

APEA:WA

Alliance for the Prevention of Elder Abuse: Western Australia

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Mr Peter Slipper MP
Chairman
House of Representatives Standing Committee
on Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600



Dear Mr Slipper

Inquiry into Older People and the Law

Please find attached the submission from the Alliance for the Prevention of Elder Abuse: Western Australia.

We appreciate the opportunity to present information to the Inquiry in relation to the abuse of older people and the law.

Yours sincerely



Stephen Boylen
Chairperson

24 April 2007

APEA:WA

Alliance for the Prevention of Elder Abuse:Western Australia

Submission to The House of Representatives Standing Committee on Legal and Constitutional Affairs

Inquiry into older people and the law

APEA:WA brings together Western Australian organisations that support and assist older people and their family and friends who are experiencing elder abuse. These organisations include:

- Advocare Inc.
- Office of the Public Advocate
- Office for Seniors Interests' and Volunteering
- Legal Aid Western Australia
- Disability Services Commission
- Department of Health
- Office of the Chief Psychiatrist
- Public Trust Office
- WA Police Service
- an Aboriginal Representative

APEA:WA promotes a whole of government policy framework that values older people and supports the rights of older people. APEA:WA's members work collaboratively to raise awareness of elder abuse issues and influence current attitudes, policies and practices in relation to elder abuse. This includes influencing the organisations from which members are drawn, as well as external agencies.

APEA:WA defines elder abuse as any act which causes harm to an older person and occurs within an informal relationship of trust, such as that of family or friends. This includes:

- Financial or material abuse
- Emotional or psychological abuse
- Physical abuse
- Sexual abuse
- Social abuse
- Neglect

As APEA:WA's focus is elder abuse, this submission focuses on the terms of reference in relation to the abuse of older people. In recent years, several member organisations have funded and undertaken research into elder abuse. This research informs the issues raised in this submission. The research includes:

- Boldy, D., Webb, M., Horner, B., Davey, M. and Kingsley, B. (2002). *Elder Abuse in Western Australia*. Perth, Centre for Research into Aged Care Services, Curtin University of Technology.
(<http://www.community.wa.gov.au/NR/rdonlyres/EF41D159-28D0-4E9F-B8F8-ECB405474529/0/DCDRPTElderabusereport2002.pdf>)
- Faye, B. and Sellick, M. (2003). *Advocare's Speak Out Survey "S.O.S". on Elder Abuse*. Perth, Advocare.
(<http://apeawa.advocare.org.au/publications/Speak%20Out%20Survey%20Final%20Report.PDF>).
- Office of the Public Advocate. (2005). *Mistreatment of older people in Aboriginal Communities Project: An investigation into elder abuse in Aboriginal communities*. Perth, Office of the Public Advocate.
(<http://apeawa.advocare.org.au/publications/MISTREATMENT%20OF%20OLDER%20PEOPLE%20IN%20ABORIGINAL%20COMMUNITIES.pdf>)
- Office of the Public Advocate. (2006). *Care and Respect: Elder Abuse in Culturally and Linguistically Diverse Communities*. Perth, Office of the Public Advocate.
(http://apeawa.advocare.org.au/publications/Elder_Abuse_in_Culturally_and_Linguistically_Diverse_Communities.pdf)

This research and its results have been discussed in submissions to this inquiry already made by Advocare Inc. (submission 71), the Western Australian Government (submission 74), and the Office of the Public Advocate (OPA) (submission 80). However, the members of APEA:WA feel that the importance of the issue of elder abuse warrants a separate submission to this inquiry being made, bringing together the views of the APEA:WA member organisations.

Issues pertinent to the terms of reference of this inquiry found in the research data are:

- Financial abuse is the most commonly reported form of elder abuse (forming 81% of known cases reported in Boldy et. al. (2002), and 74% of cases in Faye and Sellick (2003)). Financial abuse was also the most commonly reported type of abuse in Indigenous and culturally and linguistically diverse (CALD) communities (OPA, 2005; OPA, 2006).
- It is common that older people experience multiple types of abuse at the same time, with 84% of people experiencing financial abuse in the Advocare study also experiencing psychological abuse (Faye & Sellick, 2003).

- Advocare's Speak Out Survey found that the vast majority of people experiencing elder abuse lived in their own homes (90%), and in 31% of cases the alleged perpetrator lived in the victim's home, with a third of these receiving carers' payment (Faye & Sellick, 2003). In only three cases did the victim live in the alleged perpetrator's home, and in six percent of cases the victim was living in residential aged care.
- In both Boldy et al. (2002) and Faye and Sellick (2003), the main perpetrators of abuse were adult children (43% and 56% respectively).
- People from what are perceived as disadvantaged or vulnerable groups are over-represented in elder abuse statistics:
 - **Decision making disability** - people with some form of decision-making disability were more likely to be subject to abuse, representing 75% of reported elder abuse cases (Boldy et al, 2002).
 - **Women** – females are more likely to experience elder abuse than males. In Boldy et al (2002) women were abused at two and a half times the rate of men. In the Faye and Sellick (2003) research, women comprised 74% of elder abuse victims.
 - **Older Aged** – Boldy et al (2002) found that people aged 75 years or older were more likely to experience abuse.
 - **Indigenous and CALD people** - Although the two studies conducted by the Office of the Public Advocate into elder abuse in Indigenous and CALD communities did not collect prevalence data, they concluded that there is evidence to suggest that elder abuse exists in these communities at similar levels than in the mainstream population, if not greater (OPA, 2005; OPA, 2006).

Being a victim of elder abuse, especially that perpetrated by family and friends, may have a devastating effect on a person's lifestyle and quality of life. Suffering financial abuse may mean that a person who was previously comfortably off may now be impoverished. The experience of elder abuse may also have an effect on the older person's health and well-being, due to the emotions experienced as a result of the betrayal by loved ones. These factors, when grouped with other forms of elder abuse, such as social isolation, physical abuse, and neglect, may have the impact of shortening an older person's life considerably.

In 2004, people aged 65 years and older comprised 13 percent of the population. It is projected that this will increase to between 26 and 38 percent by the year 2051. Elder abuse prevalence studies estimate that elder abuse could affect anywhere from two to five percent of the older population. Thus, it is important that elder abuse is recognised and

that preventative and punitive measures to respond to it are included in legislation and policy.

Discussion around Terms of Reference

Fraud, Financial Abuse and Enduring Powers of Attorney

Fraud, financial abuse and enduring powers of attorney are discussed concurrently, as this submission focuses on elder abuse and there is often a relationship between these issues.

Different types of financial abuse uncovered in the Advocare research include:

- Theft of possessions or money, including from a bank account
- Misuse of a Power of Attorney (POA) or Enduring Power of Attorney (EPA)
- Older people being pressured for money, possessions, or to change their will
- Older people's houses being sold without their knowledge or otherwise disposed of

The potential for abuse of EPAs by attorneys where the older person does not have decision-making capacity and is not aware, or does not understand, what is being done with their finances or property, is a concern. If an older person, with or without decision-making capacity, is socially isolated due to factors such as lack of mobility, physical impairments, or is deliberately isolated by the person perpetrating the abuse, there may not be anyone monitoring what happens to the older person's finances or property.

There may be a role for banking and financial sector employees to identify suspicious situations or transactions. People working in this industry may be in a position to identify potential elder abuse if they are educated about it and sensitive to the issues involved. Anecdotal evidence from service providers trying to assist people experiencing financial abuse has been that responses by banking staff are highly variable. While some are helpful in providing information to ascertain whether or not abuse is actually occurring, others will not give the account holder information about their own finances in order that they can confirm that suspicious withdrawals have taken place. There have also been cases where real estate agents have been involved with selling a person's house on instructions from the attorney, without the older person's knowledge or consent, with the money from the sale going to the attorney or other family members.

While EPAs are required to be witnessed, there is no formal registration process required. This makes it difficult to monitor their use. However, there are several measures in place which may act as safeguards. These include:

- An EPA must be lodged with the Western Australian Department of Land Information if a donor owns land and there is likelihood that the attorney may be required to sell or transfer the property.

- Attorneys (or donees) are required to keep records of financial transactions made on behalf of the donor, as these may be requested by the State Administrative Tribunal if an inquiry or dispute is brought before it involving the enduring power of attorney.

Barriers to older Australians accessing legal services: Discrimination

Many people experiencing elder abuse would benefit from having access and recourse to legal services to assist them in protecting their rights and best interests. In relation to people experiencing elder abuse, barriers to accessing and utilising legal services include:

- lack of money, as most older people are retirees living on limited incomes and may be asset rich but cash poor.
- difficulty traversing the often complex legal system due to lack of confidence or knowledge of the services available.
- physical problems that occur in conjunction with the ageing process, such as mobility, visual and hearing impairments.
- cultural and language barriers to effective communication, especially in the case of Indigenous and CALD older people.
- Discrimination relating to age, culture/ethnicity, disability, etc.
- lack of services in rural and remote areas.
- emotional ties to the alleged perpetrator.

Barriers to accessing legal services due to ageing issues and discrimination are compounded for older people of Indigenous and CALD backgrounds. Aboriginal people age more rapidly than non-Aboriginal people due to inter generational health and socio-economic issues. Also, many Aboriginal people live in rural and remote communities where there is only limited access to legal and other services. Aboriginal people may also not trust police and legal services due to past experiences relating to discrimination and discriminatory practices, such as that which gave rise to the 'stolen generation'. Mainstream services may be quite variable in their cultural and linguistic relevance to Aboriginal and CALD people.

One of the recommendations from the Advocare research was to establish a financially accessible legal advice service for older people at risk of elder abuse. An Elder Abuse Information, Support and Legal Service is being funded by the Western Australian Government, and it is expected that it will commence operations around mid-2007. It is hoped that this service will go some way towards alleviating some of the barriers for older people to accessing legal services in Western Australia.

While some forms of elder abuse are criminal acts, they are often not reported. The research by Advocare mentions particular concern among older people that informing the police about the abuse may result in negative repercussions for the perpetrator and/or themselves. Barriers to reporting to the police include concern for the perpetrator, fear

and discomfort (especially identified by Indigenous women) and a lack of confidence that the police would or could help.

As mentioned above, research data has shown that the people most commonly perpetrating elder abuse are adult sons and daughters. Anecdotal evidence from elder abuse workers at Advocare is that in many cases, even though the older person's children have been shown to be committing fraud, misusing powers of attorney, or stealing money from their parent's accounts, older people are reluctant to press charges because of family ties and the responsibility they feel for the perpetrator's welfare. They do not want to get their relative 'in trouble' or thrown in jail, and want to maintain a personal relationship with the perpetrator, or to be able to have contact with their grandchildren. Also, lack of evidence in the case of some forms of elder abuse, such as psychological abuse and social isolation, may make it difficult to press charges.

Recommendations

In light of the issues raised in the discussion above, the following recommendations are proposed:

- *That a national community education campaign targeting elder abuse takes place.* Further awareness of this issue needs to be raised among the general community with a special focus on vulnerable groups, including Indigenous and CALD people, people with decision-making disabilities, and women.
- *That there be increased training and community education programs to raise awareness about the purpose and utility of EPAs.* The Office of the Public Advocate believes that any training around EPAs should focus on the importance of choosing an attorney who you can trust, and someone who is capable of undertaking the responsibilities of the attorney. Training should also be provided to the banking and financial sector in a bid to assist them identify and prevent financial abuse.
- *That collation of EPA data be collected in each jurisdiction.* Having a set of collated data will allow governments to identify the key problems in the EPA management system and develop strategies to address them. Some research has suggested that a central register of EPAs may help to prevent these situations, but the Office of the Public Advocate has expressed reservations about adopting this approach without substantial research into its benefits and functionality.
- *That a mechanism to review financial transactions made by donees of EPAs be explored.* Under Western Australian legislation transactions undertaken by an attorney or donee of an EPA must be recorded. Financial transactions of donees may be reviewed in Western Australia if an application is made to the State Administrative Tribunal. A further safeguard may be provided if the transactions were audited regularly. There is a need to explore this further.

- *That there be greater consistency and uniformity of EPA procedures, with mutual recognition of EPAs across States and Territories.* The system as it stands requires that people have a separate EPA for each state/territory they have property or financial interests in, and there are a number of inconsistencies in EPA procedures.
- *That a national policy framework be developed in response to elder abuse which takes into account cross-jurisdictional issues, providing a considered and cohesive national approach to addressing this issue.*

Thank you for the opportunity to contribute to this inquiry. Should further information about this submission be required, please feel free to contact myself at Stephen.Boylen@dcd.wa.gov.au or the APEA:WA Executive Officer, Barbara Black, at barbarab@advocare.org.au.

Yours sincerely



Stephen Boylen
Chairperson
Alliance for the Prevention of Elder Abuse: WA

24 April 2007