



Australian  
Human Rights  
Commission

# Australia's protection of older persons from violence, neglect and abuse

**SUBMISSION BY THE AUSTRALIAN HUMAN RIGHTS  
COMMISSION TO THE OPEN-ENDED WORKING GROUP  
ON AGEING**

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## 1 Introduction

1. The Australian Human Rights Commission makes this submission. The Commission is an 'A status' national human rights institution established and operating in full compliance with the Paris Principles. Information about the Commission can be found at: [www.humanrights.gov.au](http://www.humanrights.gov.au).
2. The submission provides an overview of Australia's protection of older persons with regard to neglect, violence and abuse.

## 2 Key studies and surveys being done regarding violence, abuse and neglect experienced by older Australians

- 3 The Commonwealth Government of Australia has asked the Australian Law Reform Commission (ALRC) to conduct an inquiry on existing Commonwealth laws and frameworks which seek to protect older persons from misuse or abuse by formal and informal carers, supporters, representatives and others; and to examine the interaction and relationship of these laws with state and territory laws. On 12 December 2016, the ALRC published a Discussion Paper with draft proposals for reform.<sup>1</sup> The final report is due to be completed by the end of May 2017.
- 4 The Commonwealth Government has further committed to developing a national plan to better protect the rights of older Australians. The national plan will include a prevalence study into elder abuse, a national elder abuse hotline, pilot training programmes for frontline staff and an awareness and education campaign.<sup>2</sup>
- 5 The Commonwealth Government has also committed \$50 million AUD to improving seniors digital literacy which will include the development of an online safety strategy for senior Australians.<sup>3</sup>
- 6 Various independent and government-funded studies have been conducted on the topic of elder abuse in Australia including the Australian Institute of Family Studies' (AIFS) research report *Elder abuse: Understanding issues, frameworks and responses*.<sup>4</sup> The Commonwealth Government has asked AIFS to conduct a further scoping study for a definition of elder abuse in Australia.
- 7 The topic of violence, abuse and neglect of older people has also been the subject of investigation by the Queensland,<sup>5</sup> and New South Wales state parliaments<sup>6</sup> and a Victorian Royal Commission into Family Violence.<sup>7</sup>
- 8 The current Age Discrimination Commissioner, the Hon Kay Patterson AO, has stated that one of her priorities during her five-year term will be to focus on the issue of elder abuse.

## 3 Experiences of elder abuse in Australia

- 8 Common recognised forms of elder abuse include:

- **Psychological/emotional abuse:** verbal abuse, name calling, bullying and harassment
- **Physical abuse:** pushing or shoving, kicking, punching, slapping, biting or burning, and rough handling.
- **Sexual abuse:** rape, unwanted sexual contact, inappropriate touching and sexually offensive language
- **Financial abuse:** someone incurring bills for which the older person is responsible; someone living in the older person's home for reasons other than the benefit of the older person; someone stealing the older person's goods; threatening, coercing or forcing an older person into handing over an asset; and abusing power of attorney arrangements.
- **Neglect:** family members or staff failing to provide an older person with food, shelter or medical care.<sup>8</sup>

9 Another less common but important form of elder abuse is **chemical abuse**, which involves using drugs to sedate older people.<sup>9</sup>

10 There is limited evidence around the prevalence and incidence of elder abuse in Australia.<sup>10</sup> Available evidence indicates that most elder abuse is intra-familial and intergenerational;<sup>11</sup> most commonly committed by the adult children of older persons.<sup>12</sup> Mothers are most often subject to abuse by sons; but other configurations also occur.<sup>13</sup> For example, it is also common for the abuse to be committed by the older person's spouse or partner.<sup>14</sup> Beyond that, as one of the commonly cited features of elder abuse is a relationship of *trust*;<sup>15</sup> it can reasonably be said that elder abuse also occurs in service-provision contexts involving formal and informal carers, supporters, representatives and others.<sup>16</sup>

11 Several groups of older Australians have been shown to have factors which heighten their vulnerability to elder abuse. These groups are:

- **Older people in culturally and linguistically diverse communities:** Factors heightening their vulnerability include language difficulties; social dependence on family members for support; and the potential conflict caused by cross-generational expectations in relation to race.<sup>17</sup>
- **Older people in rural and remote areas:** Factors include complexity of family assets in rural areas such as farming properties; lack of access to services that may assist with asset management and responding to situations where elder abuse is occurring or expected; and the dynamics involved in reporting or disclosing elder abuse in rural communities (shame or concern to protect the family name may play an inhibiting role).<sup>18</sup>
- **Older people with cognitive impairments and/or other disabilities:**<sup>19</sup> Factors include ill health, frailty, disability, impaired decision-making ability, poverty; and a reliance on home care workers,

support workers, staff in residential facilities and co-residents in residential institutions for assistance.<sup>20</sup>

- **Older Indigenous peoples:** Factors include remote living, poverty and poor health.<sup>21</sup>
- **Older women:** It is common for elder abuse to be committed against older women as a continuation of a lifelong pattern of spousal abuse.<sup>22</sup>

#### 4 Investigation of elder abuse

12 The following types of legislation may provide avenues for intervention or response regarding instances of elder abuse:

- **State and territory public guardianship legislation:** provides that public guardians/advocates may investigate instances of elder abuse in limited circumstances; such as when it occurs at the hands of guardians or administrators, or where the older person has impaired decision-making ability.<sup>23</sup>
- **Crimes legislation:** a range of personal violence and property offences can cover instances of elder abuse. These include assault, sexual offences, kidnap and detail offences, and property and financial offences.<sup>24</sup> A number of Australian jurisdictions also have 'neglect' offences which may apply regarding elder abuse. These are generally framed as a 'fail[ure] to provide necessities or necessities of life,'<sup>25</sup> including adequate food, clothing, shelter and medical care.<sup>26</sup>
- **Power of attorney legislation:** Victorian and Queensland laws currently provides for a range of offences specifically relating to abuse of powers of attorney,<sup>27</sup> which may be applicable to cases of financial abuse of older people.

13 There are issues surrounding the practical effectiveness of the legislative avenues above. The investigation powers of public guardians/advocates only apply regarding a specific subset of older Australians, and can be confusing to navigate due to their strict circumstantial requirements.<sup>28</sup> Regarding criminal offences, police have observed that older Australians may be reluctant to report abuse due to fear for the welfare of the perpetrator, and/or the potential loss of a relationship with the perpetrator.<sup>29</sup> Finally, power of attorney legislation has never been used to prosecute any perpetrators of elder abuse in Australia,<sup>30</sup> perhaps because of the same issues outlined above.

#### 5 Legislation protecting older Australians from financial abuse

14 Financial abuse appears to be the most common type of elder abuse experienced in Australia.<sup>31</sup> Since fraud and other forms of financial abuse are criminal matters, they are dealt with primarily under state and territory crimes legislation.<sup>32</sup> Offences relating to fraud, deceptive conduct/obtaining benefit by deception, and stealing; may all be applicable to instances of financial

elder abuse.<sup>33</sup> Offences relating to abuse of powers of attorney may also be relevant.<sup>34</sup> However, these issues are often difficult and complex to prosecute; and may not offer the most appropriate redress to victims, particularly in situations involving *familial* financial elder abuse.<sup>35</sup> As such, it has been suggested that instead of expanding the criminal law to deal with these matters, there should be an expansion of the jurisdiction of tribunals to award compensation to those who are aggrieved.<sup>36</sup>

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<sup>1</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016). At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

<sup>2</sup> As announced in the Liberal Party of Australia, *The Coalition's Policy to Protect the Rights of Older Australians* (2016). At [www.liberal.org.au/coalitions-policy-protect-rights-older-australians](http://www.liberal.org.au/coalitions-policy-protect-rights-older-australians) (viewed 24 April 2017).

<sup>3</sup> As announced in the Liberal Party of Australia, *Improving the digital confidence and skills of senior Australians* (2016). At <https://www.liberal.org.au/latest-news/2016/06/26/improving-digital-confidence-and-skills-senior-australians> (viewed 24 April 2017).

<sup>4</sup> Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-what-elder-abuse> (viewed 19 April 2017).

<sup>5</sup> Queensland 55<sup>th</sup> Parliament, *'Inquiry into the adequacy of existing protections for Queensland's seniors'*, Communities, Disability Services and Domestic and Family Violence Prevention Committee Report No. 2. August 2015. At <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2015/5515T876.pdf> (viewed 18 August 2016).

<sup>6</sup> NSW Legislative Council, General Purpose Standing Committee No 2, *Inquiry into elder abuse in New South Wales*, Report 44 (2016). At <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2387#tab-reports> (viewed 24 April 2017).

<sup>7</sup> Victorian Government, *Royal Commission into Family Violence*, Report (2016). At <http://www.rcfv.com.au/Report-Recommendations> (viewed 24 April 2017).

<sup>8</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 17 [1.13]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

<sup>9</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 18. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

<sup>10</sup> Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-what-elder-abuse> (viewed 19 April 2017).

<sup>11</sup> Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-what-elder-abuse> (viewed 19 April 2017).

<sup>12</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 33 [1.82]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

<sup>13</sup> Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-what-elder-abuse> (viewed 19 April 2017).

<sup>14</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 33 [1.82]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

<sup>15</sup> Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-what-elder-abuse> (viewed 19 April 2017).

<sup>16</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 17 [1.10]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

<sup>17</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 30 [1.72]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

<sup>18</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 30 [1.73]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).

- <sup>19</sup> Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-what-elder-abuse> (viewed 19 April 2017).
- <sup>20</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 22 [1.36]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>21</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 128 [7.6]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>22</sup> Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At <https://aifs.gov.au/publications/elder-abuse/2-what-elder-abuse> (viewed 19 April 2017).
- <sup>23</sup> *Guardianship and Administration Act 1986* (Vic) s 16(h); *Guardianship and Administration Act 1990* (WA) s 97; *Guardianship and Administration Act 1993* (SA) s 28; *Guardianship and Administration Act 1995* (Tas) s 17; *Guardianship and Administration Act 2000* (Qld) sch 4; *Public Guardian Act 2014* (Qld) s 19; *Human Rights Commission Act 2005* (ACT) s 27B; *Guardianship of Adults Act 2016* (NT) s 61.
- <sup>24</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 76 [4.5]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>25</sup> *Crimes Act 1990* (NSW) s 44; *Criminal Code Act 1899* (Qld) ss 285, 324; *Criminal Code Act Compilation Act 1913* (WA) s 262; *Criminal Code Act 1924* (Tas) s 144; (NT) s 149. See also *Criminal Law Consolidation Act 1935* (SA) s 14 for a 'criminal neglect' offence.
- <sup>26</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 79 [4.24]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>27</sup> *Powers of Attorney Act 2014* (Vic) ss 135, 136; *Powers of Attorney Act 1998* (Qld) ss 26, 61.
- <sup>28</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 62-63. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>29</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 62 [3.5]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>30</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 78 [4.16]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>31</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 18 [1.19]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>32</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 31 [1.76]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>33</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 78 [4.16]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>34</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 78 [4.16]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>35</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 79 [4.21]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).
- <sup>36</sup> Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 79 [4.21]. At <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 19 April 2017).