

Royal Commission Into Domestic, Family and Sexual Violence

Issues Paper – Comments

15 August 2024

- There is intersectionality between family violence and the abuse of older persons (elder abuse). They share aspects but can have different outcomes and may engender a different response. The issues paper should acknowledge that the abuse of an older person encompasses but is wider than domestic and family violence.
- The abuse of an older person occurs when a person in or enabled by a relationship of trust causes harm or distress to an older person. The abuse can occur in many ways, such as physical, psychological, social, financial, sexual, exploitation or neglect.
- 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”¹
- The abuse of an older person can occur in circumstances that reach beyond “family violence”, as the perpetrators can be friends, neighbors, acquaintances, or the staff members or volunteers connected with service providers. Nonetheless, it remains a significant aspect of family violence, although its manifestation may not be in the family (home) setting, but in another location or facility.
- The “Experiences of Violence in Australia” statistics as contained in the Background Paper do not mention the abuse of older people. Yet it is significant – the Australian Institute for Health and Welfare found that 1 in 6 (15%) people experienced abuse of an older person in the past year.²
- What has long been referred to as “psychological abuse” and “social abuse” is often now referred to as “coercive control” and “gaslighting.” In the draft *Criminal Law Consolidation (Coercive Control) Amendment Bill 2023, SA* it is recognized that coercive control is often present in abusive intimate partner relationships.

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

¹ *Family Law Act 1975 (Cth)* s4AB(1)

² <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/older-people>

- ARAS submits that the abuse of an older person by its very nature should be regarded as occurring in an “intimate relationship” and therefore capable of attracting criminal sanctions when coercive control is found to be a significant feature, particularly in the many instances of non-physical types of violence or abuse.
- The South Australian Law Reform Institute provides that, “The psychological abuse of an older person or person with a disability was often described to SALRI as “gaslighting.” Gaslighting is a form of coercion and psychological abuse that takes place over a prolonged period of time and consists of small, seemingly insignificant actions or conversations that lead to a reduced sense of autonomy in a person causing them to question their beliefs and actions.”³ Further, “gaslighting can be seen as one form of coercive control.”⁴
- 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 amount of money or real property from the older person in a single act, proving to be extremely detrimental to the older person.
- Question 4 on the Issues Paper -there are many bodies that collect information on the abuse of older people, as well as ARAS. They include, but are not limited to, Serious Incident Report Scheme (SIRS) for abuse occurring in a residential facility or as part of Home Care, SAPOL, Elder Abuse phonelines, the Older Persons Advocacy Network (OPAN), Elder Abuse Action Australia (EAAA) and the Elder Abuse legal unit at Uniting Communities South Australia.
- There is currently no consistent collection of data nor a central repository of information. A repository of data could be used to identify issues and gaps. In order to limit abuse of older people, ARAS recommends a national register of Enduring Powers of Attorney.
- In relation to question 7: As with domestic violence, the abuse of an older person can be hidden and the prevalence of abuse of older persons can be regarded as higher than the reported 1 in 6 persons. Older people are often reluctant to report abuse of an older person. There are distinct reasons why an older person would face barriers to reporting. These barriers include:
 - Who can I trust to tell?
 - Wanting to “stick by” family

³ Paige Sweet, “The Sociology of Gaslighting” (2019) 84(5) *American Sociological Review* 851, in David Plater, Divya Narayan, Anita Brunacci, Holly Nicholls, Jemma Holt, Michaela Okninski, Olga Pandos, Taylor Portelli, 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 Australia Law Reform Institute, Adelaide, 2022)* at page 186

⁴ House Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into Family, Domestic and Sexual Violence* (September 2021) 105 [4.16] in David Plater, Divya Narayan, Anita Brunacci, Holly Nicholls, Jemma Holt, Michaela Okninski, Olga Pandos, Taylor Portelli, Rachel Tan, Kim Tran, Sylvia Villios and John Williams, *op cit* at page 186

- Fear of not being believed
 - Fear of retaliation by abuser
 - It's a family matter and is private
 - Fear of residential care placement if the 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 some form of abuse from them. Older persons reports a reluctance to act because they love their adult children and do not want them to experience any negative consequence. In many cases they simply want their adult child to access help and stop the abusive behavior.⁵
- The financial abuse as listed in the Background Paper has distinct aspects in relation to the financial abuse of an older person. The abuse of an older person constitutes 34.24% of all abuse of an older person reported to ARAS.⁶
 - One of these distinct aspects where financial abuse can manifest itself is in the abuse of an Enduring Power of Attorney. It is accepted that EPAs are very useful in the management of finances for a person who no longer has capacity to manage their finances, property or other assets. An EPA allows “older people to choose the person (or persons) who will make decisions on their behalf.”⁷
 - This usefulness may be outweighed in that, “enduring documents may facilitate abuse by the very person appointed by the older person to protect them.”⁸ In order to protect persons from financial abuse in making EPAs it is widely accepted that the law should be uniform across Australia. The benefits in consistency include stronger and more consistent safeguards.

Conclusion

ARAS is very concerned about the rates of abuse of older persons. We submit that the abuse of older persons in the issues paper should be regarded as distinct from domestic or family abuse. This would highlight the issues of the abuse of older person and shine a light on what has been in the shadows.

⁵ Aged Rights Advocacy Service – Education – Power Point presentation, “Taking action to prevent abuse of older people,” at slide 16

⁶ ARAS annual report 2022-2023 at page 23 -<https://www.sa.agedrights.asn.au/resources/publications>

⁷ Elder Abuse – Australian Law Reform Commission – A National Legal Response, final report ALRC 131 at 159.

⁸ *Ibid*

ARAS provides two case studies concerning the abuse of an older person.

■■■■ story:⁹

■■■■ 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 ■■■■ 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 ■■■■ 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, ■■■■ was very pleased with the outcome. ■■■■ said he feels confident in contacting ARAS or his lawyer if there is any retribution from family.

• ■■■■ story¹⁰

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 Advocate spoke to ■■■■ and her supportive daughter about ■■■■ ability to return home safely, or 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 she 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 her 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 ■■■■ had been suffering from her husband and offered ■■■■ a permanent placement which ■■■■ willingly accepted.

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

⁹ Not his real name

¹⁰ Not her real name

