

**Submission
No 35**

INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Organisation: Alzheimer's Australia NSW

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NSW Legislative Council
GENERAL PURPOSE STANDING
COMMITTEE NO. 2

Inquiry into elder abuse

**Submission from Alzheimer's Australia
NSW**

Alzheimer's Australia NSW is the peak body for people with dementia and their carers in NSW. We provide advocacy, support services, education and information. Our organisational mission is to minimise the incidence and impact of dementia through leadership, innovation and partnerships - in advocacy, policy, education, services and research.

Dementia describes the symptoms of a large group of illnesses that cause a progressive decline in a person's functioning including loss of memory, intellect, rationality, social skills and physical functioning. Dementia is the single greatest cause of disability in Australians over the age of 65 years and the third leading cause of disability burden overallⁱ.

There are currently 342,000 Australians living with dementia and, without a significant medical breakthrough, it is projected that this number will rise to almost 900,000 by 2050ⁱⁱ. In NSW there is estimated to be almost 112,000 people living with dementia, with this number to reach 272,000 by 2050ⁱⁱⁱ.

Elder abuse is a significant concern for Alzheimer's Australia NSW as people with dementia are more vulnerable and at an increased risk of abuse due to declining cognitive capacity as their disease progresses. We welcome this inquiry into elder abuse in NSW and appreciate the opportunity to comment.

The primary focus of our submission is financial abuse of people with dementia, based on the findings and recommendations from our 2014 discussion paper *Preventing Financial Abuse of People with Dementia*, available at <https://fightdementia.org.au/sites/default/files/20140618-NSW-Pub-DiscussionPaperFinancialAbuse.pdf>

Please contact General Manager of Policy, Research and Information at Alzheimer's Australia NSW for further information, comment or feedback on this submission.

Yours Sincerely,
The Hon. John Watkins AM
CEO, Alzheimer's Australia NSW

1. The prevalence of abuse (including but not limited to financial abuse, physical abuse, sexual abuse, psychological abuse and neglect) experienced by persons aged 50 years or older in New South Wales.

The prevalence of elder abuse is difficult to estimate because abuse is often not reported, and, in instances where allegations of abuse are reported the data is not collected or collated by key agencies. Research by Monash University for the Victorian State Trustees suggests that between 5 and 10 per cent of older people experience financial abuse^{iv}. Further work is required to accurately determine the prevalence of all forms of elder abuse in NSW.

People with dementia are more vulnerable and at an increased risk of abuse due to declining cognitive capacity as their disease progresses and we believe the rate would be higher in the population with dementia.

2. The most common forms of abuse experienced by older persons and the most common relationships or settings in which abuse occurs.

International and Australian research, as well as available statistics from the NSW Elder Abuse Helpline and Resource Unit (EAHRU) indicate that psychological/emotional abuse is the most common form of elder abuse and often underpins the perpetration of other forms of abuse, including financial abuse and neglect. Financial abuse is the second most common form of elder abuse. Elder abuse often encompasses two or more co-occurring forms of abuse. Financial abuse of people with dementia is most often perpetrated by people in a relationship of trust with the victim, often their children.

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.

The government and community support services currently available to victims of elder abuse in NSW include:

- EAHRU which can only provide advice and referrals; they cannot investigate allegations of abuse or rectify the situation for victims.
- The Aged Care Rights Service (TARS) soon to be Seniors Rights NSW which also can only provide advice.
- The Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) which has the authority to appoint a financial manager and/or guardian where there are allegations of elder abuse. However, they cannot investigate reports of abuse or recover stolen money or assets.
- Community legal services are available however we are not sure how well equipped they are to respond to allegations of elder abuse.

- The NSW Police Force can respond to allegations of elder abuse. One of the challenges with financial abuse is that an illegal act is not always committed (although it is immoral), for example misuse of a Power of Attorney. Other challenges for police are outlined in response to Question 4 below.

Alzheimer's Australia NSW concludes that although support services are available, they are limited in their capacity to resolve the issue satisfactorily.

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

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.

Alzheimer's Australia NSW recommends that more *Vulnerable Communities Officer* positions be established in NSW Police local area commands to respond to allegations of elder abuse. The role of a Vulnerable Communities Officer is to support vulnerable people including: people from Culturally and Linguistically Diverse (CALD) backgrounds, people with disabilities, and older people including people with dementia and other cognitive impairments.

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.

Alzheimer's Australia NSW would also argue that the inadequacy of powers to respond exacerbates a situation where the fear of consequences and repercussions for perpetrators is significantly outweighed by the perceived power over and benefits attained from abusing older citizens.

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

The number of cases of elder abuse that are unreported is likely to be high due to:

- feelings of stigma, shame and embarrassment experienced by victims
- abuse often remains hidden within families
- victims are often in a relationship of dependence with the perpetrator and fear repercussions if they report abuse
- people with dementia may have diminished capacity to recall the abuse

There is confusion at all levels in the community about who to report abuse to, then confusion about who will act and on what grounds. There is also a community perception that if a person is financially abused, then the State will redress the issue through return of property and/or criminal sentences for perpetrators. However this is not necessarily true in cases of elder financial abuse.

Alzheimer's Australia NSW has identified the following strategies to address the above constraints to elder abuse being reported:

- The *NSW Interagency Policy Preventing and Responding to Abuse of Older People* - in the absence of anything else, this is best strategy to encourage the reporting of elder abuse. This Policy is inadequate in itself though (see response to 7 for further detail).
- The marketing material released by the EAHRU has thus far promoted the message the elder abuse is unacceptable and should be reported. The slogan of 'anyone can make the call' is also helpful in relaying the message that addressing elder abuse is a community responsibility.
- The South Australian Department of Health's recently launched *Stop Elder Abuse* campaign also appears to be a useful strategy for encouraging the reporting of elder abuse.

It is difficult to say with certainty that these are 'best practice' strategies due to the lack of evaluation of programs and initiatives.

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

Alzheimer's Australia NSW has identified the following strength based initiatives which aim to empower older people to better protect themselves from the risk of abuse:

- The NSW Government *Planning Ahead Tools* and *Get it in Black and White* campaign have been successful in reaching a broad audience and encouraging the uptake of planning ahead instruments such as Wills and Powers of Attorney.

- The *Start2Talk* website developed through an Alzheimer's Australia *National Quality Dementia Care Initiative* grant provides information about how individuals can plan ahead. The underlying philosophy of this initiative is encouraging open communication amongst family members and trusted others so that conversations are had about wishes for the future. See website at <http://start2talk.org.au/>
- The EAHRU is a strength-based initiative which empowers older people to protect themselves, underpinned by the philosophy that elder abuse is unacceptable.
- Alzheimer's Australia NSW developed a national financial abuse Q&A sheet which outlines actions that individuals can take to prevent abuse and protect themselves and family members. This resource is available at https://fightdementia.org.au/sites/default/files/helpsheets/Helpsheet-DementiaQandA22-PreventingFinancialAbuseofPeoplewithdementia_english.pdf

Currently, the best way to safeguard oneself against financial abuse in NSW is to plan head and appoint a trusted individual to act as your attorney through an Enduring Power of Attorney (EPOA). Although EPOAs do provide protection, they can also enable abuse to occur. Unfortunately people with dementia can be vulnerable to attorneys misusing their power and not acting in the best interests of those they were appointed to represent. This type of financial abuse is able to occur without legal ramifications and recourse because there are no criminal offences for breaches of Power of Attorney obligations in NSW.

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.

Alzheimer's Australia NSW believes that it is too early to determine the effectiveness of the *NSW Interagency Policy Preventing and Responding to Abuse of Older People* (the Policy).

There was such limited publicity when this new Policy was launched that awareness of its existence is low. The Alzheimer's Australia NSW Policy, Research and Information Department had to inform public servants in NSW agencies of its existence, location and currency. In our 2014 discussion paper we also recommended that all Commonwealth funded aged care organisations in NSW be required to make staff aware of their responsibilities and obligations under the Policy.

NSW laws are currently quite limited in safeguarding older people, especially from financial abuse. One clear example of this is the lack of criminal offences for breaches of power in the *Power of Attorney Act 2003*. If a person perpetrates financial abuse by misusing an EPOA they cannot be charged with a criminal offence

because technically their behaviour, although immoral, is not illegal under NSW law. Although victims (or their representative) can pursue a civil case against the perpetrator, this is a time consuming, stressful, expensive process, and is unlikely to result in the recovery of stolen assets. This loophole acts as a significant enabler and masks the actual prevalence of abuse because people believe it is not worth the effort of reporting and pursuing civil action.

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.

Based on the findings of our research and evidence from interstate and overseas, we recommend that a Public Advocate be introduced in NSW. Such positions exist in other Australian States and Territories. Their role is to promote and protect the rights of adults with decision-making disabilities to reduce their risk of neglect, exploitation and abuse. In some jurisdictions, the public advocate has the power to investigate allegations of abuse.

In relation to financial abuse, Alzheimer's Australia NSW believes that the NSW Public Advocate should be established with the statutory authority to receive reports and investigate instances of financial abuse of people with dementia and other vulnerable adults. The role should also extend to facilitating resolution of abuse, including in instances where it is perpetrated by someone appointed as an EPOA who fails to act in the best interests of the person with dementia.

In order to establish a Public Advocate in NSW, the Government must first review the *Guardianship Act 1987*, and then amend the Act to enable the creation of the Public Advocate role.

Alzheimer's Australia NSW also recommends that greater public awareness of elder abuse is needed. A state-wide community campaign is required to draw attention to the seriousness of elder abuse. Elder abuse is domestic violence in many instances and this fact needs to be highlighted. Community attitudes to domestic violence have changed considerably over the last 10 years with further attention and investment from the Commonwealth Government recently. Such political leadership is needed to address elder abuse and change public attitudes and perceptions.

Banks and other financial services also have a role to play in preventing and responding to instances of financial abuse. Staff may unwittingly fail to prevent financial abuse occurring and institutions need to respond to suspected financial abuse of their clients. The Australian Bankers' Association (ABA) has developed an industry guideline, *Protecting Vulnerable Customers from Potential Financial Abuse*, however it is not mandatory and does not have any legal force or prescribe binding obligations on individual banks. Alzheimer's Australia NSW recommends that all staff of banking and financial service institutions should be required to participate in

mandatory training about dementia and the actions they can take to assist in preventing or responding to financial abuse of vulnerable clients.

Solicitors also have an important role in preventing financial abuse of older people. In our research on financial abuse, Alzheimer's Australia NSW recommended that the NSW Law Society provide training about financial abuse to lawyers and includes this as part of continuing legal education requirements. Solicitors also need to ensure that a capacity assessment is conducted by an appropriate health professional before authorising changes to an EPOA where the cognitive capacity of the individual is in question.

An attorney cannot give gifts to themselves or third parties, or gain a benefit unless it is expressly authorised in the EPOA document. Some financial abuse may occur as a result of an attorney not understanding their role. Education for people appointed as an attorney is also required to ensure that they understand their responsibilities and obligations to prevent inadvertent misuse of power occurring.

There is no registration or subsequent monitoring of EPOAs in NSW. There is conjecture over whether or not a register of attorneys would ensure a level of accountability and prevention against financial abuse. Further to this, suggestions of a monitoring or auditing process be implemented have been made. However, implementing such a process would lead to the role of attorney being more like that of a financial manager appointed under the Guardianship Act and would be a significant imposition on those who are correctly fulfilling their attorney obligations. A registration and monitoring process may also deter people from completing EPOAs.

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

As outlined in response to point 8, Alzheimer's Australia NSW believes that a Public Advocate would assist in safeguarding older persons who may be vulnerable to abuse.

Alzheimer's Australia NSW advocates for the continued funding of the EAHRU under the *NSW Ageing Strategy*. We also believe that a public awareness and political leadership campaign is necessary to increase community understanding of elder abuse.

The Alzheimer's Australia NSW discussion paper examined the debates surrounding mandatory reporting of elder abuse. Although this idea has merit, questions remain about where and to whom people would report their concerns, and whose role it would be to investigate the allegation and confirm whether or not financial abuse had occurred. There are also concerns about mandatory reporting hindering the autonomy of an individual – what if a victim does not want the abuse reported?

There would also need to be examination of what measures could be put in place to redress the abuse, and mediate a resolution and/or punish the perpetrators. There is currently no body to undertake such tasks. The issue of mandatory reporting of financial abuse of older people was raised in a 2007 Australia Government *Inquiry into Older People and the Law*. After reviewing the case for and against, the Committee did not support the introduction of mandatory reporting of suspected financial abuse, supporting instead the voluntary reporting of suspected financial abuse. This Committee acknowledged the need for a mechanism for those wishing to report abuse. Alzheimer's Australia NSW has been unable to find any evidence to suggest that mandatory reporting of financial abuse has a deterrence effect, however, we believe that further investigation of the capacity of mandatory reporting to reduce the incidence and increase investigation and resolution of elder abuse is needed to create an effective policy response.

10. Any other related matter.

Following the publication of our discussion paper in June 2014, Alzheimer's Australia NSW established the Financial Abuse of Older People Working Group. This interagency network meets three times per year and is attended by representatives from various NSW Government agencies and non-government organisations. The Working Group is committed to working collaboratively to address the issue of financial abuse of vulnerable older people.

The current membership consists of representatives from:

- Guardianship Division of the NSW Civil and Administrative Tribunal
- NSW Trustee and Guardian
- NSW Office of the Public Guardian
- NSW Elder Abuse Helpline and Resource Unit
- Office of the Legal Services Commissioner
- Western Sydney University
- Law Society of NSW
- Ministerial Advisory Council on Ageing
- Capacity Australia
- COTA NSW
- Department of Families and Community Services
- ARAFMI (Mental Health Carers)
- Seniors Rights NSW (The Aged Care Rights Service – TARS)
- Financial Services Council
- Australian Bankers' Association
- Self-Managed Super Funds Professionals Association of Australia
- Alzheimer's Australia NSW

Alzheimer's Australia NSW also notes that the Australian Government must respond to the *United Nations Universal Periodic Review* recommendations by March 2016. We consequently suggest that the NSW Government advocate to the Australia Government to provide leadership on coordinated measures to prevent elder abuse.

Finally, a brief comment on the psychological abuse and neglect of people living with dementia. This is under-researched and less spoken about, however, anecdotally we know that it is occurring. While this is sometimes a deliberate act, in other instances it is a case of a family carer not knowing how to care for a person with dementia. A lack of knowledge about how to communicate with a person with dementia and/or lack of understanding about the impact of dementia on how the world is experienced may lead to carers causing significant psychological distress for the person with dementia. For example, constantly reminding a person with dementia that a loved one has died when they ask if they are coming to visit would cause them to relive the trauma of their death each time they forget. This is psychological abuse.

Carers may also feel so overwhelmed by the burden of caring that they fail to provide basic care and neglect the person with dementia. There was a recent case reported in the media where the coronial inquest found that a daughter's "inability to cope with her mother's descent into dementia" led to the death of her mother. The daughter had lived with her mother since 1995 and cared for her since 2010 when she was diagnosed with dementia. Although they had a close relationship, from November 2010 until her death sometime in July or August 2013, the daughter failed to take her mother to a doctor or seek any other form of assistance. The frail woman was left in the house for nine hours a day, six days a week, while her daughter worked. Such devastating cases highlight the need to ensure that carers of people with dementia are appropriately supported in their caring role. The challenge though is reaching people who never reveal themselves to service agencies or health professionals.

References

ⁱ Australian Institute of Health and Welfare (2012) *Dementia in Australia*

ⁱⁱ *Ibid.*

ⁱⁱⁱ Alzheimer's Australia NSW and Deloitte Access Economics, August 2014

^{iv} Lowndes, G., Darzins, P., Wainer, J., Owada, K. & T. Mihaljic (2009) *Financial abuse of elders: a review of the evidence, Protecting Elders' Assets Study*, Monash University: Melbourne

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