

**Submission  
No 102**

**INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW  
SOUTH WALES**

**Name:** Ms Trish Doyle MP, Member for the Blue Mountains

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12 February 2016

The Hon Greg Donnelly MLC  
Chairperson  
Inquiry into Elder Abuse  
General Purpose Standing Committee No. 2  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Chairperson

### **NSW Legislative Council Inquiry into Elder Abuse**

As the Member for Blue Mountains I am pleased to have an opportunity to make a submission to this important inquiry.

On June 15 each year we celebrate World Elder Abuse Awareness Day. This day aims to raise community awareness and recognition of this largely hidden and shameful problem. However elder abuse awareness must not be confined to a single day each year. It must be something that all members of the community are concerned about and are committed to stamping out every day of the year.

In drafting this submission I congratulate the Blue Mountains Elder Abuse Collaborative and the local support services working with many of our most vulnerable community members, their families and carers.

I pay tribute to the members of the Blue Mountains Community Care Forum who do so much to enhance the care and support for older people in the Blue Mountains and to safeguard their human rights.

This Inquiry has also provided an opportunity for the Blue Mountains Coalition Against Violence and Abuse (my local domestic violence and child protection network) to consider this issue from a domestic violence and gender-informed perspective, formulate and articulate their position.

In preparing this submission I am reminded of a frequently quoted reference attributed to Mahatma Gandhi:

*"A nation's greatness is measured by how it treats its weakest members."*

It is true that older people can be some of our most vulnerable citizens. It is therefore important that both Governments and the community take the necessary steps to make sure older people are protected, cared for and are able to lead the

life they choose. We must guard against attitudes, policies and programs that diminish the rights of older Australians and denigrate their value.

The right to live free from violence and exploitation is a basic human right and one that is accorded universally to all members of our society. Violence and abuse is never acceptable. In my view this inquiry is about shedding light on the issue of elder abuse; bringing it out of the shadows and into the open. We must see this issue in terms of human rights and the rights of older people to live safely, free of threats of violence and to lead a life with dignity.

I acknowledge the range of well-informed and compelling submissions to this Inquiry from experts in the field including:

- Blue Mountains Coalitions Against Violence and Abuse
- Elizabeth Evatt Community Legal Centre
- Alzheimer's Australia NSW
- Seniors' Rights Service (The Aged-care Rights Service Inc)
- NSW Elder Abuse Helpline and Resource Unit
- Women's Legal Services NSW
- Mental Health Carers ARAFMI NSW Inc
- NSW Nurses and Midwives' Association
- Northern NSW Abuse of Older People Collaborative

I congratulate these organisations and the authors for their advocacy and leadership on this very important human rights issue.

It is my hope that this Inquiry will not only create a dialogue about the issue of elder abuse but will make important practical recommendations that will be taken up by Government in order to protect and promote the rights of our senior citizens.

Yours sincerely

Trish Doyle MP  
**Member for Blue Mountains**

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**Submission to the  
NSW Legislative Council's  
Inquiry Into Elder Abuse**

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## **1. The prevalence of elder abuse in New South Wales:**

Whilst we have made significant inroads into the understanding and awareness of domestic violence and sexual assault the same cannot be said for elder abuse. Elder abuse remains a largely hidden problem, deprived of comprehensive research and rigorous data to inform our understanding of the problem and knowledge base.

A variety of factors contribute to a lack of reliable statistics on the incidence of elder abuse. It is only in very recent years that elder abuse has become the subject of research and is only now the subject of media attention and wider public discourse.

The effects of stigma, taboo and a lack of awareness may result in feelings of shame, invisibility and denial. For these and other reasons older people may be reluctant to come forward and alert authorities to their situation.

Given the stigma and the vulnerability of older people and a lack of awareness in the wider community, elder abuse is most likely greatly under-reported.

Studies both in Australia and overseas estimated that around 3 per cent of older people experience some kind of abuse. However Australian research also indicates that the incidence may well be higher with estimates ranging from 4.6% to nearly 10 %. Research also suggests that as many as one in five cases go unreported.

It is clear that comprehensive research is lacking, therefore, robust research and data collection is required to capture evidence and develop a common definition of elder abuse and its prevalence.

I refer to submissions from experts such as the Seniors' Rights Service (SRS):

*An analysis of the SRS data from existing clients and the issues that they raise reveals that of the 2,314 legal issues reported by older people in the past year, 12.6% were categorized as falling into one of the traits of elder abuse. ...This raises the very real issue that older people themselves do not necessarily see their treatment as a form of abuse. This is one of the barriers that SRS has identified in reporting elder abuse.<sup>1</sup>*

SRS explains:

*Other than gender, age discrimination or 'Ageism' is a factor that should be considered when discussing abuse in older populations. Certainly in western societies there appears to be a general negative attitude towards ageing and older people, a manifestation of which is the often patronising stereotypes of older people portrayed by the media. These attitudes create a fertile ground for age discrimination and like any form of discrimination it devalues and disempowers the group it is directed against.<sup>2</sup>*

## **2. The most common forms of elder abuse, where and with whom it occurs:**

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<sup>1,2</sup> Seniors' Rights Service Submission to the Inquiry

When discussing elder abuse it is important to have an understanding of the nature of the problem.

According to the World Health Organization (WHO) elder abuse can be defined as “a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person”. It can also describes it as a “pattern of behaviour by a person that results in physical or psychological harm to an older person”.

The four most common forms of elder abuse are physical abuse (including sexual abuse), psychological and emotional abuse, financial and material abuse and neglect. Elder abuse may also be the result of intentional or unintentional neglect.

When considering the maltreatment of older people (most often referred to as 'elder abuse') it is important to focus on their living arrangements. *About 95 per cent of older Australians live in private homes where accommodation arrangements vary. Some individuals either live alone or with a spouse; some share with siblings or other relatives; some share with friends of their own generation; and some live with single or married offspring who themselves may have children or grandchildren (McCallum, Matiasz and Graycar 1990). The remaining 5 per cent live in specialised aged-care accommodation. This is contrary to the widespread belief that a high proportion of older people live in 'homes'.*<sup>3</sup>

Elder abuse affects older people living at home and in institutional settings. Evidence shows that it may affect people from all backgrounds, ie older women and men and people from all cultural and socio-economic backgrounds. *Pillemer and Finkelhor (1988) discovered that older people in poor health are three to four times more likely to be abused than those in good health, and that maltreatment cuts across economic, social, religious and educational lines. Dependency appears to be the common denominator.*<sup>4</sup>

Even though there are more women than men in older populations, older women are still more likely to be abused than older men. *A major 1998 incidence study conducted by the National Center on Elder Abuse (NCEA\*) found that overall a disproportionate number of older women were victims of abuse compared to men, although older men were more likely to be victims of abandonment. However women also represented nearly half (47.5%) of the perpetrators of abuse in this NCEA study while adult sons and daughters combined to create the single biggest category of abusers.*<sup>5</sup>

*Older people with a disability are particularly vulnerable to elder abuse. Where dementia is an element of the disability, carer burnout must be recognised as a serious contributing factor to the abuse.*<sup>6</sup>

*Perpetrators of elder abuse in Australia have been reported to consist mainly of intimate family members (43% adult children, 38% spouse and 10% other family member) despite first*

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<sup>3,4,5</sup> AIFS Family Matters Journal: Abuse and Neglect of Older People by Marianne James

<sup>6</sup> Seniors' Rights Service Submission to the Inquiry

*suspicions that a majority of such abuse occurred within institutional settings (Kurle, Sadler, Lockwood and Cameron, 1997).<sup>7</sup>*

Although the overwhelming majority of older Australians live at home or in the community, it is important to recognise that elder abuse can also occur within aged care facilities. As the local Member I have been approached by relatives and aged care staff in regards to concerning practises that may place residents at risk of abuse within facilities.

Quality in the aged care setting is an important key to the prevention of abuse and the identification of abuse when it does occur. We must ensure that aged care environments operate within established quality standards. It is imperative that facilities are subject to public scrutiny and that measures are in place to ensure accountability and transparency.

A significant duty of care exists on the part of aged care facilities to ensure that adequate staffing levels exist within facilities and that they are operated by qualified people. There must be adequate supervision of both staff and residents to ensure safety for all. Staff must be trained to identify abuse and how to report such abuse.

**3. The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received from those agencies and organisations:**

I am in the fortunate position to meet and work with a wide range of local aged care and disability services, government and non-government organisations that provide services to the diverse community of the Blue Mountains.

The following is a list of agencies that are in the privileged position of providing services to older people. Therefore with skills, training and appropriate policies they are also in a very good position to identify and detect elder abuse and assist those affected (*note this list is not intended to be a comprehensive database*):

- Department of Family and Community Services including Housing NSW and Wentworth Community Housing
- Nepean-Blue Mountains Local Health District's Aged Care Assessment Team
- Blue Mountains City Council's Community Outcomes Team
- Members of the Blue Mountains Elder Abuse Collaborative
- Chronic and Complex Team of the Nepean and Blue Mountains Local Health District
- Nepean and Blue Mountains Primary Health Network
- Blue Mountains Local Area Command of the NSW Police Force
- Elizabeth Evatt Community Legal Centre
- NSW Legal Aid
- Blue Mountains Women's Health and Resource Centre including the Blue Mountains Women's Domestic Violence Court Advocacy Service
- Local Disability and Aged Care services
- Local Family Support Services

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<sup>7</sup> AIFS Family Matters Journal: Abuse and Neglect of Older People by Marianne James

- Blue Mountains and Springwood Hospitals
- NSW Elder Abuse Helpline and Resource Unit
- Carers NSW and other support services for carers
- Alzheimer's NSW

#### 4. The adequacy of the powers of the NSW Police Force to respond to allegations of elder abuse:

In response to question 4, I have drawn from three well qualified sources to express my point of view and I endorse their recommendations.

I note the submission to the Inquiry from the Women's Legal Services NSW:

*WLS NSW believes that NSW Police have sufficient powers to respond to allegations of elder abuse within its meaning in the Crimes (Domestic and Personal Violence) Act.*

*Currently, the Crimes (Domestic and Personal Violence) Act has a broad definition of 'domestic relationship' and we submit that it is important to retain this in any impending re-drafting of this legislation. It is our experience, however, that Police need further workforce development around an understanding of the nature and dynamics of domestic and family violence in all matters, including for older women.*

*Further, specialist officers would assist the effectiveness of response to the abuse experienced by older women. Policy development and new practice measures generally (and for example Safer Pathways in NSW) tend to focus on women and their children and marginalise violence against older women. For example, the DV risk assessment tool now used by all NSW Police to assess serious threat (DVSAT) does not identify particular risks relevant to women with disabilities, older women, Indigenous or CALD women.<sup>8</sup>*

The Seniors' Rights Service identifies the following impediments and suggests action as follows<sup>9</sup> :

- (a) **Misuse of Funds by Attorney** - *Misuse of funds is a crime and should be prosecuted accordingly. Greater training should be provided to the Police Force in relation to the powers granted under an enduring power of attorney and that the Power of Attorney Act 2003 be amended to specifically state that "the misuse of funds outside the scope of the power in the enduring power of attorney constitutes a specific crime, where not only criminal proceedings and convictions and sentencing would be provided for but also civil restitution could be Ordered at the same Hearing."*
- (b) **Vulnerable Persons Officers** - *The establishment of Vulnerable Persons Officers within the NSW Police Force who are trained in working with older people, identifying and dealing with elder abuse. Police need to be aware of the dynamics of elder abuse*

<sup>8</sup> Women's Legal Services NSW Submission to the Inquiry

<sup>9</sup> Seniors' Rights Service Submission to the Inquiry



*and the fact that many older people will be reluctant to turn to police for help when the abuser is their lifelong partner, son or daughter.*

- (c) **Police Prosecutions** - *That victim statements be submitted as evidence in Court and that the older persons should be allowed the opportunity to decline to be cross examined in front of the defendant. This is a special consideration that recognises the vulnerability and pressure experienced by an older person when giving evidence of abuse in front of an abuser. It is challenging enough for an older person to express themselves, particularly, where they need time due to age, health issues or even mild cognitive impairment.*
- (d) **Use of AVOs** - *Add the criteria of Vulnerable Person (appropriately defined) to the class of people that the Police can make applications to protect. Parent and child are defined within the domestic class.*

Alzheimer's Australia NSW makes a powerful point about policing in relation to people with Alzheimer's disease or dementia:

*There are significant challenges for the NSW Police Force in responding to allegations of elder abuse, especially allegations of financial abuse of people with dementia.*

*Abuse of people with dementia is challenging for police to investigate and then prosecute because people with dementia may be viewed as unreliable witnesses due to their declining cognitive capacity. Also, in the case of financial abuse there may be very little physical evidence to mount a case of elder abuse. Investigation of an allegation of financial abuse requires a victim (or their representative) to report the abuse, make a statement, and be prepared to attend a court hearing. It is also difficult to investigate because the police need to apply to a magistrate for a warrant to access bank records and other documents. If a case does progress to judicial processes, it has to be proven beyond a reasonable doubt. This judgement is complicated by dementia and limitations to cognitive capacity.*

*In addition, police officers need a greater understanding of dementia and how to engage with people with a diagnosis. Alzheimer's Australia NSW understands that there is a lack of dementia training for the police force and suggest that this become a mandatory requirement of their training.<sup>10</sup>*

## **5. Identifying any constraints to elder abuse being reported and best practice strategies to address such constraints:**

There are a range of personal and systemic barriers specific to identifying and addressing elder abuse and ensuring older people are protected and have access to the help they require.

Personal barriers include the effects of ageism, the fact that the older person may not recognise what's happening to them as abuse, the reality that the perpetrator is most often a partner or close family member, issues of dependency and fear of reprisal.

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<sup>10</sup> Alzheimer's Australia NSW Submission to the Inquiry

Some older people may not have the capacity to speak out and seek help. Older people of culturally and linguistically diverse backgrounds (CALD) may experience language and cultural barriers to seeking help.

People with dementia may not have the capacity to recognise and report abuse and if they do they may not be believed.

Given that those who are most vulnerable to abuse may be marginalised and isolated for a variety of reasons, many victims may be unaware of available services and the range of possible remedies. For these reasons the abuse is also less likely to be identified by service providers, the police, etc. and appropriate action taken.

Systemic barriers include:

- Effects of ageism and the voice and experience of older people may be devalued by workers and agencies
- Services are not attuned to listening to older people
- Service providers may not be fully cognisant of the prevalence and nature of elder abuse
- Services may be unaware of elder law and also who, when and how to report elder abuse
- Services may not recognise elder abuse as abuse and therefore not see it as a crime
- Lack of appropriate and safe housing provides very few options for older people to leave the situation, particularly for older women escaping domestic violence
- Access to affordable legal advice and remedies
- Police lacking the skills and sensitivity to deal with older people appropriately
- Lack of understanding in the community of the role and functions of powers of attorney and older people's rights within this legal framework

**6. Identifying any strength based initiatives which empower older persons to better protect themselves from risks of abuse as they age:**

I refer to the SRS submission, pages 29 to 33 (see appendix 1). I support their recommendations with particular reference to financial abuse.

Alzheimer's Australia NSW has identified a number of strength based initiatives detailed in their submission, pages 5 to 6 (see appendix 2).

**7. The effectiveness of NSW laws, policies, services and strategies, including the 2014 Interagency Policy Preventing and Responding to Abuse of Older People, in safeguarding older persons from abuse:**

Again I note the SRS submission, page 34 (see appendix 3), and I support their recommendation.

I question the effectiveness of **2014 Interagency Policy Preventing and Responding to Abuse of Older People**. I have had discussions with service providers who were unaware of this policy. More needs to be done to educate service providers about this and other related policies if we are to bring about system change in the identification and response to elder abuse.

**8. The possible development of long-term systems and proactive measures to respond to the increasing numbers of older persons, including consideration of cultural diversity among older persons, so as to prevent abuse:**

Given elder abuse has only recently been brought to public attention; I believe there is much to be done in the area of community education.

Community education strategies to educate older people and their families, carers, guardians and attorneys on relevant legal provisions including powers of attorney must be implemented. The development of such strategies should be done through consultation with key stakeholders including older people, health, welfare and legal services. Particular attention needs to be given to the inclusion of community languages and addressing other cultural barriers.

Carer fatigue has been identified as a contributing factor where the older person has dementia. More funding is required for respite and other support services for people living with dementia, their carers and families.

In some instances attitudes and behaviours can be changed through awareness raising campaigns and Governments have an obligation to resource community awareness strategies. The inclusion of specific community languages is essential to assist people from CALD backgrounds to identify elder abuse and avenues for assistance and support.

Specific strategies are required to support older Aboriginal people. Given the role of Aboriginal elders and family members as kinship carers, culturally appropriate support programs must be available to help overcome barriers and ensure they receive the necessary support to address the intergenerational effects of colonialism and the Stolen Generations including elder abuse.

Training and awareness raising strategies targeting the workforce dealing with older people is also essential. Such training must include a focus on the effects of ageism, effective communication, knowledge of elder abuse and elder law including powers of attorney.

**9. The consideration of new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse:**

I note the SRS submission's recommendations for reform (page 38, appendix 4).

I believe that housing security is a critical issue for many vulnerable older Australians, particularly older women escaping domestic violence. From conversations with my local community housing provider I understand that they hold very little accommodation which is accessible by people with disabilities, including older people. I note that much of the single bed-room accommodation is of the 'bed-sit' variety and not always appropriate to older people. Unless the victim can be assured of safe and secure housing within a reasonable timeframe, they are unlikely to escape the abuse.

A greater investment in appropriate, accessible social housing is required to meet the needs of our growing older population who have never been in a position to buy into the housing market. I note that in the coming years this group will only continue to grow.

#### **10. Any other related matter.**

##### **Safe aged care environments:**

Maintaining quality in aged care service delivery is an over-riding principle in ensuring incidents of abuse are prevented, that the risks are identified, and all aged care organisations have the appropriate policies, processes and procedures in place to protect vulnerable older people. Part of ensuring quality is maintaining a skilled workforce including having Registered Nurses on duty 24 hours a day.

A robust, transparent, confidential and accessible aged care complaints system is essential to ensuring quality and safety. The role and availability of independent advocates to support and assist older people living in aged care facilities and to monitor care provision must be expanded to meet the needs of older people in care.

I support the recommendations of the Seniors' Rights Service (SRS) as follows:

*SRS recommends a robust and strong aged care complaints mechanism to address any shortcomings or deficiencies in aged care services and to continue to apply quality assessment of every accredited aged care home and home care provider service in New South Wales. This will aim to ensure a consistently high standard of care and services as well as skilled, qualified and capable staff in aged care homes and organisations in the community providing in-home care.*

*SRS recommends that the NSW Government improve upon and work with the Commonwealth to enhance the Commonwealth's existing National Aged Care Advocacy Program. Currently NSW has the largest population of older people, the greatest diversity of older people but the least resourced Advocacy Program.<sup>11</sup>*

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<sup>11</sup> Seniors' Rights Service Submission to the Inquiry.

## **References:**

### **Australian Institute of Family Studies Journal: Family Matters No. 37:**

Abuse and Neglect of Older People by Marianne James

<https://aifs.gov.au/publications/family-matters/issue-37/abuse-and-neglect-older-people>

Submissions\* to the Inquiry into Elder Abuse in New South Wales, Legislative Council  
General Purpose Standing Committee No. 2 from:

- Blue Mountains Coalitions Against Violence and Abuse
- Seniors' Rights Service (The Aged-care Rights Service Inc)
- Mental Health Carers ARAFMI NSW Inc
- NSW Elder Abuse Helpline and Resource Unit
- Women's Legal Services NSW
- Alzheimer's Australia NSW

\*Note: I have endeavoured to acknowledge all contributions whenever they appear in this submission. I apologise for any unintended omissions.