

12. Social Security

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Summary

12.1 Engaging with social security through Centrelink is a part of life for most older Australians. This gives Centrelink a distinct opportunity to assist with the detection and prevention of elder abuse, especially financial abuse.

12.2 Stakeholders suggested that elder abuse is largely invisible in legal frameworks that determine Centrelink processes and responses. This ‘invisibility’ may result in a lost opportunity for Centrelink to detect and respond to elder abuse—particularly in areas such as Carer Payment and payment nominees, or in policies governing the entitlements of older persons.

12.3 The recommendations in this chapter focus on enhancing elder abuse visibility in these legal frameworks and frontloading safeguards against abuse. This chapter should be read together with Chapter 6 on family agreements, which discusses the role Centrelink can play in assisting to safeguard against elder abuse in the context of family agreements.

Elder abuse strategy

<p>Recommendation 12–1 The Department of Human Services (Cth) should develop an elder abuse strategy.</p>
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12.4 The majority of older Australian residents receive regular income through the Age Pension. The National Commission of Audit reported that, in 2012, approximately

80% of all Australians over Age Pension age received income through government pensions.¹ It estimated that the proportion of eligible people receiving income through the Age Pension will remain steady over the next 30 years.²

12.5 The Department of Human Services (Cth) designs, develops, delivers, and monitors social security.³ Centrelink is the body that delivers social security payments, including the Age Pension.⁴ Given that it is such a contact point with older Australians, Centrelink is in a frontline position to contribute to combating elder abuse. Moreover, as the Women’s Domestic Violence Court Advocacy Service NSW said, ‘Centrelink is a non-threatening, universal ‘soft-entry’ point for older people to access supports’.⁵

12.6 The ALRC recommends that the Department of Human Services (Cth) develop a discrete elder abuse strategy, to assist Centrelink staff to be alert to the possibility of elder abuse, and to develop appropriate responses when dealing with older people. Stakeholders responding to the Discussion Paper were broadly supportive of the development of an elder abuse strategy, while acknowledging the resource implications of such a strategy.⁶

12.7 Centrelink’s *Family and Domestic Violence Strategy 2016–19* provides a useful model. It focuses on providing information about family and domestic violence, identifying those at risk of family and domestic violence, providing referrals and support, training staff in relation to family and domestic violence, and embedding responses to violence across systems and processes.

12.8 While older people may be subjected to family violence, and there are points of intersection between family violence and elder abuse,⁷ Centrelink’s *Family and Domestic Violence Strategy 2016–19* may not facilitate the development of specific

1 National Commission of Audit, ‘Age Pension’ in *The Report of the National Commission of Audit* [9.1]. Fewer than 20% of people aged 65 years receive no pension. The Australian Bureau of Statistics reported that, in 2012, 2,278,215 people received income through the Age Pension, which was an increase of 57,831 people from the same point in time in 2011: Australian Bureau of Statistics, *National Regional Profile, 2008 to 2012, Cat 1379.0.555.001*.

2 National Commission of Audit, above n 1, [9.1].

3 Department of Human Services (Cth), *Department of Human Services Annual Report 2015–2016* (2016) 2.

4 Department of Human Services (Cth), *About Us* <www.humanservices.gov.au/corporate/about-us>.

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

6 Office of the Public Guardian (Qld), *Submission 384*; Law Society of South Australia, *Submission 381*; State Trustees (Vic), *Submission 367*; Justice Connect Seniors Law, *Submission 362*; Office of the Public Advocate (Qld), *Submission 361*; Disabled People’s Organisations Australia, *Submission 360*; COTA, *Submission 354*; Legal Aid NSW, *Submission 352*; Law Council of Australia, *Submission 351*; Aged Care Steps, *Submission 340*; V Fraser and C Wild, *Submission 327*; Carers NSW, *Submission 321*; Institute of Legal Executives (Vic), *Submission 320*; Darwin Community Legal Service Aged and Disability Advocacy Service, *Submission 316*; Seniors Rights Service, *Submission 296*; Women’s Domestic Violence Court Advocacy Services NSW Inc, *Submission 293*; FECCA, *Submission 292*; ADA Australia *Submission 283*; Alzheimer’s Australia, *Submission 282*; The Benevolent Society, *Submission 280*; Churches of Christ Care, *Submission 254*; Public Trustee of Queensland, *Submission 249*; Office of the Public Advocate (Vic), *Submission 246*; Lutheran Church of Australia, *Submission 244*; W Bonython and B Arnold, *Submission 241*; Carers Queensland, *Submission 236*; UnitingCare Australia, *Submission 216*; Advocare, *Submission 213*.

7 See ch 2.

policies to prevent, identify and respond to the abuse of older persons.⁸ The Welfare Rights Centre (WRC) observed, for example, that despite the reference to carers of older persons, the strategy document ‘fails to directly mention or refer to elder abuse’.⁹ The National Welfare Rights Network suggested that a more ‘comprehensive explanation of elder abuse is warranted’ in the *Guide to Social Security Law*.¹⁰

12.9 A discrete strategy should increase the attention given to the circumstances that can lead to the abuse of older persons and facilitate improved responses. The elder abuse strategy would complement and sit within the proposed National Plan, discussed in Chapter 3. Implementation of the recommendations and suggestions that follow could be specific actions forming part of a broader elder abuse strategy. The role of an elder abuse strategy in responding to specific concerns arising from family agreements is discussed in Chapter 6.

Potential intersection between social security and elder abuse

12.10 Social security legislation includes the *Social Security Act 1991* (Cth) and the *Social Security (Administration) Act 1999* (Cth). Social security laws and legal frameworks are administered by the Department of Human Services through Centrelink in accordance with policies and processes developed by the Department of Social Services (Cth). The Department of Social Services produces a comprehensive electronic publication for Centrelink decision makers called the *Guide to Social Security Law* that details the processes for a wide variety of social security payments.

12.11 For some people who receive government benefits, Centrelink processes and practices are a regular feature of their daily lives. As a corollary, social security laws and legal frameworks can intersect with older persons experiencing, or at risk of, abuse. Stakeholders have identified that the risk of this potential intersection is high in relation to:

- Carer Payment and Carer Allowance;
- Assurance of Support requirements for older migrants on Contributory Parent and Parent Visas;
- ‘granny flat interests’ and exemptions to the ‘gifting rules’ in the context of the Age Pension;¹¹ and
- the payment nominee scheme.

8 The strategy document defines family and domestic violence as ‘conduct that is violent, threatening, coercive or controlling, or intended to cause the family or household member to be fearful’. This can include conduct relevant to elder abuse such as economic (financial) abuse, emotional or psychological abuse, and serious neglect, where there is a relationship of dependence. It also includes relationships involving carers. The key aim of the strategy is to identify and respond to women and children in situations of domestic violence.

9 Welfare Rights Centre NSW, *Submission 184*.

10 National Welfare Rights Network, *Submission 151*.

11 See ch 6 for a discussion of these issues.

Carer payments

12.12 The key payment available to unpaid carers is Carer Payment.¹² It is income and asset tested, including the income and assets of the person receiving care.¹³ The amount to be paid is equivalent to the Age Pension.¹⁴ To qualify, a carer must personally provide constant and significant care¹⁵ to one or more adults or children with a disability in the home of the carer or the person receiving care.¹⁶

Carer payments and elder abuse

12.13 The National Commission of Audit reported that 220,000 people were in receipt of Carer Payment in 2013.¹⁷ There is no available data on the composition of the cohort of people receiving care, but, as older people with dementia make up the largest proportion of people under guardianship,¹⁸ it is likely that older persons with intermittent or diminished decision-making ability or limited mobility make up a sizable proportion of people needing full-time carers.

12.14 Stakeholders identified a potential intersection between Carer Payment and elder abuse.¹⁹ UnitingCare Australia, for example, noted that data from Queensland's Elder Abuse Helpline pointed to increased neglect of older people by recipients of Carer Payment.²⁰ Stakeholders identified a number of examples of abuse of Carer Payment. The North Australian Aboriginal Legal Service advised that it was aware of

allegations about carers, often family members, who are receiving Centrelink carer payments and not providing proper care to older persons (including not providing proper or full meals and not assisting with the cleaning of households). In these situations, the local community or aged care service (if available or in existence) often fills this gap, despite funds being allocated to the individual carer for this purpose.²¹

12 Department of Social Services, *Guide to Social Security Law* (2014) [1.2.5.20], [1.2.5.50]. A Carer Allowance is also available as a regular extra payment for 'additional daily care at home' to a child or adult with a disability. It is not income or assets tested, and is a supplement that may be paid in addition to wages or a social security payment: Department of Human Services (Cth), *Payments for Carers* <www.humanservices.gov.au>. An annual Carer Supplement is also available: Department of Social Services, *Guide to Social Security Law* (2014) [3.6.13].

13 Department of Human Services (Cth), *Income and Assets Tests for Carer Payment* <www.humanservices.gov.au>; *Social Security Act 1991* (Cth) ss 198A(1), 198D.

14 *Social Security Act 1991* (Cth) s 201.

15 For definitions see case law cited: Law Book Company, *Laws of Australia*, Vol 22 (at 31 October 2016) 22 Insurance and Income Security, '22.3 Social Security' [22.3.1480].

16 *Social Security Act 1991* (Cth) ss 197–198. There are some exceptions: ss 198AAA, 198AA, 198AB.

17 National Commission of Audit, 'Carer Payments' in *The Report of the National Commission of Audit* [9.10].

18 See ch 2.

19 National Older Persons Legal Services Network, *Submission 363*; Law Council of Australia, *Submission 351*; Darwin Community Legal Service Aged and Disability Advocacy Service, *Submission 316*; Seniors Rights Service, *Submission 296*; UnitingCare Australia, *Submission 216*.

20 UnitingCare Australia, *Submission 216*.

21 North Australian Aboriginal Legal Service, *Submission 116*.

12.15 This case study from the National Aboriginal and Torres Strait Islander Legal Services is an illustrative example:

An elderly woman sought advice from a Brisbane civil lawyer on housing issues. The elderly woman resides with her daughter, who has locked her out of her own house. The daughter continued to claim Centrelink carers' payments, despite her mother no longer residing with her. The elderly woman was effectively homeless and only has the clothes on her back, as all her property is held in the house. She has no way to retrieve the property. A Brisbane civil lawyer referred her to an appropriate legal service.²²

12.16 However, carer groups cautioned that checks and balances applicable to Carer Payment, which are already onerous for many carers, should not further lengthen or complicate the application process. Carers NSW suggested further scrutiny should only be applied where other risk factors were identified, and that any elder abuse strategy and associated training should not 'disproportionately focus on carers as perpetrators, but rather include carers as potential victims and encourage staff to consider preventative responses to risk of abuse, including support referrals'.²³

12.17 There is a strong policy impetus to encourage and maintain full-time carers for older persons who need assistance. Carers provide an important and necessary service, and receive a social security payment in recognition of the fact that their caring duties mean that they are unable to receive regular income through paid employment.²⁴ The WRC urged that '[i]t is important that false community perceptions about the incidence of carer abuse are not created, as this can undermine carers and deter carers from offering this invaluable support'.²⁵

Processes relating to Carer Payment

12.18 To show that the adult is a person with a disability or severe medical condition in need of a significant level of care, the needs of the adult requiring care are assessed using the 'Adult Disability Assessment Tool' (ADAT). This comprises two questionnaires that together measure the amount of assistance required to undertake 'basic activities of daily living', such as mobility, communication, hygiene, eating and management in a range of cognitive and behavioural activities.²⁶ One questionnaire is to be completed by the potential recipient of the Carer Payment, and the other by a treating health professional, which may be the person's general practitioner, registered nurse, occupational therapist, physiotherapist, a member of an Aged Care Assessment Team or an Aboriginal health worker.²⁷

22 National Aboriginal and Torres Strait Islander Legal Services, *Submission 135*.

23 Carers NSW, *Submission 321*.

24 Welfare Rights Centre NSW, *Submission 184*.

25 Ibid. See also Carers Victoria, *Submission 348*.

26 Department of Social Services (Cth), *Guide to Social Security Law* (2016) [3.6.9].

27 See forms for Adult Disability Assessment Determination 1999 and Carer Payment and/or Carer Allowance Medical Report for a Person 16 Years or Over: <www.humanservices.gov.au>.

12.19 A person receiving Carer Payment must notify Centrelink of changes in circumstances that may affect their qualification for the payment, including if they are no longer providing the required level of care to the care recipient.²⁸

12.20 The Department of Human Services conducts reviews of a random sample of social security payment recipients including recipients of Carer Payment.²⁹ The review assesses the circumstances of the payment recipient to establish the accuracy of payment.³⁰ In 2015–16, the survey indicated that approximately 96% of Carer Payments were accurately paid.³¹ It also uses ‘data analytics to improve and refine the detection of fraud and non-compliance’³² as part of a broader ‘risk based compliance approach’.³³

12.21 There may be opportunities to improve Centrelink’s ability to safeguard older people against abuse by recipients of Carer Payment. These are explored as part of the discussion of actions that may be included in Centrelink’s elder abuse strategy.

Assurance of support

12.22 For older migrants experiencing abuse and who are in situations of financial dependence, there may be limited options for exiting the abusive situation. Older persons who enter Australia on a Contributory Parent Visa or Parent Visa (collectively referred to as parent visas) cannot access welfare benefits for determined time periods, and are required to enter under an assurance of support (AoS).³⁴ The *Guide to Social Security Law* states that ‘[t]he primary objective of the AoS scheme is to protect social security outlays while allowing the migration of people who might otherwise not normally be permitted to come to Australia’.³⁵

12.23 An AoS is a commitment by a person or organisation (the ‘assurer’) to provide financial support to a person applying to migrate (the ‘assuree’) so that they will not have to rely on social security payments. However, during the 10-year disqualification period,³⁶ if an older person’s circumstances ‘change beyond their control’, they may be eligible for a Special Benefit Payment.³⁷ A Special Benefit Payment is usually paid at

28 Department of Human Services (Cth), *Change of Circumstances While Receiving Carer Payment* <www.humanservices.gov.au>.

29 Department of Social Services (Cth), *Department of Social Services Annual Report 2015–2016* (2016) 112 <www.dss.gov.au>.

30 Ibid.

31 Ibid Table 3.1.1. This is above the target of 95%: Ibid 112.

32 Department of Human Services (Cth), above n 3, 119.

33 Ibid 116, 119.

34 Most older migrants enter Australia on a Contributory Parent Visa, which requires a 10-year AoS, and aligns with the 10-year waiting period to qualify for the Age Pension.

35 Department of Social Services, *Guide to Social Security Law* (2014) [9.4.1.10].

36 Ibid.

37 Ibid. The National Social Security Network submitted that the Special Benefit Payment should be paid at the Age Pension rate. This is a broader social policy and budgetary question that is beyond the scope of this Inquiry.

the same rate as the Newstart Allowance.³⁸ Where an older migrant accesses such a payment during the AoS period, it is recoverable as a debt to be paid by the assurer.³⁹

12.24 Stakeholders submitted that older migrants in Australia on parent visas are particularly vulnerable to abuse⁴⁰ and that Centrelink benefits should be accessible to older migrants on parent visas experiencing abuse, similar to migrants on spousal visas.⁴¹ Some stakeholders called for a general review of the 10-year waiting period.⁴²

12.25 Older migrants on parent visas who apply for a Special Benefit Payment within the 10-year disqualification period, must be contacted by a Department of Human Services officer, before the payment is granted, to ascertain whether the assurer is willing and able to provide support and whether it is reasonable for the assuree to accept that support.⁴³

12.26 If the situation is considered as possibly involving domestic or family violence, the policy provides that the assurer should not be contacted, and a social worker should be involved.⁴⁴ Specifically:

- specialist Centrelink staff should interview the person with an independent interpreter present;⁴⁵
- the person should be referred to a social worker if a risk of harm or abuse is identified;⁴⁶
- the social worker may refer them to relevant services (eg, accommodation);⁴⁷ and
- the social worker should advise Centrelink when the situation has stabilised (eg, the person has been settled in alternative accommodation).⁴⁸

12.27 Legal Aid NSW suggested that in AoS arrangements, Centrelink should specifically consider elder abuse before contacting the assurer when an older person applies for a Special Benefit Payment.⁴⁹

38 Department of Human Services (Cth), *Special Benefit* <www.humanservices.gov.au>.

39 Department of Social Services, *Guide to Social Security Law* (2014) [9.4.1.10].

40 Justice Connect Seniors Law, *Submission 362*; Disabled People's Organisations Australia, *Submission 360*; Legal Aid NSW, *Submission 352*; Seniors Rights Service, *Submission 296*; FECCA, *Submission 292*; National Welfare Rights Network, *Submission 151*; Eastern Community Legal Centre, *Submission 177*; Seniors Rights Service, *Submission 169*; People with Disability Australia, *Submission 167*; National Welfare Rights Network, *Submission 151*; Legal Aid NSW, *Submission 140*; ACT Disability, Aged and Carer Advocacy Service, *Submission 139*; Social Work Department Gold Coast Hospital and Health Service, Queensland Health, *Submission 30*.

41 Welfare Rights Centre NSW, *Submission 184*; Eastern Community Legal Centre, *Submission 177*; Seniors Rights Service, *Submission 169*; ARAS, *Submission 166*; National Welfare Rights Network, *Submission 151*.

42 See eg, Disabled People's Organisations Australia, *Submission 360*; People with Disability Australia, *Submission 167*; ARAS, *Submission 166*.

43 Department of Social Services, *Guide to Social Security Law* (2014) [9.4.7].

44 *Ibid* [8.1.7.10], [9.4.7].

45 *Ibid* [8.1.8].

46 *Ibid* [9.4.7].

47 Department of Human Services (Cth), *Social Work Services* <www.humanservices.gov.au>.

48 Department of Social Services, *Guide to Social Security Law* (2014) [9.4.7].

12.28 Specific actions under the proposed elder abuse strategy that may address this concern include amending the *Guide to Social Security Law* to provide specific guidance on elder abuse, including, for example, about when a person should be referred to a social worker.⁵⁰

12.29 Legal Aid NSW identified that the prospect of having a debt raised against their child may be a specific barrier to seeking support and assistance for older migrants on parent visas experiencing elder abuse. They noted that, while the parent can claim a Special Benefit Payment, ‘many are reluctant to do so, as the child will need to repay the amount the aged parent receives under the Special Benefit in that first 10 years’.⁵¹

12.30 A debt under an AoS scheme may be waived if ‘special circumstances’ apply.⁵² In determining whether special circumstances exist, the circumstances of the assuree can be taken into account. The assuree’s circumstances must relate to the appropriateness of recovering the debt.⁵³ The *Guide to Social Security Law* states that special circumstances are ‘unusual, uncommon or exceptional’. It does not provide any specific guidance on whether either elder abuse or domestic or family violence may constitute a special circumstance. In the context of family violence, in its 2011 Report the ALRC recommended that the *Guide to Social Security Law* should refer to family violence as an example of a ‘special circumstance’ for the purposes of waiving a debt.⁵⁴ A similar approach could be considered in relation to elder abuse.

12.31 There is scope for Centrelink to increase community awareness of AoS arrangements, and the circumstances in which an older migrant may access Centrelink payments. These are explored as part of the discussion of actions that may be included in Centrelink’s elder abuse strategy.

Payment nominee scheme

Recommendation 12–2 Payments to nominees should be held separately from the nominee’s own funds in a dedicated account nominated and maintained by the nominee.

12.32 A person in receipt of social security payments (the ‘principal’) can appoint another person to assist them to interact with Centrelink or to interact on their behalf. A principal may have a ‘payment nominee’ and a ‘correspondence nominee’.⁵⁵ The payment and correspondence nominee may be the same person. A correspondence nominee receives any social security notice on behalf of the principal (including, for

49 Legal Aid NSW, *Submission 140*.

50 The Guidelines for Social Worker Involvement state that customers ‘who are experiencing or at risk of domestic or family violence’ should be offered a referral to a social worker. There is no specific reference to elder abuse: Department of Social Services, *Guide to Social Security Law* (2014) [8.1.7.10].

51 Legal Aid NSW, *Submission 140*.

52 *Social Security Act 1991* (Cth) s 1237AAD(2).

53 Department of Social Services, *Guide to Social Security Law* (2014) [6.7.1.30].

54 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Improving Legal Frameworks*, Report No 117 (2012) rec 9–9.

55 *Social Security (Administration) Act 1999* (Cth) pt 3A.

example, in relation to an obligation to report changes), and can make enquiries and attend appointments with Centrelink on behalf of the principal. A payment nominee receives payments on behalf of the principal. The payment is made into an account nominated and maintained by the nominee.⁵⁶

12.33 Stakeholders identified the potential for elder abuse in the payment nominee scheme,⁵⁷ and some provided examples of misuse.⁵⁸ ADA Australia, for example, advised that it receives many complaints regarding payment nominees taking a person's pension. It noted that, while the 'pension is obviously necessary to the older person', the 'amount taken is often not sufficient to pursue through other legal means'.⁵⁹

12.34 There are several statutory safeguards against financial abuse by payment nominees, including:

- oversight of nominee appointments—'particular scrutiny' of the appointment is to be given in certain circumstances;⁶⁰
- the requirement for payment nominees to keep and supply records;⁶¹
- the statutory obligations of the nominee to act in the 'best interests of the principal';⁶²
- revocation or suspension of nominee appointments following a written request or where the nominee has not provided records;⁶³
- processes for allegations of misuse—including referral to a social worker;⁶⁴ and
- reporting requirements—a nominee is to advise of any matter that affects their ability to act as a nominee.⁶⁵

⁵⁶ Ibid s 123F(2).

⁵⁷ See, eg, Welfare Rights Centre NSW, *Submission 184*; Eastern Community Legal Centre, *Submission 177*; Caxton Legal Centre, *Submission 174*; Seniors Rights Victoria, *Submission 171*; National Seniors Australia, *Submission 154*; Australian Association of Social Workers, *Submission 153*; Office of the Public Advocate (Qld), *Submission 149*; Legal Aid NSW, *Submission 140*; State Trustees Victoria, *Submission 138*; North Australian Aboriginal Legal Service, *Submission 116*.

⁵⁸ Seniors Rights Victoria, *Submission 171*; Legal Aid NSW, *Submission 140*.

⁵⁹ ADA Australia, *Submission 150*.

⁶⁰ Department of Social Services (Cth), *Guide to Social Security Law* (2016) [8.5.3]. 'Particular scrutiny' must be given to nominee requests where the proposed nominee runs a boarding or room establishment; where there are multiple voluntary nominee appointments for the same nominee; or where the nominee does not live in the same residence or in close proximity to the principal. A delegate can revoke an appointment where the delegate decides that the appointment is not in the best interest of the principal, and can direct payments to another person.

⁶¹ *Social Security (Administration) Act 1999* (Cth) s 123L. Where a review is undertaken, nominees must supply records, otherwise a fine may apply.

⁶² Ibid s 123O(1). In the *Equality, Capacity and Disability in Commonwealth Laws* Report, the ALRC recommended that 'best interests' standards should be replaced by a standard of 'will, preferences and rights': Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) rec 10–1, [10.10].

⁶³ Ibid s 123E. The Secretary can suspend or revoke appointments following a written request to the Secretary from the nominee; or where the nominee has not complied with a notice to produce records.

⁶⁴ Department of Social Services (Cth), *Guide to Social Security Law* (2016) [8.5.3]. The delegate may be able to revoke the arrangement under the above powers if a social worker is not immediately available.

12.35 There are clear policy reasons why a nominee should not be able to access the principal's account. The nominee arrangement does not grant the nominee an unconditional power of attorney. They act on behalf of the principal only in relation to the receipt and management of social security payments. The arrangement does not authorise the nominee to deal with other funds the principal may hold. The nominee's access to the principal's funds is restricted to the designated social security payments, which they are authorised to receive on behalf of the principal under the nominee arrangement unless other arrangements, such as an enduring power of attorney, are also in place.

12.36 However, the ALRC considers that a payment nominee should be required to keep their own funds separate from social security payments they receive on behalf of the principal. This can be achieved by inserting a default requirement that a payment nominee maintain a separate account on behalf of the principal. This would reiterate and emphasise the payment nominee's current duty to act in the 'best interests of the principal'.⁶⁶ It may also assist in investigating allegations of misuse by making it easier to track the source of funds for a given expenditure. The ALRC acknowledges that this places an additional burden on the nominee. However, the ALRC considers that a default requirement to hold social security payments received on behalf of the principal separate from the nominee's own funds strikes an appropriate balance. There is scope for Centrelink to vary the arrangement if the requirement would cause undue hardship to the nominee or the principal.

Actions under the recommended Elder Abuse Strategy

Staff training

12.37 Centrelink employs a number of categories of frontline service staff, including service staff and specialist staff, such as: financial information service officers; complex assessment officers; Indigenous specialist officers; and multicultural service officers. Financial information service officers can provide information to older people about planning for retirement, including in relation to when to seek independent expert advice. They can help older people understand the consequences of their financial decisions in the short, medium and long term.⁶⁷ Complex assessment officers process and assess complex claims for the Age Pension,⁶⁸ including claims that involve 'granny flat interests', and assets hardship.⁶⁹ Indigenous specialist officers help Aboriginal and Torres Strait Islander people access Centrelink payments and services.⁷⁰ Multicultural service officers help migrant and refugee communities to access government programs and services.⁷¹

65 *Social Security (Administration) Act 1999* (Cth) s 123K.

66 *Ibid* s 123O.

67 Department of Human Services (Cth), *Financial Information Service* <www.humanservices.gov.au>. The service is available to all potential recipients of social security payments.

68 Australian National Audit Office, 'Administration of Complex Age Pension Assessments' (2007) 28.

69 *Ibid* 73. Asset hardship is where a person has assets which affect the assets test, but it would be unreasonable for them to sell or borrow against the assets to improve their financial position. It can apply where a person has breached the 'gifting' rules to entitle the older person to a social security payment.

70 Department of Human Services (Cth), *Community Access* <www.humanservices.gov.au>.

71 *Ibid*.

12.38 Stakeholders suggested that Centrelink frontline staff, including specialist staff, are not specifically trained to deal with elder abuse. For example, the Eastern Community Legal Centre noted that, in their experience, ‘identification of and response to elder abuse by Centrelink is either ad hoc or non-existent’.⁷² State Trustees Victoria said that it had been contacted by social workers from Centrelink concerned about a client, and it is their experience that Centrelink staff do not have access to clear guidelines or procedures in how to respond to elder abuse.⁷³

12.39 Stakeholders have observed that there is a need to train staff and ‘develop tools and prompts to enable staff to identify signs’ of elder abuse⁷⁴ and to respond with appropriate referrals.⁷⁵

12.40 This could include, for example, the development of protocols and additional training for staff on identifying risks of elder abuse where the recipient of Carer Payment is caring for an older person. Protocols might also require staff to refer certain matters to a social worker or financial information service officer. They may also provide guidance on when staff should contact a person identified as at risk of elder abuse to confirm whether the care recipient is getting the appropriate level of care. Such measures may be an important safeguard against abuse by a carer.

12.41 The financial counselling service, Care Inc, noted that training to identify signs of elder abuse and make appropriate referrals is especially required in circumstances where staff are contacted by older persons enquiring about ‘gifting’, ‘granny flat’ arrangements or entry into aged care. Staff should be trained to pick up any ‘red flags’, and refer the person to the appropriate social worker or financial information service officer.⁷⁶

12.42 The WRC suggested there is a need for training of specialist staff to provide support and referrals to older persons. Assessment officers, who deal with complicated financial arrangements, could be used to identify and refer situations that may involve financial abuse. Financial information service officers could inform and educate older people, families and carers about elder abuse and the steps needed to reduce it.⁷⁷

12.43 Training under the elder abuse strategy should incorporate training multicultural service officers, to improve the identification of issues specific to culturally and linguistically diverse communities, including the potential for elder abuse suffered at the hands of extended family, and risk factors associated with communication barriers and the lack of access to culturally and linguistically appropriate services.⁷⁸ Stakeholders also noted that training should include the identification of issues specific to older Aboriginal and Torres Strait Islander people, including notions of reciprocity

72 Caxton Legal Centre, *Submission 174*.

73 State Trustees Victoria, *Submission 138*.

74 Eastern Community Legal Centre, *Submission 177*. See also State Trustees Victoria, *Submission 138*; Advocare Inc (WA), *Submission 86*; Law Council of Australia, *Submission 61*.

75 ARAS, *Submission 166*; Carers Australia, *Submission 157*; National Seniors Australia, *Submission 154*.

76 Care Inc. Financial Counselling Service & The Consumer Law Centre of the ACT, *Submission 60*.

77 Welfare Rights Centre NSW, *Submission 184*. See also National Welfare Rights Network, *Submission 151*.

78 FECCA, *Submission 292*; Welfare Rights Centre NSW, *Submission 184*.

and the boundaries of such notions, and risks associated with the appropriation of the person's Age Pension.⁷⁹

Data collection and classification

12.44 Additional training for staff in identifying risks of elder abuse also provides an opportunity to collect data on the risks of elder abuse among different cohorts of older people. Ensuring this is properly captured improves the data available to Centrelink for fraud detection. In particular, access to additional data means Centrelink's fraud detection processes, which rely on data analytics, might be better calibrated to assist in early detection and intervention. This could include identifying trends or risk factors that may increase the likelihood that an older person engaging with Centrelink might be experiencing elder abuse. For example, data from better identification of whether recipients of Carer Payment might be providing inadequate care might be captured and analysed to identify common patterns of behaviour. This information could be used to further improve Centrelink's fraud detection systems.

12.45 The elder abuse strategy should therefore include a specific action focused on improving data collection and classification, particularly in the context of data collected through staff identifying people at risk of elder abuse. Such action to improve the evidence base for Centrelink's purposes could also sit within the National Plan discussed in Chapter 3.

Direct contact principle

Recommendation 12–3 Centrelink staff should speak directly with persons of Age Pension age who are entering into arrangements with others that concern social security payments.

12.46 Many arrangements involving Centrelink that are entered into by older persons arise because the older person has limited, intermittent or diminishing decision-making ability or mobility. This is apparent in payment nominee arrangements when the principal is an older person, and when a carer for an older person qualifies for Carer Payment. The capacity or mobility of an older person may even be a driving factor to entering into a 'granny flat' arrangement. The vulnerability of older persons entering into these arrangements heightens the risk of abuse, and invites a discrete Centrelink response.

⁷⁹ Seniors Rights Service, *Submission 296*; National Aboriginal and Torres Strait Islander Legal Services, *Submission 135*; Top End Women's Legal Service, *Submission 87*.

12.47 A policy in favour of direct personal contact with people over Age Pension age could have wide application. There was broad support for this approach,⁸⁰ with stakeholders suggesting that greater involvement by Centrelink staff in processes involving older persons may reveal and potentially mitigate the risk of elder abuse.⁸¹ The following case study provided by Seniors Rights Victoria illustrates where the direct contact principle might have been usefully applied in the context of abuse by the recipient of Carer Payment:

An older woman had a stroke a number of years ago, and her son moved into her rental accommodation to assist her when she was discharged from hospital. He was unemployed at the time, and then obtained a Carers Payment to assist with her ongoing care needs. The client acknowledged that her son did provide considerable assistance to her at that stage, and facilitated her recovery. However over the course of several years, the son provided less and less assistance, struggled with alcohol problems, and regularly became aggressive towards her. A wall in her home was punched in by her son during an argument between them. The mother's health improved and she became more fearful of her son's unpredictable behaviour. She attended an appointment at Centrelink, to advise of her improved health, and that her son no longer provided any care for her. The Carers Payment to her son was suspended. He confronted her about this, but she declined to discuss the matter with him. At the time of contacting SRV for assistance she reported that her son had become more aggressive, and unexpectedly produced papers for her to sign. She signed these documents under duress as she had again been threatened by him, and had no opportunity to read them. She later realised the documents were to reinstate the Carers Payment.⁸²

12.48 It could also be applied in the context of 'gifting' rules, and in relation to 'granny flat' exemptions. Legal Aid NSW suggested that, where a person in receipt of the Age Pension has transferred an interest in their home for little or no value, this should be a 'red flag' and trigger contact with the older person, possibly through a social worker. The Centrelink contact person could clarify the circumstances and make an assessment of the person's decision-making ability and whether the transfer was made knowingly. Centrelink could also use this contact to make it known to the person that they can seek Legal Aid.⁸³

12.49 The direct contact principle is an important expression of respect for the autonomy and dignity of an older person. However, an appropriate balance must be struck between this principle and the potential burden it may place on the people contacted, as well as the resource implications, and workability of such a measure, particularly given the shift toward online interactions which have and will continue to

80 National Older Persons Legal Services Network, *Submission 363*; Justice Connect Seniors Law, *Submission 362*; Office of the Public Advocate (Qld), *Submission 361*; Disabled People's Organisations Australia, *Submission 360*; COTA, *Submission 354*; Legal Aid NSW, *Submission 352*; Law Council of Australia, *Submission 351*; ADA Australia *Submission 283*; Alzheimer's Australia, *Submission 282*; The Benevolent Society, *Submission 280*; Churches of Christ Care, *Submission 254*; Public Trustee of Queensland, *Submission 249*; Office of the Public Advocate (Vic), *Submission 246*; Lutheran Church of Australia, *Submission 244*; Carers Queensland, *Submission 236*; UnitingCare Australia, *Submission 216*.

81 See, eg, Welfare Rights Centre NSW, *Submission 184*; National Seniors Australia, *Submission 154*; Australian Association of Social Workers, *Submission 153*; Legal Aid NSW, *Submission 140*.

82 Seniors Rights Victoria, *Submission 171*.

83 Legal Aid NSW, *Submission 140*.

result in reduced contact with Centrelink staff. As direct contact is a key safeguarding response in some situations, the ALRC considers targeted direct contact focused on situations of risk might be a more suitable approach. Centrelink must be able to accurately identify people who are experiencing, or are at risk of experiencing, abuse for a targeted direct contact principle to have the greatest impact. This requires the use of detection systems that rely on accurate data, collected by means including the improved identification of elder abuse by staff.

12.50 This recommendation does not stand alone. It would be one action of a broader elder abuse strategy which includes training for staff, improved data collection and classification, and increased community education and awareness raising.

12.51 An example of a class of persons where Centrelink might adopt a policy of making direct contact with all participants is the payment nominee scheme. Such arrangements are easily entered into and with minimal oversight, but have potentially wide-ranging consequences. Payment nominee applications are able to be completed online via the ‘myGov’ website, in person at a Centrelink service centre, or by post or fax. On approval of a payment nominee application, Centrelink sends letters to the principal and nominee confirming the nominee appointment. This may not be enough to safeguard a principal against coercion or fraud, especially where the payment nominee applicant is also the person’s correspondence nominee.⁸⁴ Seniors Rights Victoria noted that

older people can be seriously disadvantaged by the payment nominee system implemented by Centrelink, where elder abuse is at risk of occurring. In circumstances of financial abuse, or emotional or psychological abuse there is a strong likelihood that the authority to a payment nominee may not have been given freely by the older person. It is also likely that there has not been a detailed explanation of the operation or consequences of the authority to the older person. Often an older person will feel compelled to make this arrangement, particularly if they are impacted by health or mobility issues and reliant on the person nominated.⁸⁵

12.52 There are sound policy reasons to make nominee appointments easily accessible. Easy access readily facilitates an arrangement that enables people with disability, or people who are experiencing difficulties to access and interact with Centrelink. The WRC observed that

one of the key benefits of nominee arrangements is that they can provide and prolong independence. Having a nominee to manage complex Centrelink affairs or to respond to correspondence can in some circumstances delay a move to an aged care facility and allow people to continue to live independently at home.⁸⁶

12.53 However, as noted by the WRC, if payment nominee arrangements are misused, the impact can be extreme—leaving older persons with no money, or at risk of losing their home or accommodation.⁸⁷ A case study provided by Seniors Rights Victoria

84 Ibid.

85 Seniors Rights Victoria, *Submission 171*.

86 Welfare Rights Centre NSW, *Submission 184*.

87 Ibid.

shows the extreme impact of abuse, while also illustrating more broadly the intersection between social security payments and elder abuse:

A son was operating his father's financial affairs using an enduring power of attorney (EPOA), but also managing his pension under a nominee arrangement. To collect more money he failed to notify Centrelink that his father lived with him, and that he was renting the father's house for considerable profit (retained by the son). Centrelink discovered the situation and raised a \$12,000 overpayment against the father. As the son knew he would not be responsible for any debt under Centrelink legislation, he dropped his father off at his sister's house, emaciated and with only the clothes he was wearing. Before the administrator could get involved in the retrieval of the rent money and protecting the remaining assets the son sold his father's house and moved interstate. Both the nominee form and the EPOA were signed by the father well after he was deemed not to have capacity by the family doctor.⁸⁸

12.54 To protect against coercion or fraud, stakeholders suggested that Centrelink should:

- interview proposed principals to identify risk factors associated with undue influence;⁸⁹
- contact the principal to verify the nomination is genuine and explain the effect of the arrangement and how to revoke it;⁹⁰ and even
- run compulsory background checks on proposed nominees.⁹¹

12.55 The ALRC considers that a requirement for direct personal contact with the parties to a payment nominee arrangement strikes an appropriate balance, retaining the accessibility of nominee applications for principals, while putting in place a simple preventative measure against abuse and misuse by nominees. Early and direct telephone or personal contact with principals could help to avoid forgeries or the appointment of inappropriate nominees.

12.56 However, in some cases, direct contact with the principal may not be the most appropriate approach. Carers Victoria, for example, cautioned against requiring direct contact with a person 'under care', noting that 'many carers are supporting people with significant communication and cognitive impairments'. They argued that 'it would be preferable if the treating health professional ... was contacted to confirm the care relationship'.⁹² Such concerns are best addressed by ensuring that access to appropriate supports for older people suffering cognitive impairment or other communication

88 Seniors Rights Victoria, *Submission 171*.

89 Welfare Rights Centre NSW, *Submission 184*; Seniors Rights Service, *Submission 169*; National Seniors Australia, *Submission 154*.

90 Legal Aid NSW, *Submission 140*.

91 Eastern Community Legal Centre, *Submission 177*; Australian Association of Social Workers, *Submission 153*; UNSW Law Society, *Submission 117*.

92 Carers Victoria, *Submission 348*.

difficulties is provided.⁹³ Similarly, access should also be provided to appropriately credentialed interpreters.⁹⁴

Enhanced understanding of roles and responsibilities

12.57 Arrangements that involve Centrelink can transfer significant powers and responsibilities to parties to the arrangements. Payment nominees may receive all or part of a person's social security payment, and are trusted to use those funds only for the benefit of the principal. Carers in receipt of Carer Payment are responsible for a person's health and wellbeing, and can often be involved in decisions regarding medical care.

12.58 Older persons and third parties to arrangements involving Centrelink may not have a full understanding of their roles and responsibilities under the arrangement. For example, payment nominees may not be aware that they should not mix monies, or that the monies should be spent only on the principal; carers may not understand the scope of their role and responsibilities, including their entitlement to respite; and older persons may not understand their rights. An action under the 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 persons of Age Pension age that concern social security payments. This may, where appropriate, be accompanied by information on support and assistance that may be available. Stakeholders were broadly supportive of this approach.⁹⁵

12.59 Centrelink could, for example, send SMSs or letters (electronically as well as by post where possible) to Carer Payment recipients about their obligations and include information about programs and support services such as the Carer Gateway established by the Department of Social Services (Cth), a national website and phone service providing carers access to information and support.⁹⁶ Other support services include the availability of counselling and respite services.⁹⁷ It could also institute regular SMS reminders of available supports.

93 COTA, *Submission 354*; V Fraser and C Wild, *Submission 327*; W Bonython and B Arnold, *Submission 241*.

94 COTA, *Submission 354*; FECCA, *Submission 292*.

95 Office of the Public Guardian (Qld), *Submission 384*; Office of the Public Advocate (Qld), *Submission 361*; COTA, *Submission 354*; Law Council of Australia, *Submission 351*; V Fraser and C Wild, *Submission 327*; Institute of Legal Executives (Vic), *Submission 320*; Seniors Legal and Support Service Hervey Bay, *Submission 310*; Seniors Rights Service, *Submission 296*; FECCA, *Submission 292*; ADA Australia *Submission 283*; Alzheimer's Australia, *Submission 282*; The Benevolent Society, *Submission 280*; Churches of Christ Care, *Submission 254*; Public Trustee of Queensland, *Submission 249*; Lutheran Church of Australia, *Submission 244*; W Bonython and B Arnold, *Submission 241*; Carers Queensland, *Submission 236*; UnitingCare Australia, *Submission 216*; Advocare, *Submission 213*.

96 Australian Government, *Carer Gateway* <www.carergateway.gov.au/>. Carers Australia emphasised the need for Centrelink to proactively refer carers to support services, maintaining that many carers find out about the service after many years: Carers Australia, *Submission 157*.

97 Department of Social Services (Cth), *Carers* <www.dss.gov.au/>. The Department of Social Services is also developing an Integrated Plan for Carer Support Services, which seeks to support and sustain the work of unpaid carers. The first phase was the development of the Carer Gateway. The government developed a draft service delivery model which included identifying carers early on in their carer journey, especially those who were considered 'high risk' carers, and providing ongoing support, counselling and

12.60 The Federation of Ethnic Communities' Councils of Australia recommended that older migrants on parent visas should be provided with materials modelled on the Family Safety Pack, which would provide information on what to do and where to go if the older person finds themselves in crisis and needs to leave their place of residence.⁹⁸ The material could be included with the grant letters issued by the Department of Immigration and Border Protection.⁹⁹

12.61 Other examples include clear guidelines and standards for payment nominees and carers, outlining their roles and responsibilities.¹⁰⁰ These, and other Centrelink communications, should be made available in accordance with the government's *Multicultural Access and Equity Policy*, including by ensuring that material is available in community languages.¹⁰¹ They should also be available in a number of formats, including, for example, in easy English.¹⁰²

12.62 The design of Centrelink forms may also be improved to provide clearer information about roles and responsibilities. For example, the current design of the nominee authorisation application form places little emphasis on the responsibilities of the nominee.¹⁰³ Information regarding the obligations of a nominee is put two pages before the signed declaration of the nominee. Nominee obligations are directed toward the principal, and at no point does the form state in clear terms to the nominee what their obligations to the principal are. National Seniors suggested that greater use of the nominee application form could be made to inform and deter abuse. It proposed that the form explicitly state the penalty for not producing records (60 penalty points, equating to \$10,800); the penalty at law for misuse of funds to the benefit of the nominee; and information about the review process.¹⁰⁴

12.63 Community education to enhance older persons' understanding of their rights forms an important strategy in the proposed National Plan to combat elder abuse, which focuses on helping older persons in protecting their rights.¹⁰⁵ In particular, enhancing the financial literacy of older persons in agreements that involve Centrelink is critical to safeguarding against financial abuse.¹⁰⁶ Centrelink can play a key role in financial literacy education of older persons regarding the interaction of personal finances with social security laws and legal frameworks.

assistance, including through peer support and coaching and mentoring: Department of Social Services (Cth), *Delivering an Integrated Carer Support Service: A Draft Model for the Delivery of Carer Support Services* (2016). Implementation of such a plan and ensuring that carers identified through Centrelink systems are given access to assistance under the plan would be key preventative strategies.

98 The Family Safety Pack provides information on domestic and family violence and, in particular family violence and partner visas, including in relation to access to support and services: Department of Social Services (Cth), *Family Violence and Partner Visas Factsheet* <www.dss.gov.au>.

99 FECCA, *Submission 292*.

100 ADA Australia, *Submission 150*; Office of the Public Advocate (Qld), *Submission 149*.

101 FECCA, *Submission 292*.

102 People with Disability Australia, *Submission 167*.

103 Authorising a Person or Organisation to Enquire or Act on Your Behalf (SS313): <www.humanservices.gov.au>.

104 National Seniors, *Submission 154*.

105 See ch 3.

106 V Fraser and C Wild, *Submission 327*; Seniors Rights Service, *Submission 169*; People with Disability Australia, *Submission 167*; National Welfare Rights Network, *Submission 151*; Care Inc. Financial Counselling Service & The Consumer Law Centre of the ACT, *Submission 60*.

12.64 The WRC specifically supported further education for older persons who are considering making gifts through loans or acting as guarantors to increase awareness of their social security obligations and to advise them where to seek help if needed.¹⁰⁷

107 National Welfare Rights Network, *Submission 151*; Legal Aid NSW emphasised the need for Centrelink to advise clients that they may be able to receive Legal Aid: Legal Aid NSW, *Submission 140*. Some stakeholders raised concerns that an older person who has suffered financial abuse might face further financial strain because the 'gifting rules' might operate to deprive them of the Age Pension. They submitted that the operation of social security laws might further financially penalise older people who experience financial abuse. See, eg, Seniors Rights Service, *Submission 169*; Legal Aid NSW, *Submission 140*. 'Asset hardship rules' may provide some relief for an older person in this situation. Under the rules, a pensioner who has disposed of assets or income, and suffers severe financial hardship, may be eligible for a hardship pension even where such hardship is the result of the disposal. To qualify, they must demonstrate that they have less than \$21,015.80 in readily available funds (\$31,683.60 for couples) and cannot reasonably be expected to sell or borrow against their assets to improve their financial position. The ALRC considers that frontloading measures of the kind suggested by the WRC are a key safeguard against abuse.