

## Australian Law Reform Commission

### Response to the Issues Paper on Elder Abuse

#### The work of Relationships Australia

This submission is written on behalf of Relationships Australia's eight member organisations.

We are a community-based, not-for-profit Australian organisation with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia provides a range of support services to Australian families, including counselling, dispute resolution, children's services and relationship and professional education. We aim to support all people in Australia to achieve positive and respectful relationships. We also believe that people have the capacity to change their behaviour and how they relate to others.

Relationships Australia has been a provider of family relationships support services for nearly 70 years. Relationships Australia State and Territory organisations, along with our consortium partners, operate one third of the 65 Family Relationship Centres across the country. In addition, Relationships Australia Queensland is funded to operate the Family Relationships Advice Line.

Relationships Australia organisations each provide a range of support services to people whose lives have been, or are being, affected by change, challenge, crisis, violence and/or trauma.

The information in this submission also reflects our involvement with, and support of, clients who have experienced ageing-related family relationship issues, including elder abuse. Our comments are informed by listening to the experiences of clients, discussion with practitioners and service providers, research and reports.

We commend the Law Reform Commission for acknowledging the need for improved responses to, and greater and longer-term support for families affected by elder abuse.

## Introduction

On 1 January 2016, Relationships Australia commenced a twelve month trial of an elder relationship service in six selected locations around Australia. The aim of the service is to support families to plan for future medical, health, financial or living arrangements and make decisions that protect the interests, rights and safety of all family members. Sites include urban and regional locations: Canberra ACT, Wagga Wagga NSW, Kew VIC, Adelaide SA, Launceston TAS and Moreton Bay QLD.

The service was developed in response to changing demographic, health and social issues which have resulted in an ageing Australian population and increasingly complex family structures. People can attend the new service on their own, with their partner or extended family, and are supported by qualified mediators, psychologists and social workers who have been trained in delivering services to older people. The service responds to the presenting needs of clients, and may include counselling, mediation, education and referral to specialist support services and legal advice. A number of presentations to date have included elder abuse.

Our early experience suggests that the current service system and policy frameworks to prevent and respond to elder abuse are inadequate and fragmented. We welcome the Australian Law Reform Commission's issues paper and the opportunity to contribute to the design of a better system.

## Response to questions in the issues paper

### Questions 1 & 2

#### Definitions

- We support an approach that protects human rights and a definition that identifies both the effect on the victim of abuse and the intention of the abuser. When considering whether elder abuse should include negligence, we could look to other similar social issues whereby there are particular vulnerabilities, care relationships, and expectations of trust, such as in cases of child neglect. We support the approach of many other international jurisdictions to include failure to provide adequate care as an element of the definition, and would suggest that this broader definition reflects contemporary community standards. We support the issues paper's acknowledgement that remedies should reflect the intentional nature of the abuse.
- The definition should be consistent for informal and formal relationships, regardless of payment for services. The definition could also be informed by relevant policy frameworks that exist in child protection and family violence where informal, formal, for-profit and not-for-profit relationships exist.
- The definition of elder abuse and regulation to prevent it should also be consistent across states and territories, including Powers of Attorney and guardianship. Many of our clients

are part of families that live across various state and territories and jurisdictional differences contribute to the complexity of responses and the ability of agencies to protect older people.

- We also support the establishment of a single regulator with investigative powers, and redress that includes approaches that achieve the best possible outcomes for older people and their families, including restorative approaches such as family group conferencing, apology, restitution and criminal sanctions in serious cases of abuse.

#### Abusers

- Our experience suggests that policy work in this area could be informed by the child protection and family violence systems. For example, relevant frameworks for responding to elder abuse could look to developing 'elder' safe organisations in the same way that child-safe organisations are created to protect vulnerable children.
- Where elder abuse differs markedly from other related social policy issues is in the gendered nature of the abuse. While we note that women are more likely to be the victims of elder abuse, and men the perpetrators, the gendered nature of elder abuse is not nearly as marked as for violence and abuse at younger ages. The current family violence sector is orientated (largely due to historical funding models and need) to provide services to women and children victims (eg crisis accommodation, child protection) and we suggest that many of these services are ill-equipped to deal with, inadequately funded, and inappropriate for, older people. This is particularly the case for male victims and female perpetrators. Within the elder relationship service we have used approaches developed for family law services where the service model supports both male and female members of couples.
- We do not support an approach that allocates an arbitrary age to the definition of elder abuse. In our pilot program, we defined the service by the existence of an 'ageing related issue' rather than the attainment of a particular age.

#### Question 3

- Early presentations to the elder relationship service have included older people from regional and rural communities. In these cases, the ability of the older person to exercise their rights and wishes has been complicated by the existence of multi-family households, expectations of entitlement to the family farm, complex financial arrangements, social isolation, vulnerability of the older person and poor communication between family members (see, for example case studies 3 & 8).
- While cases to date demonstrate how difficult it can be to engage all the parties in multifamily situations, early learnings also point to the services ability to empower family members to tackle family conflict where members of the family won't come in to the service.
- Clients from culturally and linguistically diverse communities have raised issues consistent with the observations in the issues paper, including male dominated cultural expectations, and vulnerabilities of elderly women due to language barriers and inexperience in navigating the Australian financial and social security systems. Where there has been a history of family violence, we observe intergenerational transfer that results in the abuse of mothers by sons at older ages.

- With respect to lesbian, gay, bisexual, transgender or intersex people, we also expect family conflict to arise where adult children do not respect the partner relationships and wishes of their parent when financial and end of life decisions need to be made.

#### Question 4

- We support a national collection of prevalence data, noting that elder abuse occurs on a spectrum and a robust definition is needed. It is likely that the difficulties in collecting family violence data for younger cohorts are likely to be evident in collecting data for older populations. However, it is also likely that there will be difficulty eliciting disclosure due to outdated views of relationships and the specific vulnerabilities of older people.
- We also support studies that evaluate the effectiveness of intervention and prevention strategies.
- We do not think that prevalence will be adequately measured by elder abuse hotline reporting.

#### Question 11

- We note the observations of the issues paper. The elder relationship service has also observed elder abuse in retirement villages where the governing/body corporate has coerced and intimidated residents.

#### Questions 12, 13 & 14

- Our stakeholder conversations have alluded to the potential of the existing health and community service sector in helping to identify elder abuse. Services that come in contact with older people at risk of abuse could include age care assessment teams, GPs, Pharmacists, Human Services and community support organisations such as mental health, housing and carer services (for example see case 8). At present, many service providers show a lack of confidence, skills and information to assist them in approaching and dealing with issues of elder abuse. This is compounded by a lack of referral pathways, and primary and tertiary services with specific skills in supporting people affected by elder abuse.
- In our experience in supporting families affected by family violence, there are usually people in the formal and informal networks around the ‘at risk’ person who know, or have suspicions about violence and abuse. For example, in a survey conducted by Relationships Australia in January 2016, almost one-third of respondents indicated that they had concerns relating to the abuse of an elderly relative or neighbour (see [www.relationships.org.au](http://www.relationships.org.au)). The challenge for policy makers is to create an environment to support and encourage people to report to the appropriate service or authority.
- Family relationship services can also provide a ‘safe-space’ in which people are comfortable discussing concerns relating to abuse. Where the service identifies safety concerns, existing procedures for families affected by violence would ensure appropriate reports are made.
- The best outcomes for victims would be achieved by a single regulatory/investigative body and a nationally consistent policy framework. This framework could be informed by policy work in other related areas, including standards for creating ‘elder’ safe organisations, quality accreditation standards for children’s services, family violence and disability services.

### Question 18 & 19

- We support an improved complaints system but note that in many situations older people will not have the skills, capacity or will to report abuse.

### Question 20

- As discussed above at question 12, with an appropriate policy framework, aged care services and schemes are well-placed to identify elder abuse.
- We would also support additional services to support carers. A key feature of cases of elder abuse presenting at our services is an adult child/parent care relationship. Many of these carers are suffering their own financial, mental and physical health issues due to the significant burden of their caring role (see for example case 6 below). Our service has been able to provide additional supports to carers through referrals to community support organisations, and facilitating family meetings to encourage other family members to assist with care. Services that provide additional supports to people in caring roles could be significant in preventing elder abuse, particularly in relation to neglect.

### Questions 24 & 25

- Our service has identified instances of older people being coerced and abused in relation to retirement savings and bank accounts. In these cases the perpetrator is usually an adult child.
- While additional legal safeguards may be put in place, clients presenting at our services are unlikely to access civil or criminal remedies as they do not want to damage their family relationships. This is particularly the case where the older person(s) relies on their adult child for care, or envisage they may do so in the future. These situations suggest a role for restorative processes that achieve outcomes for older victims and preserve or improve family relationships that need to endure past the financial abuse.
- We also note situations where the capacity of the older person contributes to the opportunity for abuse. For example, medical diagnosis of Alzheimer's disease can take many years. In the intervening period it may be difficult to determine the capacity of the older person and this may also be the period in which Powers of Attorney are assigned and financial abuse takes place.
- We support increased education of staff in the banking sector to identify and respond to elder abuse.

### Question 26

- As discussed above, we support a national consistent policy framework and single regulator. The regulator could have powers to refer clients to alternative dispute resolution and restorative processes that could assist in improving outcomes for older people and preserving and enhancing relationships.
- Our services have established procedures for reporting safety concerns. Clients are informed at intake that reports will be made if the service identifies a person at risk of safety from violence or abuse. Mandated reporting would not increase the number or quality of these reports.

### Question 27

- One of the key aims of Relationships Australia's elder relationship service is to help families have difficult conversations and come to agreement. The service can also assist decision-making, conflict resolution and agreement between parties in formal arrangements such as in aged care facilities. It is our experience that agreements made in this way are less likely to break-down, and result in harm and future litigation.
- In a number of cases to date, conflict and elder abuse has arisen due to an agreement breaking down or misunderstanding, but often the situation has arisen due to poor communication or that an agreement was never discussed or made at the outset (for example see case study 1 & 5).
- For example, in a survey conducted by Relationships Australia in May 2016, less than 50 per cent of respondents reported having a will. Of those who had a written will, one quarter had not discussed it with their family (see [www.relationships.org.au](http://www.relationships.org.au)).
- These case studies illustrate poor outcomes for older people as a result of family relationship breakdown. The breakdown of agreements can lead to financial distress for older people, social security dependence and delayed retirement. It can also lead to family conflict and relationship breakdown for the parent's relationship. In many cases, parents are unlikely to seek legal remedies, preferring restorative processes such as repayment plans, acknowledgement of wrongdoing and apology when help is sought.

### Question 28

- We note the issue paper's discussion of the cost, time and stress involved in pursuing many of the remedies currently available. We support the increased powers of tribunals and an increased range of alternative dispute resolution and support services to assist people to resolve disputes and make agreements.

### Questions 29 - 32

- There are many opportunities whereby appointed decision-makers can and do abuse their powers. We have observed a low level of knowledge about the operation of these arrangements, both by the general public and their appointed decision makers (for example see case study 3). We support increased community education, tools and resources, and regulation/registration of these arrangements under a nationally consistent system.
- Stakeholder feedback has identified situations where Powers of Attorney granted years ago to one adult child were used to make end of life decisions without consultation with other adult children and family members. This has caused significant family distress and the wishes of the older person were not necessarily observed. Our service has recently been asked to train emergency medical staff after many complaints were made about Doctors allowing one member of a family to make end of life decisions without discussion with other members, and no real knowledge of the wishes of the older person. In a stressful situation, it is often difficult for the Attorney to separate their values and beliefs from the need to ensure the wishes of the older person are carried out.
- In another case a violent husband had guardianship of his elderly wife who had developed dementia. Her decreased capacity exposed her to increased risk of sexual assault until an

adult daughter was able to convince her father to participate in a family meeting and agree to arrangements for formal care for her mother.

- While we agree that it is possible to have too many safeguards, policy must ensure that the choices exercised by people with such significant consequences are, at the very least, informed choices. We support an approach that firstly supports the voice of older people to express their wishes, and secondly promotes their best interests.

### Question 35 & 36

- As stated above, tools, training and resources could be developed for professionals who already provide services to older people, including health professionals. Community education and awareness could improve public knowledge and reporting.
- Along with health-justice partnerships, we also support partnerships between community sector professionals and lawyers.

### Question 41

- As mentioned above, our services have demonstrated the benefits of alternative forms of dispute resolution and redress that uses restorative and therapeutic approaches.
- Policy frameworks could be informed by innovative programs being trialled in international jurisdictions such as New Zealand and Canada.

### Final observations

- We note that elder abuse can be as a result of historical family violence continuing at older ages or due to opportunities that arise later through caring roles or the poor personal circumstances and behaviours of perpetrators. The response and interventions are likely to be different depending on the history of the family and the circumstances of victims and perpetrators.
- Where there is a history of family violence, frailty and fear of being left without a carer can be a leverage point for change and prevention of future abuse. However, the opportunity for change can only be maximised if appropriate services are available. For example, whilst men's behavioural change programs are well-established in Australia, these services are not adequately funded or targeted towards older perpetrators.
- We also have observed the potential for domestic violence education to positively impact older generations, both at the community level in dispelling outdated views, and at the individual level in encouraging respectful family relationships.
- Where carer burden is a contributing factor, support services aimed at improving the mental and physical health of carers, employment and respite can be significant in mitigating the risk of abuse.
- In the early stages of Relationships Australia's elder relationship services trial we have promising results that support an innovative approach that can improve the outcomes of older clients and their families. In contrast to legal process which can circumvent the services ability and the client's willingness to mediate their own solutions, success has been achieved through assisting people to reach agreement, and restorative and therapeutic approaches that preserve and enhance relationships into the future.

## Case studies

### Case study 1 - mediation

A mother lent her son a large portion of her retirement savings for his business venture. There was an understanding by both parties that the money would be paid back. The mother factored in that the son mostly owned his own home and felt confident that the money would be repaid. However, the son had re-mortgaged his home and did not disclose that he was in a precarious financial position.

Ten years have passed and the son has not been in a financial position to repay the mother and the mother has been unable to retire. The son and his wife have both worked hard for several years and they both have jobs but still contend they cannot afford to repay the loan. The son feels that the money, and his obligation to re-pay the loan, should simply be forgotten about. The son has not acknowledged to the mother his gratitude for the loan, nor his remorse at being unable to repay it.

In this situation, the mother has held off on pursuing her legal rights due to her love for her son. The mother is emotionally distressed over what she perceives to be her son's betrayal of her good will. Her legal claim is clear and undeniable; however, her husband (and the son's father), does not wish to pursue the son for the money. The division regarding their son has led to their own relationship and financial problems. They also share a sense of regret that they have been unable to give equally to all of their children and anger they are being taken advantage of.

Outcomes sought at mediation:

1. an acknowledgment/apology from the son that he understands the issues and is grateful and wanting to do his best to rectify the situation; and
2. partial repayment of the loan at a rate that the son and his family can afford.

### Case study 2 - counselling

A separated elder couple accessed the elder relationships service. They had separated and there was a high level of animosity and blame and the husband was becoming very abusive towards the wife. One of the adult children was also very abusive towards the mother, blaming her for the separation. After intake, historical family violence was evident but this now included extended to other family member perpetrators.

The husband was unwell, and both elderly and old fashioned in his values, and unaware that his actions were a form of abuse. However, he was open to change, particularly as he was fearful of being on his own for the rest of his life.

The counselling process was effective in allowing them to reconfigure how they related to each other and educate the husband about respectful behaviour.

### Case study 3 – mediation

An adult child accessed the service as her sister had moved their father to a nursing home closer to her home; she had not consulted other family members. This move had meant that the father was no longer able to get outside into the garden (which he loved to do in the previous home). Also, his

partner could no longer visit him because he was now too far away and she had no transport. The elder daughter insisted that this new nursing home was best for him as it was “more secure” but the father and other siblings believed it was to meet her needs and not his.

The clients had initially contacted the state administrative appeals tribunal before seeking mediation, but the sister had been difficult to get an appointment with. By the time an intake was done the family had a date with the tribunal. The service offered them the option of a family meeting once they had been to the tribunal but the sister was no longer interested.

#### Case 4 - mediation

An elderly client was referred to the service by a local community organisation. The client lived with his son who was his main carer. The client had concerns around ‘lending’ his son money, feeling pressured to lend and the timing of repayment of loans. A support worker attended the interview and had genuine concerns about the client being taken advantage of and his ability to recollect when, if and how much the son had ‘borrowed’ from his father and when or if he had made repayments.

There were several attempts to contact the son but he said that there were no problems and the community worker was interfering. The father was contacted and it was explained that his son did not want to participate and he decided not to proceed and further upset his son.

#### Case study 5 - mediation

An elderly widowed mother came to the service requesting assistance with a family situation. Several families lived on their large rural property, including her two sons and their families who work the family farm.

Things had become increasingly hostile between the mother and one of the daughter in laws. The mother had moved out of the main house and was worried about their ability to live together and run the farm. The sons didn’t want to get involved. A family meeting was held to assist the family members to come to an agreement about management of the farm and their family relationships.

#### Case 6 - mediation

Three male siblings in their fifties came to mediation to discuss the care of their elderly parents. They had another sibling who was not involved as she lived overseas. One son lived interstate and came back to regularly to see his parents and to try to manage their care. One son had taken the biggest responsibility for managing the care of the parents as he wasn’t working but had reached a point where he was unwilling to continue doing this as it was affecting his mental health. The brothers had joint Power of Attorney over their parent’s affairs.

Their parents still lived independently in their home. Mother had been diagnosed with dementia which was reasonably advanced and father had diagnosed mental health issues where he was prone to very angry outbursts. The sons had tried to buy in care to support them in their home but the parents wouldn’t let strangers into the home and became hostile to most people trying to help such as carers, cleaners, RDNS etc. They would only really tolerate their children coming to help which had mainly fallen upon the son who wasn’t working.

Three siblings believed that mum and dad weren't coping and should be put into residential care against their will. One son was a staunch advocate for maintaining the independence and rights of his parents and would not agree to this as an option and had been resisting it for a considerable period of time (2 years or more) preferring to try different options to bring help into the home. He was often unable to help and went away overseas for extended periods for his work on a regular basis. The other brothers were aware that they could apply to the Guardianship Board but didn't want to cause conflict.

Outcome from the family meeting: The son who had resisted putting his parents into care eventually agreed to look at options for mum but would not agree to consider a placement for dad. He did agree to have a conversation with dad about the possibility of moving into care at some point in the future. Another mediation was scheduled.

### Case 7 – mediation and counselling

The service was contacted by an older couple who were unwillingly sharing their house with an adult daughter (aged 50). They had agreed for their daughter to move in for a short time to mind the house when on holidays but she then declined to move and been in the house for the last 6 years. The daughter has mental health issues and although living reasonably separately, was both verbally abusive, mostly to her mother, and stonewalling (refuses to discuss her behavior or moving out), and is making their lives in the house increasing stressful and unpleasant. The mother, in particular is feeling a negative impact on her own mental health and home amenity. There are also issues about the level of the daughter's financial contribution.

The mother is also worried about where else the daughter could live (the daughter is on a disability payment). The parents were thinking of selling their house as a means of resolving the situation although they do not really want to move.

The parents attended for an intake and discussed a length their situation. Their daughter was invited both by letter and by her parents verbally but chose not to participate in a mediation process.

We then referred the parents to Seniors Rights for legal advice and the mother to counselling. The mediator had a number of follow up phone calls with the mother to see how things were progressing. Through legal advice the parents became aware they had legal options to remove their daughter if necessary. Seniors Rights also offered to help them draft warning letters to their daughter of their wish for her to relocate and ability to evict if no other option. Seniors Rights also offered to provide the daughter directly with referrals and resources to find alternative accommodation. Although the matter did not proceed to mediation the parents felt much more informed and empowered and realised they did in fact have options beyond selling the house to separate themselves from their child's abusive behaviour.

### Case 8 - mediation

The service was contacted by an adult daughter living in the city whose mother (85 year old with increasing forgetfulness) lives on a property 80 kms out in the country with one of her adult sons. The son lives in a bungalow on the same property. The son keeps an eye out for his mother and

helps her out in many ways around the home. This has been the living arrangement for many years now, but the daughter has become increasingly concerned about what she sees as her brother's bullying of their mother. This takes the form of alleged controlling behaviour around their mother's cooking, planned outings/trips, driving and other matters. He has been receiving a disability pension for many years. The daughter acknowledges many good aspects of her brother's care and in fact believes he needs respite, but they can't agree about respite care for their mother (amongst other things).

Intake/assessment sessions were conducted with the daughter and her mother, but attempts to engage the son in mediation have so far been unsuccessful. The mother does acknowledge that a couple of things could certainly be different, but does not seem prepared to take the matter further although she has spoken to her GP about it. The adult daughter is still hopeful that her brother will come to mediation.

### Case 9 - mediation

The service was contacted by an older person who was the carer for her physically disabled (wheel chair bound) husband in a home which they share with their daughter and son-in-law and their 3 children. The property was bought in the name of all 4 people some 5 years ago when the parents were moving from interstate. The mother also has some physical health issues of her own. She had been referred by a community service housing social worker who had been investigating some possible alternative accommodation for them, because the son-in-law had been saying that the home would have to be sold by the end of the year.

Individual intake/assessment was conducted with each adult. Both parents said that the mother was the target of verbal and emotional abuse by the son-in-law. Despite the stressful atmosphere in the house, the parents were still keen to discuss continuing to live under the 1 roof "but with respect." Seeing the grandchildren was obviously important to them.

At intake, the daughter and son-in-law seemed frustrated about a situation they say they had tried to improve, but couldn't. They had made many suggestions, including suggestions for respite care for the mother, but nothing was taken up. Communication was clearly a big issue and they were under severe financial stress. They wanted to discuss this in mediation, and also see if something could change in their relationship with the parents.

The parties came together for mediation. Agreements were made about finding a boarder, whose financial contribution could help with the mortgage, which the parents acknowledged was very urgent and important. There was also the opportunity for the mother to talk about how she felt about the verbal abuse. The son-in-law listened and did not react defensively. Discussion also occurred about respite for the mother and the mother in turn talked about how much she loved them and the grand-children.

Thank you for the opportunity to provide a submission to the Issues Paper on Elder Abuse. Should you require any further clarification of any aspect of this submission or need information about the services Relationships Australia provides, please contact me or Paula Mance, National Policy Manager, Relationships Australia.

Yours sincerely,

A handwritten signature in cursive script that reads "Alison Brook".

Alison Brook  
National Executive Officer

5 September 2016