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Royal Commission: Domestic Family and Sexual Violence

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The Aged Rights Advocacy Service (SA) Inc (ARAS) welcomes the opportunity to provide a submission to the Royal Commission into Domestic, Family and Sexual violence.

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

Through its elder abuse prevention program ARAS assists older persons who may be experiencing abuse, and it delivers education sessions at aged care residential facilities and at community meetings to raise awareness about the prevalence of the abuse of older persons.

ARAS works extensively to assist and support older South Australians and it supports measures that are designed to reduce the rate of abuse.

In 2021 the Australian Institute of Family Studies estimated that about 15% of people over 65 living in the community were likely to have been exposed to elder abuse.¹ In a population of 4.2 million people aged over 65,² this equates to over 620 000 older Australians. This is an alarming number, given that “by 2050 around one quarter of Australians will be aged 65 years and over.”³

About Aged Rights Advocacy Service (ARAS) Inc.

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

ARAS' clients

An older person can retain the services of an ARAS advocate to help them address their concerns if they are users of community or residential aged care services, live in

¹Qu, L, Kaspiew, R, Carson, R, Roopers, D, DeMaio, J Harvey, J, Horsfall, B, (2021) *National Elder Abuse Prevalence Study: Final Report* (Research Report) Melbourne Australian Institute of Family Studies at page 2 [2021_national_elder_abuse_prevalence_study_final_report_0.pdf \(aifs.gov.au\)](https://aifs.gov.au/2021-national-elder-abuse-prevalence-study-final-report-0.pdf) at page 2

² [Older Australians, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://aihw.gov.au/older-australians-summary)

³ Australian Human Rights Commission, *Face the facts: Older Australians* at page 2, [FTFOlderAustralians.pdf \(humanrights.gov.au\)](https://www.humanrights.gov.au/face-the-facts-older-australians)

retirement villages, or are experiencing, or are at risk of abuse from family or friends. This service is available at no cost to the individual.

ARAS employs specialist Aboriginal advocates to provide culturally safe and appropriate supports for older Aboriginal people.

ARAS' activities

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

Intergenerational gatherings are regularly convened in regional South Australia, and each year ARAS hosts a South Australian World Elder Abuse Awareness Day (WEAAD) conference. WEAAD brings together policy makers, frontline workers, and those with lived experience of elder abuse. The key message at each conference is that any abuse of an older adult is unacceptable.

Earlier this year, together with Elder Abuse Action Australia (EAAA), ARAS co-hosted a conference, entitled "Turn up the Volume."

This conference brought together experts from across Australia to share their knowledge and experiences of tackling the issue of elder abuse, and it heralded a growing ambition to embed issues surrounding the abuse and neglect of older people into the consciousness of the nation.

The conference title serves as a reminder that continued efforts and advocacy will be needed to affect changes in attitudes towards the elderly; to repudiate ageism and uphold principles of equality and fairness.

ARAS' leadership and affiliations

ARAS is an originating member of the South Australian Alliance for the Prevention of Elder Abuse and is one of five founding members of EAAA.

It has an experienced volunteer Board of non-executive directors and 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

- 43 financial advocacy cases
- 576 education sessions with a total of 9,662 participants
- 137 community activities/events
- Overall, 22432 contacts with South Australians.

Abuse of an older person

It is noted that the background and issues papers recognize that domestic, family and sexual violence is a broad concept that can occur between family members, not just between intimate partners, and in family-like settings. Further that family violence is not limited to physical acts but could encompass coercive and controlling behaviors as well as financial and psychological abuse.

This submission concerns itself with the abuse of an older person. The World Health Organization defines the abuse of an older person as:

“a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.”⁴

The abuse can be identified as being physical, psychological, social, sexual, or financial in nature, or it can be neglect.

Physical abuse can be identified as hitting, pushing, slapping, kicking or perhaps the inappropriate use of drugs or restraints.

Psychological abuse can be manifested in the form of verbal harassment, humiliation, threats, or controlling behavior.

Social abuse can occur when there are restrictions placed upon activities or contacts.

Sexual abuse can be where a person is forced or tricked into sexual acts or activity against their will or without their consent.

Financial abuse can be evidenced through the misuse of an older person’s money, property or resources.

Neglect or abandonment can stem from a failure to meet basic needs or to provide necessities.

It is important to highlight the differences between abuse of an older person and family violence. It is ARAS’ view that the term “abuse of an older person” is broader in scope than “family violence” as it may extend well beyond the family of an older person to include non-familial persons who are in a relationship of trust.

Perpetrators can be friends, neighbors, acquaintances or the staff members or volunteers connected with service providers. Nonetheless, abuse of an older person

⁴ World Health Organization, *Abuse of older people* (13 June 2022) [Abuse of older people \(who.int\)](#)

remains a significant aspect of family violence, although its manifestation may not always be in a family home setting, but at another location or facility.

There is intersectionality between family violence and abuse of an older person as they share certain features, but can have different outcomes, engendering different responses. The abuse of an older person can be intergenerational.

When mention is made of family violence, not often is the focus on the abuse of an older person.

Family violence is defined in the *Family Law Act 1975 (Cth)* as “violent, threatening or other behavior by a person that coerces or controls a member of the person’s family or causes the family member to be fearful.”⁵

In the National Legal Response on Elder Abuse “abuse of an older person” is defined as occurring in “a relationship where there is an expectation of trust.”⁶ Further, this expectation of trust applies to those in an “affective relationship such as family members, friends and informal carers and those in a functional position of trust such as paid carers and some professionals.”⁷

Abuse of an older person is closely related to family violence. As Dr John Chesterman has observed, “elder abuse is often also an instance of family violence.”⁸

It appears that the descriptors such as ‘abuse of older persons’ and ‘family violence’ “are often used interchangeably in policy documents and statistics”⁹ But it is clear that there can be differing consequences.

“Whether abuse of an older person is described as elder abuse or family violence can have an impact on services available to the person to respond to the abusive behavior, for instance, family violence services, such as crisis accommodation that largely cater for women and children may not be suitable for older victims.”¹⁰

A shelter would likely be regarded as an inappropriate support for an 80-year-old man.

The difference between family violence and abuse of an older person has been further examined by Dr Chesterman:

“Oftentimes domestic and family violence responses are warranted in situations of elder abuse. However, even in those situations where a family member is involved, there is often a difference in elder abuse scenarios from general family violence ones. Whereas in a paradigmatic family violence situation a partner may be seeking to sever a relationship and move away from the perpetrator,

⁵ *Family Law Act 1975 (Cth)* s4AB(1)

⁶ Elder Abuse – Australian Law Reform Commission A National Legal Response, final report ALRC 131 at 37

⁷ *Ibid*

⁸ Dr John Chesterman “Taking Control : Putting Older People at the Centre of Elder Abuse Response Strategies (2016) 69(1) *Australian Social Work* 115, 117 in Elder Abuse – Australian Law Reform Commission A National Legal Response, final report ALRC 131 at page 40

⁹ *Ibid*

¹⁰ Victoria, Royal Commission in Family Violence, *Summary and Recommendations* (2016) 18 in Elder Abuse ALRC 131 page 41

intergenerational elder abuse may see the victim strongly wishing to maintain contact with the abuser. This can affect everything from likely reporting through to appropriate service responses.”¹¹

ARAS has commonly found that the victims of abuse of an older person want the abuse to stop, but not necessarily for a perpetrator to face criminal sanctions. A perpetrator might be the sole carer for the victim in their home, and if they are taken away there will be consequences for the victim, including isolation or a need to move into residential care.

Roundtable contributors to the volume 1 report “Adult Safeguarding in Queensland” explained that the identification of situations involving elder abuse proved difficult at times, and that:

“In many scenarios, both the person experiencing elder abuse and the perpetrator of the abuse may be unaware that the situation would constitute elder abuse. This impacts the likelihood of reporting the abuse or seeking assistance.”¹²

The “Experiences of Violence in Australia” statistics contained in the Background Paper do not mention the abuse of older people. Yet it is significant – the National Elder Abuse Prevalence Study found that around 1 in 6 (15%) of people experienced abuse of an older person in the past year.¹³

This submission addresses “abuse of an older person” whilst recognizing that there are components of abuse of an older person that will not be regarded as family violence.

Question 1: What causes abuse of an older person?

In relation to financial abuse, “generational attitudes and expectations in relation to asset transfers before or after death and the broader question of attitudes and expectations...form an important part of the backdrop to the social and economic dynamics that may influence the conditions in which elder abuse occurs.”¹⁴

ARAS suggests that there are a number of factors contributing to the abuse of an older person.

Risk factors for older people experiencing abuse identified by ARAS in the 2022-2023 year were:

- family conflict

¹¹ Dr John Chesterman, Adult Safeguarding in Queensland Volume 1: Identifying the Gaps, page 21

¹² *Ibid* at page 20

¹³ Qu, L, Kaspiew, R, Carson, R, Roopers, D, DeMaio, J Harvey, J, Horsfall, B, (2021) *National Elder Abuse Prevalence Study: Final Report* (Research Report) Melbourne Australian Institute of Family Studies at page 2 [2021_national_elder_abuse_prevalence_study_final_report_0.pdf \(aifs.gov.au\) at page 2](https://aifs.gov.au/aifs/research-reports/national-elder-abuse-prevalence-study-final-report-0)

¹⁴ Rae Kaspiew, Rachel Carson and Helen Rhoades, “Elder Abuse: Understanding Issues, Frameworks and Responses” (Research Report 35, Australian Institute of Family Studies, 2016) 5 in ALRC report 131 op cit page 41

- cognitive impairment
- financial stress
- isolation
- lack of knowledge¹⁵

Particularly, for those in the 70+ age group the risks increased due to:

- greater reliance on others for financial decisions or decisions about care
- isolation due to death of a spouse and/or friend, or
- physical dependency upon an adult child for care and transport to medical appointments and social activities.¹⁶

The Australian Law Reform Commission has pointed to some further factors which play a role in and contribute to the abuse of an older person:

- dependence
- significant disability
- poor physical health
- mental disorders (such as depression)
- low income or socio-economic status
- cognitive impairment, and
- social isolation.

As for the perpetrator, there is strong evidence that the following are risk factors:

- depression
- substance abuse, alcohol and drug misuse, and
- financial, emotional, relational dependence on the abused.¹⁷

The Adult Safeguarding in Queensland report found:

“Elder abuse presents risks to an older person’s physical and mental health as well as potentially jeopardising their financial future, creating a situation where they are financially dependent on others, and may feel that they must remain in an abusive relationship. Elder abuse can often be hidden and even ‘not noticed’ by the victim and perpetrator until reaching a crisis point where significant intervention is required to prevent a tragic outcome.”¹⁸

ARAS submits that the abuse of an older person should be capable of being sanctioned notwithstanding that the abuse is limited to a single act. For example, so called “inheritance impatience” could constitute a transfer of a large sum of money or real property from the older person in a single act and proving to be extremely detrimental to them.

¹⁵ ARAS annual report 2022-2023 at page 22 -<https://www.sa.agedrights.asn.au/resources/publications>

¹⁶ ARAS annual report 2021-2022 at page 20 -<https://www.sa.agedrights.asn.au/resources/publications>

¹⁷ Elder Abuse – Australian Law Reform Commission - A National Legal Response, final report ALRC 131 at 44

¹⁸ Dr John Chesterman Adult Safeguarding in Queensland *op cit* at page 25

Question 2: What works, or will work, to prevent abuse of an older person?

Abuse of an older person is a complex, multi-factorial and sophisticated problem. Initiatives aimed at preventing abuse of an older person must be multi-layered, comprehensive and well resourced designed to provide support to the older person during the entire journey of the abuse; before, during and after.

Prevention of abuse of an older person can be addressed through information and education of the community at large to raise awareness about abuse of an older person. Knowledge as they say is power and understanding that abuse of an older person occurs and is unacceptable will also contribute to effecting cultural change which is another mechanism for prevention.

ARAS programs deliver ongoing education about elder abuse to community members and to service providers. In 2022/2023 ARAS delivered 162 education sessions in South Australia.¹⁹

ARAS is a member of OPAN which provides extensive education and support in relation to abuse of older persons. ARAS is also a founding member of EAAA which is a specialist organization acting to eliminate elder abuse. It provides a national voice to raise awareness and to “confront the often-hidden problem of discrimination, neglect and mistreatment of older Australians.”²⁰

EAAA “campaigns for a society that respects and values older Australians and which is free from elder abuse.”²¹

The client services and education sessions provided by ARAS are designed to address some of the key challenges which can be faced “including awareness and identification of elder abuse, early intervention, and investigation of potential elder abuse.”²²

In 2022/2023, advocacy support to persons subject to abuse of an older person was provided to 108 people. General information on prevention strategies and safeguards was provided to a further 365 people, making a total of 473 people assisted by ARAS.²³

“ARAS advocates provided options for prevention and intervention strategies to help callers safeguard themselves from abuse. From the feedback received we know that people felt relieved and confident and were supported to take the lead and feel empowered through the advocacy process, increase their independence, know their rights, receive a culturally appropriate service and regain control of their lives.”²⁴

¹⁹ ARAS annual report 2022-2023 at page 37 -<https://www.sa.agedrights.asn.au/resources/publications>

²⁰ <https://eaaa.org.au/about-us/>

²¹ *Ibid*

²² Dr John Chesterman, Adult Safeguarding in Queensland, *op cit* at page 8

²³ ARAS annual report 2022-2023 at page 11 – <https://www.sa.agedrights.asn.au/resources/publications>

²⁴ ARAS annual report 2018-2019 at page 13 -<https://www.sa.agedrights.asn.au/resources/publications>

More resources will have to be invested so that any community education programs reach a much larger cohort of people and where possible targeting relevant stakeholders.

Question 3: What existing initiatives are directed at addressing the attitudes and systems that drive domestic, family and sexual violence. Are they effective?

Domestic, family and sexual violence, including abuse of an older person, in our community is at crisis point. It has received attention from government at all levels and funding for various initiatives have been provided.

There are increased media exposure of the problem designed to increase community awareness. Various agencies are funded to provide support to survivors largely responding at the acute end, such as crisis care, housing and financial.

Funding has also been provided to set up the Women's Domestic Violence Court Assistance Service (WDVCAS) operated by the Legal Services Commission. The WDVCAS provides legal representation to women seeking protective orders under the *Intervention Orders (Prevention of Abuse) Act 2009* in circumstances where the abuse may include financial, coercion and harassment. However, this service is not available to men, and consequently an older male South Australian experiencing abuse, other than physical abuse, from a family member, will have to source other avenues to find protection from harm.

An existing initiative of ARAS is its extensive education campaigns around the abuse of an older person, which includes a "train the trainer" program:

*"Designed to equip designated staff trainers with comprehensive knowledge and resources. The aim of this workshop is to enable these trainers to guide their front-line staff in identifying signs of elder abuse and ensuring they take the right action upon detection."*²⁵

In addition, ARAS provides education sessions for service providers. These sessions detail the types of abuse of an older person (social, physical, psychological, sexual and neglect) and points to some of the warning signs that abuse of an older person may be present. For example, psychological abuse is defined as "any language or action designed to intimidate another person and cause fear of violence, isolation, deprivation or feelings of powerlessness."²⁶

The warning signs of psychological abuse include "withdrawal, fearfulness, helplessness, resignation and passivity, reluctance to make decisions and talk openly, displays nervousness and anxiety with certain people and insomnia and lack of sleep,"²⁷

ARAS provides the following information for medical and allied health staff who may be witness to psychological abuse:

²⁵ ARAS annual report 2022-2023 at pp36-37 -<https://www.sa.agedrights.asn.au/resources/publications>

²⁶ Aged Rights Advocacy Service – Education- PowerPoint presentation, "Taking action to prevent abuse of older people" at slide 31

²⁷ *ibid*

“You may see a patient who comes into the hospital with a carer/family member and notice that there is:

- *Lack of eye contact when talking to the older person*
- *May be huddled or nervous with the carer/family member present*
- *The older person is extremely passive, for example, the carer/family member always speaks for the older person, even though the older person has mental capacity*
- *There may be a reluctance to speak openly*
- *The older person is treated like a child.”²⁸*

ARAS works to prevent abuse of an older person amongst community members.

ARAS provides the following messages to the community:

- *Plan for the future – consider making advance directives such as an Enduring Power of Attorney and ensure that your will is up to date with any changes in your life*
- *Decide on your preferences and let others know of your decisions. In particular, provide your GP with a certified copy of your Advance Care Directive as well as a providing a copy of your Enduring Power of Attorney with your bank manager. Your GP and bank need to know who is acting for you, if you are no longer able to make those decisions.*
- *Remain active in your community – maintain your social contacts, develop friendships outside your immediate family, be involved with community activities – isolation can increase an older person’s vulnerability.*
- *Be as independent as possible – take care of your own health by eating healthily and keep up with your regular health checks with your GP. Ask for help from services when required so that you are less dependent on family members. Think carefully before accepting personal care in exchange for your possessions or accommodation:²⁹*

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 provided by ARAS aims to ensure that its advocacy support is adaptable to the diverse cultural needs of the older community.

This ARAS initiative is quite effective but is limited by resources and funding. More needs to be done.

²⁸ *ibid*

²⁹ Aged Rights Advocacy Service – Education- PowerPoint presentation, “Knowledge is Power: How to safeguard your future” at slide 11

Question 4: What systems, including systems outside government, receive information which may allow for the identification of individuals who are at high risk of experiencing or perpetrating domestic, family and sexual violence, specifically those experiencing abuse of an older person?

As well as ARAS, there are many bodies that collect information on the abuse of older people. These include, but are not limited to:

- Serious Incident Report Scheme (SIRS) for abuse occurring in a residential facility or a home care setting
- SAPOL
- Elder abuse phonedines
- Older Persons Advocacy Network (OPAN)
- Elder Abuse Action Australia (EAAA)
- Elder Abuse legal unit at Uniting Communities South Australia
- Adult Safeguarding Unit

There is currently no consistent collection of data nor a central database of information. A de-identified repository of data could be used to identify issues and gaps and to further inform service delivery and future research.

Question 7: What are the barriers to reporting domestic, family and sexual violence to police or seeking support from domestic, family and sexual violence services?

As with domestic violence, the abuse of an older person can be hidden, and the prevalence of abuse of an older person is likely to be higher than the reported 1 in 6 persons experiencing elder abuse. Older people are often reluctant to report abuse. There are barriers for an older person to wishing to disclose abuse.

These barriers include:

- Who can I trust enough to tell?
- Unaware of assistance from ARAS.
- Wanting to “stick by” family.
- Fear of not being believed.
- Fear of retaliation by abuser.
- It’s a family matter and is private.
- Fear of residential care placement if abusive carer is removed
- A sense of responsibility for the family member – the abuser may have addictions or mental health issues.
- The older person is in denial.
- Don’t want anything to happen to their son or daughter despite experiencing elder abuse of some form. Older person reports a reluctance to act because they love their adult children and do not want them to experience any negative

consequences. In many cases they simply want their adult child to access help and stop the abusive behaviour.³⁰

Question 8: What are the elements of a best practice crisis response which will meet the needs of a victim-survivor?

A key feature of an abusive relationship is an imbalance of power. Best practice crisis response in this jurisdiction is appropriately focused on safety. The engagement with the victim-survivor must follow trauma informed models and principles because in order to break the cycle of abuse, there must also be a focus on empowerment and the regaining of power.

When the victim-survivor is an older person and where often the perpetrator is an adult child or family member, the crisis response will need to be broadened incorporating options that preserves the relationship safely, where possible.

Health professionals, though arguably one of the gate keepers of abuse need to be better supported through training in recognising abuse, documenting abuse and responding to suspicion of abuse of their patients. General Practitioners are one of the group of professionals frequently seen by older people. It is a trusted relationship, but also with the current pressures general practice is under, there is a risk that the presenting injury is treated without the time to explore the underlying cause.

A feature of the abuse of an older person that distinguishes it from other forms of domestic, family sexual violence is the higher occurrence of circumstance where the victim-survivor's capacity may be questioned. It is an element where present that often result in the police and the justice system responding to a crisis protectively. Putting aside the need to ensure that the victim-survivor is safe, this approach if not adopted with an understanding of human rights principles, the concept of fluctuation capacity, dignity of risk, could result in an older person experiencing systemic abuse.

ARAS' best practice is to engage with and listen to the older person who may be suffering from abuse, and to be guided by the wishes of the older person. ARAS understands through experience respecting the older person's autonomy supports them in regaining control.

The older person is given options to address the abuse and provided with strategies to achieve positive outcomes. Any decision remains with the older person at all times. However, this decision is contingent on the older person not being subject to a serious risk of imminent harm.

If the older person and the alleged abuser live in the same house, visits by ARAS do not occur at the home but at a safe location. ARAS does not confront the alleged

³⁰ Aged Rights Advocacy Service – Education- PowerPoint presentation, “Taking action to prevent abuse of older people” at slide 16

abuser. Support may be provided in contacting SAPOL, including assistance to provide a statement, should they wish.

Where appropriate, alternative accommodation may be discussed as part of a safety plan, or if the situation at home rapidly escalates, as part of an escape plan.

If an alleged abuser is residing in the same house as the older person, advice can be provided about their eviction, including having SAPOL attend the house on the day of the eviction for the safety of the older person.

Sometimes, it is appropriate that the older person enters into respite care at a residential facility during the eviction process.

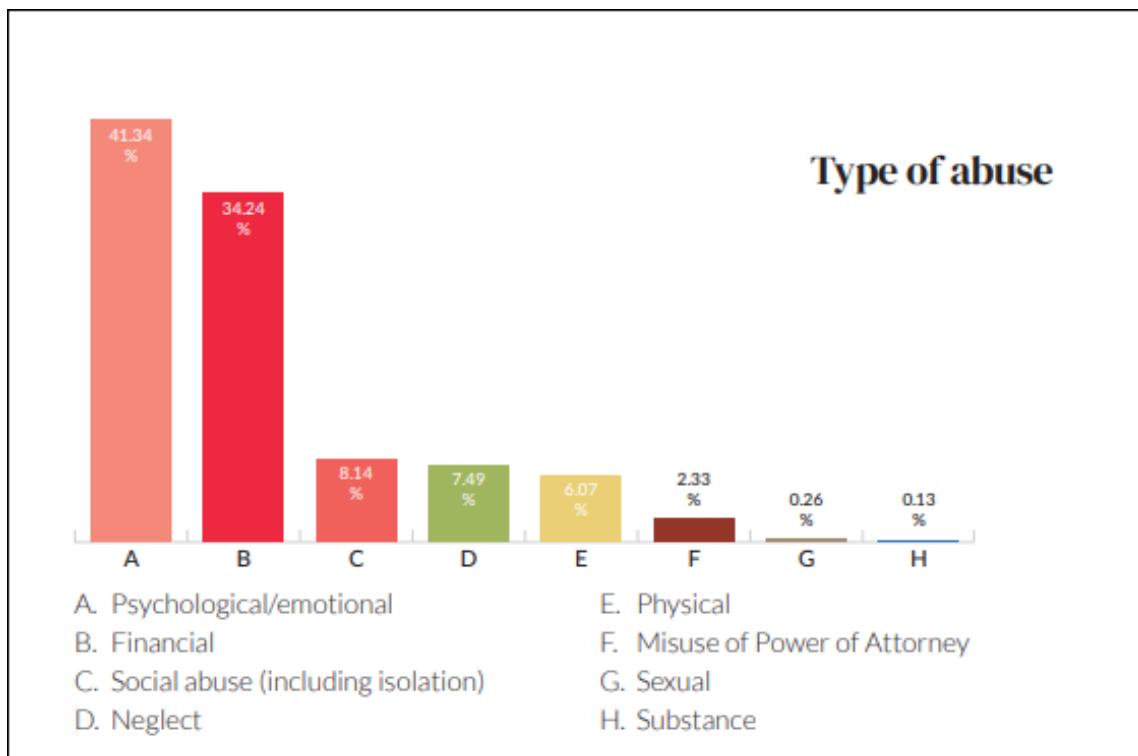
In a case of financial abuse, steps can be taken to support the older person in dealings with their bank, including changing a pin number or closing an account.

A review of advance directives can be undertaken with the older person to ensure that they have considered having in place a current will, an Enduring Power of Attorney and an Advance Care Directive.

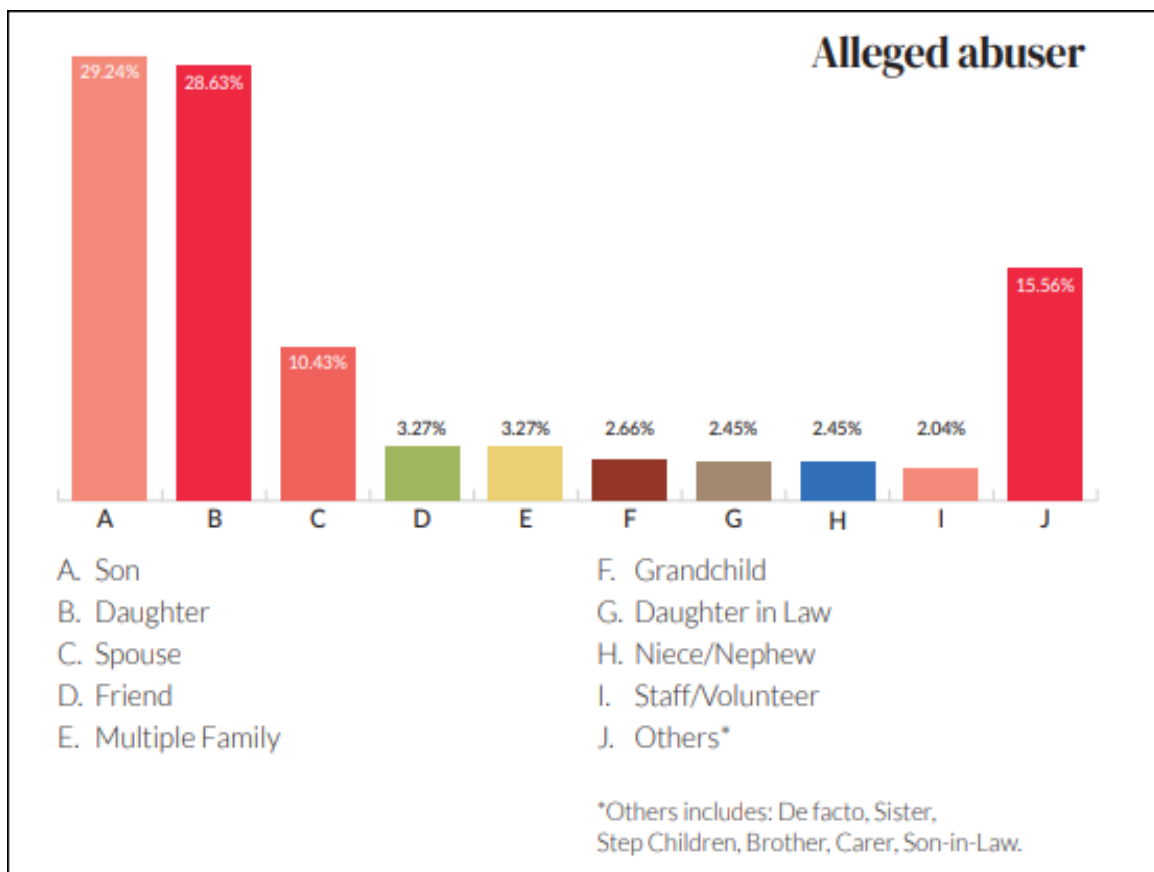
Where home safety may be a concern, SAPOL can be involved in an audit where the safety of the house is examined, including checks on screen doors and screen windows, lighting and door locks.

Counselling may be considered, as it can be very traumatic to be abused by a loved one.

Types of elder abuse and alleged abuser



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³¹ ARAS annual report 2022-2023 at page 23 -<https://www.sa.agedrights.asn.au/resources/publications>

³² ARAS annual report 2022-2023 at page 23 -<https://www.sa.agedrights.asn.au/resources/publications>

It can be seen from the data that elder abuse is most likely to be perpetuated by an adult son or daughter, and that the most common types of elder abuse are psychological and financial.

Case studies

██████████ story:³³

██████████, 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. ██████████ also said the family member had sold his house, possessions, jewelry and car, and was using the money for his own purposes.

The family member had enacted the Enduring Power of Attorney without ██████████ permission, even though a geriatrician had recently assessed ██████████ as having full capacity for financial decision making.

██████████ was very vulnerable and isolated and had no other living family in South Australia except the family member who had financially abused him. ██████████ had reduced mobility, was unable to use a phone due to deafness, and had lost social connections since living in an aged care home.

██████████ said that all his friends were deceased but that he had a sister living interstate. With permission from ██████████, ARAS contacted a free legal service to investigate the situation. What was discovered was extensive financial abuse by the family member.

An advocate assisted ██████████ to contact his banks and supported him to review and amend his Power of Attorney and make changes to his Will. Although it was a lengthy process, ██████████ was pleased with the outcome and said he felt confident to contact ARAS or his lawyer if there was any retribution from his family.

██████████ story:³⁴

A doctor contacted ARAS seeking support for a patient, ██████████, who had come with her daughter to the surgery with multiple bruises on her body. ██████████ informed the doctor her husband had hit her, and she lived in constant fear for her life.

An ARAS advocate spoke to ██████████ and her supportive daughter about ██████████ ability to return home safely, and asked whether urgent support was required, e.g. a shelter or hospital, as ██████████ had multiple health issues, including not being able to dress or care for herself. ██████████ said she did not want to go to a hospital or a shelter.

The advocate suggested emergency respite which ██████████ agreed to, stating she would be happy to leave her husband and move into care, as he refused to move. With permission and instructions from ██████████, the advocate found a respite bed in a residential aged care home not far from the daughter's home.

██████████ daughter contacted the residential care home, and their request for a respite bed was accepted. While in the residential aged care home, the Care Manager

■ ██████████
 ■ ██████████

became aware of the physical abuse [REDACTED] had been suffering and offered [REDACTED] a permanent placement which [REDACTED] willingly accepted.

The daughter, on behalf of [REDACTED], later contacted ARAS and advised that [REDACTED] now feels safe, happy and supported in her new residence.

[REDACTED] story³⁵

A family member contacted ARAS to assist with an allegation of sexual assault against their mother, [REDACTED], who had, over a period of time, reported to staff and family that she was afraid of another resident at her residential aged care home. [REDACTED] said the resident had been coming into her room at night and sexually assaulting her. [REDACTED], although diagnosed with moderate dementia, was able to speak about the incidents and able to identify the alleged perpetrator. The alleged perpetrator was known to have full cognitive and physical abilities. The family said [REDACTED] was stressed and sleeping poorly, and that her behaviour had changed significantly in recent weeks due to trauma from the incidents.

When management at the aged care home were advised about the alleged sexual assaults, SAPOL were informed and the alleged perpetrator was immediately moved to another wing of the home. However, [REDACTED] family were informed that, due to security of tenure, the alleged perpetrator could be moving back to his usual room. The aged care home offered to move [REDACTED] to another room but the family did not think this was right as [REDACTED] was settled in her own room.

Even though the aged care home undertook a risk assessment and safety measures were put in place, the family was not feeling confident that their mother was safe from further sexual advances. It was also thought that it would be traumatic for [REDACTED] to regularly see the alleged perpetrator in the shared dining room and lounges at the aged care home.

ARAS Advocate assisted with communications and facilitated a meeting between the family and the aged care home to discuss safeguarding strategies and psychological support for [REDACTED].

ARAS Advocate supported the family to lodge an Intervention Order against the alleged perpetrator when it was proposed he be moved back to his room near [REDACTED] room. ARAS Advocate also suggested that the alleged perpetrator undergo medical and psychological testing as part of the risk assessment and this was attended to.

ARAS lodged a complaint with the Aged Care Quality and Safety Commission (ACQSC) in relation to the delay in notifying the family of the issue and the delay in putting safeguards in place for [REDACTED].

ARAS Advocate raised concerns for other residents who may possibly have been affected by, but had not reported, sexual assault incidents. This was also followed up by the aged care home management.

[REDACTED]

Whilst the SAPOL investigation was ongoing, the alleged perpetrator was given a number of options by the home and ultimately he decided to move to an independent living unit in another location. [REDACTED] and her family were very relieved.

A Convention on the Rights of Older Persons

Older people face distinct challenges in relation to their rights and it is submitted that an international convention on the Rights of Older Persons would help protect older persons from abuse.

The existence and prevalence of abuse of older persons provides support for a Convention. It is important to note that much of the abuse of an older person occurs in a relationship of trust – family, carers and service providers.

A Convention would provide a framework for a nationally consistent response to the abuse of an older person as well as being a prompt for governments to act to provide safeguards.

Many separate pieces of legislation at the federal and state level currently provide protection for the rights of older Australians, but these are piecemeal and do not provide a comprehensive cover. The lack of an overarching framework makes it difficult for many older Australians to access their existing legal rights, or to advocate for improved enforcement of existing laws. The existing law have a number of gaps which leave vulnerable older people without access to legal remedies for breaches of their human rights. Having an international Convention for older people, “would increase the visibility of older Australians and highlight the need for a comprehensive national framework capable of recognizing and protecting the human rights of older Australians.”³⁶

A Convention would recognize the unique experience of older persons whose rights require specific protection. Human rights are based upon “dignity, equality and mutual respect.”³⁷

In its position statement on ‘*Rights in Aged Care*’ published in 2021 OPAN asserted:

“Despite long standing principles and plans for action on the rights of older people, there is no dedicated global human rights treaty that protects their rights.”³⁸

“...in Australia’s response to the United Nations Questionnaire on the Rights of Older Persons (2011), the federal government stated that they recognise that older persons may be subject to multiple discrimination and that it is to ensure an integrated approach to human rights protections. However, the Australian

³⁶ Response to the Public Consultation on the Human Rights of Older Persons, Australian Human Rights Commission to the Office of the High Commissioner for Human Rights 15 March 2013 at page 8 [Response to the public consultation on the human rights of older persons 2013.pdf](#) at page 8

³⁷ Australian Human Rights Commission – what are human rights? 18/03/2013 <https://www.humanrights.gov.au/about/what-are-human-rights>

³⁸ Rights of Older People, Older Persons Advocacy Network (OPAN) Position Statement – Rights in Aged Care at page 7 [OPAN_RIGHTS-Position-Statement_A4_170321.pdf](#) at page 7

government has continued to oppose the creation of a UN Convention on the Rights of Older People, arguing that “there is already a range of existing international human rights treaties that provide protection for all people.”³⁹

The Oakden Aged Care facility

Older people are often vulnerable to abuse and their situations can require careful scrutiny if their rights are to be upheld as has been demonstrated by the systemic failures that were exposed at the Oakden Aged Care Facility.

The abuse suffered at this facility was severe. Oakden was shut in the wake of the significant and concerning allegations made about the care of residents in the facility, and the subsequent review undertaken by retired judge the Hon Bruce Lander culminated in a report to the State Government entitled, “*A Shameful Chapter in South Australian History*,”⁴⁰

Lander reported that the residents of the Oakden facility:

“...were some of the most frail and vulnerable persons in our community. They did not have a voice. They were obliged to live in a facility that could only be described as a disgrace, and in which they received very poor care. The processes and procedures were such that they were forgotten and ignored. The State did not provide them with the level of care they deserved.”⁴¹

The Oakden experience in South Australia laid bare the abuse of the residents and highlighted the need to provide greater protection to those vulnerable people. They were a group of older persons who were denied their right to be free from abuse.

An Aboriginal Perspective

Family and domestic violence reportedly occurs at a greater rate in Aboriginal populations than non-Aboriginal populations.

*“The aged-standardised rate for being a victim of physical or threatened violence among the indigenous population was over twice the rate of the non-Indigenous population”.*⁴²

Older Aboriginal persons are vulnerable to a type of abuse commonly known as “Humberging.” As part of ARAS’ service delivery, Aboriginal advocates are tasked with raising awareness of the issue of “Humberging” through the provision of culturally safe resources that ask elders the question “*Is this happening to you or someone you know?*”

³⁹ *ibid*

⁴⁰ Oakden ‘A Shameful Chapter in South Australia’s History’ a Report by the Hon. Bruce Lander QC Independent Commissioner against Corruption, 28 February 2018. [ICAC_Report_Oakden.pdf](#)

⁴¹ Lander Report op cit at page 14.

⁴² AIHW: A;-Yaman F, Van Doeland M & Wallis M 2006. Family violence among Aboriginal and Torres Strait Islander peoples. Cat. No. IHW 17. Canberra: AIHW at page ix [Family violence among Aboriginal and Torres Strait Islander peoples \(full publication\) \(AIHW\)](#)

“Humberging” is an unreasonable and repeated demand that can be placed on an older Aboriginal person by a family member for money, accommodation or payment of goods or services. Humberging occurs due a range of factors, including socio-economic and cultural obligations prevalent in Aboriginal communities.

Assistance measures provided by ARAS include engagement in discussions about the safeguards that can be put in place to support and protect elders from “humberging” while at the same time preserving close connections and relationships by linking elders and their families to culturally appropriate support services.

Cultural obligations often involve Aboriginal elders caring for their family, members of their community, and extended family, through a sharing of resources. However, there is a delicate balance to be achieved between the cultural obligations of elders, and the respect that is due to them. The act of humberging can compromise the well-being of elders if they feel obliged to give up money set aside to pay for their groceries, medications or housing payments, if in so doing they jeopardise their own health and wellbeing.

A CALD Perspective

12.25% of ARAS clients identify as from a CALD background. ARAS provides an overview brochure in 17 languages and utilises a government funded, independent translation service to provide translation services to clients free of charge.

There is no significant difference in the reported prevalence of the abuse of older persons in CALD communities as compared to the overall population.⁴³ However, it does seem that the reporting rates are different in CALD communities, with CALD subjects “less likely to report their sons or daughters as perpetrators.”⁴⁴

It must be noted that “CALD communities are not “homogenous,””⁴⁵ and that “diversity means different culture, language and values.”⁴⁶ Further, “the concept of culture is complex, multifaceted and difficult to define. Cultural diversity offers distinct advantages as well as potential problems.”⁴⁷

Familism may render a CALD community member at greater risk of abuse of an older person.⁴⁸

⁴³ Qu, L, Kaspiew, R, Carson, R, Roopers, D, DeMaio, J Harvey, J, Horsfall, B, (2021) *op cit*, at page 149 [2021_national_elder_abuse_prevalence_study_final_report_0.pdf \(aifs.gov.au\)](#)

⁴⁴ *ibid*

⁴⁵ See Dementia Australia, *RUDAS Administrative and Scoring Guide* (Guide) 2011 David Plater, Divya Narayan, Anita Brunacci, Holly Nicholls, Jemma Holt, Michaela Okiniski, Olga Pandos, Taylor Porttelli, Rachel 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, 2002 at page 328)

⁴⁶ *ibid*

⁴⁷ Dr Visla Rao, Jeni Warburton and Helen Bartlett, “Health and Social Needs of Older Australians from Culturally and Linguistically Divers Backgrounds: Issues and Implications” (2006) 25(4) *Australian Journal of Ageing* 174 in *ibid* at page 328

⁴⁸ *ibid* at 323

Familism is defined as:

*“[A] cultural value that emphasises the importance of the family over the individual and is a significant issue in some CALD communities. Familism may lead to a reluctance to report elder abuse, create interdependence in family relationships and priority being placed on reliance on family for support rather than institutions or agencies (such as the idea of trusting family more than the ‘system’).”*⁴⁹

It can be surmised that there is a risk for abuse when the head of a family passes away and the son, for cultural reasons, becomes the new head of the family. In this scenario the surviving spouse may become vulnerable to financial abuse if they have always deferred decision making to their former husband.

Financial abuse

Financial abuse is a significant form of abuse of an older person. Financial abuse constituted 34.24% of all abuse of an older person as reported to ARAS in 2022-23.⁵⁰

Many older people become reliant upon family members or their carers to access internet banking. This makes them soft targets for financial abuse. In addition, when using the internet or social media, older persons can be exposed to significant risks of falling prey to financial scams.

The present-day reliance upon internet banking has removed much of the opportunity for bank staff to assist older people with their banking transactions in real time, and once an older person has provided their banking details to another person the potential for abuse becomes very real.

Financial abuse presents:

*“Significant risks to an adult’s health and wellbeing. It has the potential to negatively impact an adult’s day-to-day life, as well as their financial future, removing from them the right to make choices about their life, including decisions such as where they live in the future.”*⁵¹

In a case in the District Court of South Australia in August 2024, it was reported that:

“A “devious” fraudster swindled millions of dollars from the savings and super accounts of “vulnerable” elderly people.”⁵²

██████████ pleaded guilty to 19 counts of aggravated theft and two basic counts of theft with the judge saying:

⁴⁹ Western Australian Select Committee into Elder Abuse, *‘I Never Thought It Would Happen To Me’: When Trust is Broken* (Final Report, September 2018) 35 [3.43] in *Ibid* at 323

⁵⁰ ARAS annual report 2022-2023 at page 23 -<https://www.sa.agedrights.asn.au/resources/publications>

⁵¹ Dr John Chesterman, *Adult Safeguarding in Queensland*, *op cit* at 28

⁵² <https://www.abc.net.au/news/2024-08-28/sa-elderly-woman-patricia-evans-stole-millions-from-victims/104279184>

“This type of abuse of old people who are vulnerable and worked all their lives to put aside some money so they can care for themselves in their old age...is shocking behaviour and shocking offending.”⁵³

Examples of financial abuse seen by ARAS include:

- An older person left unable to find jewellery or other personal property taken by her daughter to sell and pay for a holiday,
- Bills not being paid
- An older person being told by a family member there is no money left from their pension/super fund to pay for hairdressing or outings, despite there being funds in their account money in their account
- Requests by an older person to see their bank account balance met with refusals by the family member/friend managing the finances.⁵⁴

Psychological abuse usually accompanies all forms of abuse, including financial. For example, forcing someone to sign a legal document such as an Enduring Power of Attorney when they are in hospital by threatening to put them into a nursing home.⁵⁵ No matter how the psychological abuse is referred to – “emotional abuse,” “coercive control” or “gaslighting,” the two forms of abuse are often intertwined.

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 approach of, unless you cooperate with this financial demand, you won’t be seeing this person or that person again in your life.”⁵⁶

When a matter of financial abuse is reported or suspected, it is useful to consider what other types of abuse of an older person may be evident. It could commonly be psychological abuse, or it could be social abuse, or neglect. An example of neglect would be a spouse refusing to purchase hearing aids or glasses, despite being informed multiple times by a residential care facility that these are required for use by the resident; or the spouse refusing to pay the accommodation charges at the facility.

⁵³ *ibid*

⁵⁴ Aged Rights Advocacy Service – Education – PowerPoint presentation, “Community Staff and Workers Abuse Prevention talk at slide 30

⁵⁵ Aged Rights Advocacy Service – Education – PowerPoint presentation, “Allied Health Professionals and Medical Students” talk at Slide 31

⁵⁶ 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)

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.

Another example of abuse is where a son and daughter-in-law may move in with an older person to “care” for them, but then don’t pay the bills even though money is provided to them for these. The land line telephone is cut off leaving the older person with no outside connection, and the son retains the older person’s ATM card, “just in case they lose it.”

The son may hold an enduring power of attorney for his mother but yet is not acting in her best interests. Money is taken out of his mother’s bank accounts.⁵⁷

Financial abuse can manifest itself in the abuse of an Enduring Power of Attorney (EPA). “An EPA is a valuable and convenient legal instrument by which clients can protect their financial and property interests in the event of future cognitive impairment.”⁵⁸

An EPA allows “older people to choose the person (or persons) who will make decisions on their behalf.”⁵⁹ This usefulness may be outweighed by the fact that “enduring documents may facilitate abuse by the very person appointed by the older person to protect them.”⁶⁰

In order to help protect persons from financial abuse when making EPAs it is clear that the aim should be to make the laws relating to EPAs uniform across Australia. There are clear benefits to be gained from a consistency in legislative approach, including the provision of stronger safeguards for those who wish to make EPAs, and sanctions against those who knowingly misuse their appointment to the detriment of a donor.

There are advantages and disadvantages to establishing a national register. Registration would allow authorities such as hospitals, banks, lawyers and aged care facilities to verify documents that are presented to them. Taking the register one step further, there could be safeguards built into the system, such as an alert when the document is activated. A consequence of the private nature of such instruments is that upon presentation of the instrument to a third party such as a bank or aged care facility, that party has no way of confirming that the instrument is valid or has not been subsequently revoked.

National registration would be ideal, but this is not feasible without nationally consistent laws.

⁵⁷ Aged Rights Advocacy Service – Education, PowerPoint, Taking Action to prevent abuse of older people, op cit at Slide 32

⁵⁸ Sylvia Villios, David Plater, Gabrielle Golding, Olga Pandos, Bernadette Richards, Anna Brunacci, Natalie Ayoub and Holly Nicholls, *Valuable Instrument or the Single Most Abused Legal Document in our Judicial 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 10

⁵⁹ Australian Law Reform Commission, *Elder Abuse: A National Legal Response* (Report No 131, May 2017) at page 159

⁶⁰ *ibid*

Conclusion

The Royal Commission into domestic, family and sexual violence is a sobering recognition that as a society we are saying enough is enough. This is not a new problem. However, the level and frequency of abuse and harm experienced by some of the most vulnerable members of our community indicates that we need to do more or do something different to effect change.

ARAS remains concerned about the prevalence of abuse of older persons and is committed to providing a best practice response in situations of reported abuse. ARAS continues to conduct education programs aimed at reducing the incidence of abuse of older persons.

ARAS suggests that the abuse of older persons represents a category of human rights violation that goes beyond domestic, family and sexual violence as it has a number of different presentations and characteristics. The prevalent and most disturbing incidences of abuse of older persons are related to the infliction of financial and psychological losses and harm by perpetrators who are, in the main, the adult sons and daughters of the victims. It is important that these circumstances are recognised and addressed through legislative safeguards and continuing community-wide education.

ARAS supports the work of the Commission and will continue its work in addressing and preventing the abuse of older persons.