

Submission
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INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Organisation: Aged and Community Services NSW & ACT

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Aged & Community
Services NSW & ACT

**Legislative Council –
General Purpose Standing Committee
No. 2
Inquiry into elder abuse**

Submission

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ABOUT AGED AND COMMUNITY SERVICES NSW & ACT

Aged & Community Services NSW & ACT (ACS) is the leading peak organisation representing not-for-profit, church and charitable providers of services in retirement living, community aged care and residential aged care in NSW and the ACT.

ACS represents around 300 organisations, providing over 2,000 services to more than 100,000 people.

ACS members range in size from large multisite organisations to small rural and regional stand-alone providers.

ACS members are typically registered charities with not-for profit status, in recognition of the services provided to aged and frail people unable to afford fees and charges or unable to access any other form of support due to their levels of disadvantage. Not-for-profit organisations across NSW and the ACT provide around 65% of all aged care beds and around 89% of community packages.

The views expressed in this submission are those of our members, management and staff.

Submission

ACS is pleased to have the opportunity to provide input into this Inquiry into Elder Abuse.

Elder abuse is a term used to describe complex and multi-faceted issues which may cross criminal justice, health and social service sectors. Issues of elder abuse often get caught up with stereotypes of frail, dependant older people, but the reality can be very different.

Whilst there are many and differing definitions of elder abuse, ACS supports the concept of elder abuse as occurring within a relationship of trust, differentiating this from crimes against older people by strangers ie. "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". Elder abuse can take various forms such as physical, psychological or emotional, sexual and financial abuse. It can also be the result of intentional or unintentional neglect¹.

Whilst some responses may help to tackle both (such as community awareness and work done to counter stereotypes of ageing), there exists criminal responses to the latter, whilst the former requires a much more nuanced and complex network of responses.

The growing ageing population, and the increasing numbers of older people with complex support needs who are living at home for longer, provides an environment where older people may be increasingly dependent on informal or formal care, or who may be isolated. Ensuring there are sufficient, available and affordable supports is an important piece of the puzzle to preventing and responding to abuse.

With the move to more choice and control for older people within Commonwealth aged care programs such as Home Care Packages, an unintended consequence may offer increased opportunity for family members, acting as the older person's representative, to exclude

service providers from oversight of aspects of the older person's care, thus removing protections that previously existed.

The true prevalence of elder abuse is unclear. Australian studies estimate abuse is experienced by 2-6 % of older peopleⁱⁱ whilst some international studies report that 7.6%–10% of study participants experienced abuse in the prior year^{iii iv}.

A lack of general awareness of the issue of elder abuse, coupled with a lack of funding for robust research and data collection, hampers our understanding of the scope of the issue and limits our ability to form evidence based responses.

What the research is clear about is that most perpetrators of abuse are relatives. Both Australian and international studies report that 90 per cent of alleged perpetrators of elder abuse are related to the older person, or in a de facto relationship^{v vi}.

Approaches to elder abuse need to be based on an empowering approach, respecting the older person's autonomy, right and ability to make decisions for themselves. It is important that paternalistic and stereotypical views of older people as being frail, dependant and cognitively impaired do not hijack the agenda, treating elder abuse in the same way as child abuse, but rather recognise its greater similarities with other forms of family or domestic violence.

A number of protections already exist, such as through the NSW Civil and Administrative Tribunal (NCAT) Guardianship Division, to assist people with a decision making disability who are incapable of making their own decisions and who may require a legally appointed substitute decision maker. However, it is essential that the investigation and hearing process be able to respond in a timely manner. Our members have reported significant delays in some matters getting to hearing even when there are significant concerns about financial abuse occurring. This can mean that an older person's finances can be eroded further during the delay.

Timely responses are also needed by the Police who may be called on by aged care providers to investigate suspected abuse by staff. Some providers have reported significant delays in follow up by Police which have resulted in staff moving from one employer to another before a matter has been finalised.

Aged care providers are always keen to make informed recruitment decisions to ensure they have appropriate staff. The Commonwealth Government requires a Criminal Record Check to be undertaken for staff or volunteers working unsupervised with older people, as part of their funding requirements. However, providers are aware that the Criminal Record Check only provides part of the picture and also rely on reference checks as part of their recruitment process. A working with older person / working with vulnerable person check has been proposed by some to supplement the Criminal Record Check – similar to the Working with Children Check and overseas models such as the Disclosure and Barring Service in the UK (<https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>). Whilst ACS appreciates the intent behind such ideas, it is cautious about introducing another administrative process unless there is clear evidence from an ageing / aged care sector

perspective that demonstrates such a check provides additional protection for older people and employers without infringing on the rights of employees.

Strategies which tackle perceptions about ageing, and address ageism within our society are important aspects of any comprehensive policy which aims to prevent and respond to elder abuse.

It is important that any responses developed are evidence based. Any discussion of elder abuse brings with it discussion of mandatory reporting. ACS does not support mandatory reporting in the community on the basis that 90 per cent of alleged perpetrators of elder abuse are related to the older person^{vii viii}, and older people are adults who should be allowed (and empowered) to make decisions for themselves (unless they have been found to require the support of a substitute decision maker). It is important not to take away the right of the older person to make their own decision thus further disempowering them at a time when they may already be feeling vulnerable. Mandatory reporting can also lead to older people not seeking help for fear of a report being made whether they want it to be or not and may result in punitive consequences for an older person who may end up in residential aged care following reporting or other losses of autonomy^{ix}. Mandatory reporting has been referred to as an ageist response, treating victims differently simply by virtue of their age^x. However, ACS recognises that the consideration of mandatory reporting is well-meant, helps put the issue on the social agenda and provides clear procedures to be followed when abuse is identified^{xi}. ACS considers that these are important outcomes but ones that can equally be achieved in other ways. ACS supports the view expressed in the Interagency Policy *Preventing and Responding to Abuse of Older People* that 'all workers employed in NSW agencies, whether government or non-government, have a responsibility to respond to abuse of older people in our community'^{xii}. ACS would extend this to include all providers of aged care and agrees that 'frontline workers will often be the first to recognise or suspect abuse of an older person. Agencies should ensure that their policies and guidelines protect and support their workers dealing with abuse'^{xiii}.

The issue of elder abuse has been raised, and various work done over the past 20 years, but in NSW there has not been a sustained focus on elder abuse meaning there has been little progress in dealing with the issues, and there is a sense of 'starting again' rather than building on the work of the past.

The 2014 Interagency Policy *Preventing and Responding to Abuse of Older People* is a good case in point. This is a useful resource which was developed but not immediately released. There was little promotion or publicity of the Policy so it has had limited impact. The NSW Government first released an Interagency Protocol back in the 1990s, which was revised in 2007 but in the intervening years, the issue fell off the Government's agenda meaning any gains made were lost and we are back to the beginning.

The NSW Government, as part of its NSW Ageing Strategy, launched the NSW Elder Abuse Helpline and Resource Unit in 2013. This was a positive step and early reports showed high

levels of satisfaction from users of the Helpline. More recently however there appears to have been high staff turnover and engagement with the sector had dropped off considerably. ACS is pleased to see that a new website has recently been developed and new training sessions announced. It is hoped such developments continue into the future.

Conclusion

There is a need for sustained attention by the NSW Government, to ensure the gains made from this Inquiry are built upon going forward.

There is a need for a National approach to elder abuse, building on and consolidating the work being done in the States and Territories.

There is a need for robust research and data collection to be funded, to provide the evidence needed to establish workable and sustainable responses into the future.

Raising community awareness of the issue of abuse and tackling ageism will help create an environment which will discourage elder abuse.

Providing avenues for older people to have a voice and be given access to information will be essential in taking this issue forward.

There needs to be viable options for older people to provide them with real options when they seek to leave an abusive situation, or to support and empower them to remain safely when that is their choice.

Illana Halliday
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ⁱ www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf

ⁱⁱ Cooper, Selwood & Lixingstone, 2008; Kurrle & Naughtin, 2008

ⁱⁱⁱ Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University. & New York City Department for the Aging. (2011) Under the Radar: New York State Elder Abuse Prevalence Study. New York:

^{iv} Acierno R, Hernandez MA, Amstadter AB, Resnick HS, Steve K, Muzzy W, et al. (2010). Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The national elder mistreatment study. *American Journal of Public Health*, 100(2), 292-297

^v Administration on Aging, National Center on Elder Abuse; MetLife Mature Market Institute, Broken Trust, Elders, Families and Finances, March 2009. OWL, Elder Abuse: A Woman's Issue, March 2009. revised 03/30/10

^{vi} Profile of elder abuse in Victoria Analysis of data about people seeking help from Seniors Rights Victoria Summary Report. June 2015 National Ageing Research Institute in partnership with Seniors Rights Victoria

^{vii} Administration on Aging, National Center on Elder Abuse; MetLife Mature Market Institute, Broken Trust, Elders, Families and Finances, March 2009. OWL, Elder Abuse: A Woman's Issue, March 2009. revised 03/30/10

^{viii} Profile of elder abuse in Victoria Analysis of data about people seeking help from Seniors Rights Victoria Summary Report. June 2015 National Ageing Research Institute in partnership with Seniors Rights Victoria

^{ix} Mandatory Reporting of Abuse of Older People: Advisory Committee on Abuse of Older People. 1997

^x Faulkner, L. "Mandating the Reporting of Suspected Cases of Elder Abuse: An Inappropriate, Ineffective and Ageist Response to the Abuse of Older Adults," *Family Law Quarterly*, Vol. XVI, No. 1, 69 – 91 (1982).

^{xi} Mandatory Reporting of Abuse of Older People: Advisory Committee on Abuse of Older People. 1997

^{xii} NSW interagency policy - Preventing and responding to abuse of older people, NSW Family & Community Services, 2014

^{xiii} NSW interagency policy - Preventing and responding to abuse of older people, NSW Family & Community Services, 2014