

# PROTECTING THE RIGHTS OF OLDER AUSTRALIANS FROM ABUSE

Submission to the Australian Law Reform Commission Issues Paper

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## Executive Summary

### Understanding and Responding to Elder Abuse

- Many victims of elder abuse have significant difficulty in accessing legal assistance.
- The types, victims and perpetrators of elder abuse all vary greatly, however there are a number of risk factors that indicate the presence of abuse.
- Best practice legal services are flexible, individualised and holistic. Socio-legal practice and health-justice partnerships are effective models for legal assistance in elder abuse cases.

### CALD Communities

- Older people from CALD communities are at particular risk of elder abuse and are less likely to seek legal assistance than other demographic groups.
- Elder abuse services must strive to implement culturally sensitive interventions and develop appropriate outreach services to ensure older CALD adults can access justice.

### Statutory Reform

- Legal Aid ACT has seen multiple cases of elder abuse in aged care settings. Training programs may be warranted to ensure aged care workers can detect elder abuse.
- Many family financial or property arrangements leave older people vulnerable to abuse.
- Many older people experience elder abuse perpetrated by their appointed decision maker.
- The jurisdiction of civil and administrative tribunals should be expanded to determine matters relating to financial agreements, power of attorney abuses and joint or equitable property interests. This would improve access to justice for victims of elder abuse.
- Mandatory information sharing or reporting schemes risk undermining the autonomy of older adults and should not be implemented.
- Alternative dispute resolution is often useful as a less confrontational remedy to elder abuse.
- No special offence for elder abuse is necessary, instead current offences should be made more accessible.
- Police and prosecution policy should not require mandatory pursuit of charges in cases of elder abuse.

## 1. Introduction

Legal Aid ACT welcomes the opportunity to comment on the ALRC's Issues Paper on Protecting the Rights of Older Australians from Abuse. This submission will respond to the Issues Paper by seeking to:

- (a) Describe the way that older people experience elder abuse, including the social factors that may affect vulnerability and impact help-seeking behaviour;
- (b) Describe best practice service models for addressing the legal need of older people; and,
- (c) Identify where legal frameworks should be changed to better protect older people from abuse.

Elder abuse is a significant public and private health issue. With an ageing Australian population and growing community awareness of the rights of older people, demand for legal and social services for elder abuse will certainly grow in the future. A sustainable and holistic response to elder abuse must be a priority. This submission seeks to clarify where existing laws, processes and services can better provide for the protection of older people from abuse.

With this in mind, Legal Aid ACT submits that elder abuse cannot be addressed solely through statutory reform. In many cases, specific laws to protect the rights of older people already exist, but are not being utilised. A theme throughout this submission will be that curtailing elder abuse requires improvements to access to justice for older people.

### 1.1. What is elder abuse?

The World Health Organisation refers to elder abuse 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.'<sup>1</sup> It can be perpetrated by a family member, partner or carer, whether in a private home or an aged care facility. While no single definition is unanimous or comprehensive, the WHO definition is used widely and can help us seek clear social and legal responses to elder abuse.

Estimates suggest that between 2% to 14% of older people will experience elder abuse in their lifetime,<sup>2</sup> with the rate increasing to more than 25% for vulnerable groups such as those dependent on a carer.<sup>3</sup> The effects of elder abuse can include physical harm, psychological distress and illness, financial impoverishment, homelessness and increased mortality.<sup>4</sup>

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<sup>1</sup> World Health Organisation, 'World report on ageing and health' (Report, WHO, 2015) [www.who.int/ageing/publications/world-report-2015/en/](http://www.who.int/ageing/publications/world-report-2015/en/).

<sup>2</sup> Ibid.

<sup>3</sup> Cooper, Selwood and Livingston, 'The prevalence of elder abuse and neglect: a systematic review' 37(2) *Oxford Journal of Medicine and Health* 151, 158.

<sup>4</sup> Ibid.

Despite the serious harm associated with elder abuse, it remains significantly underreported<sup>5</sup> and understudied.<sup>6 7</sup>

This submission will adopt the framework used by the Australian Bureau of Statistics that defines elder abuse as abuse of people 65 and older. We however note that the experience of ageing is far from uniform, and that conceptualising elder abuse within a framework of capacity, and not simply age, may be a more useful metric.<sup>8</sup>

### 1.2. Legal Aid ACT’s elder abuse services

Legal Aid ACT is an independent statutory authority tasked with providing legal advice and services for people in the ACT, especially those facing social or economic disadvantage. We seek to promote justice by empowering vulnerable and disadvantaged people to access legal assistance. We are able to provide assistance in criminal, family and some civil matters.

Elder law matters, including elder abuse, constitute a significant portion of the matters seen by the Commission. Table 1 below details the proportion of total matters seen by Legal Aid ACT that involve an older client, while Table 2 details domestic and family violence related services for older clients.

Table 1: Legal Aid ACT grant assistance for older people in 2015-16

Type of Assistance	Client aged 65-85	Client aged 85+	All Assistances	% of Total Matters
Grant	45	3	2176	2.21%
Advice	252	17	6030	4.46%
<b>Total</b>	<b>297</b>	<b>20</b>	<b>8206</b>	<b>3.86%</b>

Table 2: Legal Aid ACT domestic violence duty services 2015-2016

Age	Male	Female	Other	
45-65	130	295	6	
65-85	25	50	1	
85+	6	12	6	Total:
	<b>161</b>	<b>357</b>	<b>13</b>	<b>531</b>

<sup>5</sup> Acierno et al., ‘Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study’ (2010), 100(2) *Am J Public Health* 292.

<sup>6</sup> Clare, M., Blundell, B., & Clare, J. ‘Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data.’ (Report, Crawley, WA: Crime research Centre, 2011), 40.

<sup>7</sup> Jeanette Daly, Mary Merchant and Gerald Jogerst, ‘Elder Abuse Research: A Systematic Review’ (2011) 23(4) *Journal of Elder Abuse and Neglect* 348.

<sup>8</sup> Clare, M., Blundell, B., & Clare, J. ‘Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data.’ (Report, Crawley, WA: Crime research Centre, 2011).

2014-2015

Age	Male	Female	Other	
45-65	99	223	1	
65-85	26	20	0	
85+	8	14	0	Total:
	<b>133</b>	<b>257</b>	<b>1</b>	<b>391</b>

2013-2014

Age	Male	Female	Other	
45-65	66	121	3	
65-85	9	29	0	
85+	4	7	1	Total:
	<b>79</b>	<b>157</b>	<b>4</b>	<b>240</b>

Further data about the services Legal Aid ACT provides to older people are available in Appendix 1. The latest census data provides that around 12% of the ACT population is aged 65 years or older (around 45,300 people).<sup>9</sup> Prevalence studies have found that up to 6% of the older population report an experience of abuse each month.<sup>10</sup> These numbers lead us to believe that older people experiencing abuse frequently do not or are unable to seek legal assistance.

The Commission notes that older people in the ACT often experience difficulty in engaging legal and social services. Some key impediments reported by clients include:

- The dispute involves a family member or a relationship of trust;
- They are not aware of the available legal services;
- They have other physical or mental problems;
- They do not know they have a legal problem; and
- They do not have access to appropriate transport or communication devices.

In response to these issues, Legal Aid ACT has developed a fortnightly outreach program with the Council on the Ageing (COTA) in the ACT. This has allowed us to provide assistance to a number of older clients who would otherwise have difficulty in seeking assistance. Demand for services has exceeded expectations, so we have recently doubled the number of available sessions. Legal Aid ACT is also a key member of the ACT Elder Abuse Network which seeks to facilitate collaboration and communication between other organisations assisting older people.

Legal Aid ACT is currently seeking to establish an Elder Law Clinic to provide legal assistance to older people in the ACT. The clinic will be structured as a socio-legal practice, integrating specialist legal advice with the support of a social worker to assist clients with non-legal issues. This approach hopes to ensure that older people have their matter addressed holistically, both through the resolution of their

<sup>9</sup> Australian Bureau of Statistics, *Australian Capital Territory* (Report, 2014), <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3235.0Main%20Features502014?opendocument&tabname=Summary&prodno=3235.0&issue=2014&num=&view=>>>

<sup>10</sup> Cooper, Selwood and Livingston, 'The prevalence of elder abuse and neglect: a systematic review' 37(2) *Oxford Journal of Medicine and Health* 151, 158.

legal issue and through the opportunity for social integration. We will discuss later the strong empirical support for the efficacy of socio-legal practice in redressing the effects of elder abuse.

### 1.3. Access to justice arrangements

More resources are necessary to address the scope of unmet need across Australia. Statutory reform is only one part of the path towards improved protections from elder abuse. In many circumstances, the legal provisions that could protect an older person from abuse already exist, but the person has no means to access them. Access to justice is pivotal in ensuring the effective function of the law.

Legal Aid is seeking to expand our services to older people, but this is unlikely in a difficult funding environment. Research indicates that older people face significant and unique difficulties in accessing legal assistance. As Australia's population ages, more attention *must* be given to the needs of our older population. To meet these needs, it is critical that legal, health and community services have adequate funding.

Many older people are excluded from accessing a grant of legal aid as a result of the Legal Aid means test. The maximum allowed weekly income for any client is \$411.49;<sup>11</sup> whereas the maximum pension payment rate for a single adult is currently indexed at \$436.95 per week.<sup>12</sup> On this basis alone, many older people are prohibited from accessing a grant of aid – this is exacerbated further when factoring in asset limits such as equity in the family home.

The Productivity Commission has noted that there is a significant justice gap in Australia for those who cannot afford private legal assistance but do not qualify for a grant of legal aid. Many older people fall into this category. Legal Aid Commissions are not resourced to meet this gap:

The present means tests used by the LACs are restrictive, reflecting the limited funds available. The income tests are below many established measures of relative poverty. It is not the case that people are 'too wealthy' to be eligible for legal assistance, but rather that they are 'not sufficiently impoverished'.<sup>13</sup>

Ensuring access to justice for older clients should not be seen as a cost, but an investment. Former Chief Justice Gleeson noted that on a systemic level "What is not so obvious, and not so easily measurable, but what is real and substantial, is the cost of the delay, disruption and inefficiency, which results from absence or denial of legal representation."<sup>14</sup> The personal costs of elder abuse may be far greater.

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<sup>11</sup> Legal Aid ACT, *Legal Assistance Guidelines* (17 February, 2016), 67.

<sup>12</sup> Department of Human Services, 'Payment rates for Age Pension' (Fact Sheet, DHS, 2016) <<https://www.humanservices.gov.au/customer/enablers/payment-rates-age-pension>>

<sup>13</sup> Productivity Commission, 'Access to Justice Arrangements' (Productivity Commission Inquiry Report No. 72, 2014), 30.

<sup>14</sup> *Ibid*, 31.

## 2. Understanding and responding to elder abuse

**Question 1:** Descriptions and definitions of elder abuse.

**Question 3:** Examples of elder abuse.

**Question 4:** Current evidence and research gaps about elder abuse.

Elder abuse is a complex and multi-faceted phenomenon. To institute appropriate legal responses, we must have an understanding of the way elder abuse occurs across different cross-sections of Australian society. This includes the characteristics and circumstances that leave older people vulnerable to elder abuse and motivate perpetrators.

To *reach* victims of elder abuse, we must understand the physical, psychological and financial impacts of elder abuse. Elder abuse substantially damages the wellbeing of an older person, and this is reflected in the way that they choose to seek help. This has an implication for public policy, which must be responsive to the range of personal experiences of victims of elder abuse.

Elder abuse research is typically focused on health responses, with a relative dearth of legal research. A systematic review found that a substantial amount of elder abuse literature was not rigorous and there was a relative lack of evidence in support of particular interventions.<sup>15</sup> This submission has sought to identify key characteristics that do have empirical support and that may be illustrative in formulating legal responses to elder abuse.

### 2.1. Types of elder abuse

#### 2.1.1. *Financial*

Financial abuse involves the misappropriation of an older person's assets, including by seizing funds, altering a will or through abusing power of attorney. Financial abuse is the most common form of victimisation of older people.<sup>16</sup> Because assisted asset management is common for older people, financial abuse can be at times hard to detect and difficult to address, but nevertheless harmful to the older person's financial solvency and independence.

Inhibited capacity is a primary risk factor for elder financial abuse. Where an adult child or other family member holds power of attorney, they may leverage control of assets for personal gain rather than acting in the best interest of the older person. Further, where the older person has inhibited capacity, they are less likely to understand their rights or mechanisms to seek help.<sup>17</sup> Consequently older people may experience substantial difficulty in protecting their financial assets.

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<sup>15</sup> Jeanette Daly, Mary Merchant and Gerald Jogerst, 'Elder Abuse Research: A Systematic Review' (2011) 23(4) *Journal of Elder Abuse and Neglect* 348.

<sup>16</sup> Acierno, et al., 'Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study' (2010), 100(20) *American Journal of Public Health* 292, 295.

<sup>17</sup> Wainer et al (2010)

### 2.1.2. *Sexual*

Sexual abuse is unwanted sexual contact. Older people are at higher risk of sexual abuse as they are less capable of resisting the contact, less able to communicate disapproval, and often socially isolated.<sup>18</sup> Older people with inhibited capacity are more susceptible to manipulation or coercion into sexual conduct. Further, they are less likely to be believed when they report that they have experienced sexual abuse.<sup>19</sup>

Elder sexual abuse can have serious physical and psychological impacts on the victim and is associated with severely increased mortality. In the majority of cases the perpetrator of sexual abuse is the primary caregiver of the older person, while the majority of incidents occur within the context of an institutional care facility.<sup>20</sup> Only about 30% of victims report their abusers to their police.<sup>21</sup>

Elder sexual abuse is a gendered phenomenon, with an estimated 6:1 ratio of female to male victims.<sup>22</sup>

### 2.1.3. *Physical*

Physical elder abuse is the direct physical harm, assault or restraint of an older person. It includes indirect actions that cause physical harm such as the provision of incorrect medicine.<sup>23</sup> Because it is visible, physical abuse is often easier than other types of abuse to identify; however victims may seek to hide their injuries.

### 2.1.4. *Psychological and emotional*

Psychological and emotional abuse consists of conduct that threatens, coerces, controls or humiliates the victim. The abuse can lead to social isolation, reduced self-esteem, lowered self-sufficiency, reduced capacity for decision making and the development or exacerbation of mental health issues. It may be inflicted verbally, through threats and denigration, or through conduct, such as denying food or removing disability aids.

Because psychological abuse is not easily apparent, it can be difficult to identify. Practitioners must be sensitive to behaviours that indicate abuse, commonly including withdrawal, anxiety and changes in conduct. The disempowered victim will often not seek help, and will not want to pursue a legal remedy in many circumstances.

Psychological abuse can be committed intentionally or neglectfully. Neglectful psychological abuse is often associated with increased stress levels for the caregiver.<sup>24</sup> It has been observed that psychological

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<sup>18</sup> Paul & Perkins PA, 'Elder Sexual Abuse' (Factsheet, Nursing Home Abuse Guide, 2016).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Malcom Holt, 'Elder Sexual Abuse in Britain' (1993) 5(2) *Journal of Elder Abuse and Neglect* 63.

<sup>23</sup> Lisa Young, 'Elder Physical Abuse' (2014) 30 *Clinical Geriatric Medicine* 761.

<sup>24</sup> Margie Eckroth-Bucher, 'Devious damage: Elder Psychological Abuse', (2008) 1(4) *Aging Well* 24.

abuse is frequently a prelude to financial abuse as perpetrators use psychological abuse to undermine the victim's capacity to manage their financial affairs.<sup>25</sup>

#### 2.1.5. *Neglect*

Neglect is the intentional or unintentional failure to meet the older person's needs or care requirements, resulting in harm to the person. It includes failure to provide food, medical care, shelter or clothing. Detecting elder neglect often requires assessment of the older person's health problems, social circumstances, capacity and living environment to ascertain whether their needs are being met.

Elder neglect often occurs when the caregiver or care facility lacks the resources to meet the needs of the older person.<sup>26</sup> When living with a family member, neglect is associated with caregiver psychopathology, stress, and economic dependency upon the victim.<sup>27</sup> Similarly, institutional neglect occurs when an aged care facility has not allocated sufficient resources to the victim. Institutional neglect is often characterised by inappropriate medical and disability care, poor environmental hygiene and social isolation.<sup>28</sup>

In studies of fatal elder neglect, post-mortality scene investigation has identified clear and pre-existing forensic indicators of neglect.<sup>29</sup> It has been suggested that trained practitioners could play a role in detecting elder neglect in care institutions.<sup>30</sup> Future directions for addressing elder abuse may include incorporating forensic expertise into an Official Visitor Scheme to provide oversight in aged care facilities.

## 2.2. Factors in the experience of elder abuse

### 2.2.1. *Social isolation*

Social isolation occurs when an older person has limited sources of social support, and is unable to access community resources. Low social support is associated with a more than three times heightened risk for all forms of elder abuse.<sup>31</sup>

The connection between social isolation and elder abuse is multi-faceted. Isolation leaves older people more vulnerable to abuse physically, psychologically and emotionally.<sup>32</sup> It increases the risk of

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<sup>25</sup> Miskovski K, 'Preventing Financial Abuse of People with Dementia' (Report, Alzheimers Australia NSW, 2014).

<sup>26</sup> Kim Collins, S Erin Presnell, 'Elder Neglect and the Pathophysiology of Aging' (2007) 28(2) *American Journal of Forensic Medicine and Pathology* 157, 159.

<sup>27</sup> *Ibid.*

<sup>28</sup> Dong, XQ, 'Medical Implications of Elder Abuse and Neglect' (2005) 21 *Clinical Geriatric Medicine* 293.

<sup>29</sup> Kim Collins, S Erin Presnell, 'Elder Neglect and the Pathophysiology of Aging' (2007) 28(2) *American Journal of Forensic Medicine and Pathology* 157, 158.

<sup>30</sup> *Ibid.*, 161.

<sup>31</sup> Acierno, et al., 'Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study' (2010), 100(20) *American Journal of Public Health* 292, 295.

<sup>32</sup> Ray Kaspiew, Rachel Carson and Helen Rhoades, 'Elder abuse: Understanding issues, frameworks and responses' (Report, AIFS, 2016), 12.

psychopathology including post-traumatic stress disorder, depression, and generalised anxiety disorder.<sup>33</sup> Previous experiences of trauma are associated with a heightened risk of social isolation.<sup>34</sup> These factors further increase the risk of elder abuse.<sup>35</sup>

Studies have demonstrated that interventions that improve an older person's support structures can reduce the risk of elder abuse.<sup>36</sup> These interventions include encouraging community interaction and integration, the development of familial, neighbourhood and community programs, and resource allocation for affordable transport.<sup>37</sup> By re-connecting with community resources, older people can develop interpersonal connections that promote general health and well-being, provide means to escape and address abuse, and increase personal resilience in the face of stressors.<sup>38</sup>

For social support to be protective against elder abuse, it must be broader than shared living with a carer or family member. Effective social support structures exist when the older person (and their family) are embedded in a community of friends, relatives and community organisations. This improves the possibility of detection and abuser sanction when elder abuse occurs.<sup>39</sup> Shared living situations increase the risk of elder abuse through greater opportunity for contact and through limiting options to 'cool off'. When living in the same home, the abuser may be able to isolate the victim from external supports by controlling the victim's movement.<sup>40</sup>

### 2.2.2. *Socio-cultural beliefs and attitudes*

Attitudes are a core driver of elder abuse. Beliefs and cultural norms, including tolerance toward violence, affect the likelihood of elder abuse occurring.<sup>41</sup> Condescending or dismissive attitudes about the capabilities of older people is a predictor of future violence.<sup>42</sup> Similarly, a significant risk factor for financial abuse is a carer's sense of entitlement or ownership of the older person's assets.<sup>43</sup>

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<sup>33</sup> Acierno et al., 'Risk and protective factors for psychopathology among older versus younger adults after the 2004 Florida hurricanes.' (2006) 14(12) *American Journal of Geriatric Psychiatry* 1051.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Acierno, et al., 'Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study' (2010), 100(20) *American Journal of Public Health*, 292-297, 295.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Bonnie RJ, Wallace RB, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (National Academies Press, 2003), ch 5.

<sup>40</sup> Ibid.

<sup>41</sup> Gil A, Kislaya I, Santos A, Nunes B, Nicolau R, Fernandes A, 'Elder abuse in Portugal' (2015), 27 *Jornal of Elder Abuse and Neglect* 174, 191.

<sup>42</sup> Quinn MJ, Tomita SK, *Elder Abuse and Neglect: Causes, Diagnosis and Intervention Strategies* (2<sup>nd</sup> Ed, Springer Publishing NY, 1997.)

<sup>43</sup> Bagshaw et al, 'Financial abuse of older people by family members: Views and experiences of older Australians and their family members' (2013) 66(1) *Australian Social Work* 86.

Attitudes toward elder abuse differ significantly across socio-cultural contexts.<sup>44</sup> Older adults from different cultural groups may have substantially different tolerances to different types of abuse.<sup>45</sup> This holds particularly true for beliefs about asset ownership, with some families perceiving that the older person's assets should be owned communally.<sup>46</sup>

Cultural attitudes can greatly affect help-seeking behaviours, and older CALD adults may express greater reluctance to report abuse.<sup>47</sup> Practitioners seeking to address elder abuse must balance respect for the privacy and beliefs of the older person involved, while still recognising that particular family dynamics may prevent older people from reporting harmful abuse.

### 2.2.3. Disability

Cognitive impairment, and particularly dementia, is a substantial risk factor for abuse.<sup>48</sup> Cognitive decline is associated with a reduction in decision-making capacity and judgement, which increases the older person's reliance on others and inhibits their ability to make an assessment of other people's trustworthiness.<sup>49</sup> Older people experiencing cognitive decline are less able to report abuse against them as a result of their inhibited capacity. Research in Australia has found that in up to 75% of reported incidents of elder abuse the victim had some degree of cognitive impairment.<sup>50</sup>

Other forms of disability also increase the risk of elder abuse. People with Disability Australia note that violence against older disabled adults is intersectional and aggravated by other forms of discrimination such as age and gender.<sup>51</sup> In many cases, abuse occurs when the older person with a disability is reliant upon the abuser to provide care.<sup>52</sup> In both institutional and residential settings, abusers often use overmedication or chemical restraint in response to older people demonstrating 'challenging behaviours' in order to encourage compliance.<sup>53</sup> Elder abuse has been shown to accelerate the effect of pre-existing disability.<sup>54</sup>

Access to justice can be particularly problematic for people with a disability. Accessing phones to contact police or legal services may be difficult as a result of symptoms of the disability, similarly,

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<sup>44</sup> Monro, Rosslyn 'Elder abuse and legal remedies: practical realities?' (2002) 81 *Australian Law Reform Commission Reform Journal* 42.

<sup>45</sup> E-Shien Chang, Xin Qi Dong, 'Understanding Elder Abuse in the Chinese Community: The role of Cultural, Social and Community Factors' in the National Academy of Sciences, *Elder Abuse and Its Prevention* (National Academies Press, 2014), Ch II.1.

<sup>46</sup> Miskovski K, 'Preventing Financial Abuse of People with Dementia' (Report, Alzheimers Australia NSW, 2014).

<sup>47</sup> E-Shien Chang, Xin Qi Dong, 'Understanding Elder Abuse in the Chinese Community: The role of Cultural, Social and Community Factors' in the National Academy of Sciences, *Elder Abuse and Its Prevention* (National Academies Press, 2014), Ch II.1.

<sup>48</sup> Dong, X et al 'Association of cognitive function and risk for elder abuse in a community-dwelling population' (2011) 32 *Dementia and Geriatric Cognitive Disorders* 209.

<sup>49</sup> Charles, S T and Carstensen, L, 'Social and emotional aging' (2010) 61 *Annual Review of Psychology* 383.

<sup>50</sup> French P, Dardel, J, Price-Kelly S, 'Rights Denied' (Report, People with a Disability Australia, 2010), 17.

<sup>51</sup> People with Disability Australia, 'Legislative Council Inquiry into Elder Abuse Submission' (Submission, PWDA, 2016), 7.

<sup>52</sup> *Ibid*, 14.

<sup>53</sup> *Ibid*, 22 [48].

<sup>54</sup> Ray Kaspiew, Rachel Carson and Helen Rhoades, 'Elder abuse: Understanding issues, frameworks and responses' (Report, AIFS, 2016), 11.

navigating the internet or written information may be impeded by visual or cognitive impairment.<sup>55</sup> If the older person with a disability *is* able to report, police or other agencies are often not equipped to take statements from people using alternative communication techniques, or in some cases may dismiss the report as not credible.<sup>56</sup> PWDA suggests that people working in the justice system must have training to assist people with a disability, and information and documentation for reporting should be published in accessible formats.<sup>57</sup>

#### 2.2.4. Gender

Elder abuse is a gendered phenomenon, with a greater number of older women than men reporting abuse.<sup>58</sup> This only partially reflects the fact that women are more likely to live to old age<sup>59</sup> and that men are less likely to report abuse.<sup>60</sup> The abuse reported by older women consists of qualitatively more serious forms of conduct that are likely to cause long term harm.<sup>61</sup>

Many older women are in a position of material disadvantage largely due to a lifetime experience of gender inequity and low labour market participation.<sup>62</sup> This further exacerbates the risk of abuse. Attitudes that reflect traditional gender roles may predict elder abuse. The cultural attitude that women cannot or should not manage their own financial assets is a predictor of financial abuse.<sup>63</sup>

Many older women are reluctant to access community-based women's services, assuming that these are exclusively structured to assist younger women.<sup>64</sup> It has been suggested that broader social understanding of legal and community services available to older women experiencing abuse would improve health outcomes.<sup>65</sup>

#### 2.2.5. Aboriginal and Torres Strait Islander status

The way that we conceptualise elder abuse is problematic in respect to Aboriginal and Torres Strait Islander (ATSI) communities. The concept in itself is contested – 'eldership' is often associated with community contribution, authority, or knowledge.<sup>66</sup> There is a significant gap in the life expectancy of

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<sup>55</sup> People with Disability Australia, 'Legislative Council Inquiry into Elder Abuse Submission' (Submission, PWDA, 2016), 27 [58]-[60].

<sup>56</sup> *Ibid*, 28 [62]-[64].

<sup>57</sup> *Ibid*, 30 [66].

<sup>58</sup> Wolf R, 'Factors Affecting the Rate of Elder Abuse Reporting to a State Protective Services Program' (Paper presented at National Committee for the Prevention of Elder Abuse, Washington DC, 1997).

<sup>59</sup> Lynda Aitken, Gabriele Griffin, *Gender Issues in Elder Abuse* (Sage Publishing, 17 Oct 1996), 14.

<sup>60</sup> Linda Belardi, *Spotlight on gender and elder abuse* (5 June 2013) Australian Ageing Agenda <<http://www.australianageingagenda.com.au/2013/06/05/spotlight-on-gender-and-elder-abuse/>>

<sup>61</sup> Pillemer K, Finkelhor D, 'The prevalence of elder abuse: a random sample survey' (1988) 28(1) *Gerontologist* 51.

<sup>62</sup> Lynda Aitken, Gabriele Griffin, *Gender Issues in Elder Abuse* (Sage Publishing, 17 Oct 1996), 15.

<sup>63</sup> Peri K, Fanslow J, Hand J 'Keeping older people safe by preventing elder abuse and neglect' (2009) 35 *Social Policy Journal of New Zealand* 159.

<sup>64</sup> Jill Hightower, 'Age, Gender and Violence: Abuse Against Older Women' (2004) 7(3) *Geriatrics and Aging* 60, 61.

<sup>65</sup> *Ibid*, 62.

<sup>66</sup> Mick Gooda, 'Introduction' (Paper presented at the AAG Elder Abuse and Neglect Conference, Alice Springs, 5 September 2012)

Aboriginal people and other Australians, with many Aboriginal people becoming grandparents at relatively younger ages.<sup>67</sup>

Elder abuse in ATSI communities is rooted in the legacy of colonialism. Disadvantage and discrimination are endemic to the Aboriginal experience, and this is reflected in the experience of older people in Aboriginal communities. Mick Gooda notes that the historical institutional discrimination against Aboriginal people can become internalised, and that this in turn can manifest in ‘lateral violence’ toward other family members.<sup>68</sup> Policies such as the Stolen Generation create fractures in the Aboriginal community and expose its victims to significant trauma. These historical traumas create the circumstances in which elder abuse is more prevalent.

A primary form of elder abuse in ATSI communities is that of ‘demand sharing’, where younger community members exploit kinship-obligations to appropriate an older person’s financial resources.<sup>69</sup> A sense of social and communal obligation may also affect the help-seeking behaviours of older Aboriginal people.

Other factors that have been reported to contribute to elder abuse against Aboriginal people include:

- A higher rate of homelessness, leaving Indigenous people as ‘easy targets’ in public areas;<sup>70</sup>
- A loss or lack of community respect for older aboriginal people;
- Higher rates of alcohol and drug abuse by both victims and offenders;
- Overcrowding within residences and financial burden on older adults; and,
- Fear of losing children to statutory authorities.<sup>71</sup>

Aboriginal and Torres Strait Islander clients and stakeholders in the ACT have expressed to Legal Aid ACT a desire to bring a discussion about elder abuse “into the forefront.” Despite having heard about multiple cases of elder abuse, they noted that there had been no public discussion of elder abuse, and they had not been given any information about the incidence of elder abuse or elder abuse services. It was suggested that a number of local ATSI community groups would be an effective forum to disseminate information about the rights of older people and elder abuse services.

Stakeholders and clients also described a number of barriers that prevented older ATSI people from accessing assistance. Kinship obligations and community loyalty were cited as a substantial reason for not reporting elder abuse, and it was noted that there is significant social pressure to maintain community harmony for many Aboriginal people. Stakeholders noted that victims of elder abuse often felt a sense of shame as a result of their circumstances. Victims may be further hesitant to report elder abuse for fear that it would reflect negatively on their community.

Mistrust of government authorities was another significant rationale for not reporting cases of elder abuse, and particularly the concern that Aboriginal people would no longer have control over the

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Joy Wundersitz, ‘Indigenous perpetrators of violence: Prevalence and risk factors for offending’ (Research and public policy series no 105, Australian Institute of Criminology, April 2010), appendix B.

<sup>70</sup> Ibid.

<sup>71</sup> Office of the Public Advocate, ‘Mistreatment of Older People in Aboriginal Communities Project’ (Report, Office of the Public Advocate Western Australia, 2005), [3.3].

information provided to authorities. This reflects the mistrust of institutions that have a history of injustices committed against Aboriginal and Torres Strait Islander people.

#### 2.2.6. *LGBTIQ Status*

LGBTIQ individuals are at particular risk of elder abuse. Discriminatory attitudes drive the dehumanisation of older LGBTIQ people which predicts future abuse.<sup>72</sup> 50% of LGBTIQ people living in both institutional and residential aged care settings report having an experience of discrimination and harassment because of their identity.<sup>73</sup> LGBTIQ people are more likely than non-LGBTIQ people to experience lifetime trauma, mental illness,<sup>74</sup> and social isolation,<sup>75</sup> each of which are contributory risk factors for later elder abuse.<sup>76</sup>

Clients and stakeholders working with Legal Aid ACT have identified that they feel aged care professionals often hold prejudiced attitudes towards LGBTIQ people. A lack of training or regulation is frequently cited as underlying this trend. Fear of discrimination is a common experience for LGBTIQ people within aged care facilities, particularly because it may lead to inadequate provision of care and negative judgements against the older person.

Prejudice may also be expressed at an institutional level, where same sex partners have been disallowed from sharing the same room or bed, reprimanded for displays of intimacy, or simply kept separate as a matter of policy (whether official or not). This conduct should be categorised as psychological abuse, and is associated with increased social isolation and harm to mental health.

In response to elder abuse against LGBTQI people, community advocacy groups have developed programs targeted at providing training to aged care workers and other stakeholders to ensure they have an understanding of the issues faced by older LGBTIQ people. The National LGBTI Health Alliance's Silver Rainbow project can be looked to as a benchmark for training procedures that ensure inclusive and equitable aged care.

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<sup>72</sup> Nancy Knauer, 'LGBT Elder Law: Toward Equity in Aging' (2009) 32 *Harvard Journal of Law and Gender* 302, 352.

<sup>73</sup> *Ibid.*

<sup>74</sup> J Warner et al., 'Rates and predictors of mental illness in gay men, lesbians and bisexual men and women' (2004)

<sup>75</sup> ACT Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Ministerial Advisory Council, 'Aged Care Issues' (Report, ACT LGBTIQ Ministerial Advisory Council, 2014), 3.

<sup>76</sup> Acierno, et al., 'Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study' (2010), 100(20) *American Journal of Public Health*, 292-297, 295.

### Case Study:

Ted is an older gay man who lives alone in his home. Ted’s partner had died some years ago. While Ted mostly cares for himself, he is occasionally visited by an aged care worker who pre-prepares meals and helps him clean.

On multiple occasions in the past, aged care workers have noted pictures of Ted with his partner and subjected him to verbal abuse or refused to treat him fairly. Ted now hides any evidence of his relationship before being visited by an aged care provider. He is very scared that he will be hurt because of his sexuality. He believes many aged care workers are from cultural backgrounds where homophobia is accepted, and have not received training to address these attitudes.

## 2.3. The role of abusers

The perpetrator of elder abuse is most often a close family member of the victim.<sup>77 78</sup> A holistic understanding of elder abuse should account for the intrinsic motivations of abusers.<sup>79</sup> Theorists have proposed a number of models that attempt to explain the drivers of abusive behaviour towards older people.<sup>80</sup>

### 2.3.1. *Personality*

There is moderate empirical support that personality characteristics of the abuser contribute to elder abuse.<sup>81</sup> The most widely-used model characterises abusers within five different types of personality.<sup>82</sup> The nature of abuse perpetrated by each type of offender is likely to differ qualitatively. Individual abusers may fall in one or multiple typologies.

Type	Characteristics
Overwhelmed	The abuser provides day-to-day care in excess of their caregiving ability or capacity, causing the abuser to ‘lash out’ or neglect their duties. Abusers are often able to recognise their abuse, however struggle with managing their care responsibilities and experience difficulty in seeking help.

<sup>77</sup> Sarah Ellison et al, *Access to Justice and Legal Needs: The legal needs of older people in NSW* (Law and Justice Foundation of NSW, 2004), 269.

<sup>78</sup> Monro, Rosslyn ‘Elder abuse and legal remedies: practical realities?’ (2002) 81 *Australian Law Reform Commission Reform Journal* 42.

<sup>79</sup> NetCE, ‘Elder Abuse: Cultural Contexts and Implications’ (Training material, NetCE, 2014).

<sup>80</sup> Wolf, R, ‘Elder Abuse and Neglect: History and Concepts’ in *Elder Mistreatment: Abuse, Neglect and Exploitation in an Aging America* (National Academies Press (US), 2003) Appendix C.

<sup>81</sup> Bonnie RJ, Wallace RB, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (National Academies Press, 2003), ch 5.

<sup>82</sup> Ramsey-Klawnsnik H. ‘Elder-abuse offenders.’ (2000) 24(2) *Generations* 17-22.

Impaired	The caregiver is physically or mentally impaired, resulting in neglect or inappropriate care behaviours. Perpetrators of elder abuse are more likely than the general population to have mental health or substance abuse problems. <sup>83</sup>
Narcissistic	The abuser has little interest in genuine caregiving and instead only seeks to exploit the older person for a personal interest, e.g. financial.
Bullying	The abuser seeks to exert power or control over the victim, for whom they have little empathy. Abuser employs a range of abusive behaviours.
Sadistic	The abuser enjoys inflicting harm and has no genuine interest in the wellbeing of the older person.

### 2.3.2. Caregiver Stress

Overburden is unlikely to be the sole cause of elder abuse, but may exacerbate it.<sup>84</sup> Overburden can be a result of both tangible, objective stressors including physical care or financial and employment burdens, and subjective or affective stressors that include the emotional strain of long-term care for an older person.<sup>85</sup> Overburden is not a uniform contributor to elder abuse – it is heavily contingent on the carer’s resources to cope with stressors.<sup>86</sup> There is some evidence to suggest that interventions assisting carers to build emotional resources may reduce the severity of elder abuse.

Exchange theory considers the relationship between victim and abuser in terms of the balance of benefit in care relationships. This model assumes that the strain of increasing dependency upon the caregiver may cause the caregiver to negatively evaluate the cost of providing care; while the older person becomes increasingly vulnerable.<sup>87</sup> This inequality increases the likelihood of elder abuse.

While in some cases exchange theory may be useful, an instrumentalist approach to elder abuse will inevitably not account for nuanced interpersonal relationships that underlie elder abuse. Even in cases where older people experience significant cognitive decline, most caregivers will not engage in elder abuse<sup>88</sup> and the incidence of abuse cannot be predicted on the balance of dependency alone.

### 2.3.3. Other Factors

Mental illness and related impairments of behavioural control are predictors of elder abuse,<sup>89</sup> with an estimated 16% to 38% of all elder abusers having a history of mental illness.<sup>90</sup> Although there is limited

<sup>83</sup> Anetzberger GJ. ‘An update on the nature and scope of elder abuse.’ (2012) 36(3) *Generations* 12-20.

<sup>84</sup> Bonnie RJ, Wallace RB, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (National Academies Press, 2003), ch 5.

<sup>85</sup> Atkinson JM, Coia DA, *Families Coping with Schizophrenia: A Practitioner’s Guide to Family Groups* (John Wiley and Sons, 1995).

<sup>86</sup> Lubkin I, Payne ME, ‘Family caregivers’ in Lubkin IM, Larsen PD. *Chronic Illness: Impact and Interventions*. (4th ed. Jones and Bartlett Publishers, 1998) 258.

<sup>87</sup> Boudreau, ‘Elder Abuse’, in Hampton RL *Family Violence: Prevention and Treatment* (Sage Publications, CA, 1993), 142.

<sup>88</sup> Pillemer K, Suito JJ, ‘Violence and violent feelings: What causes them among family caregivers?’ (1992) 47 *Journal of Gerontology* 165-172.

<sup>89</sup> Bonnie RJ, Wallace RB, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (National Academies Press, 2003), ch 5.

<sup>90</sup> Travis Labrum and Phyllis L Solomon, ‘Physical elder abuse perpetrated by relatives with serious mental illness: A preliminary conceptual social-ecological model’ (2015) 25 *Aggression and Violent Behaviour* 293.

evidence available about the types of mental illness associated with elder abuse, correlations have been shown between elder abuse and mood disorders,<sup>91</sup> positive hallucinations and paranoia,<sup>92</sup> and depressive symptoms.<sup>93</sup> It is believed that the majority of mentally ill elder abuse offenders suffer from serious mental illness.<sup>94</sup> A 2015 study found that older women living with a relative with a psychiatric disorder experienced elder abuse at a much higher rate than the general population, and were particularly vulnerable to psychological abuse.<sup>95</sup>

Limited evidence suggests that people who have been abused or who have observed family violence as children are more likely to engage in family violence as adults.<sup>96</sup>

There is strong evidence that the relationship between the older person and their abuser is often interdependent.<sup>97</sup> Abusers are often reliant on the victim for housing or financial assistance and may engage in abusive behaviour to re-appropriate the victim's assets.<sup>98</sup> Alternatively, an abuser that is dependent upon the victim may use violence in an attempt to assume control and 'achieve balance' in the relationship.<sup>99</sup>

As noted in section [2.2.2] of this submission, caregiver attitudes affect the likelihood that they will engage in elder abuse.<sup>100</sup> Negative stereotypes around the capabilities and resilience of older people strip them of their value and identity. In the mind of abusers, these attitudes provide justification for abuse, apathy and discrimination towards older people. This construct interacts with carer overburden – carers who see the victim as being a difficulty or imposition more easily blame the victim for the abuse.<sup>101</sup>

Ultimately, there is no overarching theoretical framework that can explain the drivers, abusers, victims and experiences of elder abuse. Instead we can reconcile aspects of theoretical models and look towards risk factors, trends and cultural attitudes to inform our approach in providing elder abuse services. The incidence of elder abuse is complex meaning that solutions to elder abuse must inevitably be individualised and flexible.

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<sup>91</sup> Korbin et al, 'Abused elders who seek legal recourse against their adult offspring: Findings from an exploratory study' (1991) 3(3) *Journal of Elder Abuse and Neglect* 1.

<sup>92</sup> Ibid.

<sup>93</sup> Williamson G M and Shaffer D, 'Relationship quality and potentially harmful behaviours by spousal caregivers: How we were then, how we are now' (2001) 16 *Psychology and Aging* 217.

<sup>94</sup> Travis Labrum and Phyllis L Solomon, 'Physical elder abuse perpetrated by relatives with serious mental illness: A preliminary conceptual social-ecological model' (2015) 25 *Aggression and Violent Behaviour* 293, 295.

<sup>95</sup> Labrum, Travis; Solomon, Phyllis and Bressi, Sara K, 'Physical, financial, and psychological abuse committed against older women by relatives with psychiatric disorders: Extent of the problem' (2015) 27 *Journal of Elder Abuse and Neglect* 377.

<sup>96</sup> Straus MA, Gelles RJ, *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8145 Families* (Transaction Publishes, New Jersey, 1990), 431-470.

<sup>97</sup> Bonnie RJ, Wallace RB, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (National Academies Press, 2003), ch 5.

<sup>98</sup> Ibid.

<sup>99</sup> Boudreau, 'Elder Abuse', in Hampton RL *Family Violence: Prevention and Treatment* (Sage Publications, CA, 1993), 142

<sup>100</sup> Quinn MJ, Tomita SK, *Elder Abuse and Neglect: Causes, Diagnosis and Intervention Strategies* (2<sup>nd</sup> Ed, Springer Publishing NY, 1997.)

<sup>101</sup> Brandl B, Raymond JA. 'Policy implications of recognizing that caregiver stress is not the primary cause of elder abuse.' (2012) 36(3) *Generations* 32-39.

## 2.4. The challenge for older person's services

**Question 2:** What are the key elements of best practice legal responses to elder abuse?

The legal issues experienced by older people tend to be qualitatively different to that of the general population, characterised by interpersonal conflict, financial, property and welfare management disputes, and issues around guardianship and power of attorney.<sup>102</sup> Similarly, the way that older people seek help is different from other demographic groups.<sup>103</sup> There is a clear gap in service provision for older people, especially where they are unable to afford a private lawyer.<sup>104</sup>

Lawyers assisting older clients face the challenge of enabling the client to manage their own affairs while still ensuring that their financial and interpersonal interests are protected.<sup>105</sup> To properly address this challenge, elder law lawyers require specific experience and cognisance of the needs of ageing people, including their physical and sensory challenges, the need to preserve personal and family relationships, and the need to communicate in a context-appropriate manner.<sup>106</sup>

For victims of elder abuse, access to legal services can be restricted by a variety of circumstances. Social isolation is both a contributor to and a result of elder abuse,<sup>107</sup> meaning many victims find it difficult to engage social and legal resources that might assist them. Victims often do not have legal capacity to represent their own interest, and the abuser may intervene to prevent the victim from seeking help.<sup>108</sup> The incidence of elder abuse closely resembles that of spousal and child abuse; yet preventative strategies and policy for elder abuse is comparatively under-resourced.<sup>109</sup>

Similarly, the older person may choose not to report elder abuse for fear of family breakdown or because of a lack of alternative care or residential arrangements. Service providers cannot simply ignore these wishes, so practitioners must be able to offer solutions that still allow for the older person's contact and interaction with the abuser.

When older people *do* seek assistance, their lawyer may not be equipped to meet the full scope of their needs in the context of a generalist service. Elder abuse is not just a legal issue, and the experience of elder abuse is coloured by the broader context of social, physical and emotional wellbeing. Attending to these needs holistically can be time and skills intensive; however failing to address them limits the benefit of legal assistance. Lawyers should seek to avoid a prescriptive approach to assisting victims of elder abuse.

<sup>102</sup> Lewis, Rodney, 'About Elder Law' (Report, elderlaw.com.au, 2010) <<http://www.elderlaw.com.au/about-elder-law>>.

<sup>103</sup> Sarah Ellison et al, *Access to Justice and Legal Needs: The legal needs of older people in NSW* (Law and Justice Foundation of NSW, 2004).

<sup>104</sup> Sarah Ellison et al, *Access to Justice and Legal Needs: The legal needs of older people in NSW* (Law and Justice Foundation of NSW, 2004), 53.

<sup>105</sup> Dennis Stolle, 'Elder Law: A Synthesis of Preventative Law and Therapeutic Jurisprudence.' (1996) 14 *Behavioural Sciences and the Law*, 459-487, 459.

<sup>106</sup> Fiona York, 'Referral Pathways Report' (Report, Senior Rights Victoria, June 2013) 12.

<sup>107</sup> Acierno, et al., 'Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study' (2010), 100(20) *American Journal of Public Health*, 292-297, 295.

<sup>108</sup> M R Block, 'Battered Elder Syndrome – An Exploratory Study', *National Criminal Justice Reference Service 070678* (1979).

<sup>109</sup> Ibid.

To intervene in cases of elder abuse effectively, services must be structured to provide co-ordinated and broad assistance. While many services exist for older people in the ACT, few of these are targeted towards redressing elder abuse. Older people seeking assistance may be referred from organisation to organisation to address individual aspects of their complex issue, and as a result many older people will experience referral fatigue and simply ‘drop out’. Reports from other jurisdictions suggest that inadequate resourcing and structural deficiencies in service delivery for older people is a problem that extends through Australia.<sup>110</sup>

## 2.5. Translating research into practice: socio-legal practice models

Elder abuse is complex and multifaceted, meaning prescriptive approaches will provide little relief. Addressing elder abuse exclusively within a criminal law context in many cases will fail to meet the scope of needs of the older person, and may dis-incentivise older people from reporting elder abuse for fear of family breakdown. Rather, elder abuse must be addressed on a societal level through ‘a multi-sectoral and multi-disciplinary approach.’<sup>111</sup>

Because both help-seeking behaviours and remedial needs substantially vary on a person-to-person basis, community organisations must collaborate to provide an efficient system of referral with multiple points of entry. A review from 2011 noted that the best results in addressing elder abuse were observed when:

‘The community developed a system for dealing with elder abuse that involved a wide variety of agencies and organizations working together to coordinate their efforts. The [systems] have multiple points of entry for cases and multiple options for conflict resolution and also place a major emphasis on the role of education in preventing and managing conflict.’<sup>112</sup>

There is substantial empirical evidence that the socio-legal model of service provision can greatly improve case outcomes for vulnerable clients.<sup>113</sup> Research indicates that the most effective response to elder abuse require “interprofessional, ongoing, community-based, and resource-intensive [interventions]”<sup>114</sup> which are often not achievable within the context of services that exclusively address legal problems.

Inclusion of social workers and other community support officers within a legal practice allows a holistic assessment of the client’s needs, and can help the client navigate relevant support organisations. By addressing both legal issues and the social and emotional needs of elder abuse victims, the socio-legal model allows for more holistic and lasting remedies to elder abuse.

Socio-legal practice models may integrate a number of strategies and interventions. One prominent model is the solicitor and client advocate model, where the client advocate (usually a social worker) helps the client to communicate their needs and to understand the legal advice being conveyed by the lawyer. Significant focus is placed on the advocate building a positive relationship with the client to

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<sup>110</sup> Fiona York, ‘Referral Pathways Report; (Report, Senior Rights Victoria, June 2013), 4.

<sup>111</sup> World Health Organisation, ‘Active Ageing, A Policy Framework’ (Report, WHO, 2002).

<sup>112</sup> A Barn and R Linden, ‘Addressing Elder abuse: The Waterloo Restorative Justice Approach to Elder Abuse Project’ (2011) 23:2 *Journal of Elder Abuse and Neglect* 127, 144.

<sup>113</sup> Mark S Lachs and Karl A Pillemer, ‘Elder Abuse’ (2015) 373 *New England Journal of Medicine* 1947, 1954.

<sup>114</sup> *Ibid.*

ensure that client has their broader needs met, and is able to receive assistance at a pace appropriate to their capacity.

Other models involve the inclusion of one or more nurses, social workers, and/or counsellors with a lawyer to provide a comprehensive assessment the client's needs. By bringing in a range of professionals with a cohesive understanding of the client's circumstances, the client is empowered to bring about a holistic solution to the elder abuse.

Family dispute resolution can also be an effective method to address early conflicts or some less serious cases of elder abuse.<sup>115</sup> A key aspect of this approach is that it allows for a more family-centred and less adversarial form of conflict resolution. Elder mediation can be used in combination with systems of referral for abusers so that they can receive help addressing problem attitudes and behaviours.

Service providers should prioritise flexible, individualised and comprehensive services when assisting victims of elder abuse. The individual needs and desired outcomes held by victims of elder abuse vary greatly. Ignoring these and adopting a prescriptive approach risks limiting help-seeking behaviour and disempowering victims from making their own decisions.

## 2.6. Health-justice partnerships

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

Health-justice partnerships can be an effective way to integrate services and provide easy-to-access legal assistance in areas of high need. A critical function of these partnerships is in raising the capacity of both health and legal services to recognise and respond to different aspects of elder abuse. Health-justice partnerships operate similarly to socio-legal practice by creating inter-professional models of service delivery with multiple points of entry.

Training between organisations can assist professionals to identify potential indicators of elder abuse. The lawyer can provide training on identifying elder abuse and the legal rights of older people, while health professionals can help lawyers develop skills in recognising health-related symptoms of elder abuse and circumstances where medical intervention is necessary.

Partnerships may also play a role in preventing later elder abuse. Lawyers situated in a health care facility can offer services such as drafting a power of attorney, which may mitigate later abuses. Health professionals are often trusted confidants of their patients, and many Australians will seek their doctor's help even in relation to a legal issue. Integration of services prompts quicker referrals, and this is likely to prevent the risk of health or legal issues becoming more serious.

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<sup>115</sup> Ian Fletcher, 'Can Specialised Family Mediation Prevent Elder Abuse in Australia' (Paper presented at the Australian Mediation Conference, Sydney, 2012), 2.

Many older people in a health care setting may not have the means or knowledge to access legal support. Integrated legal services allow easier geographical access to legal support without alerting abusers. Our view is that health-justice partnerships are a promising service model to ensure cross-sector responses to elder abuse that lower barriers to accessing justice.

**Summary:**

- Elder abuse is highly complex and context specific. Definitions should reflect the range of conduct experienced by victims of elder abuse.
- Older people experience significant difficulty in accessing legal services and reporting elder abuse.
- Elder abuse is influenced by the characteristics of the victim, the perpetrator and the situation. Knowing this can assist us in detecting elder abuse and developing best practice responses.
- Socio-legal practice integrates social workers with legal practitioners. Developing socio-legal practice models allows legal services to respond to the complex needs of older clients. This improves access to justice and allows for holistic outcomes.
- Referral pathways between health services, social services and legal services are often confusing and result in victims experiencing referral fatigue. Stronger health-justice partnerships allow for more expedient and comprehensive responses to elder abuse.

### 3. CALD communities and elder abuse

#### 3.1. Issues

Cultural attitudes dictate norms, behaviour and beliefs about the family unit and the role of older people in society. Views about family structure and authority, gender roles, obligations to the elderly, and the division of labour are all contingent on a cultural understanding of family. Understanding differences in socialisation across cultural contexts is integral to understanding the incidence and prevalence of elder abuse.

The intersection between culture and elder abuse is multifaceted. Attitudes and beliefs do not just affect the incidence of elder abuse, but also define how the issue of elder abuse is labelled and perceived.<sup>116</sup> The way a cultural group constructs domestic violence may vary substantially from the conception commonly used in legal practice or academia, so practitioners must be aware that a person

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<sup>116</sup> Diller JV, *Cultural Diversity: A Primer for Human Services* (Wadsworth Publishing California, 1999) 47-65.

from a CALD community may report or demonstrate elder abuse very differently to the majority culture.<sup>117</sup> Cultural perceptions may further differ based on the age of the client, so we cannot assume particular attitudes because a client is of a particular culture.<sup>118</sup>

Differing paradigms about elder abuse influence the way that older people seek assistance services. An older person being abused by a caretaker may opt not to seek assistance because they see their abuse as something that must be persevered, rather than a problematic imposition on health.<sup>119</sup> The idea of 'wellness' is built through signs and symptoms of harms; both of which are shaped by cultural models.<sup>120</sup>

Further, cultural minority groups may have a number of justifications for not seeking assistance, including economic reliance on the abuser, suspiciousness or unfamiliarity with professionals within the majority culture, geographic inconvenience, language barriers, or simply not being aware of that assistance services are available.

Stigma may be a significant factor in help-seeking outcomes for CALD older adults. A 2014 study by Chang and Dong found that Chinese older adults were unwilling to report elder abuse, stemming chiefly from shame at the breakdown of family affairs.<sup>121</sup> The authors suggest that stigma-reducing interventions may increase help-seeking, particularly through providing information that is sensitive to the cultural norms of the minority group.<sup>122</sup>

Culture may also have a compounding affect with other contributing factors to elder abuse. There is a significant correlation between social isolation and cultural minority status for ageing people.<sup>123</sup> Older cultural minorities are more likely to be subject to environmental risk factors including low socio-economic status and discrimination.<sup>124</sup> Similarly, the impact of risk factors such as disability or illness may be higher as older members of CALD communities have less means to access professional services.

### 3.2. Survey results

Legal Aid ACT surveyed a number of our CALD clients and other CALD community leaders and stakeholders in the ACT about elder abuse. The survey sought to assess what they knew about elder abuse, what they knew about elder abuse services, and any barriers that they thought restricted people in their community from accessing elder abuse services.

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<sup>117</sup> Anetzberger G, Korbin J, Tomita S. 'Defining elder mistreatment in four ethnic groups across two generations.' (1996) 11 *Journal of Cross Cultural Gerontology*, 187-212.

<sup>118</sup> Vinton L. A nationwide survey of domestic violence shelters' programming for older women. (1998) 4(5) *Violence Against Women*, 559-571.

<sup>119</sup> Arnault, DS, 'Cultural Determinants of Help Seeking: A model for research and practice' (2009) 23(4) *Res Theory Nurs Pract.* 259-278.

<sup>120</sup> Ibid.

<sup>121</sup> E-Shien Chang, Xin Qi Dong, 'Understanding Elder Abuse in the Chinese Community: The role of Cultural, Social and Community Factors' in the National Academy of Sciences, *Elder Abuse and Its Prevention* (National Academies Press, 2014), Ch II.1.

<sup>122</sup> Ibid.

<sup>123</sup> Victor C, Burholt V, Martin W, 'Loneliness and ethnic minority elders in Great Britain: an exploratory Study' (2012) 27(1) *J Cross Cultural Gerontology* 65-78.

<sup>124</sup> Griffin LW, Williams OJ. 'Abuse among African-American elderly.' (1992) 7(1) *J Fam Violence* 19-35.

From these discussions, we observed that:

- Many CALD community leaders had not had any previous discussions about elder abuse, whether with health or legal services or among their community members. Few cases of elder abuse had been reported in their communities.
- Both community leaders and members were not aware of an exact meaning of abuse. When we discussed with community leaders they seemed uncertain about the definition of elder abuse, and mostly discussed physical elder abuse.

Survey respondents noted that older people in their community would be unlikely to report elder abuse. The reasons underlying this include:

- Many older people choose not to report because they felt a sense of embarrassment and fear of family pressure. There was particular concern that reporting elder abuse would result in an escalation of the conflict.
- Many CALD people lack trust in the justice system and so they are hesitant to report abusers. Many CALD clients expressed a desire to avoid interacting with the courts and police if possible.
- There was a lack of an efficient reporting system across the human services sector (by contrast to child protection), so CALD clients and other community organisations were unaware of where they should report.
- Settlement agencies and CALD service providers tend to focus on the needs of younger people, and the staff were not trained to address cases of potential elder abuse. Similarly, newly arrived migrants, refugees and asylum seekers were not provided information about elder abuse or the rights of older people

Respondents also noted that older CALD people in the ACT face unique issues that include:

- A lack of services that provide culturally appropriate programs to ensure older people are socially connected, particularly programs catering to non-English speakers. In the ACT, one social program involves volunteers socialising with elder people to prevent them from feeling isolated; however it does not cater for CALD people and does not have volunteers who are from CALD background.
- Older people from a CALD background are unaware of elder abuse services and legal and community services more generally. This is a result of language barriers and because they instead rely on other people from their community to fulfil that need.
- Older people who don't have children or family in Australia and who have come as refugees have little means to access intensive support services and may not have their needs met.

- Older CALD people feel particular anxiety when seeking help and legal advice from non-CALD services.
- There is significant stigma in many CALD communities associated with legal problems, specifically related to abuse between children and parents.

### 3.3. Service models

Given the intractable connection between culture and elder abuse, it is essential that service providers and legal practitioners have experience and knowledge of cultural attitudes, belief systems and norms. Support services must have the ability to adapt to the individualised needs of a particular client group and the capacity to provide services that are tailored and accessible to cultural minority groups if they hope to enact lasting and holistic remedy.

The WA Public Advocate reports that older people indicate that they prefer consulting with service providers of their own cultural and linguistic background.<sup>125</sup> Workers from a similar background are better able to raise awareness of available services and create trusting relationships and open dialogues with older people from CALD backgrounds.<sup>126</sup> Services should strive to be representative in hiring if they wish to serve the community appropriately.

Lawyers are often not equipped to provide the level of social support appropriate to a person from a different cultural background and social experience. There is an important role for community and social workers to meet this need. Legal Aid ACT's Client Liaison Officers are a critical bridge between CALD communities and legal assistance; they allow us to build trust between the Commission and the community in order to ensure accessible justice.

Where legal services cannot provide community or social support in-house, it is critical that they are well connected with other community organisations that can provide social and health support services. Strong, interconnected referral networks are integral to the operation of legal services that wish to appropriately help CALD clients.

#### 3.3.1. *Family Centred Model*

While still recognising that services to older people must be highly individualised, an effective intervention for elder abuse is the family-centred approach. This approach respects the concern held by many older people, and particularly those from CALD communities, that reporting elder abuse is likely to result in family breakdown or rejection from the local community. Within the family-centred care model, relevant stakeholders are encouraged to recognise the strengths of the older person and to respect the older person's right to make their own decisions. For many older CALD adults, the presence of family members will significantly lessen the stress of navigating the legal system.

The central feature of the family centred approach is that it seeks to empower the older person. Service providers, caregivers, and other family or community stakeholders are encouraged to collaborate in

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<sup>125</sup> Public Advocate WA, *Report on Elder Abuse in CALD Communities* (Report, Public Advocate WA, 2006), 47.

<sup>126</sup> Ibid.

assisting the older person to meet their needs while maintaining independence.<sup>127</sup> Through bringing together relevant parties, service providers are better able to understand the context of the client, and the older person is given greater opportunity for social inclusion. Family members and carers are made aware rights of the older person, and harmful attitudes toward older people can be addressed.

Family dispute resolution can play a central role in the family centred model. There is considerable evidence that elder mediation can prevent future elder abuse, and that it can be used to alleviate less serious cases of on-going elder abuse.<sup>128</sup>

The family centred model becomes limited in serious cases of abuse, however may be useful when there are early indicators of abuse, or older people are involved in family conflicts that may result in later abuse. This approach does not need to involve the abuser – it can simply be a way for the older person to seek help within the context of a family or community support system.

**Summary:**

- Culture has a substantial impact on the experience and reporting of elder abuse.
- Older people from CALD communities are at particular risk of elder abuse. Many of the risk factors for elder abuse are more prevalent in CALD communities.
- Many people from CALD communities are not aware of legal assistance services for elder abuse, and are unlikely to report elder abuse.
- Interventions for older CALD adults must be culturally sensitive and targeted towards the help-seeking behaviours of people from those communities.
- Support services must work harder to connect with CALD people in their community, both through community engagement and in hiring practices.
- For many older CALD people, a family centred approach allows a less confrontation resolution to the abuse that maintains family connections. It stresses recognising the older person's strengths and building community integration.

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<sup>127</sup> Lisa Smith and Joyce Fitzpatrick, 'A geriatric family-centred care model for hospitalized elders' (2013) 8 *American Nurse Today* 4.

<sup>128</sup> Ian Fletcher, 'Can Specialised Family Mediation Prevent Elder Abuse in Australia' (Paper presented at the Australian Mediation Conference, Sydney, 2012), 2.

## 4. Statutory reform

### 4.1. Aged care

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

Through the Legal Aid ACT Helpline, Legal Aid receives a number of enquiries from concerned family members about the standards of care of older persons in residential aged care facilities. These enquiries often encompass concerns about the quality of care that an older person is receiving and difficulties family members are experiencing with aged care providers and staff responsible for the care of an older person. Many clients express the fear that making complaints to the facility directly or the aged care commissioner will lead to a punitive response, and this may result in a decline in care of the older person or escalation of the poor treatment that they already feel the older person is experiencing.

Legal Aid ACT has assisted with a number of enquiries in regards to aged care facilities restricting access to an older person for some family members based on the direction of an older person's appointed attorney under a power of attorney. In many cases the attorney does not have power to issue those directions, however aged care staff are not aware of the rights of the older person and will enforce the directions. It is our view that aged care workers require greater training about elder abuse and the rights of older people.

Our experiences is that many older people within aged care facilities do not seek legal advice or assistance. This may be due to a lack of ability to access legal services, anxieties about seeking legal advice, or a lack of knowledge that their concerns may involve a legal issue. We believe that there is scope for greater outreach to aged care facilities and better aged care worker training in relation to elder abuse.

#### **Case Study:**

Sonia, an adult daughter, sought advice from Legal Aid ACT about her elderly mother, Noreen, who had been diagnosed with advanced dementia and was living in a residential aged care facility. Sonia's sister, Brooke, was appointed as Noreen's attorney under a valid enduring power of attorney.

Brooke had notified the aged care facility that Noreen was not allowed to have any visits from family or friends. The aged care facility staff were enforcing this request of the attorney. Legal Aid ACT was able to provide some advice on the nature and effect of the power of attorney to Sonia, who had been prevented from visiting Noreen. We advised Sonia that Noreen's appointed attorney could not restrict Noreen's access to Sonia or other family and friends in these circumstances.

Subsequently, Sonia was able to meet with management staff to communicate Legal Aid ACT's advice and commence visiting Noreen again.

#### 4.2. Protection of property interests

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

Older people face significant difficulty in protecting their interests when family arrangements break down. When older people have sought advice and assistance from Legal Aid ACT in regards to a family arrangement, frequently the family arrangement does not sufficiently protect the older person's financial or property interests, and does not provide a cheap, accessible or efficient mechanism to resolve disputes between the parties.

For many of the clients that Legal Aid ACT has assisted, a family arrangement usually involves a transfer of title in the older person's property to a family member. This will often involve a right to reside in the property until their death in exchange for the discharge of the mortgage or payment of ongoing household and utility bills. Another common alternative is a transfer to the adult child's benefit before death in exchange for the adult child providing ongoing care and support for the older parent by family members.

Legal Aid ACT sees many circumstances where the older person and a member of their family have entered into an 'informal' arrangement that is not documented in writing. This makes any enforcement or future legal proceedings more difficult, as the terms of any family arrangement are often unclear and parties have varying expectations of the obligations. Disputes often arise when current circumstances make the previous arrangement unworkable or undesirable for one party.

In these circumstances the older person has not usually obtained sufficient legal or financial advice before entering the arrangement, including advice about how the transfer of title may affect their aged pension or other income support benefit from Centrelink.

Even in circumstances where the older person and a member of their family have entered into a formal arrangement (often drafted by the adult child), the arrangement is not sufficient to protect the older person's interest in the event that there is a relationship breakdown between the parties. Most often it is the older person that has their interests in the family arrangement adversely effected as they are usually the party that has transferred their interest in the property. The older person is then required to rely on a caveatable or equitable interest in the property to protect their ongoing right of residence.

In these circumstances, the older person often has a weaker position compared to the party that has the registered proprietor interest and requires an active assertion of the older person's equitable rights in the ACT Supreme Court. This restrictive barrier to seek cheap and accessible legal recourse in the event that a family arrangement breaks down, places the older person in a vulnerable and weakened legal position when entering any family arrangement.

Whilst family arrangements are not inherently a form of financial abuse, they often place the older person in a heightened position of vulnerability and should only be entered into by older people with extreme caution and after the older person has been comprehensive advised of the legal and financial risks of doing so.

### Case Study:

Barry, an eighty five year old man transferred his unencumbered home in the ACT to one of his adult children, Angela. Angela had promised to build a granny flat for Barry and take care of him until his death. There was no written agreement, however Barry had been living in his granny flat on Angela's property for approximately 5 years.

Angela remarried and advised Barry that the arrangement could not continue and demanded he leave his home. Barry was devastated by Angela's actions, however was able to go live with another child, Stephanie and did not want to seek any legal recourse against Angela as he was *"too old and it was too hard"* and he felt so ashamed about what had happened to him.

### Case Study:

Benjamin, a 55 year old man entered into a family agreement with his adult son, Terry, to transfer his interest in his family home in the ACT to Terry. This was made on the basis that Terry would discharge the remainder of the existing mortgage of \$35,000, pay the expenses of the property including insurance and rates and Benjamin would continue to live in the property for the rest of his life and pay the utility bills.

Benjamin sought both legal and financial advice and a Deed of Family Arrangement was prepared by a lawyer. It was agreed that a caveat would be placed on the property. Once the property was transferred to Terry, the relationship deteriorated and Terry sought to kick Barry out of his home. The Deed of Family Arrangement did not contain any dispute resolution mechanism as a relationship breakdown between Benjamin and Terry had not been contemplated. Whilst Terry was not successful in removing Benjamin from his home, Benjamin's health deteriorated as a result of the relationship breakdown and the fear of being rendered homelessness by Terry's actions.

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

A tribunal would be a highly preferable forum to hear and determine disputes about family arrangements and would greatly decrease access to justice concerns as indicated in paragraph 122 of the Issues Paper.

Legal Aid ACT supports the expansion of the ACT Civil and Administrative Tribunal's (ACAT) jurisdiction in a similar manner to VCAT jurisdiction and its ability to hear disputes in its Joint Property List about co-owned land and goods. Legal Aid ACT's submissions in regards to this issues are outlined in section [4.5].

If ACAT's jurisdiction was expanded in a similar manner to VCAT's jurisdiction to hear disputes involving family arrangements, Legal Aid ACT would be well positioned to provide further dispute resolution services through a proposed Elder Law Dispute Resolution Program.

In reference to paragraph 125 of the Issues Paper, Legal Aid ACT supports the recommendations made by the House of Representatives Standing Committee on Legal and Constitutional Affairs in its 2007, *Older People and the Law*.

ACAT would be well positioned in the ACT to provide an avenue for family arrangements to reviewed and dissolved if necessary and grant appropriate relief in a similar manner to its current jurisdiction in relation to powers of attorney pursuant to section 62 of the *Guardianship and Management Act 1991*.

Legal Aid ACT is currently exploring its ability to provide greater assistance and expertise in regards to family arrangements, particularly in regards to increasing Legal Aid ACT's capacity to provide advice and assistance in relation to family arrangements and developing pro-forma agreements to be consulted by older clients wishing to enter into these types of arrangements.

Legal Aid ACT's ability to increase its legal service delivery in regards to assisting older clients in a cost effective and efficient manner would greatly be improved with changes to the current legal framework to reduce existing access to justice barriers for older persons. The ACT requires a cheap and accessible legal forum to resolve disputes arising out of a family arrangement, rather than the current legal framework that requires an older person to commence proceedings in the ACT superior courts.

Legal Aid ACT acknowledges that any expansion in the jurisdiction of civil and administrative tribunals in this manner would require significant legislative changes, structural reform of the existing legal framework and likely further resource and funding allocation. These significant changes are warranted to address the restrictive barriers that largely prevent older people from seeking legal recourse in the current legal framework.

**Summary:**

- Many older people's unregistered property or financial arrangements can leave them vulnerable to family breakdown. In most jurisdictions they can only enforce their equitable interest through costly litigation in the Supreme Court.
- Jurisdiction to hear disputes about family agreements should be vested in civil and administrative tribunals. This would greatly improve access to justice for older people.

#### 4.3. The role of appointed decision-makers

**Question 29:** What evidence is there of elder abuse committed by people acting as appointed decision makers under instruments such as powers of attorney? How might this type of abuse be prevented and redressed?

Appointing a trusted person to act as an attorney under an enduring power of attorney is an effective legal arrangement that benefits many older people and gives effect to their wishes in circumstances where their capacity becomes impaired. However, there is also a risk to older people executing a power of attorney in so far as their appointed attorney gains a significant position of power over the important decisions in the older person's life. Legal Aid ACT has provided advice and assistance to older persons that have been subject to elder abuse by their appointed attorney.

Many older people appoint an attorney often without understanding the legal ramifications of doing so. Appointed attorneys are often unaware of their obligations as attorneys, particularly in regards to how to manage the principal's property or financial interests and what type of transactions may result in a breach of their obligations pursuant to the *Powers of Attorney Act 2006* (ACT).

Older people that have lost legal capacity or have impaired decision making ability are increasingly vulnerable to abuse by their appointed attorney, as they are likely to have little or no awareness of the breaches by the appointed attorney and limited ability and resources to seek assistance.

Section 94 of the *Power of Attorney Act 2006* (ACT) and section 62 of the *Guardianship and Management Act 1991* (ACT) allows applicants to seek review at ACAT and direction of power of attorneys if there is any evidence of breaches by the attorney where an older person lacks decision making ability or capacity.

ACAT currently does not have the legislative power to impose any sanction or penalty if ACAT makes a finding that an attorney has breached their obligations pursuant to the *Powers of Attorney Act 2006* (ACT). In these circumstances, a principal's only remedy in regards to seeking legal recourse in respect of compensation or a penalty is to make an application to the ACT Supreme Court pursuant to section 50 of the *Power of Attorneys Act 2006* (ACT). ACAT does have the power to refer power of attorney matters to the ACT Supreme Court pursuant to section 63 of the *Guardianship and Management of Property Act 1991*, however this power is not readily used.

Unfortunately the option of seeking review or direction from ACAT is largely ineffective on the basis that the Public Guardian and Trustee, the body charged with reviewing attorneys pursuant to an ACAT direction, has limited resources reviewing accounts. This causes significant prejudice to the older person particularly if it is found that the attorney is acting improperly and in breach of their obligations pursuant to the *Powers of Attorney Act 2006* (ACT).

This significant access to justice barrier means that vulnerable older people that are likely to have impaired decision making capacity are unable to easily seek legal recourse in circumstances where their attorney has breached their obligations and they may have suffered a financial loss.

The current barriers to seeking legal redress need to be significantly reduced, if older people are able to seek meaningful legal recourse in regards to appointed decision makers' conduct that breaches their legislative obligations. If the jurisdiction of ACAT was expanded and allowed ACAT to award compensation, impose penalties and sanctions this would greatly reduce the cost and complexity for older persons in seeking necessary legal redress and allow Legal Aid ACT to provide more cost effective legal advice and assistance to older people in relation to these matters.

In reference to paragraph 126 of the Issues Paper, Legal Aid ACT supports the introduction of uniform laws across jurisdictions in regards to powers of attorney and the requirement for a standardised national format and approach for powers of attorney and advanced care directives.

A principal should be required to obtain independent legal advice before executing a power of attorney. This mandatory requirement would then require the principal to only enter into a power of attorney fully informed of the legal nature and effect of the document.

Whilst compulsory training for attorneys would be beneficial, the cost of providing this training is likely to be substantial and impractical and may infringe on an older person's autonomy and ability to freely enter into agreements surrounding their future decision making arrangements.

#### Case Study:

Alex was appointed as her elderly mother Beverley's attorney under an enduring power of attorney. Beverly had also executed an advanced health directive that indicated she did not want to be resuscitated. During a hot summer day, Beverley became dehydrated and suffered from heat stroke and fainted. Alex refused to call an ambulance or seek medical assistance on the basis that she was the attorney and she did not want Beverley to receive medical assistance. Alex also advised her siblings that they were not allowed to call an ambulance as they could not go against her decision as Beverley's attorney and Beverley had indicated she did not want to be resuscitated.

Beverley's son, Mark sought urgent legal advice in regards to the nature and effect of Beverley's power of attorney and whether an attorney could decide whether to provide required medical assistance including calling an ambulance for Beverley in the circumstances.

After providing advice in regards to the nature and effect of a power of attorney Mark felt comfortable calling an ambulance and coordinating medically assistance for Beverley as required, despite his sister Alex indicating that he was not permitted under Beverley's power of attorney.

**Case Study:**

Mona, an older woman who could not read or speak English, was cared for and lived with her adult son, Hugh, and his family. Mona and her daughter in law, Jane had a fight one day and Mona was kicked out of her home. Hugh was her appointed attorney under an enduring power of attorney many years ago and refused to provide Mona with her medication, important documents or bank account details.

Mona was very distressed at the breakdown in her relationship with Hugh and Jane and she sought legal advice with the assistance of her youngest son, James. In her culture, the older members of the family are always cared for by the children and the conflict in her family was causing her significant distress and shame. As her appointed power of attorney, Hugh had been withdrawing money from Mona’s bank account for his own personal spending unknown to Mona. Mona was not willing to commence legal proceedings against Hugh due to the shame and stigma she felt from the breakdown in her relationship with her family and Mona was worried what members of her church group would say if they found out about any legal proceedings.

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

Compulsory registration of powers of attorneys may assist in preventing elder abuse, as it may alert attorneys to a further level of oversight required in complying with their duties and responsibilities.

Currently in the ACT, if any dealings with real property are required, the power of attorney must be registered pursuant to the *Land Titles Act 1925 (ACT)* and *Registration of Deeds Act 1957 (ACT)*. Requiring registration of a power of attorney that deal with any financial interest may provide an additional safeguard, whilst not creating a burdensome shift of registration in respect of personal or medical decisions.

**Question 31:** Should the statutory duties of attorneys and other appointed decision-makers be expanded to give them a greater role in protecting older people from abuse by others?

In reference to paragraph 143 of the Issues Paper, statutory duties of attorneys and appointed decision makers should not be expanded on the basis that it is unlikely to assist in preventing elder abuse. It is unclear in what manner the proposed expansion would assist in the prevention of elder abuse, when there is evidence that attorneys or appointed decision makers are often the person breaching their obligations and responsibilities to the older person.

**Question 32:** What evidence is there of elder abuse by guardians and administrators? How might this type of abuse be prevented and redressed?

There is significantly less incidences of elder abuse where a guardian or financial manager has been appointed, due to the legislative requirements for a hearing to be held by the ACAT before any appointment is made, and the option of appointing the Public Advocate and Trustee if no other guardian and manager is available or a suitable.

The *Guardianship and Management of Property Act 1991* (ACT) also requires regular review of guardianship and financial manager orders by ACAT which acts as a safeguard and overview in regards to the need for the ongoing orders in relation to the older person.

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

In reference to paragraph 156 of the Issues Paper Legal Aid ACT is supportive of a similar model as recommended by the VLRC in respect of extending the powers of the Public Trustee and Guardian office in respect of investigating elder abuse. However, Legal Aid ACT notes that under current powers under the *Powers of Attorney Act 2006* (ACT), the Public Trustee already has the legislative authority to review accounts at the request of ACAT.

Legal Aid ACT notes there is no legislative timeframe in which the Public Trustee must comply with these orders, and lengthy delays may occur due to resources and workload pressures. Any additional responsibilities in regards to investigating and responding to elder abuse would inevitably place an increased workload and resource burden on the Public Trustee and Guardian office.

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

In reference to paragraph 158 of the Issues Paper that specific 'adult protection' legislation may not be required and greater protection to vulnerable adults can be extended by amending and refining existing legislation and legal frameworks. The introduction of specific adult protection may also reduce individual's autonomy and the dignity of older people to control aspects of their own lives and make their own decisions.

**Summary:**

- Many older people experience financial abuse by their appointed decision maker.
- Older people often appoint an attorney without understanding the legal consequences of that decision. Principals should only be allowed to enter into power of attorney after obtaining independent legal advice.
- Many attorneys are unaware of their obligations in managing the principal's interest. Training should be made available for attorneys.
- Civil tribunals should be vested with jurisdiction to review a breach of an attorney's obligation to their principal. Pursuing litigation through the Supreme Court is a significant barrier to access to justice.
- Legal Aid ACT supports the introduction of uniform laws around the power of attorneys. This system should incorporate the registration of a power of attorney dealing with financial interests.
- Expanding the statutory duties of attorneys is unlikely to assist in addressing elder abuse.
- Legal Aid ACT has experienced less incidences of elder abuse where a guardian or financial manager is appointed.
- The Public Advocate and/or Public Trustee should have significant power to investigate and respond to elder abuse, however this will require additional resource allocation.

4.4. Health services

**Question 38:** Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?

In reference to paragraph 166 of the Issues Paper, Legal Aid ACT is supportive of improving practices and training within hospitals to better identify and respond to elder abuse in a similar manner to the changes adopted by St Vincent's Hospital.

Legal Aid ACT submits that reporting schemes to third parties including social or law enforcement agencies in relation to any suspected elder abuse should only occur with the consent of the older person. Any notification to third parties without the older person's consent risks undermining their autonomy to make decisions about their own lives and the care and support they receive.

Any changes to privacy laws particularly in respect of older person's medical information and documents should be considered with caution. Older people may be less likely to discuss confidential

information to their doctors and treating team if their confidence and privacy may be breached by a requirement of medical staff to notify a third party of any allegations of elder abuse. This may compromise a doctor-patient's relationship or result in necessary information not being provided due to a fear of a report being made or consequences to a family member or carer giver.

**Summary:**

- Health justice partnerships are critical toward addressing elder abuse. Many older people rely on other community services before seeking legal assistance.
- Training both health professionals and aged care workers to identify elder abuse will greatly assist in addressing abuse.
- Information sharing should occur only with the older person's consent. Similarly, mandatory reporting schemes risk breaching the older person's confidentiality and autonomy, resulting in fewer disclosures over the long-term. Any scheme that is introduced should respect and prioritise the older person's privacy.

4.5. Dispute resolution forums

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

Legal Aid ACT is receiving an increasing number of enquiries from older people in regards to matters that involve elder abuse in the context of financial transactions that relate to property interests.

The cost and complexity of making applications to the ACT Supreme Court in regards to seeking legal redress is a significant barrier to access to justice in these types of matters. Private practitioners are often unwilling or unable to represent clients in these circumstances, as clients often do not have any financial capacity to pay for legal fees. If any application was successful in regards to a property interest that is the client's principal place of residence, private practitioners may not be able to recover their legal fees from the remedy awarded.

Legal Aid ACT is severely restricted in providing representation in these matters on the basis of the cost and expertise involved in assisting clients. Any application to the ACT Supreme Court is likely to involve the expertise of senior legal practitioners and counsel, and ongoing funding constraints limit the ability for clients to receive funding and ongoing assistance in regards to this type of litigation.

Many older people are indeed reluctant to commence such legal action due to the high cost and the time taken to finalising court proceedings. These are significant barriers to accessing any legal redress in a cost effective and time efficient manner.

The inability of older people to access cheap, simple and accessible avenues for redress particularly in regards to financial transactions relating to property interests is in Legal Aid ACT's view the most significant barrier to access to justice. This perpetuates the feelings of hopelessness, shame and despair that many older people that have been subjected to elder abuse by a close relative, child or trusted person feel in the circumstances.

Legal Aid ACT strongly supports the expansion of the ACAT's jurisdiction, so that ACAT could be vested with jurisdiction to hear and resolve complaints relating to the misuse of powers of attorney and arrangements under family care agreements and in relating to disputes where financial transactions relate to property interests or parties' joint interests in property. To that end, Legal Aid ACT strongly supports the expansion of ACAT's jurisdiction in a similar manner to the powers that VCAT holds in regards to determining these types of disputes.

In reference to paragraph 171, Legal Aid ACT however does not support the expansion of ACAT's jurisdiction in regards to vesting tribunals with a broader range of orders in relation to at-risk adults.

Any expansion of jurisdiction in regards to service provision orders, protection orders, removal and placement orders in regards to older persons encroaches on older people's capacity to make decisions in regards to their own lives and the ability to make decisions about how they live, who they live with, and which services they engage to provide them with necessary care and support.

Any expansion of ACAT's jurisdiction in this regard, has the potential to reduce or remove older person's decision making ability, where they maintain legal capacity to make decisions about their own lives. Further legal mechanisms already exist in the ACT for older persons to apply for protection orders through the ACT Magistrates Court and any expansion of ACAT's jurisdiction in regards to service provision orders and removal and placement orders is likely to place a significant burden on service providers to comply with the order.

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

**Question 47:** How should victims' services and court processes be improved to support victims of elder abuse?

The design of courts and tribunals should always seek to innovate to take advantage of technological developments in order to become more inclusive and accessible for those people that seek to access them. For example, hearing or visual aids should be made readily available to older people participating in court and tribunal matters so they can actively engage in any proceedings they are involved in.

Procedural requirements should be responsive to the needs of older people accessing court or tribunals. This could be achieved by allowing a greater discretion in regards to when court appearances are scheduled, depending on a client's medication, treatment and support needs that may impact their ability to participate in proceedings depending on the time and day of the court appearance.

Judicial officers should be more willing to exercise their discretion in regards to allowing older persons the ability to participate in proceedings via telephone or video link where their mobility and ability to attend Courts in person is limited.

Legal Aid ACT's experience is that courts and tribunals in the ACT are readily willing to make alternative arrangements to allow older persons with mobility or communication difficulties to participate in proceedings without always requiring them to attend court or make alternative arrangements where the circumstances warrant an exercise of discretion with regard to the older person's personal circumstances.

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

Legal Aid ACT strongly supports a greater role for mediation and conciliation services to assist in responding to elder abuse. Currently in the ACT there are limited alternative dispute resolution mechanisms available, particularly when there are complex legal issues involved for older people suffering from elder abuse.

If ACAT's jurisdiction was expanded to allow ACAT to hear and determine disputes in circumstances where financial transactions relate to property interests, any expanded jurisdiction could require a mandatory mediation or conference with a registered mediator prior to any formal hearing of the dispute.

Any required mediation between older persons and members of their families that may be involved in the dispute would then have an opportunity to resolve the matter in a private manner, without having to proceed to a formal hearing. Often in matters involving financial abuse of older persons the circumstances can involve fraudulent financial transactions or the breaking of a promise or an agreement in regards to ongoing care and support of an older person perpetuated by members of their family. Any mediation would allow parties to ventilate and hopefully resolve related care and support issues that are inevitably intertwined with the legal issues and claims surrounding the older person's property interests.

Legal Aid ACT has been designated by the Commonwealth Attorney-General under the *Family Law Act 1975* to be registered provider of Family Dispute Resolution (FDR) conferences. In this context, FDR conferences are arranged by Legal Aid ACT to help people resolve parenting or property disputes by agreement. A FDR Conference is attended by the parties to the dispute and their solicitors, and is chaired by a neutral third party, the Convenor. The Convenor acts as a conciliator and helps the parties to resolve the matters in dispute. If a matter cannot be resolved or is not suitable for an FDR Conference a certificate is issued pursuant to the *Family Law Act 1975* that advises the Court that an FDR was attempted but was unsuccessful. An FDR can be held at any stage during proceedings or before formal proceedings have been commenced.

Legal Aid ACT is exploring the possibility of commencing an elder law dispute resolution program, using its existing FDR conferences as a model for providing additional low cost legal services.

Whilst an elder law dispute resolution program could be commenced in the current legal framework, any dispute resolution program would be most effectively delivered in conjunction with an expansion of ACAT's jurisdiction to hear and determine disputes involving financial transactions involving property interests.

If ACAT's jurisdiction was expanded in this manner, a mandatory requirement could be made for the parties to the dispute to attend a dispute resolution conference before any application could be listed for final hearing. This would provide the parties with a cheap and efficient means of resolving the dispute without the necessity to proceed to a hearing and would reduce the number of matters that ACAT has to hear at a final hearing.

Any dispute resolution program would increase older persons' access to justice and avenues of legal recourse in a cheap and accessible manner, whilst also providing an opportunity for older persons, their families, carers and support persons to ventilate and address issues subject to any legal proceedings but also discuss often related and integral issues pertaining to the older persons' care and support arrangements.

#### **Case Study:**

Mary, an elderly woman transferred her unencumbered family home to her adult son, David and daughter in law, Simone for no consideration. The woman transferred her home to David and Simone on the basis that they would allow her to live in the property for the rest of her life and not pay any expenses towards the property. Shortly after Mary's interest was transferred in the property, David indicated to Mary that she would need to move out of the property and David and Simone would apply for further rental assistance through Centrelink to cover the cost of Mary's rental payments.

Unfortunately, Mary's aged pension was reduced due to the circumstances in which she transferred her family home and she was struggling to pay all of her expenses. Mary did not want to commence proceedings in the ACT Supreme Court as she was too overwhelmed by the prospect of lengthy and complex litigation and was reluctant to take such action against David and Simone as she was worried if she did so she would never be allowed to see her grandson or granddaughter again.

**Summary:**

- Supreme Court litigation is costly and unachievable for many older people. Civil and administrative tribunals are significantly more accessible.
- Civil and administrative tribunals should have jurisdiction to hear complaints relating to the misuse of power of attorney, family agreements, and financial transactions relating to joint or equitable property interests.
- Civil and administrative tribunals should *not* have jurisdiction to issue a broader range of orders in relation to at-risk adults. This would be an undue imposition on the independence of older adults.
- Courts and tribunals should seek to use technology to assist older people. This includes exercising discretion to allow telephone or video appearances, or allowing flexible attendance.
- Parties should be subject to a requirement to attend mediation or conciliation before bringing a financial dispute before the civil and administrative tribunal. This should be waived where there is evidence of serious abuse.
- An elder law dispute resolution program could provide a cheap, accessible, and less adversarial avenue of legal resolution. For many older people worried about family breakdown, this would close a serious justice gap.

4.6. Criminal law reform

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

It is not necessary to create any special offences in regards to behaviour that may constitute elder abuse. In reference to paragraph 175, criminal offences already exist to cover a range of criminal behaviour that may also occur in an elder abuse context. These offences apply to all persons and circumstances, and it is not necessary to treat older people differently and create a special class of offences in relation to older people.

Creating special offences risks treating older people as a different category of citizen. Further, creating a special category of offences may have the consequence of placing an additional legal burden and responsibility on care providers and carers of older people which may make others reluctant to take on caring responsibilities and duties.

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

There is currently no specific neglect offence in the ACT, however Legal Aid ACT submits that no specific offence in relation to neglect of older persons is necessary as the type of behaviour described in paragraph 177 is already covered by existing criminal offences.

In reference to paragraph 179, a specific offence in relation to a duty to provide the necessities of life may have the unfortunate consequence of acting as a deterrent for people to provide care and support to older family members by imposing a legal relationship on the carer that is too onerous and burdensome.

**Question 44:** Are protection orders being used to protect people from elder abuse? What changes should be made to make them a better safeguard against elder abuse?

Legal Aid ACT operates the Domestic Violence and Personal Protection Unit (the DV Unit) at the ACT Magistrates Court. Legal Aid ACT provides specialist expertise to both applicants and respondents, however primarily applicants and victims of violence involved in domestic violence and personal protection order proceedings.

The DV Unit is currently staffed by three solicitors, every morning until 12:30pm and one solicitor in the afternoon. The DV Unit provides initial advice, assistance with applying for interim orders and ongoing representation in court proceedings including in final hearings. Legal Aid ACT works closely with many support services including the ACT Domestic Violence Crisis Service in order to provide a holistic service to clients and provide the necessary socio-legal supports that victims may need at times of crisis including safety planning and emergency accommodation.

Older people are often at risk of domestic and personal violence, however are reluctant to seek out social or legal assistance. In 2015-2016 only 6 male and 12 female clients over the age of 85 sought legal advice and assistance from Legal Aid ACT's DV Unit, whilst 50 female clients and 25 male clients aged between 65 – 85 years old sought legal advice and assistance. These statistics are similar to previous years with only 14 female client and 8 male over 85 years of age and 20 female clients and 26 male clients between 65 – 85 years of age seeking assistance in 2014-2015. These statistics do not accurately represent the level of domestic and personal violence experienced by older people within the ACT community.

Older people that do seek out legal advice and assistance do so in circumstances where they wish to apply for a domestic violence order (DVO) in relation to adult children that still live in the family home and with one or two older parents. The adult child may often have a physical disability or mental health concerns and the older person is supporting their adult child in some way, whether as a formal carer or providing financial and social support. There are often emotional, social, financial and varying degrees of physical abuse committed against the older person.

In these circumstances, it is DV Unit's experience that the older person often has sufficient grounds to apply for a DVO against their adult child due to threats to their personal safety or incidents of domestic violence. They are however they are very reluctant to do so, on the basis that they are frightened about the consequences for their adult child, particularly if the adult child's behaviour may result in criminal charges or they are aware that the adult child has high medical care needs and has limited or no other social/family support.

Where older clients do not wish to apply for a DVO, despite having sufficient grounds to do so, the DV Unit work with the older person and other support services to arrange sufficient safety planning and ensure social supports are place so that the older person is aware of the supports they can access and what legal avenues are available to them if their adult child behaviour escalates again and legal intervention is required.

Where older people do proceed to applying for a DVO against an adult child or family member, the formal Court process can be traumatic and confronting for older people, particularly if the adult child remains in the older person's home and has no alternative accommodation options.

The ACT is scheduled to commence a new Family Violence Act and Personal Protection Act in May 2016 which substantially amends the existing *Domestic Violence and Personal Protection Orders Act 1998* (ACT). The new Family Violence Act provides for broader definitions of violence including emotional and economic abuse and applies more broadly to arrange of applicants and circumstances but will also benefit older people experiencing circumstances of elder abuse.

There have been amendments to the definition of a relative under the new Family Violence Act to include people with whom the aggrieved person has a family-like relationship. This could potentially encompass carers, including paid carers where there is a level of dependency that takes on family-like characteristics. This may also encompass older people that are living in non-traditional family settings where the relationship has developed some family like characteristics.

The new Personal Violence Act also allows the aggrieved person to ask the Court to make an order of over 12 months in special and exception circumstances, where previously orders relating to personal violence were restricted to a maximum of a 12 month period. This amendment is designed to encompass circumstances where the aggrieved person requires additional protection due to the nature of the relationship and may assist older people that suffer elder abuse in circumstances where the definition of family violence is not satisfied.

**Case Study:**

Elaine and Joe, an elderly married couple sought legal assistance as their adult daughter, Eve, and their son in law, Joseph, had begun to make serious threats of violence including threats to kill them. Eve and Joseph rented their investment property to Elaine and Joe however decided that they wanted to unlawfully evict them because they wanted to rent to new tenants that could pay higher rent.

Elaine and Joe were distressed as both were illiterate and could not read all the documents they were being sent in relation to the eviction proceedings. Elaine and Joe had been reluctant to involve any third party, however felt that they had no other option as they were fearfully for their safety and concerned that they would be made homeless. Elaine and Joe both had significant physical health concerns and Eve and Joseph's behaviour was causing them significant distress.

After consulting our DV Unit, Legal Aid ACT assisted Elaine and Joe to apply for interim DVOs against Eve and Joseph in regards to the threats of violence. Obtaining a DVO made Elaine and Joe feel safe in their own home, whilst further assistance was provided in regards to their tenancy and housing matters.

**Case Study:**

Sue, an elderly woman sought advice and assistance from our DV Unit as she had fears for her safety from her adult son, William. William had a mental illness, lived in Sue's home and Sue was his sole carer. Sue was becoming increasingly frightened for her safety, as William was violent towards her when he became unwell including pushing her against walls, throwing household objects at her and slapping her. Sue had called the Police on severally occasions when she could not handle the situation, however was afraid to continue involving the Police as she did not want William to be arrested. Sue was reluctant to apply for a DVO, as William would get angry and she knew he had no one else to care for him.

Through the DV Unit, Legal Aid ACT was able to assist Sue to apply for a DVO against William, modifying the usual terms to suit her situation and reduce the risk of William being placed in breach of the DVO, whilst protecting her safety. Sue was also referred to other social services that could provide her with information about safety planning and provide her with carer and social support to manage caring for William and protecting her own safety.

**Question 45:** Who should be required to report suspected elder abuse, in what circumstances and to whom?

It is not necessary for the introduction of further legal requirements to report elder abuse on the basis that there are already existing obligations to report abuse in the aged care system.

In reference to paragraph 186, Legal Aid ACT shares the concerns of the House of Representatives Standing Committee on Legal and Constitutional Affairs in respect of any obligation to report suspected

financial abuse may reduce the autonomy of older persons and compromise existing relationships of trust.

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

In reference to paragraph 192, Legal Aid ACT is supportive of the Victorian Royal Commission into Family Violence's recommendation of supportive further training for further family violence and elder abuse response team.

Any police and prosecution response to elder abuse needs to be approached from a common sense, holistic and sensitive perspective and involve effective referrals and pathways for ongoing support and assistance.

Any mandated action in respect of pursuing charges in the case of elder abuse by both police and the prosecution is not recommended or necessary of assistance to the families involved. Many older people and family members may be reluctant to seek the assistance of the police if they are concerned about criminal charges and subsequent consequences against another family member, particular where a family member may be significant member of the older person's social or familial support network.

Maintaining the inherent dignity of older people should require the same level of due diligence and service from any police or prosecution response generally.

**Question 48:** How should sentencing laws and practices relating to elder abuse be improved?

Sentencing laws and practices already take into account personal circumstances, both the victim and the offender's vulnerabilities, the objective seriousness of an offence in the circumstance and allow for victim impact statements to be tendered to the Court.

There is no need to change current sentencing practices to specifically address elder abuse.

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

Restorative justice processes may play a diversionary role in responding to elder abuse. This would depend on the circumstances of the offence, the family relationship and the impact on the victim. Restorative justice processes may be useful when the victim and the offender have ongoing care and familial relationships they seek to maintain and a tailored and victim inclusive process is appropriate.

Where such a process can be arranged, it may incentivise people to report elder abuse. There is often a reluctance to report criminal conduct if a person is concerned the offender will be punished through the usual criminal justice process.

**Question 50:** What role might civil penalties play in responding to elder abuse?

It is essential to remove existing barriers to the legal system and appropriate legal recourse in the first instance rather than introducing new civil penalties. Older people are largely prevented or discouraged from seeking legal redress due to the cost, complexity and length of time it takes to resolve court proceedings. Introducing further civil penalties under the current legal framework is unlikely to act as a deterrent or improve older people's access to justice.

The introduction of civil penalties may be warranted in the future, particularly where the trusted person has obtained a financial benefit from their unlawful conduct. This would however be contingent on older people having confidence that the legal framework allowed them easy access the legal system, and that civil penalties were available to them as a legal recourse.

**Summary:**

- No special offence for elder abuse is necessary. Existing laws cover behaviour that constitutes elder abuse.
- Elder abuse will not be curtailed through the introduction of new offences. Rather, helping older people and other stakeholders understand and report abuse should be a priority.
- Older people are not seeking to use protection orders. This is often because they do not want to impose consequences through a protection order against their adult child.
- Court processes relating to protection orders can be traumatic and create further tension in the family situation.
- Mandatory reporting of suspected elder abuse should not be legislated.
- Police and prosecution should not be mandated to pursue charges in cases of elder abuse. Police should be highly responsive to the older person's individual wishes. This will incentivise reporting abuse.
- Restorative justice may play a significant role in maintaining family ties in cases of elder abuse, and in turn encourage older people to report abuse.
- Civil penalties may be useful as a less punitive way for older people to enforce their rights. However, access to current remedies should be a priority.

## 5. Conclusion

Elder abuse is a substantial threat to the dignity, wellbeing and independence of many older Australians. Developing better legal frameworks around elder abuse is a necessity to protect older adults from violence.

Any discussion of elder abuse as it exists in contemporary Australian society must address the structural issues that prevent efficient responses. Creating new offences or civil penalties will not necessarily deter elder abuse perpetrators. Instead, law reform should seek to lower the barriers that stop older people from accessing help and legal assistance.

Structural change itself should be based on empirical research around the characteristics of elder abuse. We know that elder abuse covers a wide array of misconduct, that its victims come from a variety of backgrounds, and that its perpetrators have a range of motivations. Legal practitioners must avoid being overly prescriptive when assisting victims of elder abuse; so too must policy-makers.

This submission has looked principally at practice models and statutory reform that the Commission believes will lower barriers to accessing justice. Many of these changes cannot be achieved with a quick statutory fix, but require serious review of the institutional structures and allocation of resources toward connecting older people with the services they need.

## Appendix

### Appendix 1: Legal Aid ACT elder law assistance by matter type

Table 1: Grants of aid by matter type (2015-16)

Primary Matter Type	Client aged 65-85	Client aged 85+	All Grants	% of Total Grants
Assault	1	-	228	0.44%
Breach of order	1	-	97	1.03%
C&P proceedings	2	-	197	1.02%
Contact	3	-	186	1.61%
Criminal appeal	1	-	46	2.17%
Criminal Injuries/VOC	1	1	7	28.6%
Debtor	1	-	1	100%
DVO	6	1	207	3.38%
Drink Driving	2	-	16	12.5%
Enforcement	1	-	4	25.0%
Guardianship	1	-	4	25.0%
Guardianship/property	1	-	3	33.3%
Other (civil)	1	-	5	20.0%
Other (family)	1	-	12	8.33%
PPO	4	-	40	10.0%
Police offences	1	-	10	10.0%
Property (de facto)	1	-	9	11.1%
Property (marriage)	1	-	34	14.7%
Residence	5	1	237	2.53%
Return of child	1	-	58	1.72%
Sexual offences	1	-	31	3.23%
Traffic/driving offence	3	-	73	4.11%
Traffic/manufacture drug	1	-	14	7.14%
<b>Total</b>	<b>45</b>	<b>3</b>	<b>1519 (2176 total)</b>	<b>2.21%</b>

Table 2: Advices by matter type (2015-16)

Primary Matter Type	Client aged 65-85	Client aged 85+	All Advices	% of Total Advices
Body corporate/unit titles	9	-	31	29.0%
Boundary fences	5	-	23	21.7%
Building/trade disputes	5	1	40	15.0%
Child support	1	-	30	3.33%
Child support – overseas	1	-	19	5.26%
Commercial	4	-	12	3.57%
Complaints – govt. depar.	-	1	23	4.34%
Contact	1	-	146	0.68%
Conveyancing	1	-	5	20.0%
Criminal injuries/VOC	1	1	37	5.41%
Damage to property	1	-	35	2.86%
Creditor	1	-	67	1.49%
Debtor	7	-	67	10.4%
DVO	20	2	953	2.31%
Drink driving	1	-	126	0.79%
Employment	9	-	278	3.24%
Enforcement	1	-	8	12.5%
Enforcement – debt	21	-	179	11.7%
Fair trading/trade practice	3	-	61	4.91%
Financial hardship	1	-	1	100%
Admin law/review	3	-	27	11.1%
Guardianship	1	-	9	11.1%
Guardianship/property	8	3	49	22.4%

Insurance	2	-	16	12.5%
Landlord	3	-	13	23.1%
Landlord/tenant	6	-	205	2.92%
Mental health	32	6	686	5.54%
Mortgages/guarantees	2	-	5	40.0%
Motor vehicle accident	9	-	207	4.34%
MVA – injury	2	-	18	11.1%
Neighbour disputes	1	-	11	9.09%
Nuisance/noise	5	-	8	62.5%
Offensive behaviour	1	-	11	9.09%
Other – civil	8	-	103	7.77%
Other – criminal	1	-	68	1.47%
Personal	5	1	91	6.59%
Personal injury	1	-	22	4.55%
PPO	25	2	434	6.22%
Power of Attorney	6	-	15	40.0%
Probate/estate	6	-	16	37.5%
Property – de facto	1	-	29	3.45%
Property – marriage	9	-	83	10.8%
Repossession/foreclosure	2	-	12	16.7%
Residence	2	-	70	2.86%
Tax and revenue	2	-	6	33.3%
Tenant	6	-	102	5.88%
Theft	2	-	79	2.53%
Traffic/driving offence	1	-	238	0.42%
Wills	4	-	30	13.3%
Wills/estates	2	-	5	40.0%
Workers compensation	1	-	14	0.71%
<b>Total</b>	<b>252</b>	<b>17</b>	<b>4923 (6030 total)</b>	<b>4.46%</b>

Table 3: Domestic violence duty assistance

	Age	Male	Female	Other	
2015-2016	45-65	130	295	6	
	65-85	25	50	1	
	85+	6	12	6	Total:
		<b>161</b>	<b>357</b>	<b>13</b>	<b>531</b>

	Age	Male	Female	Other	
2014-2015	45-65	99	223	1	
	65-85	26	20	0	
	85+	8	14	0	Total:
		<b>133</b>	<b>257</b>	<b>1</b>	<b>391</b>

	Age	Male	Female	Other	
2013-2014	45-65	66	121	3	
	65-85	9	29	0	
	85+	4	7	1	Total:
		<b>79</b>	<b>157</b>	<b>4</b>	<b>240</b>