

INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Organisation: Office of the Public Advocate

Date received: 15/10/2015



Office of the Public Advocate

The Director
General Purpose Standing Committee No. 2
Legislative Council
Parliament of NSW
Parliament House
Macquarie Street
Sydney NSW 2000

15 October 2015

Dear Sir/Madam,

Submission from OPA (Victoria) to the Inquiry into Elder Abuse

I write to make a submission, by way of this letter and two enclosed documents, to your Committee's inquiry into elder abuse.

I am Director of Strategy at Victoria's Office of the Public Advocate (OPA). OPA is Victoria's adult guardian of last resort, and we have a range of other statutory duties relating to our core roles of protecting and promoting the rights of people with disability. Among our services we are host of five volunteer programs that utilise the skill and experience of around 900 volunteers.

A significant amount of OPA's work directly or indirectly concerns the topic of elder abuse. It is worth noting that over half of our guardianship clients are 65 years of age or older, and dementia is the biggest category of disability among our guardianship clients, affecting around one-third of the people for whom OPA is guardian. OPA is also the lead educator on the topic of powers of attorney (which, as the Committee would know, can both prevent and, if improperly used, can facilitate elder abuse).

By way of background I am on the Victorian Department of Health and Human Services' state-wide Elder Abuse Prevention and Response Advisory Group. I also serve on Seniors Rights Victoria's Council. I emphasise that this submission is written from the perspective of, and contains the views of, OPA.

I wish in this submission to draw your attention to six matters that I believe are germane to your inquiry and may assist you in this important endeavour.

1. Article in *Australian Social Work*

This year I published an article in the journal *Australian Social Work* that examines recent and current elder abuse response strategies in force throughout Australia, including in New South Wales, and I identify a number of shortcomings in these policies and guidelines. In particular, I argue the policies and guidelines need to do more to prioritise the wishes and well-being of the person in question; identify and empower lead agencies; and drive collaborative responses. A copy of this article, entitled 'Taking control: Putting older people at the centre of elder abuse response strategies', is enclosed.



2. Churchill Fellowship

In 2013 I was fortunate to travel on a Churchill Fellowship to north America and the United Kingdom to explore a range of different adult protection systems. The outcomes of my research have had particular relevance to the topic of elder abuse, particularly the topic of elder financial abuse, which is widely considered to be the most prevalent form of elder abuse. One of the six recommendations I make in the report concerns learning from the impressive approach to financial abuse that is in action in Seattle. I enclose with this submission a copy of my Churchill Fellowship report, 'Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults' (this is also available on the Churchill Trust and Office of the Public Advocate websites, at <https://www.churchilltrust.com.au/> and <http://www.publicadvocate.vic.gov.au/advocacy-research/abuse-neglect-and-exploitation>).

3. New Powers of Attorney Act in Victoria

As members of the Committee will know, enduring powers of attorney are both a means of preventing elder abuse and a possible instrument of elder abuse. It is worth drawing to the Committee's attention the fact that Victoria's new *Powers of Attorney Act 2014* came into force on 1 September 2015, and it contains a number of elements designed to make enduring powers of attorney less likely to be instruments of abuse. Among these measures are:

- a range of new offences contained in Part 9 (including dishonestly obtaining or using an enduring power of attorney);
- clear articulation of the duties of attorneys (Part 6, Division 1);
- an enhanced power of the Victorian Civil and Administrative Tribunal to order compensation for acts of attorneys (section 77); and
- elevated witnessing requirements (section 35).

OPA is Victoria's lead educator on powers of attorney, and new online forms are hosted on our website. The revised publication *Take Control*, which is the lead publication on powers of attorney in Victoria, is available on our website (www.publicadvocate.vic.gov.au).

4. Victoria's Royal Commission into Family Violence

Members of the Committee will be aware that Victoria is currently conducting a Royal Commission into Family Violence. While this Commission is examining matters that extend beyond elder abuse, a number of submissions to the Commission have focused on elder abuse. This has been the case certainly with the submission and oral evidence from Seniors Rights Victoria, and I also gave oral evidence to the Commission which discussed elder abuse. It is worth noting that elder abuse, including financial abuse, is almost always a form of family violence (the legislative definition of 'family violence' in Victoria includes economic abuse). It is expected that this Commission will make a series of recommendations that will improve Victoria's ability to prevent and respond to elder abuse, and the work and recommendations of the Commission will, I am sure, be of interest to your inquiry.



5. OPA research on elder abuse among guardianship clients

One of my staff members is currently conducting a review of the extent of elder abuse among OPA's guardianship clients. This research is not yet complete, but preliminary information suggests that elder abuse affects a significant minority of older guardianship clients. This research will be presented next year at the national elder abuse conference discussed below.

6. National elder abuse conference in Melbourne February 2016

On this point, I want to draw to the Committee's attention (if it is not already aware) that the 4th National Elder Abuse Conference is taking place in Melbourne from 24th to 25th of February 2016, and I expect members would be interested in a number of the presentations being made at that forum. I am a member of the organising committee for that conference, and the program can be obtained from the conference website (<http://elderabuseconference.org.au/program/>).

I hope this information is helpful. I would be very happy to elaborate further on any of the matters covered in this submission, including by giving oral evidence before the Committee if that would be of assistance.

Yours sincerely,

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Director of Strategy

Enclosures: Churchill Fellowship report and *Australian Social Work* article

Taking Control: Putting Older People at the Centre of Elder Abuse Response Strategies

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Abstract

Elder abuse is acknowledged to be a significant social problem in Australia, but Australia's elder abuse responses have significant limitations. These responses, as evidenced by state and territory elder abuse strategies, voice important principles and typically seek to improve the knowledge of service providers, potential victims, and the general public about elder abuse. But they tend only to identify and draw upon existing service and community care responses in their attempts to address elder abuse. This article provides a policy analysis of existing elder abuse response strategies and argues that reforms are needed to ensure that the strategies: prioritise the wishes and wellbeing of the person in question; identify and empower lead agencies; and drive collaborative responses.

Keywords: Elder Abuse; Aged; Justice

Elder abuse is defined by the World Health Organization (2008, p. 1) 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." This includes physical, financial, and psychological forms of abuse and neglect. Elder abuse, which will often but not always constitute a crime, can be perpetrated by a family member, a friend, or a service provider. While definitions of elder abuse do vary, they include at their core the notion of a breach of trust, which can make problematic and debatable their application to professional service providers. There has been no detailed study of prevalence rates in Australia, but rough Australian estimates of the size of this problem suggest "that elder abuse affects between 0.5 per cent to five per cent of people aged over 65 in any year" (see Lowndes, Darzins, Wainer, Owada, & Mihaljcic, 2009, p. 11; Wainer, Darzins, & Owada, 2010).

Elder abuse is also a problem of international significance, though the specific size of this problem is not clear. Studies point to divergent prevalence rates of elder abuse throughout the world, something that, in part at least, is the result of definitional and methodological inconsistency (see WHO, 2002; WHO, 2008). Elder abuse rates

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Accepted 9 June 2015

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will almost certainly go up in Australia because of demographic changes as well as likely increased reportage rates. Elder abuse is said to be a “common” experience for people with dementia (though again prevalence estimates for this cohort of people vary widely: Dong, Chen, & Simon, 2014, pp. 643, 647), and significant cognitive decline is common among a growing number of older Australians (Australian Institute of Health and Welfare, 2012).

This article examines current Australian elder abuse response strategies, which are typically found at the state and territory level. It is worth noting that there have been a number of recent reform suggestions for this broad area, ranging from calls for the enactment of broad adult protection legislation (Lacey, 2014; Office of the Public Advocate (South Australia) & Human Rights and Security Research and Innovation Cluster, University of South Australia, 2011) to proposed reforms to guardianship and related laws and practices (Alzheimer’s Australia, 2014; Australian Law Reform Commission, 2014; Chesterman, 2013a; House of Representatives Standing Committee on Legal and Constitutional Affairs, 2007; Queensland Law Reform Commission, 2010; Victorian Law Reform Commission, 2012).

The policies reviewed for this article (identified through Lacey, 2014, p. 127, then updated) were:

- *Australian Capital Territory*: “ACT elder abuse prevention program policy,” ACT Government, 2012 (hereafter ACT, 2012)
- *New South Wales*: “Interagency protocol for responding to abuse of older people,” NSW Government, 2007 (NSW, 2007)
- *South Australia*: “Strategy to safeguard the rights of older South Australians 2014–2021,” SA Government, 2014 (SA, 2014)
- *Tasmania*: “Responding to elder abuse: Tasmanian government practice guidelines for government and non-government employees,” Tasmanian Government, 2012 (Tas., 2012)
- *Victoria*: “Elder abuse prevention and response guidelines for action 2012–14,” Victorian Department of Health, 2012 (Vic., 2012)
- *Western Australia*: “Elder abuse protocol: Guidelines for action,” Alliance for the Prevention of Elder Abuse, 2013 (APEA, 2013)

While Queensland does not have a publicly-available elder abuse strategy, it is worth noting that the Queensland Government (2015a) has an elder abuse website that, among other things, lists definitions and referral agencies, and there exists a state-funded Elder Abuse Prevention Unit (2015) that is run by UnitingCare. Queensland also has the Seniors’ Legal and Support Service, a rights-based response service.

The reviewed strategies vary considerably in length and scope, with some jurisdictions, such as New South Wales and Tasmania, producing detailed protocols or practice guidelines (Tasmania’s “practice guidelines” run to 106 pages), whereas other jurisdictions, such as Victoria, have developed high-level guideline documents aimed at encouraging sector collaboration and coordination (although Victoria has earlier practice guidelines, Victorian Government, 2009). The focus of this article is

on elder abuse responses, and it is important to note that preventative measures are equally important in this field. Most of the reviewed strategies document detailed preventive strategies and programs, but I only briefly discuss these in the sections below. Another preliminary and general point to make is that elder abuse is often also an instance of *family violence*, depending on the way that latter term is defined. In Victoria, for instance, where a Royal Commission into Family Violence is underway, family violence is defined to include physical, psychological, and financial abuse of a *family member*, and “family member” is itself defined broadly defined (*Family Violence Protection Act 2008*, sections 5, 8). While a number of the strategies discuss linkages between elder abuse and family or domestic violence (e.g., NSW, 2007; Tas., 2012; Vic., 2012) there remains significant scope for more integration between the two fields.

Current Strategies and their Limitations

Australia’s elder abuse response strategies might be summarised as identifying relevant agencies that have a role to play in responding to instances of abuse, and in some cases they outline useful procedural information. But these strategies, and the existing service responses to which they refer, have four significant limitations.

An Undue Focus on the Vulnerability of Victims

Australian elder abuse policies routinely discuss *empowerment* or the right to *self-determination*, and they incorporate community education initiatives as a key strategic goal (see ACT, 2012; APEA, 2013; NSW, 2007; SA, 2014; Tas., 2012; Vic., 2012). The strategies also routinely point to measures older people can undertake to appoint representatives should they lose the ability to make their own decisions (e.g. ACT, 2012; NSW, 2007; Tas., 2012; Vic., 2012). It is worth noting too that many of the strategies also point to enduring powers of attorney as significant potential vehicles of abuse, particularly financial abuse (ACT, 2012; APEA, 2013; NSW, 2007; SA, 2014; Tas., 2012; see further, Stewart, 2012; Victorian Parliament Law Reform Committee, 2010).

When it comes to responses to elder abuse, the strategies seem to focus unduly on vulnerability. In part this may be a result of the complex causes of elder abuse (which can range from carer stress to revenge taken by adult children against parents, and can also involve simple opportunity). Indeed the focus on vulnerability is a criticism that can be levelled at the name, and indicative focus, of the “elder abuse” policy realm, which by definition is directed at current and potential victims, rather than perpetrators or even settings in which abuse commonly occurs.

One standard response in all jurisdictions when the elder abuse victim has significant cognitive decline is the removal of decision-making authority from the victim and the appointment of a substitute decision maker. This usually involves a guardianship application to a state or territory tribunal and the appointment of someone to manage

the person's finances or the appointment of a guardian (to make significant accommodation, medical treatment, and access to services decisions) or both. Guardianship applications are discussed in most of the strategies (e.g., ACT, 2012; APEA, 2013; NSW, 2007; Tas., 2012). A number of factors render guardianship a problematic response to elder abuse. Key among these is that guardianship is a future protective response that focuses on the victim. It does not deal with past wrongdoing (Chesterman, 2013b).

Rather than focusing on the victim's vulnerability, elder abuse response strategies could be improved by prioritising what service responses, if any, the person wants, even when the person has a significant cognitive impairment. The Tasmanian strategy (2012, p. 34) leads well on this topic by asking, as one of its key service response questions, "Does the older person want the intervention or assistance?" This is certainly the right starting point. However, shortly after the strategy states that "If an older person lacks capacity to make decisions, an application may be made ... for the appointment of a substitute decision maker" (p. 34).

The point needs to be made here that even where victims of elder abuse do have a cognitive impairment, their wishes should still be a priority. This can cause obvious professional challenges, especially when a person is unable to express either a consistent viewpoint, or a viewpoint at all. However, useful instruction comes from a recent report by the Australian Law Reform Commission (2014, p. 77), which recommended the adoption of a "will, preferences and rights" approach in assisting people who need support with decision making.

The response strategies could also be improved by making it clearer that crimes should always be treated as such, with victims encouraged to report matters to police. While victims who choose not to report a crime to police should have that wish respected (as it is for others in the community) where they have freely and with insight made that decision (see OPA, 2013), the strategies could state more clearly that other evidence of criminal behaviour should still routinely be reported to police.

Service Specialisation and Skill Acquisition is Missing

Elder abuse can consist of crimes and other wrongs that can be particularly hard to identify. This can be because elder abuse often occurs within relationships where the opportunity exists both for subtle and unsubtle coercion, and where evidence is often missing or is easily hidden. This means that elder abuse strategies need to generate drive for service improvement and the gaining of expertise by service professionals in order to tackle these inherent difficulties (and such reform will need to apply both to generalist services, for instance health services, as well as to specific crime and safety response services). Currently the strategies are limited in this regard.

There are certainly interesting developments occurring at the local level. For instance, at St Vincent's Hospital in Melbourne an innovative program (O'Brien, Collins, Lethborg, & Posenelli, 2014) is identifying ways to improve the ability of

clinical and support staff to identify and respond to elder abuse. This has involved surveying staff, development of a new “model of care,” and the production of resources for staff training in the hospital.

The reviewed elder abuse strategies neither drive nor plan for this kind of development. But they could. There are two key and discrete areas where service specialisation should be significantly improved. When it comes to neglect and physical violence, improvements in elder abuse responses could draw from family violence initiatives. The Council of Australian Governments’ *National Plan to Reduce Violence Against Women and Their Children* (2010) incorporated specific service development initiatives that in some cases could be specifically referenced and drawn upon in elder abuse strategies. Providing direct reference to family violence service development strategies would be a simple yet important development for elder abuse strategies.

Meanwhile, the area of financial exploitation requires particular expertise that doesn’t necessarily exist elsewhere; this is certainly not an area of family violence priority. Again, there are some interesting developments occurring that are not mentioned in, nor driven by, existing elder abuse strategies. Recognising that there is room for Australian banks to develop better protective and reactive responses to vulnerable people’s exposure to financial risk, the Australian Bankers Association is supporting the development by Capacity Australia of an online “assessment tool” to determine whether a person is at risk of financial abuse (Collier, 2015; Gardiner, Byrne, Mitchell, & Pachana, 2015). While this is an important development, greater service response expertise is also needed, and examples exist elsewhere in relation to the policing of elder financial abuse from which Australia could draw (e.g., Chesterman, 2013a, examines Seattle’s improved policing of financial abuse). Incorporating and driving this kind of service innovation could be an important role played by elder abuse response strategies.

Collaboration is Lauded but not Driven

The reviewed strategies routinely refer to the need for collaborative responses and frameworks to exist in order for elder abuse responses to be optimal. For example, Tasmania’s policy (2012, p. 27) seeks to integrate “a response to abuse within existing service coordination frameworks”—an approach that is mirrored in other reviewed policies. Victoria’s strategy (2012, p. 15) seeks “coordinated multi-agency support”, while the New South Wales strategy (2007, p. 30) notes that “Interagency coordination is crucial” (see also APEA, 2013). Tasmania’s strategy (2012, p. 43) goes so far as to ask as one of its key service response questions: “When is an agreed coordinated service plan between multiple agencies necessary?”

While the broad goal of collaboration is clearly expressed, the strategies tend not to identify a mechanism by which service coordination is encouraged, developed, and, importantly, sustained. Again, there is some excellent work being conducted at the local level that elder abuse strategies could more actively drive, test, and seek to roll out more broadly where such initiatives prove successful. For instance, to draw

again on Victoria where my knowledge is strongest, in the eastern suburbs of Melbourne the Eastern Community Legal Centre (ECLC) has produced its own “Elder Abuse Toolkit” (ECLC, 2013), and it hosts the Eastern Elder Abuse Network (ECLC, 2015), which provides information and contact points for professionals working in that geographical area. Another excellent initiative has been the establishment of a partnership between a large Victorian community health organisation, Cohealth, and a public interest law organisation, Justice Connect (Legal Services Board, 2014). This initiative sees lawyers placed at a community health centre to enable easy elder abuse cross referrals.

In the family violence field the idea of “integrated family violence responses” are now routine. Victoria, for instance, has cross-disciplinary regional committees that meet regularly to collaborate on family violence service responses and service development. This is similar in some ways to the “adult protection committees” that exist in Scotland, which meet routinely at local authority level to discuss local service provision to at-risk adults (Chesterman, 2013a). Elder abuse response strategies could easily draw from these examples and provide a framework for regular service collaboration that incorporates where necessary (rather than replicates) family violence developments. The strategies could also ensure collaboration on matters that particularly appear to affect older people, such as financial abuse.

Leadership is Unclear

It almost goes without saying that the reviewed elder abuse strategies either nominate or imply that the lead response agencies in relation to elder abuse are either police services where crime is involved, or health services where medical treatment is needed (and, of course, both can sometimes be involved). However, the strategies do not establish processes for identifying lead agencies when elder abuse is suspected but when there is neither an obvious medical emergency, nor a crime that police are willing and able to investigate. Instead, the strategies typically identify existing responsibilities of service providers and state and territory instrumentalities. A default leadership role will often fall to the local Aged Care Assessment Team, which can coordinate the provision of in-home care for the person, or the person’s relocation to residential aged care where that is warranted.

The New South Wales strategy does stand out for acknowledging that “The lead agency role will vary according to the nature of the abuse and the level of independence or health status of the older person who has experienced abuse” (2007, p. 20). It then lists a number of possible lead agencies including: police, health services, Aged Care Assessment Teams and Services, sexual assault and mental health service providers, and the state’s Guardianship Tribunal. Tasmania’s strategy (2012) also engages directly with this point. Some states (NSW government, 2015; Queensland government, 2015b; WA government, 2015) have an elder abuse helpline, though this tends only in effect to be a referral system.

Some jurisdictions have created significant "rights" agencies. In Victoria, for instance, there is Seniors Rights Victoria, which provides advice, education, advocacy, and casework services, and which has produced a range of important materials on elder abuse, including an "Online Elder Abuse Toolkit" (SRV, 2015), and a lawyers' guide concerning elder financial abuse (2012). There are other discrete agencies, such as Elder Rights Advocacy, which advocates for Victorians who are in receipt of aged care services. Other states have rights agencies such as The Aged Rights Service in New South Wales, the Aged Rights Advocacy Service in South Australia, Advocare in Western Australia, and the Seniors' Legal and Support Service in Queensland. Although these agencies have significant roles to play they are not empowered, or resourced, to coordinate and lead individual service responses.

The strategies could more clearly articulate the processes and expectations under which lead agency roles can be identified (where obvious leadership roles do not already exist). The best way to address this leadership deficit, and at the same time promote leadership in the sector more generally, would be for specific stand-alone elder abuse prevention and response units to be created within key state and territory government departments (these units have existed in some jurisdictions in the past, with variations on this title). While they could be based in departments that have carriage of policies most relevant to seniors and ageing, it would be important that they have cross-departmental links, particularly in the health and justice fields. It would also be important that they have sufficient operational independence to be able to identify service failure by government and nongovernment service providers.

The units could have a range of functions. They could be responsible for developing and monitoring service response principles and practices. They could ensure greater service coordination by taking responsibility for establishing regular operational engagement with, and between, key service providers and agencies in the criminal justice, health, guardianship, and aged care sectors. The units could also collaborate closely with, rather than seek to replicate, existing family violence initiatives. At a broader level such units could oversee the development of more ambitious elder abuse strategies. And they could ensure, and report on, the delivery of the identified goals in such revamped strategies.

Conclusion

Australia's elder abuse strategies are in need of significant reform if they are to ensure that older Australians are receiving coordinated and expert responses that place the wellbeing and wishes of the older person at the centre. Although significant developments are occurring at the local level, there is a need for meaningful strategies to be developed that drive service improvement and coordination. On this score, current family violence strategies provide a starting point for elder abuse response improvements. This ought not to be surprising since elder abuse is often also a form of family violence.

Acknowledgements

I want to thank the Winston Churchill Memorial Trust of Australia for affording me the opportunity to conduct the research listed below as Chesterman (2013a). I also wish to thank the people with whom I have had discussions about elder abuse, including Jenny Blakey, Gary Ferguson, Sue Hendy, Colleen Pearce, Phil Grano, Hannah Jones, Barbara Mountjouris, Gerard Mansour, and members of the Australian Guardianship and Administration Council. I represent the Office of the Public Advocate on the Victorian Elder Abuse Prevention and Response Advisory Group, which advised the Victorian government about the development and implementation of the *Elder abuse prevention and response guidelines for action 2012–14*. I am also a member of the Seniors Rights Victoria Council. The views expressed in this article are representative of the views of the Office of the Public Advocate, though these views are not necessarily shared by other members of the advisory group, the council, or the individuals named above.

Funding

This work draws on and extends some of the arguments I made in my Churchill Fellowship report (2013a), which examined adult protection practices in Victoria and a range of overseas jurisdictions.

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