



Carers Australia

**Submission to the Australian Law Reform
Commission**

Elder Abuse and Commonwealth Laws

August 2016

AN AUSTRALIA THAT VALUES AND SUPPORTS ALL CARERS

ABOUT CARERS AUSTRALIA

Carers Australia is the national peak body representing the diversity of Australians who provide unpaid care and support to family members and friends with a:

- disability
- chronic condition
- mental illness or disorder
- drug or alcohol problem
- terminal illness
- or who are frail aged

Carers Australia believes all carers, regardless of their cultural and linguistic differences, age, disability, religion, socioeconomic status, gender identification and geographical location should have the same rights, choices and opportunities as other Australians.

They should be able to enjoy optimum health, social and economic wellbeing and participate in family, social and community life, employment and education.

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CONTENTS

Executive Summary	page 4-5
Potential Risk Factors for Abuse in a Caring Situation	pages 5-8
Prevention, Intervention and Support	pages 8-10
Response to Specific Questions raised in the ALRC Issues Paper on Elder Abuse	pages 10-16

Executive Summary

Carers Australia welcomes the opportunity to provide input to the Australian Law Reform Commission's review on 'Elder Abuse and Commonwealth Laws'. This submission was written with support from the State and Territory Carers Associations.

We have chosen to focus on family and friend carers of older people who may also have a disability, chronic illness, mental illness or disorder, substance abuse problem or who are terminally ill. We have not focused on paid care workers or volunteers. The distinction is particularly important because loose references to carers who perpetrate elder abuse, particularly in the media, often fail to distinguish between these different groups of people who provide care, which can result in misleading representations.

It must also be noted that while elder abuse may be perpetrated within a relationship of trust, not all relationships between an older person and a family member or friend constitute a care relationship. As identified under our response to Question 4, page 10, the research we have been able to access on elder abuse reports does not identify whether the abuser is a carer, or has a care relationship with the older person at all. We strongly recommend that more research needs to be undertaken to identify whether there is a care relationship present; for example, not all adult children of older people who are found to be abusive are caring for their older parents.

Family and friend carers, hereon referred to as 'carers', generally take on substantial caring responsibilities out of love and concern for the people they care for, often at a cost to their own financial future and health and wellbeing. Such motivations do not lend themselves to perpetrating abuse. Having said that, some carers may become abusive within a care relationship. Such abuse may be physical (either in the form of physical aggression or neglect), sexual, emotional, psychological or financial.

In this submission we have focused on the circumstances under which such abuse may take place and the type of supports which can be accessed to prevent such deterioration in the relationships between carers and the people they care for. We note that state and territory level legislation primarily addresses the consequences of elder abuse. We support the national harmonisation of relevant legislation.

We also draw attention to the fact that carers themselves can experience abuse from the people they care for.

While we do not have the expertise to address many of the legal questions posed in the Issues Paper, we do have some suggestions about improving the safety and protection of older people against abuse and resolving abusive situations. These include:

- Improved access to information and education about what constitutes abuse;
- Where abuse is identified, increased access to alternate dispute resolution, mediation and restorative justice processes; and
- Access to support programs which address underlying causes of abuse.

Potential Risk Factors for Abuse in a Caring Situation

Potential risk factors for the abuse of the person being cared for by a family or friend carer

Carer stress is often posed as a reason for elder abuse.¹ Carers and, in particular, primary carers (i.e., those who provide the majority of informal assistance with core activities of daily living), tend to be subject to a high number of stressors. These stressors may be seen as risk factors for providing the precondition under which abusive relationships arise.

A carer at risk of committing abuse is most likely to be experiencing a high level of emotional, financial, physical and psychological distress as a result of their caring role. According to the 2012 Australian Bureau of Statistics Survey of Disability, Ageing and Carers (SDAC), primary carers had the following characteristics:

- 39% of primary carers spent on average 40 hours or more caring every week;
- almost two thirds (65%) of primary carers resided in a household with equivalised gross household income in the lowest two quintiles, compared with 36% of non-carers.
- the median gross personal income per week for a primary carer was \$400, for a secondary carer was \$511, and for a non-carer was \$600;
- of those primary carers who were employed, 18.3% were in full-time employment compared with 45.7% non-carers;
- 60% were not employed and social security was the main source of income for 55%;
- 37% had a disability of some kind;
- 38% reported that their physical or emotional wellbeing had changed due to their caring role; and
- more than 10% were diagnosed with a stress related illness due to their caring role.

Particular risk factors which have been identified as raising the carer's risk of exhibiting abusive behaviour towards the person they care for include:²

¹ Brandl, B & Raymond, J. A 2012, 'Policy Implications of Recognising that Caregiver Stress is Not the Primary Cause of Elder Abuse', *Generations: Journal of the American Society on Aging*, vol. 36, no. 3, pp. 32-39. Accessed 30/06/2016.

² Carers ACT 2016, Position Statement – Elder Abuse: Safeguarding ACT Carers at Risk, pp. 1-6. Accessed www.carersact.org.au 29/06/2016.

- severe sleep deprivation;
- poor physical and mental health, including depression and anxiety;
- circumstances in which the person they care for refuses formal services to assist with their caring role, or are averse to the use of alternate care to provide a break for their carer;
- where the carer is unaware of what elder abuse involves, including financial, physical, emotional abuse and neglect; and/or
- where carers have become socially isolated and do not receive sufficient practical and emotional support.

Additionally, abuse by a carer is more likely to occur if the carer has personal risk factors, such as: exhibiting aggressive tendencies prior to taking on the caring role; mental health issues; or drug and alcohol issues.³ Studies restricted to violence against older people in domestic settings have found that the perpetrator is likely to have mental health and substance abuse problems.⁴ One of the most significant risk factors for elder abuse is the 'harmful and hazardous' use of alcohol.⁵ For example, individuals with alcohol problems may be financially dependent on older relatives.⁶ This reliance may include funding their alcohol use and financial or emotional coercion. Some carers who drink excessively may neglect their caring responsibilities to older people who depend on them.⁷ Prevention strategies to reduce elder abuse under these circumstances include educational programmes and support services to address alcohol use problems and alcohol-related abuse.⁸

Another factor of importance in this context is that available evidence suggests that most elder abuse is intra-familial and inter-generational.⁹ In other words, abuse is most likely to occur where it is part of a historical or current family pattern of behaviour, including family violence. However, none of these factors constitute a necessary or even common pre-condition for abuse. Nor are they, by any means, excuses or justifications for abuse.

In short, attributing abuse to carer stress and its consequences alone, is misleading. Recent research into carer stress and its links to the carer perpetrating elder abuse suggests such

³ Brandl, B & Raymond, J. A 2012, 'Policy Implications of Recognising that Caregiver Stress is Not the Primary Cause of Elder Abuse', *Generations: Journal of the American Society on Aging*, vol. 36, no. 3, pp. 32-39. Accessed 30/06/2016.

⁴ Brandl, B & Raymond, J. A 2012, 'Policy Implications of Recognising that Caregiver Stress is Not the Primary Cause of Elder Abuse', *Generations: Journal of the American Society on Aging*, vol. 36, no. 3, pp. 32-39. Accessed 30/06/2016.

⁵ World Health Organisation 2006, 'Elder Abuse and Alcohol fact sheet'. Accessed www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_elder.pdf?ua=1 22/06/2016.

⁶ World Health Organisation 2006, 'Elder Abuse and Alcohol fact sheet'. Accessed www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_elder.pdf?ua=1 22/06/2016.

⁷ World Health Organisation 2006, 'Elder Abuse and Alcohol fact sheet'. Accessed www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_elder.pdf?ua=1 22/06/2016.

⁸ World Health Organisation 2006, 'Elder Abuse and Alcohol fact sheet'. Accessed www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_elder.pdf?ua=1 22/06/2016.

⁹ Brandl, B & Raymond, J. A 2012, 'Policy Implications of Recognising that Caregiver Stress is Not the Primary Cause of Elder Abuse', *Generations: Journal of the American Society on Aging*, vol. 36, no. 3, pp. 32-39. Accessed 30/06/2016.

links are concealing the underlying causes of elder abuse. This is not a new concept.¹⁰ Hudson (1986) concluded that 'stress could easily mask the discovery of other significant contributing factors. Stress appears to be an intensifier of potential mistreatment, but it is not a clear predictor, since most families providing eldercare experience stress and yet do not mistreat their elders'.¹¹ The causes of elder abuse are wide-ranging and are highly contextual to individual circumstances. Moving away from the perception of carers as potential or actual perpetrators of abuse, and identifying the abuser as a distinct category, is more productive in addressing and preventing elder abuse.

Further, abuse or neglect by a carer may not necessarily be an intentional, malicious or deliberate act. Not all carers will possess the necessary skills, capacity or knowledge to address the needs of the person being cared for, or the resources to access education, support and training in support of their caring role. It is a responsibility for which many carers may feel unprepared and consequently may experience difficulties in adequately meeting the needs of the person they care for. Many people who assume the role receive little support or information. For example, when a person is discharged from hospital without their carer receiving adequate information and advice on how to provide the required level of care, such as correct medication administration, the carer may not manage the situation adequately and the person could experience harm as a result of the carer's lack of understanding about their condition and the required level of care.

Situations where carers may be unequipped to provide adequate care include, for example, where a person is bed bound, and their carer may not know how often they need assistance be turn to prevent bed sores. If a person refuses liquids and food, their carer may struggle to keep them adequately hydrated. Obviously such forms of neglect are not necessarily due to an intention to harm or neglect, but rather out of low levels of health literacy and a lack of support. Caring for a person with a deteriorating condition such as dementia can pose its own unique set of challenges for the carer as the condition progresses.

Potential Risk Factors – Abuse of Carers

Carers, including older carers, are also at risk of being abused by the person they care for. A Carers South Australia project to develop safeguarding guidelines for carers at risk identified that a significant number of surveyed carers had experienced physical abuse by the person they cared for.¹²

Carers who are abused continue to care for the abuser for a number of reasons: there is no alternative care or accommodation; concern about the wellbeing of the person they care for; and the stress associated with intervention services.¹³ A Carers Queensland 2015 survey of 571 carers found 26% of participating carers did not feel safe in their caring role and

¹⁰ Brandl, B & Raymond, J. A 2012, 'Policy Implications of Recognising that Caregiver Stress is Not the Primary Cause of Elder Abuse', *Generations: Journal of the American Society on Aging*, vol. 36, no. 3, pp. 32-39. Accessed 30/06/2016.

¹¹ Hudson, M. F 1986, 'Elder Neglect and Abuse: Current Research', in Pillemer, K. A & Wolf, R. S (eds) *Elder Abuse: Conflict in the Family*. Auburn House, Dover. Accessed 30/06/2016.

¹² Carers SA 2015, 'Safeguarding Carers at Risk of Abuse: A summary on the Safeguarding Carers at Risk project', Commissioned by the Office for the Ageing, SA Government, Adelaide. Accessed 29/06/2016.

¹³ Carers ACT 2016, Position Statement – Elder Abuse: Safeguarding ACT Carers at Risk, pp. 1-6. Accessed www.carersact.org.au 29/06/2016.

admitted to being abused – physically, financially, emotionally, and/or sexually. Many experienced more than one type of abuse.¹⁴

Ageing and becoming dependent upon a carer can lead to frustration, embarrassment and denial about the situation. Instances of older people abusing their carer, intentionally or unintentionally, can also occur as a behavioural or psychological symptom of a condition such as dementia, or from other personal issues such as dealing with chronic pain, losing friends, frustration over memory loss and experiencing incontinence.¹⁵ As with the reverse of this situation, major risk factors for abuse by older people towards their carer include previous violence, abuse or neglect in the relationship prior to the caring situation; whether the older person has mental health issues such as anxiety and depression, and how socially isolated the older person is. There may be little to no support for carers in this situation.

Carers can also be at risk of abuse if their ability to care is overestimated. The capacity of the carer to provide the care and support required by the person they care for is a factor often overlooked in informal caring. In this relationship, the needs of the person being cared for are frequently prioritised over the carer's needs. This can lead to a situation where the carer is unable to manage the demands of the person they care for, but are afraid of the consequences if they were to admit this, such as the person they care for being taken away. Carer denial, guilt and fear can also contribute to the non-disclosure of abuse. In this context it is worth noting the findings of the Association of Directors of Adult Social Services, a UK organisation, which highlighted four indicators of carers in distress:¹⁶

- the person being cared for has care needs that exceed the carer's ability to meet them;
- where the person being cared for is aggressive or abusive;
- where the person being cared for sought assistance but did not meet service thresholds;
- where the person being cared for refuses external help or support, including respite. This can occur when the person wants to remain independent but in fact relies heavily on their carer.

Prevention, Intervention and Support

There are many services available to carers to assist them in their caring role and reduce stress levels. The supports and services delivered by carer support organisations can be broadly classified as:

- Capacity building, including training and development, peer support, and counselling (either in house or, more commonly contracted out). A counsellor who has experience working with carers will have a greater capacity to identify the range of

¹⁴ Carers Queensland 2015, 'Quality of Life Survey', Brisbane. Accessed 30/06/2016.

¹⁵ 'Elders who abuse the relatives who are taking care of them'. Accessed www.agingcare.com/Articles/elders-abusing-their-adult-children-or-caregivers-137122.htm 30/06/2016.

¹⁶ ADASS 2011, 'Carers and Safeguarding Adults – Working Together to Improve Outcomes'. Accessed www.adass.org.uk/adassmedia/stories/Policy%20Networks/Carers/Carers%20and%20safeguarding%20document%20June%202011.pdf 05/07/2016.

issues and stressors specific to carers, and assist them in their capacity to manage the stress of their caring responsibilities.

- Matching diverse carer needs to appropriate service provision in their area through information, referral and, in some cases brokerage funds. Examples include the provision of alternative care arrangements to allow carers to take a break from caring (carer respite), or helping carers to identify and access services which can provide them with financial assistance, accommodation support, health issues, legal advice and other services. Access to such services can alleviate the difficulties which carers may need to address in order to continue to sustain their caring role.
- In some cases, organisations also assist carers with long-term planning to help them to move beyond the day-to-day management of their lives and to ease their way through transitions in the caring journey. For example, transitioning the person they care for into residential care, and helping the carer to identify when such a transition is needed, such as when the cost to their physical or emotional health becomes too great, or the condition of the person being cared for has deteriorated significantly. Identifying the need for such transitions is important in decreasing the likelihood of elder abuse by preventing the carer from being in a situation where they cannot provide the type or level of care required.
- Case management is also offered to some carers and their families, especially in situations where carers are dealing with a range of complex needs or need assistance to adapt to difficult changes in the caring situation.

Most importantly, carer organisations provide emotional support to carers, who are frequently in a state of distress when they eventually reach out for support. In offering these services, carer organisations are person centred; that is they adapt their response to the particular circumstances of carers. Many carers do not identify as carers, and as such are unaware of the services available. We hope that the Carer Gateway (in the form of a website and call centre) established last year by the Australian Government will go some way to promote higher levels of carer self-awareness and service provision. It is also hoped that the Integrated Carer Support Services Project, which is currently being developed by the Australian Government, will help fill funding gaps, especially for respite and counselling services. Additionally, programmes and prevention initiatives that directly target elder abuse, neglect, and financial exploitation should fund assistance and support, such as victim-centred services and inter-disciplinary training and interventions for carers, family members, aged care workers, and other professions which deal with older people on a regular basis, such as health professionals.

The NDIS can also help families and carers find other support services and programs.

Addressing Financial Abuse

According to the Australian Institute of Family Studies (AIFS), in 2014-15 the most commonly reported type of abuse to the Queensland based Elder Abuse Prevention Unit helpline (EAPU) was financial abuse, accounting for 40% of reports. Where the abuser was a partner or spouse, the most likely form of abuse was psychological (41%). Where the perpetrators were adult children, financial abuse (39%) and psychological abuse (38%) were the most common types of abuse.¹⁷ Whether the abuser was the primary carer or in a care relationship at all was not specified.

A carer who is assisting an older person with income and assets can be confronted by the complexities that may require high levels of specialist skills. It is a responsibility for which some carers may feel unprepared. A carer may not understand that they are technically breaching a financial duty of care in relation to the person they are caring for, especially in co-residency situations where the household income is shared.

Carers who find themselves in the position of managing someone else's income and assets may need specialist advice. Timely and affordable specialised financial and legal education and support is required.¹⁸ Therefore, raising awareness of what constitutes financial abuse through education is essential, as there are contexts where a carer, or indeed a non-caring family member or friend, may unintentionally commit financial abuse.

Another situation in which financial abuse may occur is when families pressure their older parents to go into residential care in order to preserve or use assets – such as the family home – for their own benefit. What is less often acknowledged is where families pressure carers, especially older carers who are finding the caring role beyond their capacity and are subject to huge stress, to continue the caring role at home. The cost of residential care in this case can be seen as a threat to the preservation of assets, rather than a viable option for improved care.

Response to specific questions raised in the ALRC Issues Paper on Elder Abuse

Question 4: What further research is needed and where are the gaps?

Carers Australia highlights that current evidence about the prevalence of elder abuse in Australia is lacking; based on more comprehensive international research, it is likely that

¹⁷ Australian Institute of Family Studies 2015, 'Elder Abuse: Understanding issues, frameworks and responses', Research Report No. 35. Accessed <https://aifs.gov.au/publications/elder-abuse/3-what-known-about-prevalence-and-dynamics-elder-abuse> 23/06/2016.

¹⁸ Carers QLD, 2006. Submission to the 'Inquiry into Older People and the Law, pp. 2. Accessed 26/07/2016.

between 2% and 10% of older Australians experience elder abuse in any given year, with the prevalence of neglect possibly higher.¹⁹

However, current available evidence does not adequately demonstrate the groups of people perpetrating elder abuse. What percentage of identified elder abusers are the older person's children, their spouse/partner, or a care worker? Is the abuser their primary carer, someone who provides occasional support or someone who does not participate in their care at all? Data collected by AIFS demonstrated that over the past 5 years, calls to the Queensland based EAPU identified children of older people subject to abuse as the largest groups of perpetrators reported (31% sons, 29% daughters). Otherwise, 10% were 'other relatives', 9% a spouse/partner, and 21% fell into a combined category of neighbours, friends, workers and informal carers.²⁰ A similar breakdown across Australia is required to understand where, why and by whom elder abuse occurs.

Australia's aged population is increasing to unprecedented levels. In 2050, just over a fifth of the population is projected to be over 65 (compared with 15% in 2015), and those aged 85 and over are projected to represent about 5% of the population (compared with less than 2% in 2011).²¹

As parents of people with lifelong disabilities get older, it is a likely possibility they will become 'sandwich carers' of children or partners with a disability and of their ageing parents, creating further stress within the family. There is insufficient research on these inter-generational issues.²² In addition to a lack of research on inter-generational issues, AIFS findings when examining experiences of separated families suggested that relatively high proportions of separated parents experience complex family dynamics, including family violence. The implications of these findings for future vulnerability to elder abuse among parents (and step-parents or partners) who have experienced separation merit further examination in any future research program.²³

Question 5: How does Centrelink identify and respond to people experiencing or at risk of experiencing elder abuse? What changes should be made to improve processes for identifying and responding to elder abuse?

It is difficult for us to imagine how Centrelink would be in a position to detect elder abuse in the absence of a direct complaint.

¹⁹ Australian Institute of Family Studies 2015, 'Elder Abuse: Understanding issues, frameworks and responses', Research Report No. 35. Accessed <https://aifs.gov.au/publications/elder-abuse/3-what-known-about-prevalence-and-dynamics-elder-abuse> 23/06/2016.

²⁰ Australian Institute of Family Studies 2015, 'Elder Abuse: Understanding issues, frameworks and responses', Research Report No. 35, p. 10. Accessed <https://aifs.gov.au/publications/elder-abuse/3-what-known-about-prevalence-and-dynamics-elder-abuse> 23/06/2016.

²¹ Australian Institute of Family Studies 2015, 'Elder Abuse: Understanding issues, frameworks and responses', Research Report No. 35. Accessed <https://aifs.gov.au/publications/elder-abuse/3-what-known-about-prevalence-and-dynamics-elder-abuse> 23/06/2016.

²² Australian Institute of Family Studies 2007, 'Disability and family carers', *Family Matters*, no. 76, pp. 30 – 31. Accessed <https://aifs.gov.au/sites/default/files/is.pdf> 23/06/2016.

²³ Australian Institute of Family Studies 2015, 'Elder Abuse: Understanding issues, frameworks and responses', Research Report No. 35. Accessed <https://aifs.gov.au/publications/elder-abuse/3-what-known-about-prevalence-and-dynamics-elder-abuse> 23/06/2016.

One role Centrelink could perform is to promote information about elder abuse and how it can be addressed. Centrelink could proactively refer carers to carer-support services; many carers may receive either Carer Payment and/or Carer Allowance for many years before they find out about dedicated carer supports. Access to such supports earlier could help to reduce carer stress and improve their capacity to effectively carry out the caring role.

An important issue to consider when planning for identification and potential responses by Centrelink to people experiencing or at risk of experiencing elder abuse is the necessary cross-cultural communication skills to be able to recognise and work effectively when dealing with culturally and linguistically diverse (CALD) clients and their families and carers.²⁴ People who report elder abuse may interpret the appropriate response to the abuse differently under cultural norms.²⁵ For example, concepts of sharing resources within a family, including finances, may not be interpreted as financial abuse within a CALD community. One such example is children taking their parents' pension to pay for their own expenses such as housing costs, with parents' expecting to be cared for later on.²⁶ Cultural expectations often confound perceptions of what constitutes abuse or mistreatment of an older person.²⁷

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

If there is proof that a person in receipt of the Carer Payment or Carer Allowance is abusing the person they care for – including financially or through failing to provide care – then there are obvious grounds to cancel their Carer Payment and Carer Allowance. However, in such contexts the burden of proof is an important consideration. Such a severe consequence will not necessarily address the social context in which the abuse is occurring. Further, for many older people the options of a legal remedy are not a practical reality, with older people less likely to pursue legal avenues due to a number of socio-cultural reasons, such as power dynamics in family violence situations.²⁸

Family relationships are often complicated and fraught with tensions, conflicting perceptions and expectations, and jealousies. These may involve perceptions that one member of the family – perhaps the carer of an older person – is cutting into the family inheritance or financially exploiting the affections of a parent and result in a complaint. In such situations,

²⁴ Black, B & Clare, M 2012, 'Elder Abuse in CALD Communities: Developing Best Practice', p. 2. Accessed www.advocare.org.au/uploaded/files/client_added/Elder%20Abuse%20in%20Culturally%20and%20Linguistically%20Diverse%20Communities%20-%20Developing%20best%20practice.pdf 22/06/2016.

²⁵ *Ibid*, p. 4.

²⁶ Office of the Public Advocate 2006, 'Care and Respect: Project to Research Elder Abuse in Culturally and Linguistically Diverse Communities', p. 26. Accessed www.publicadvocate.wa.gov.au/files/Report_on_Elder_Abuse_in_CALD_communities.pdf 22/06/2016.

²⁷ Ethnic Communities' Council of Victoria 2009, 'Reclaiming Respect and Dignity: Elder Abuse Prevention in Ethnic Communities', p.8. Accessed eccv.org.au/library/file/policy/ECCV_Discussion_Paper_Reclaiming_Respect_and_Dignity_MArch_2009.pdf 22/06/2016.

²⁸ Monro, R, 2002, 'Elder Abuse and Legal Remedies: Practical Realities?' Australian Law Reform Commission – Reform Journal Issue 81, vol. 22, no. 42. Accessed www.austlii.edu.au/au/journals/ALRCRefJI/2002/22.html 23/08/2016.

both the right and the capacity of the older person being cared for to make their own decisions about the disposal of their finances also needs to be taken into account.

Similarly, family members who are not involved in providing care may be unaware of the amount of care actually being provided and believe there are shortcomings. Under these circumstances the cessation of social security payments pending an investigation of charges is simply unwarranted and unjustified – particularly bearing in mind the financial impact it is likely to have not only on the carer but on the person being cared for.

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

The outcomes of income management in preventing financial abuse produce mixed results.²⁹ We are not in favour of mandatory income management such as has been implemented in the Northern Territory Intervention and in the Department of Social Service’s Cashless Debit Card Trial.

Evaluation of such initiatives indicates that they are frequently ineffective in preventing financial harassment and abuse.³⁰ We refer the Commission to our submission to the 2015 Senate Inquiry into the Social Security Legislation Amendment (Debit Card Trial) Bill 2015.³¹

Question 12: What further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?

There is scope in the National Screening and Assessment Form (NSAF) for clients accessing Commonwealth Home Support Programme services to identify whether the applicant ‘feels safe’. However, the NSAF is a very long form and assessors are under pressure to complete the process as quickly as possible. There are over 30 pages in the form. The opportunity to go in depth in relation to sensitive questions such as this (and indeed, the vagueness of the term ‘feel safe’) does place constraints in detecting elder abuse. Moreover, providers of Regional Assessment Services in our network have raised the issue of the lack of avenues available to them for reporting abuse, and under what circumstances can they do so without the permission of the applicant.

Question 14: What concerns arise in relation to the risk of elder abuse with consumer directed aged care models? How should safeguards against elder abuse be improved?

The scope for carers and family members to commit financial abuse in relation to Home Care Packages is limited, since individualised budgets are not held by the consumer but by providers of services, which are chosen by the consumer. Services identified must be embodied in the Care Plan following an ACAT assessment.

Home Care Packages cannot be used for the following purposes:

²⁹ Bray, J. R., Gray, M., Hand, K & Katz, I 2015, ‘Compulsory Income Management in the Northern Territory – evaluating its impact,’ *Australian Journal of Social Issues*, vol. 50, no. 4.

³⁰ Bray, J. R., Gray, M., Hand, K & Katz, I, 2015, ‘Compulsory Income Management in the Northern Territory – evaluating its impact,’ *Australian Journal of Social Issues*, vol. 50, no. 4.

³¹ Available from: <http://www.carersaustralia.com.au/storage/carers-australia-submission-debit-card-inquiry.pdf>

- as a source of general income;
- to purchase food, except as part of enteral feeding requirements;
- as payment for permanent accommodation, including assistance with home purchase, mortgage payments or rent;
- to pay home care fees;
- to pay fees or charges for other types of care funded or jointly funded by the Australian Government (this includes fees for residential respite care);
- for home modifications or capital items that are not related to your care needs
- for travel and accommodation for holidays;
- for the cost of entertainment activities, such as club memberships and tickets to sporting events;
- to pay for services and items covered by the Medicare Benefits Schedule or the Pharmaceutical Benefits Scheme; or
- for gambling or illegal activities.

Under these circumstances, the scope for financial exploitation with the current Home Care Packages model is mainly within the scope of providers who may levy excessive administrative fees taken from the package. The Government does not regulate these costs and they differ substantially between Home Care Package Providers.

Question 20: What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification of and responses to elder abuse?

Advocacy groups for aged care issues are listed on the My Aged Care website in every state and territory, with a National Aged Care Advocacy Help Line available to provide advice and services to anyone receiving aged care services.³² This service is aimed at addressing concerns surrounding ‘the quality of...aged care services’; stating that an advocate can:

- give you information about your rights and responsibilities;
- listen to your concerns;
- help you resolve problems or complaints with your aged care service provider;
- speak with your service provider if you wish; and/or
- refer you to other agencies when needed.

Additional funding for advocacy services to provide advice and services, including sufficient amounts to cover administrative fees, would provide older people with support and impartial advice to better manage their situation, for example professional financial advice on how to manage their finances.

³² MyAgedCare, 2015. Accessed <http://www.myagedcare.gov.au/how-make-complaint/advocacy-services> 19/08/2016.

Question 27: What evidence is there that older people face difficulty in protecting their interests when family agreements break down? Question 28: What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?

A major benefit of family agreements is that they provide an avenue for people to discuss and consider their expectations and assumptions regarding the provision and receipt of future care for older relatives. These agreements, in considering the transfer of income and assets to carers, also recognise that people may give up employment and financial security in order to care for older people. The expense incurred by families in providing care is often not acknowledged or compensated for. Family agreements can, in some respects, redress that debt.³³ However, there are many limitations to family agreements. Agreements can oversimplify arrangements and fail to acknowledge the complexities involved in providing care and the uncertainty often inherent to care situations.³⁴

Assisting families to take on the caring role and to devise their own informed solutions for the future is worth supporting. This process does not necessarily have to occur within a legal framework. If a complaint against a carer is raised, initial investigation into their family arrangements, their support network and the level of carer stress they are experiencing should first be taken into account before action is taken.³⁵

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

Restorative justice models such as victim-offender mediation could play a role where the person being abused is reluctant to engage with the criminal justice system, or because they do not want the abusive person to be punished. For example, following the positive identification of elder abuse, methods to address the abuse could include victim-offender mediation processes provided for the perpetrator of the abuse, the victim, and the family and carers to address the abuse, but also the factors which caused the abuse to occur. Many older victims of abuse do not report it for fear of the consequences for the abuser, who is likely to be a family member.

Additionally, before engaging with the criminal justice system, alternative dispute resolution processes such as mediation would alleviate some of this fear, as the initial consequences would not be severe, and may assist the family to understand why the abuse occurred, and prevent it in the future. Alternate dispute resolution processes may be particularly appropriate where unintentional neglect has occurred, for example due to a lack of carer capacity, skills, knowledge or support. Bringing the carer, the person they care for and the extended family network together through mediation could assist the carer in asking for more support in their role due to the difficulties they are facing. Other family members may step up and assist in the caring role as a result, reducing the likelihood of neglect occurring due to a lack of carer capacity to perform the caring role optimally.

³³ Carers QLD, 2006. Submission to the 'Inquiry into Older People and the Law, pp. 5-6. Accessed 26/07/2016.

³⁴ *Ibid.*

³⁵ *Ibid.*

One initial intervention model for the safe and confidential reporting of elder abuse or suspected elder abuse which also provides methods to address the abuse are health-justice partnerships. Health-justice partnerships incorporate a lawyer into a health care team, and aim to improve legal and health outcomes for older clients by promoting access to justice through combined service delivery. Health-justice partnerships also assist in identifying people at risk of elder abuse, or who are experiencing elder abuse, and refer them to legal and non-legal supports, such as legal advice and referrals to a social worker. The first annual report produced by a Victorian health-justice partnership, Justice Connect Seniors Law and CoHealth, found an improved capacity to address elder abuse and other legal issues on individual, team and organisation-wide levels leading to better reach of clients and improved engagement with the services.

Findings from their baseline surveys for current awareness of elder abuse and referral pathways indicated that the top five legal issue for older clients were:³⁶

1. Abuse, physical, family other violence;
2. Family relationships;
3. Homelessness, housing;
4. Financial matters; and
5. Wills, property, and Power of Attorney arrangements.

Benefits of health-justice partnerships include a safe space for people experiencing elder abuse, or suspect abuse, to report the abuse and to receive information, advice and quick referral to services. An older person experiencing abuse may be dependent on the perpetrator, and be unwilling or unable to speak to a professional privately, or be unaware of their options. Current multi-disciplinary partnerships addressing elder abuse operating within Community Legal Centres include seniors' rights and elder abuse prevention legal services. These services play an important role in identifying the most appropriate way to proceed when elder abuse is identified, e.g. police intervention, legal assistance, or reporting to an adult guardian where the client lacks capacity.

³⁶ ADASS 2011, 'Carers and Safeguarding Adults – Working Together to Improve Outcomes'. Accessed www.adass.org.uk/adassmedia/stories/Policy%20Networks/Carers/Carers%20and%20safeguarding%20document%20June%202011.pdf 05/07/2016.