a care worker.<sup>221</sup>

3.181 **Identifying gaps:**

- identifying the barriers to obtaining criminal convictions;<sup>222</sup>
- analysing the prevalence and correlates (associations) of abuse to identify appropriate targets for intervention, particularly in areas where there is no data, such as the banking and financial sector;<sup>223</sup>
- assessing the economic costs of elder abuse, including through financial abuse and the costs to the health and support systems;<sup>224</sup>
- identifying 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;<sup>225</sup>

217 Australian Association of Gerontology (AAG) and the National Ageing Research Institute (NARI), *Submission 291*.

218 National Legal Aid, *Submission 370*.

219 See, eg, Office of the Public Advocate (Vic), *Submission 95*.

220 National LGBTI Health Alliance, *Submission 156*; Office of the Public Advocate (Vic), *Submission 95*; Alice’s Garage, *Submission 36*. The LGBTI Health Alliance pointed to the ‘good starting point’ provided in the report: GRAI (GLBTI Retirement Association Inc), *‘We Don’t Have Any of Those People Here’ Retirement Accommodation and Aged Care Issues for Non-Heterosexual Populations* (2010). Targeted research in these particular contexts was also identified in the scoping study: Qu et al, above n 191, 51.

221 Carers Australia, *Submission 157*.

222 ARAS, *Submission 166*.

223 Capacity Australia, *Submission 134*.

224 ARAS, *Submission 166*.

225 TASC National, *Submission 91*.

- the ways in which family agreements are being used in Australia, their common problems and outcomes;<sup>226</sup>
- collation of data concerning the risks of injury or death to older people caring for adult children with a mental illness;<sup>227</sup>
- a focus on rural communities concerning the lack of avenues to report elder abuse and/or access to appropriate services for assistance;<sup>228</sup>
- research concerning informal arrangements to manage financial and personal affairs;<sup>229</sup>
- a multi-jurisdictional case review of matters that have been referred to various guardianship tribunals to identify emergent themes, characteristics and circumstances which have given rise to proven elder financial abuse or exploitation under substituted decision-making schemes, with a view to developing evidence-based risk reduction strategies;<sup>230</sup>
- information about elder abuse perpetrated against people with cognitive impairment and about people living in supported accommodation settings.<sup>231</sup>

#### 3.182 *Assessing existing responses:*

- assessment of the effectiveness of existing prevention, intervention and remediation responses to address elder abuse—including in relation to health, justice, aged care, financial and other services;<sup>232</sup>
- assessment of intervention and prevention measures—that support older people and carers.<sup>233</sup>

3.183 The Scoping Study also suggested that research relating specifically to older people with impaired decision-making ability could be undertaken through surveying aged care providers, carers and professionals.<sup>234</sup>

#### *Evaluating future initiatives*

3.184 Finally, the ALRC considers that any actions implemented under the National Plan (and as a result of this Report) should be subject to evaluation, to provide a continuous loop of evidence-based practice and policy improvement.

226 National Seniors Australia, *Submission 154*.

227 L Barratt, *Submission 155*. Barratt suggests that ‘a useful study could be conducted by the Australian Institute of Criminology who could analyse court files and forensic psychiatric records as well as statistics, to marshal the determinants’.

228 TASC National, *Submission 91*.

229 Law Council of Australia, *Submission 61*.

230 Queensland Law Society, *Submission 159*. The QLS suggested that such strategies might include ‘evidence-based legislative review of substituted decision-making and structured decision-making tools to guide decisions about the appointment of attorneys’.

231 Office of the Public Advocate (Vic), *Submission 95*.

232 Seniors Rights Victoria, *Submission 171*; National Seniors Australia, *Submission 154*.

233 ARAS, *Submission 166*; Public Trustee of Queensland, *Submission 98*.

234 Qu et al, above n 191, 52.