

Submission
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INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Organisation: Australian Association of Gerontology

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**Submission to Legislative Council Inquiry into elder abuse
in New South Wales**

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About the Australian Association of Gerontology

The Australian Association of Gerontology (AAG) is Australia's peak national body linking professionals working across the multidisciplinary fields of ageing. Since 1964, AAG has connected professionals with an interest in gerontology to help them collaborate and exchange information on ageing. The AAG's goal is to expand knowledge of ageing in order to improve the experience of ageing.

With over 1000 members across every State and Territory, our members include geriatricians, academics, researchers, nurses, policy makers, allied health professionals, social workers, consultants and other gerontology specialists based in universities, government, health and community services, advocacy organisations and elsewhere. Members connect through forums, workshops, seminars, webinars and conferences, as well as through participation on committees and special interest groups.

The AAG has a special interest group on elder abuse.

The AAG has Divisions in every State and Territory of Australia. Each Division has a committee of members who facilitate local activities and input into state-based policy forums.

This submission has been prepared by the NSW Executive Committee in consultation with the elder abuse special interest group.

The AAG has Collaborating Research Centres based at universities and institutes across Australia. The AAG Collaborating Research Centres engage in discussions on issues affecting ageing and aged care research, and promote research projects and disseminate research findings through the AAG.

The AAG publishes the Australasian Journal on Ageing (AJA) in partnership with Aged and Community Services Australia (ACSA), the Australian and New Zealand Society for Geriatric Medicine (ANZSGM), COTA Australia and Wiley Blackwell.

The multidisciplinary nature of our association is one of the AAG's key strengths. This is particularly pertinent to elder abuse given the many forms of and complexity of elder abuse and the necessary involvement of professionals from a wide range of disciplines in preventing and responding to elder abuse.

For more information about AAG, see www.aag.asn.au

Prevalence of abuse uncertain and likely to grow

There is no universally agreed definition of elder abuse. However, a common definition of elder abuse is ‘any act which causes harm to an older person carried out by someone they know and trust, such as family and friends.’

Other definitions take a somewhat broader approach to include any acts (and acts of omission) that cause harm or distress to an older person carried out where there is an expectation of trust.¹ Under this broader definition, acts committed by people such as paid caregivers, door-to-door or online scammers, unscrupulous fundraisers, retailers and predatory lenders can be regarded as forms of elder abuse.

Research estimates in Australia indicate that abuse is experienced by approximately 2–6 per cent of older people. However, the differing definitions – plus lack of recognition of abuse, lack of robust data collection mechanisms and likely under-reporting – mean that the prevalence of elder abuse is uncertain.

We note that a recent WHO review of the prevalence of abuse in high and middle income countries reported rates of up to 14%, and higher still among people with cognitive impairment and/or who live in institutions.²

It is likely that the prevalence of elder abuse in New South Wales will increase because of the projected growth in numbers of older people, particularly those in their 80s and beyond. It has also been suggested that the prevalence of financial exploitation may increase as a result of the increased wealth of older people (especially housing wealth) compared to previous generations, creating motives for exploitation of older people’s assets.

Forms of abuse experienced by older persons and the most common relationships or settings in which abuse occurs

Elder abuse can occur wherever older people live, whether in their own homes, homes of relatives or in residential aged care.

Elder abuse may be psychological, financial, physical, social or sexual, or as a result of neglect. Elder abuse may be for the deliberate benefit or gain of the perpetrator, such as in the case of financial abuse. On the other hand it may not always be deliberate or malicious, such as in some cases of neglect by carers.

Abuse may involve a single act, repeated behaviour, or neglect. It may occur when a vulnerable older person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or lacks the capacity or capability to consent to. Sometimes elder abuse is the continuation of long-standing patterns of abuse. Many forms of abuse of older

¹ World Health Organization, 2014, Elder Abuse Fact Sheet No. 357

² World Health Organization, 2015, World report on ageing and health.

people are crimes but others, while improper, may not be considered crimes.³

The WHO World Report on Ageing and Health lists risk factors for elder abuse for which there is a strong level of evidence as

- relating to the older person – dependence due to significant disability; poor physical health; mental disorders: depression; low income or socioeconomic status; cognitive impairment; social isolation; living alone with perpetrator
- relating to the perpetrator – mental illness, depression; alcohol and drug misuse; financial, emotional or relational dependence on the abused; living alone with the victim.⁴

The WHO Report also identifies other risk factors for which there is, at present, less or insufficient evidence. These include cultural norms and negative stereotypes about ageing.

Stressful caring situations can lead to abuse. Abuse by family carers can be driven by the carers' own mental illness or other conditions, perhaps exacerbated by stresses of the caring role. They commonly involve an adult child caring for an older parent or an older parent caring for an adult child, or sometimes an older person caring for a spouse.

Examples of abuse include using an older person's money without their consent, coercing an older person into handing over an asset, moving into their home for personal gain, misuse of power of attorney by spending their money in ways that are not in the person's best interests or are for direct personal gain; physical harm or threats of harm to an older person, to others close to them or their pets; threats of abandonment, restraint (physical or through the misuse of medication); restrictions on the person's access to the community or to contact with family and friends; and sexually abusive or exploitative behaviour.

Research indicates that financial and psychological abuse are the most common types of abuse. The experience of specialist elder abuse legal/resource centres in Australia such as the Elder Abuse Hotline in Queensland and the Senior Rights Victoria helpline bears this out.

A report by the Banking Industry Ombudsman for staff of financial institutions includes a comprehensive list of forms of financial abuse (in addition to those just mentioned) including forcing an older person's signature or misleading them about the purpose of a signature; coercing an older person to become a guarantor without them having sufficient knowledge to make an informed decision; getting an older person to sign a will or power of attorney through deception or undue influence; overcharging for or not delivering services, including care services; promising long-term care or accommodation in exchange for money or property (or in order to receive a Carer Payment or Allowance) and then not doing so;

³ Benevolent Society, 2010, Recognising, preventing and responding to abuse of older people living in the community, Research to Practice Briefing No. 3

⁴ World Health Organization, 2015, World report on ageing and health.

pressuring an older person to take out a loan or a product which is not for their benefit.⁵

Responses to elder abuse and availability of appropriate services

The variety and complexity of elder abuse means that strategies need to be tailored to the particular circumstances of the victims and their family context.

Elder abuse shares many of the characteristics of domestic violence and can be regarded as a form of domestic or family violence. As with domestic violence, the starting point should be that sufferers are adults with autonomy of decision-making. Responses to elder abuse should respect older people's rights to make their own decisions.

However, elder abuse differs in certain key respects from what is commonly understood as domestic violence. For example, perpetrators are more likely to be sons or daughters rather than intimate partners, abuse may arise in older age for the first time rather than being a long term pattern of behaviour, and older men can be victims of elder abuse. Elder abuse may be linked to the onset of disability in older age and carer stress and this can affect older men as much as women. The incidence of abuse is more common among women in part because of women's greater longevity.

Making comparisons between elder abuse and child abuse, and drawing on responses used in child protection, is ageist and generally not appropriate. For example, mandatory reporting to government authorities of suspected elder abuse, irrespective of the older person's wishes, is not consistent with respecting older people as autonomous adults. (For older people that lack mental capacity, the range of responses required may be different, while noting that people may retain capacity to express views on certain matters and that capacity may fluctuate).

The *NSW interagency policy - Preventing and responding to abuse of older people (2014)* is a key plank in guiding responses to elder abuse in NSW. However there is concern about the lack of attention given to promulgation of the policy after its release, and the low level of promotion and education about the policy to the health and community services sector in the frontline for identifying and responding to abuse, most of whom are NGOs and private providers outside government. We note that formal processes for consultation with the sector about the policy and how best to ensure its implementation were never properly implemented.

The establishment of the NSW Elder Abuse Helpline and Resource Unit was a very positive development. We note that the Evaluation of the NSW Ageing Strategy conducted towards the end of 2014 reported high levels of satisfaction among callers to the service and participants in training sessions. However concerns have been expressed recently that the Helpline and Resource Unit has been having high staff turnover, there is little publically information available about how the Unit is performing and the lessons learnt from its experience, and the education and training for professionals has been modest even though it is one of the Unit's key roles.

⁵ Banking and Financial Service Ombudsman 2007, BFSO Bulletin 56 December 2007: Financial Abuse of the Vulnerable Older Person

A contributory factor may be the lack of continuity and consistency in the support it receives from the Department of Family and Community Services (FACS). It is understood that the interagency steering committee set up by FACS (previously Ageing, Disability and Home Care or ADHC) has not met since 2014 and that there has been considerable change in personnel in the Carers, Ageing and Disability Inclusion Unit which has responsibility for Elder Abuse Helpline and Resource Unit and the NSW interagency policy on abuse.

The State Government has policy responsibility for responding to abuse of older people who live in NSW, regardless of where they live or who they may receive services from.

We appreciate that the operations of the Home Care Service of NSW will shortly be transferred to a non-government provider, Australian Unity, but this is not sufficient reason for the government to withdraw from policy and service responsibility in this area.

Similarly, although the Commonwealth Government has responsibility for regulation of residential aged care and for maintaining standards in aged care facilities the State Government's overall policy remit should continue to include residents of aged care homes, notwithstanding the Commonwealth Government's Standard 3.2 which requires regulatory compliance with mandatory reporting of allegations of physical or sexual abuse.

The recent Legislative Council Inquiry into Registered nurses in New South Wales nursing homes⁶ canvassed the pros and cons of State Government involvement in staffing numbers and standards in homes in New South Wales. A suggestion was raised during the Inquiry that a 'working with older people and/or vulnerable adults check' process for staff be implemented. This could provide important additional protection for older residents in NSW.

There are also concerns that trends in the organisation and delivery of community services to older people have the potential to *reduce* the support available to support the older adults most vulnerable to abuse. One result of the transfer of responsibility for community aged care from the State to Commonwealth Government and the current aged care reforms is the loss of case management services for older people previously provided in NSW by Community Options services.

In the context of the introduction of consumer-directed care, new models of care provision and the greater involvement of private businesses in care provision it is important that that *all* paid carers have adequate education and training in how to identify signs of abuse and respond to it appropriately.

The impact of these changes on the availability of appropriate support for older people should be monitored and evaluated.

When older people no longer have capacity to make important decisions and/or are no longer able manage their finances, it is important that allegations of financial abuse can be dealt with quickly so that assets are not dissipated irrevocably. Access to guardianship and/or financial management orders through the NCAT Guardianship Division must be timely and quick. We

⁶ New South Wales Parliament Legislative Council. General Purpose Standing Committee No. 3 Registered nurses in New South Wales nursing homes, October 2015,

note that the number of matters relating to people over the age of 65 being dealt with by the NCAT Guardianship Division has been increasing significantly over recent years.

Vulnerable older people are very diverse and include older Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds with poor English skills, older people who are Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) and older people with long-standing mental illness. The stigma associated with elder abuse and beliefs that such matters are a private family matter may provide additional challenges for services attempting to provide support and interventions in vulnerable communities.

The differences and similarities between domestic violence and elder abuse have been referred to earlier. It is important that domestic violence services have a good understanding of elder abuse and, vice versa, that elder abuse services have a good understanding of domestic violence. Both types of services need to recognise the strengths of each other's approaches so that victims of elder abuse can receive the right support.

Traditional domestic violence services, refuges and family relationship services are rarely set up to cater for older people and generally do not have experience of supporting victims of abuse perpetrated by sons and daughters. They are certainly inappropriate for older men who are victims of abuse.

Given the demand pressures on domestic violence services it is also important that older people who are the victims of spousal abuse (usually women) are not referred elsewhere simply on the grounds of age.

As mentioned earlier, abuse by family carers of an older person can be driven by a carer's own mental illness or other conditions, perhaps exacerbated by stresses of the caring role. Where this is the case, the most appropriate response may on occasions be to provide mental health support and treatment to the carer, rather than removing the older person or the carer from the house or preventing them having access to each other. It may not be in the older person's wishes or in their best interest, to completely disrupt the relationship. Older people who have been carers for an adult son or daughter with a disability (mental or physical) perhaps for many years, may be very reluctant to disclose abuse by their son or daughter for fear of what would happen to their loved one and may regard the abuse as a lesser evil.

Similarly, where carers are doing their best but are overwhelmed by the caring role and are suffering burnout, the most appropriate response may to support the carer and/or relieve them of some aspects of the caring role.

Underlying ageism

One factor driving elder abuse is ageism. This is a societal attitudinal problem that needs more public exposure and dialogue. The existence of ageism allows elder abuse to continue and to go unreported and unrecognised.

Ageism manifests itself in negative community attitudes towards older people. It is exacerbated by public discourse about older people as a burden on the rest of society.

It is important that governments not overstate the challenges of population ageing without putting due emphasis on the opportunities. Over-emphasis on the negative fiscal implications of the growth in the older population has the effect of increasing community perceptions that older people are a burden.

In New South Wales, health and welfare practitioners see many families who believe that simply because their relative is old they have the right to make decisions for them without even consulting them.

Family members may also regard older relatives' assets as belonging to the family rather than the older relatives, since the assets will be coming to them as an inheritance in due course (or so they expect). This has been referred to as 'inheritance impatience'. Younger generations may feel that they can't 'get ahead' without access to financial support from parents or grandparents and this may create undue pressure on older people.

However, it should also be acknowledged that there are cultural differences in attitudes towards assets generated and held by older people. Great sensitivity is required when assessing whether the transfer of assets from parents or grandparents (including those who are suffering dementia and no longer able to give fully informed consent) to younger family members, constitutes exploitation or not. Many post-war migrant families migrated to Australia with the express purpose of giving their children a better life and worked hard to accumulate assets to make that happen and may concur with the view that their assets are family assets.

In the UK the practices of some private fundraising firms employed by charities in targeting older people has recently been highlighted as a form of elder abuse underpinned by ageism, with some charities accused of seeing older people as 'fair targets' for fundraising. In response, new regulations governing the asking for donations from vulnerable older people are being introduced.⁷

Elder abuse can be a violation of older people's human rights. Conversely human rights-based strategies can help empower older people to be more aware of and to assert their rights.

Data collection, research and evaluation

Robust data collection is lacking in New South Wales and in Australia generally, as recently noted by the federal Age Discrimination Commissioner, Susan Ryan.⁸ Better data collection and funding for research are both needed as there are significant gaps in the research evidence on elder abuse, the risk factors and how best to respond to it. In the absence of clear definitions and improved data collection, comparing the results of different studies, measurement of trends over time or across jurisdictions is impossible.

A better understanding of the links between vulnerability and elder abuse is needed, and the

⁷ <http://www.telegraph.co.uk/news/politics/11973540/Government-Minister-says-corrupted-charities-viewed-older-people-as-fair-targets.html> 3 Nov 2015

⁸ <https://www.humanrights.gov.au/news/stories/financial-abuse-older-australians> 19 October 2015

role of other factors such as gender, socio-economic status and geography.

It is important that current policy-making in this area is evidence-based and draws on the evidence that does exist both here and overseas. It is encouraging that the Australian Institute of Family Studies has been asked to undertake a scoping study to assess the problem and ways to address it.⁹

We note that evidence to support the effectiveness of mandatory reporting of suspected abuse is not strong and we strongly caution against going further down that path. The introduction of mandatory reporting of suspected abuse of residents of aged care facilities to the Commonwealth Government and the Police has introduced significant administrative burden for little demonstrable benefit to older people.

There are several areas in which data collection could be improved in New South Wales. For example the Police could be required to collect data on abuse (or suspected abuse). Similarly the NSW Civil and Administrative Tribunal Guardianship Division could be asked to collect data on the suspected and/or actual abuse of older people who are the subject of hearings before the Tribunal.

In conclusion

We recommend that the State Government take steps to

- improve data collection in New South Wales about elder abuse
- develop an agreed definition of elder abuse for the purposes of facilitating data collection, measurement of trends and the effectiveness of interventions
- fund research into elder abuse and how best to support older people who are the most vulnerable to abuse or who are victims of abuse.

The Australian Association of Gerontology would be pleased to provide further evidence to the Inquiry if required.

Please contact Dr Anthony Brown, President NSW Division on

⁹ <http://www.smh.com.au/federal-politics/political-news/age-discrimination-commissioner-susan-ryan-seeks-george-brandis-help-on-elder-abuse-20151108-gktmyp.html> 9 Nov 2015