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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial
Services

By email: corporations.joint@aph.gov.au



ABN 72 214 044 225

ARBN 639 390140

Phone: (08) 8232 5377

1800 700 600 (Country Toll Free)

aras@agedrights.asn.au

www.sa.agedrights.asn.au

Introduction

The Aged Rights Advocacy Service (SA) Inc (ARAS) welcomes the opportunity to provide commentary to the Parliamentary Inquiry into financial services regulatory framework in relation to financial abuse.

ARAS proudly acknowledges her Excellency
the Honourable Frances Adamson AC,
Governor of South Australia, and
Mr Rod Buntzen as our Patrons.

ARAS works extensively with older people with exposure to financial abuse and it is supportive of appropriate actions designed to reduce the rate of this form of abuse.

In June 2021 the annual prevalence of elder abuse was reported as being 15 per cent of older Australians. In a population with 4.2 million people aged over 65, this would equate to 630 000 older Australians experiencing abuse every year.¹ This is an alarming number, given that by 2026 more than 22 per cent of Australians will be aged over 65. Australia is getting older, faster. By 2026, more than 22% of Australians will be aged over 65 – up from 16% in 2020.²

Financial abuse is a significant component of elder abuse. Financial abuse can be insidious, and it can also be flagrant, such as when an instrument of delegated authority is misused by a trusted attorney or a family member. Financial abuse is often seen in combination with other forms of elder abuse, such as psychological abuse.

About Aged Rights Advocacy Service (ARAS) Inc.

ARAS is a state-wide, not-for-profit, independent, community-based organisation which has been providing information education and advocacy support for older adults across South Australia since 1990.

ARAS' clients

Older people can retain an ARAS advocate, at no cost, to assist them to address their concerns if they use community or residential aged care services, or live in retirement villages, or if they are experiencing, or are at risk of abuse from family or friends. ARAS also has specialist Aboriginal advocates to provide culturally safe and appropriate supports for older Aboriginal people.

¹ Australian Institute of Family Studies, report on National Elder Abuse prevalence study

² <https://www.sydney.edu.au/news-opinion/news/2023/10/09/confronting-ageing-the-talk-australia-has-to-have.html>

ARAS' activities

In addition to supporting older adults through individual advocacy, ARAS provides information and education sessions about aged care rights, retirement villages entitlements and broader human rights. In these ways ARAS contributes to community understanding of issues affecting vulnerable older people and helps to ensure that the voice of older adults, and younger people who are residing in residential aged care can be heard on issues that matter to them.

Intergenerational gatherings are regularly convened in regional South Australia, and each year ARAS hosts the annual South Australian World Elder Abuse Awareness Day (WEAAD). WEAAD is acknowledged annually on 15th of June, bringing together policy makers as well as frontline workers. At the forefront of the conference is the key message that abuse of any older adult is unacceptable.

In 2024, ARAS is co-hosting with Elder Abuse Action Australia (EAAA) an Elder Abuse conference, titled - "Turn up the Volume." Our mutual commitment is to raise awareness about the abuse of older people and to prevent it. This conference will bring together experts from across Australia to share their knowledge and experiences in tackling the issue of elder abuse.

The Elder Abuse conference will herald a growing ambition to embed issues surrounding the abuse and neglect of older people into the conscience of the nation. It is designed to amplify the restlessness of a movement that expects lawmakers and the wider community to intensify efforts to end the scourge of abuse. The conference will provide a platform to better support older people by listening to their stories, advocating for their human rights and capitalising on the collective energy of attendees. We will hear from voices that reflect the true diversity of our nation. Crucially, it will be a reminder that we cannot go quietly about the quest for real and lasting change, nor should we cease to imagine an Australia that repudiates ageism and upholds the principles of equality and fairness.

ARAS' leadership and affiliations

ARAS has an experienced volunteer Board of non-executive directors and a committed staff. It is an originating member of the South Australian Alliance for the Prevention of Elder Abuse and one of five founding members of Elder Abuse Action Australia (EAAA) funded by the Commonwealth Attorney General's Department.

ARAS is the only South Australian member of Older Persons Advocacy Network (OPAN) which delivers the National Aged Care Advocacy Program (NACAP). ARAS is funded by OPAN, the Australian Government, SA Health, Office for Ageing well and APHN.

ARAS' support services

Fast facts on ARAS' support for older people in 2022-2023.

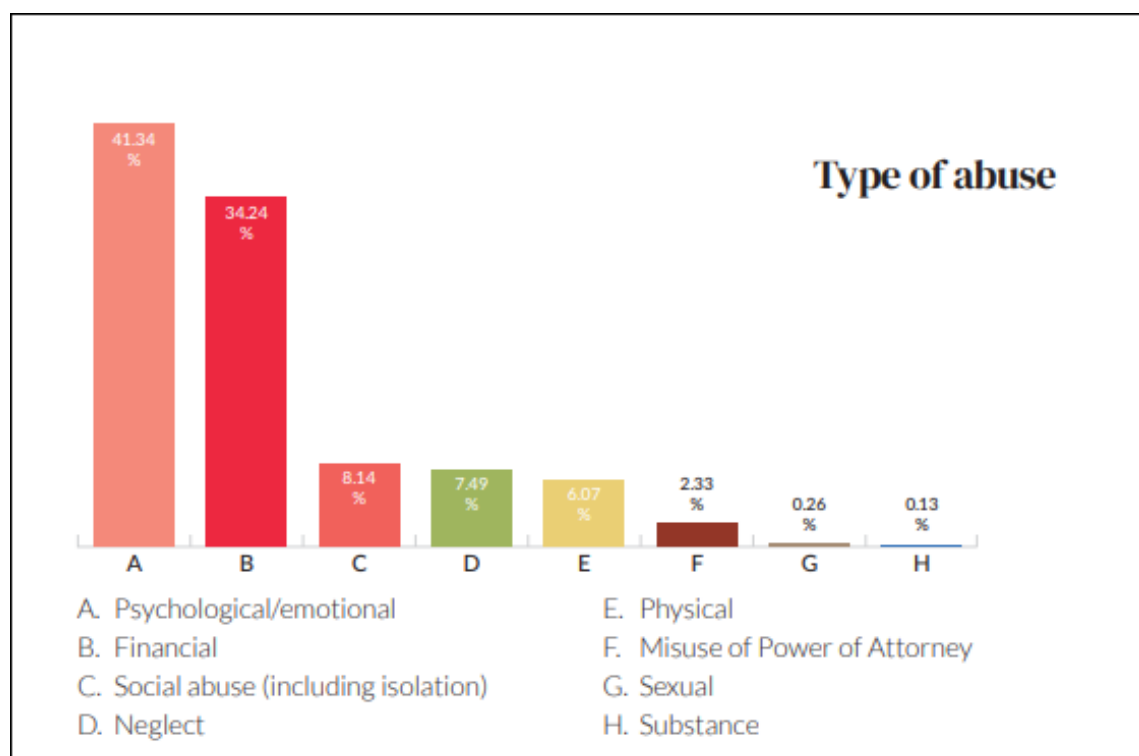
- 3,911 individual advocacy cases & information enquiries

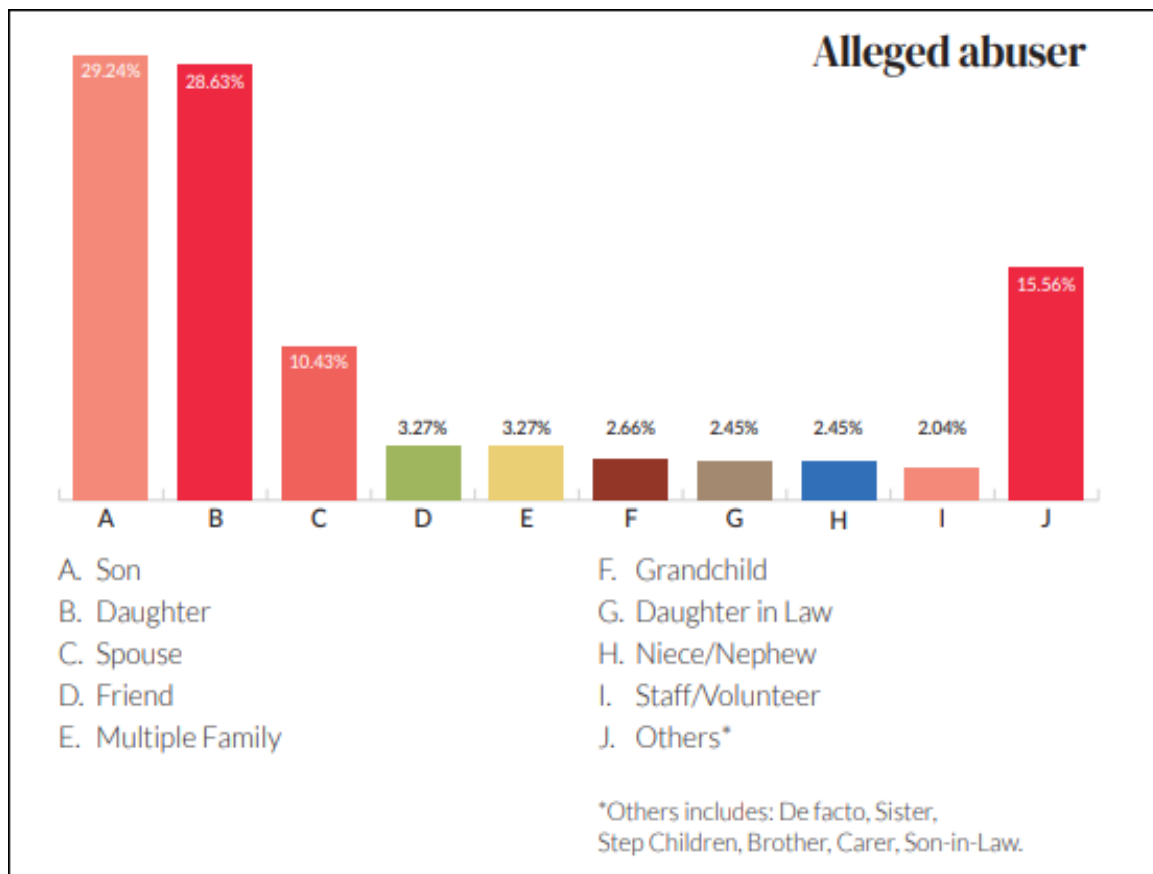
- 42 financial advocacy cases
- 576 education sessions with a total of 9,662 participants
- 135 community activities/events
- 57 networking events
- 346 callers referred to other relevant services
- Overall 16,956 contacts with South Australians.

Financial abuse

ARAS provides advocacy support, information, and education to older people (or their legal representatives) who are at risk of or experiencing financial abuse by someone in a position of trust, such as a family member or a friend.

The abuse prevention service operates with a simple message – “there’s no excuse for abuse” and aims to reinforce the idea that older people are valued community members, and that help is available to prevent them from suffering harm. By recognizing cultural nuances, the service ensures that its advocacy support is adaptable to the diverse cultural needs of the older community.





Financial abuse is a significant feature of elder abuse and mainly perpetrated by adult children (60%). A spouse is identified as ranking third (11%).

Risk factors for older people experiencing abuse identified in 2022-2023 year:

- family conflict
- cognitive impairment
- financial stress
- isolation
- lack of knowledge

Particularly, for those in the 70+ age group:

- greater reliance on others for financial decisions or decisions about care
- isolation due to death of a spouse and/or friend
- physical dependency upon adult children for care and transport to medical appointments and social activities.

³ ARAS annual report 2022-2023 at page 23 -<https://www.sa.agedrights.asn.au/resources/publications>

The South Australian Law Reform Institute (SALRI) found that “ARAS collects the most comprehensive data on elder abuse in South Australia.”⁴

Older people are particularly vulnerable to financial abuse. Many older people are reliant upon family members or carers to access internet banking, and when using the internet or social media for themselves they can be exposed to a significant risk of falling prey to financial scams due to the sophistication of the fraudsters.

The present-day reliance upon internet banking removes the opportunity for banking tellers to assist older people with their transactions in real time.

“[We] are informed of many instances where abuse has been perpetrated simply because the account holder has provided his or her account access details to another – whether through pressure being brought to bear, or simply because it is “easier” for the other person to attend to (usual) payments on the account holder’s behalf.”⁵

Examples of financial abuse seen by ARAS include:

- An older person cannot find jewellery or other personal property, the daughter has taken these items to sell and pay for a holiday,
- Bills not being paid
- Client told by family member there is no money left from their pension/super fund to pay for hairdressing or outings but client tells staff they have money in their account
- Client asks to see their bank balance but the family member/friend who is managing the client’s finances never provides it

Where there is financial abuse present, psychological abuse usually accompanies this.⁶

However the particular form of abuse is referred to – emotional abuse, coercive control or gaslighting, it is often accompanied by financial abuse, as it becomes the means by which the financial abuse is able to be carried out.

A Western Australian Parliamentary Report case study found that:

“In terms of psychological and emotional abuse, what I see most commonly is threats to isolate an older person from their grandchildren and from their broader family networks unless they cooperate – if you like it is a two-pronged approach – with, for example, selling a house or handing over X amount of money to allow someone to put a deposit on a home. So that two-pronged

⁴ Sylvia Villios, David Plater, Gabrielle Golding, Olga Pandos, Bernadette Richards, Anita Brunacci, Natalie Ayoub and Holly Nicholls, *Valuable Instrument or the Single Most Abused Legal Document in our Legal System? A Review of the Role and Operation of Enduring Powers of Attorney in South Australia* (South Australian Law Reform Institute, Adelaide, 2020) at page 225

⁵ Institute of Legal Executives (Vic), *Submission 320* Rae Kaspiew, Rachel Carson and Helen Rhoades, “Elder Abuse: Understanding Issues, Frameworks and Responses” (Research Report 35, Australian Institute of Family Studies, 2016)¹¹ in *Elder Abuse – A National Legal Response, Final Report*, Australian Law Reform Commission ALRC Report 314

⁶ Aged Rights Advocacy Service – Education – Powerpoint presentation, “Allied Health Professionals and Medical Students” at Slide 31

approach of, unless you cooperate with this financial demand, you won't be seeing this person or that person again in your life.”⁷

ARAS finds that financial abuse is commonly associated with other forms of abuse. When a matter of financial abuse occurs, it is useful to consider what other types of elder abuse may be evident. This could commonly be psychological abuse, or it could be social abuse, or neglect. An example of neglect could be a spouse refusing to purchase hearing aids or glasses, despite being told multiple times by a residential care facility that these are required; or refusing to pay the accommodation charges at the facility.

An example of social abuse could be an adult daughter refusing to reimburse a residential care facility for a bus excursion for her parent despite knowing the importance of this type of outing. This could be accompanied by financial abuse.

Another example is of a son and daughter-in-law who move in with the older person. The bills are not being paid even though money was given for these. They will not contribute to expenses. The phone is cut off, the older person has no outside connection. The son is holding on to the older person's ATM card, “just in case they lose it.” The son may be enduring power of attorney for his mother but is not acting in her best interests. Money is taken out of older person's bank accounts.⁸

Misuse of delegated powers by attorneys is an area of concern. Use of an enduring power of attorney is an effective way to manage an older person's financial affairs once they are no longer capable. However, it is also susceptible to misuse.

“[E]nduring documents may facilitate abuse by the very person appointed by the older person to protect them. Evidence suggests that financial abuse is the most common form of elder abuse and that, in a significant minority of cases, the financial abuse is facilitated through misuse of a power of attorney.”⁹

It is suggested that there needs to be a broad national consensus on the approach to be taken towards the use (and misuse) of enduring powers of attorney. This is particularly so given the significance of the fact that the authority vested in the donee under a power of attorney will only take effect once the donor has lost legal capacity, and hence the ability to monitor or approve the actions subsequently taken by their donee. It is crucial to the efficacious use of a power of attorney that the donee understands the significance of the responsibility that has been entrusted to them.

A better widespread understanding of a donee's responsibilities and accountability is necessary in the quest to reduce the financial abuse of older persons through the misuse of powers of attorney. To advance this aim steps should be encouraged to

⁷ Select Committee into Elder Abuse, Legislative Council of Western Australia, *“I Never Thought It Would Happen to Me,” When Trust is Broken* (Final Report, September 2018) 42 in David Plater, Divya Narayan, Anita Brunacci, Holly Nicholls, Jemma Holt, Machaela Okinski, Olga Pandos, Taylor Partelli, Rahcel Tan, Kim Tran, Sylvia Villios and John Williams, *“Autonomy and Safeguarding are not Mutually Inconsistent” A Review of the operation of the Ageing and Adult Safeguarding Act 1995 (SA)* (South Australian Law Reform Institute, Adelaide, 2022)

⁸ Aged Rights Advocacy Service – Education, op cit at Slide 32

⁹ National Ageing Research Institute and Seniors Rights Victoria, *Profile of Elder Abuse in Victoria. Analysis of Data About People Seeking Help from Seniors Rights Victoria* (2015) 5; in Rae Kaspiew, Rachel Carson and Helen Rhoades, op cit 131

reduce inconsistencies of approach amongst the different states and territories through efforts to harmonise the laws regulating the use of powers of attorney, and to signal that there will be consequences for donees who breach their obligations to donors.

ARAS is in favour of national harmonisation of laws governing the use of enduring powers of attorney, the introduction of a national register, and educational initiatives to improve the widespread understanding of the purpose and appropriate use of such instruments.

“SALRI accepts the strong case in favour of national harmonisation (or at least consistency) ...SALRI supports the national harmonisation of Enduring Powers of Attorney and, to the maximum extent possible, the recognition in South Australia of all power of attorney documents validly executed in another Australian state or territory. Mutual recognition is an important point.”¹⁰

Inconsistency in the documents that create enduring powers of attorney across the various states and territories can create issues for banks and other financial institutions; issues which could be largely addressed by a single common form.

SALRI comments:

“Whilst a national EPA register is commendable – indeed desirable option, this will also prove a complex and time-consuming practical project and also will certainly not happen immediately. In the interim, it is desirable that Sought Australian laws and practices relating to EPAs should be as effective as possible and serve to protect the principal whilst retaining the utility of EPAs...nationally harmonious or consistent EPA laws and especially the introduction of a national EPA register is likely to prove a prolonged and involved process.”¹¹

The Australian Law Reform Commission has offered the following actions to prevent abuse of Enduring Powers of Attorney:

- *Adopting nationally consistent safeguards that seek to minimize the risk of abuse of an enduring document*
- *Giving tribunals jurisdiction to award compensation when duties under an enduring document have been breached; and*
- *Establishing a national online registration scheme for enduring documents.*¹²

An Aboriginal perspective

As reported in the Australian Institute of Health and Welfare, Dementia in Australia Summary Report 2022:

¹⁰ Sylvia Villios, David Plater, Gabrielle Golding, Olga Pandos, Bernadette Richards, Anita Brunacci, Natalie Ayoub and Holly Nicholls, *op cit* at 21

¹¹ *Ibid* at 22

¹² *Rae Kaspiew, Rachel Carson and Helen Rhoades, op cit* at 160

“[R]ates of dementia for older Indigenous Australians in remote and rural communities [are] among the highest in the world.”¹³

“Across the Northern Territory, the age-adjusted prevalence of dementia for Indigenous people aged 45 and over is 6.5%, compared with 2.6% among the non-Indigenous population¹⁴

“The prevalence of dementia among Indigenous people aged 60 and over who live in urban and regional areas is about 3 times as high as the rate for all Australians aged 60 and over (21%and 6.8%, respectively.)”¹⁵

ARAS provides a specialist Aboriginal advocacy service. It has been observed over the years that the uptake of EPOAs by Aboriginal people is seemingly less than in the non-indigenous population. A low incidence of formal appointment of financial attorneys, when coupled with the known cultural obligations that may be placed on Aboriginal elders to care for extended family and communities through the sharing of resources, leads to a concern that older aboriginal people may be subjected to a form of financial abuse.

As part of its service delivery ARAS’ Aboriginal advocates raise awareness of the issue of “Humbugging” through the provision of culturally safe resources that ask elders the question “Is this happening to you or someone you know?” ARAS support service offers options around safeguards to resolve concerns whilst also aiming to preserve family connections and relationships through linking elders and their families to culturally appropriate support services.

“Humbugging” refers to the unreasonable and repeated demands that are placed on an older Aboriginal person by a family member, for money, accommodation or payment of goods or services. Humbugging occurs as a result of a range of factors, including socio-economic and cultural obligations in Aboriginal communities.

The act of Humbugging may compromise the well-being of elders if they pass up money that was set aside to pay for their own groceries, medications, housing payments or wellbeing. Humbugging is a form of financial abuse.

Case studies

ARAS provides the following case study about financial abuse, including the misuse of an enduring power of attorney.

Graham, who lives in an aged care home, contacted ARAS, concerned that a family member had used his savings to pay off their own home mortgage. Graham also said the family member had sold his house, possessions, jewellery, and car, and was using the money for his own purposes. The family member had enacted the Enduring Power of Attorney without Graham’s permission, even though a geriatrician had recently assessed Graham as having full capacity for financial decision making.

¹³ Smith et al.2008; Lo Gludice et al 2016) AIHW Dementia in Australia Summary report page 29

¹⁴ Li et al.2014; ibid at 29

¹⁵ Radford et al.2017; ibid at 29

Graham was very vulnerable and isolated and had no other living family in South Australia except the family member who had abused him. Graham had reduced mobility, was unable to use a phone due to deafness, and had lost social connections since living in an aged care home. Graham said that all his friends were deceased but that he had a sister living interstate.

With permission from Graham, the ARAS advocate contacted a free legal service for free advice and to investigate the situation. The local support service discovered extensive financial abuse by the family member. The advocate assisted Graham to contact his banks and supported him to contact a mobile law service who were able to visit him in the aged care home to review and amend his Power of Attorney documentation and make the changes to his Will that he wanted.

Although it was a long process, Graham was very pleased with the outcome. Graham said he feels confident in contacting ARAS or his lawyer if there is any retribution from family.

Recommendations

- ARAS recommends the harmonisation of enduring powers of attorney laws.
- ARAS recommends a national register of enduring powers of attorney.
- ARAS recommends a national approach to education about financial abuse, and the responsibilities of donees acting under powers of attorney.