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**TASMANIA
LAW REFORM
INSTITUTE**

Symposium on Elder Abuse and Neglect

15 November 2017

Report and Recommendations

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Executive Summary

The following report provides an overview and summary of outcomes of the Symposium on Elder Abuse and Neglect hosted by the University of Tasmania's research network on the Prevention of Elder Abuse Tasmania (PEAT), the Tasmania Law Reform Institute (TLRI), Equal Opportunity Tasmania (EOT), and the Council on the Ageing Tasmania (COTA) at Tasmania's Parliament House on Tuesday 15 November 2017. Funding for the Symposium was kindly provided by the University of Tasmania's Better Health Research Theme.

The Symposium brought together over 60 representatives from the aged care sector, the legal profession, police, unions, clinicians, policy makers and academic researchers to examine the social, legal, and clinical dimensions of elder abuse and neglect in Tasmania.

International expert on elder abuse, Professor Wendy Lacey, gave the keynote address and attendees discussed three key themes:

- Ageism and the Culture of Invisibility
- Giving Older People a Voice
- Financial Elder Abuse

Based on the input of Symposium attendees in the theme discussions, the PEAT researchers, TLRI, EOT and COTA are calling on the Tasmanian Government and relevant agencies to:

1. Improve knowledge of elder abuse through research to improve understanding of the incidence, vulnerability factors and enabling culture.
2. Enhance strategies to address ageism including the development and use of guidelines promoting positive ageing language and images consistent with commitment under the *Strong Liveable Communities Tasmanian Active Ageing Plan 2017-2022* to address ageism and combat age-related stereotypes.
3. Promote community understanding and shared responsibility for addressing elder abuse and neglect through awareness raising campaigns.
4. Embed a human rights culture within the Tasmanian community through the adoption of a Tasmanian Charter of Human Rights, containing a duty incumbent on all persons and public authorities to act consistently with human rights. The Charter must also contain mechanisms to allow individuals to seek remedy where protected human rights are violated.
5. Endorse and adopt the recommendations of the Australian Law Reform Commission's report into Elder Abuse – A National Legal Response including the adoption of state and territory adult safeguarding laws to give

adult safeguarding agencies the role of safeguarding and supporting at risk adults.

6. Establish a transparent, independent and quick State-based complaints mechanism for taking, investigating and addressing elder abuse and neglect, including broad provisions for 3rd parties to make complaints.
7. Ensure that appropriate independent legal support, including access to mediation and family conferencing, is available to all adults including prior to signing residential aged care and related contracts.



Key Note Address

Professor Wendy Lacey, Dean of University of South Australia Law School and Co-Convenor of the Australian Research Network on Law and Ageing, delivered the keynote address.

Professor Lacey adopted the World Health Organisation's definition of elder abuse:

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.

Common forms of elder abuse include physical (including chemical or substance abuse), psychological, sexual and financial abuse and neglect.

Elder abuse fundamentally breaches a person's human right to feel safe. It removes dignity, respect, autonomy, liberty and physical safety from those affected.

Professor Lacey explained that there is a normative gap in international human rights law on the rights of older persons. While some declarations refer to the rights of the elderly, older people are the only vulnerable¹ population without a comprehensive or binding international instrument specifically developed to address their rights.

Australia has a complex approach to ageing and aged care. In the current environment, responsibilities are shared between Commonwealth, State and Territory governments. There is a lack of coordination that a single comprehensive policy framework could provide. This means that elder abuse is often hidden and under-reported and there are gaps in the support and protection of older people. At a State and Territory level, several safeguarding frameworks provide some protection and criminal laws include some offence provisions relevant to elder abuse, but few prosecutions are brought and penalties are generally very low.

Professor Lacey argued that political will and leadership is required across all jurisdictions to provide a coordinated and consistent response to elder abuse. Key actions within this approach should include:

- the enactment of adult protection legislation at the state and territory level, coupled with a review of guardianship and powers of attorney laws through a human rights lens;
- a review of existing criminal laws and their operation, as well as the exercise of prosecutorial discretion in cases of elder abuse; and
- the implementation of a national education and awareness campaign.

This approach is consistent with the Australian Law Reform Commission's recommendation that each State and Territory enact adult safeguarding legislation to support and assist at risk adults.

¹ With regard to referring to older people as 'vulnerable', it is important to consider the statement made in the ALRC's 2017 Report, *Elder Abuse – A National Legal Response*:

'While older people should not be considered vulnerable merely because of their age, some factors commonly associated with age can make certain older people more vulnerable to abuse. Disability, for example, is more common among older people. More than 80% of people aged 85 years or over have some disability. While fewer than one in 20 Australians under 55 years have 'severe or profound core activity limitations', almost one-third of people aged 75 years or over have such limitations.'

Ageism and the Culture of Invisibility

(introduced by Sue Leitch, COTA, and Dr. Susan Banks, PEAT)

Context

There is a need to foster a different approach to ageing in our communities, one that acknowledges that every person is ageing and that being valued or respected is related to who you are and not how old you are.

Existing campaigns that support 'positive ageing' may assist in spreading this message but there is an ongoing need to shift community perceptions toward older people. Social perceptions of ageing contribute toward a culture in which older people are demeaned and seen as lacking in agency. In the context of care and support relationships this can lead to elder abuse; elsewhere in the community it may take the form of devaluing or ignoring contributions.

The words we use in conversations with or about older persons should be given careful consideration. The 'bell curve of usefulness in life' was used to illustrate the perception that once a person reaches 65 years – an arbitrary number chosen on the basis of retirement, that labels someone as 'elderly' – they are likely to be seen as a burden rather than a benefit to society. By challenging these concepts of ageing we can shift our culture from one that views support as a luxury to one that understands elder rights as human rights.

Discussion questions

The questions that guided the discussions were:

1. What's in a number? As a community, how do we address ageism?
2. What changes would you make to prevent elder abuse in Tasmania? What resources, skills and relationships would be important to achieve this change?

Actions

The key actions identified by Symposium participants to counteract ageism and the culture of invisibility are listed below. For a complete list of actions, see Appendix A.

- Embed a human rights culture in the Tasmanian community.
- Check our language across all spheres of public life – including in the way older people are referred to in policies and campaigns.
- Encourage the media to adopt standards relating to how older people are portrayed.
- Celebrate ageing, don't blame. Reflect on achievements.

- Remove age discrimination in all areas including employment. Create organisational and community cultures that value older people.
- Educate everyone - schools and communities - so that elder abuse is not just about victims and perpetrators.
- Encourage everyone to reflect and address unconscious bias. Rebut the presumption that older people aren't useful or valued and reframe their contributions around experience, life skills and wisdom. 'Elders not oldies'.
- Improve the visibility of older people in our community.
- Help families have early conversations about the wishes of ageing family members before the situation becomes fraught or the wishes of the vulnerable aged are not clearly understood.
- Legislate to stop restrictive practices in aged care homes and other institutional settings.
- Provide nuanced care frameworks for CALD communities and other marginalised and minority groups.

Giving Older People a Voice

(introduced by Sarah Bolt, Anti-Discrimination Commissioner, EOT)

Context

There are many extraordinarily wonderful people who work in the aged care sector and it is important that we highlight good practice. At the same time individuals, organisations and service providers who fail to meet standards of care that provide basic human rights, dignity and respect should be exposed and brought to account.

The right to live without fear of physical or emotional harm is a basic human right that most Tasmanians take for granted. However the basic rights of some members of the community are being breached every day.

Tasmania's Anti-Discrimination Act is a powerful tool in the fight against discrimination, harassment and prohibited conduct.

Yet elder abuse is under-reported. Whether it is out of fear of a negative or punitive response, fear of not being believed, shame, embarrassment or not knowing what is happening is against the law older people are being denied a voice.

The confusion between State and federal Government responsibility adds to this confusion.

The time is right for Tasmania to explore State-based mechanisms, including legislation for all vulnerable adults, that would give older people, their families, carers, witnesses and whistleblowers the confidence to speak up if their believe a person is at risk of harm or abuse.

Encouraging older people to speak up requires a multifaceted approach and everyone has a role in helping older people feel safe and trusted when they speak out.

Discussion questions

The questions that guided the discussions were:

1. What gaps exist in current complaint mechanisms for reporting abuse and neglect?
2. What can be done to encourage older people (and their families, carers and other service providers) to speak up?

Actions

The key actions identified by Symposium participants to give older people a voice are listed below. For a complete list of actions, see Appendix A.

- Adopt a State-based human rights Act that provides clear protections to all Tasmanians
- Introduce legislation to protect the rights of at-risk adult Tasmanians (including people with disability) which provides a simple, universal, one-stop shop for making a complaint and having abuse and neglect identified and addressed.
- Provide more options for mediation and more flexible ways of responding especially where there is a fear that reporting will impact on family relationships.
- Provide clear guidelines for the provision of supports to persons in need. Make clear what abuse and neglect can involve.
- Provide assistance and advocacy support for those with cognitive impairment who are being abused or neglected.
- Empower complainants so that they can have their say in formal prosecutions for crimes or potential crimes where it involves abuse by a family member.
- Create and resource a complaints culture that identifies and responds to abuse as has been done for victims of family violence.
- Complaint options need to be safe and recognise the inter-familial nature of many cases.
- All complaints should be taken seriously, followed up and investigated.
- Provide resources to promote awareness of reporting options eg, elder abuse hotline, Advocacy Tasmania, Guardianship Board, Public Guardian, Anti-Discrimination Commissioner.
- Encourage a whistleblower culture. Let people know that it is OK to complain/call out/question abusive behavior. Make elder abuse 'everyone's business'.

Financial elder abuse

(introduced by Dr. Jeremy Prichard, UTAS, and Kate Hanslow, TLRI)

Context

Financial elder abuse involves the illegal use of or mismanagement of a person's money, property or financial resources by a person in a situation of trust.

It can include threatening a person to hand over assets, forcing them to sell their home, abusing or neglecting wills or powers of attorney arrangements, stealing from them or using their banking or other financial documents (such as credit cards) without authorisation.

Enduring powers of attorney and other guardianship arrangements enable older Tasmanians to choose who will make decisions for them in circumstances where decision making capacity may be impaired. But they also have the capacity to facilitate abuse where the best interests of the represented person are ignored. Other arrangements, including the power to making binding nominations in relation to finances or carer payments may also be used to improperly control finances. Legal safeguards that provide for improved oversight and monitoring in circumstances where control of assets and finances are transferred is required.

The age profile of the Tasmanian community, including the number of older Tasmanians who live in rural and regional areas has the capacity to compound these issues.

Discussion questions

The questions that guided the discussions were:

1. The Australian Law Reform Council and Victorian Royal Commission have examined the financial abuse of elderly people. To what extent do their key findings reflect the situation in Tasmania? Are there any differences in light of our demographics, including rural and regional considerations?
2. How could we better enable elderly people to navigate financial and contractual arrangements to secure the services and care they need?

Actions

The key actions identified by Symposium participants to help address financial elder abuse are listed below. For a complete list of actions, see Appendix A.

- Provide access to independent financial planners/counsellors to provide planning and support especially when signing major contracts.
- Improve arrangements for checks and oversight of those exercising powers of attorney. Require a formal application to enact and require monitoring and register of major decisions.
- Introduce and apply penalties for those abusing powers of attorney or enduring guardianship arrangements.
- Ensure that contracts for care, including contracts for entry in to residential aged care facilities are easily understood. Universally accessible plain English and easy English options to be made available. Contracts to clearly list what is being paid for and what additional costs may be involved.
- Provide greater choice and make more available residential aged care beds in rural and regional areas. Often there is only one provider and this means limited choice and pressure to remain despite abuse.
- Wills to be written without coercion or beneficiaries present.

Recommendations

Based on the outcomes of the Symposium, the University of Tasmania's research network on the Prevention of Elderly Abuse Tasmania (PEAT); the Tasmanian Law Reform Institute (TLRI); Equal Opportunity Tasmania (EOT); and the Council on the Ageing Tasmania (COTA) endorse the following actions to address elder abuse and neglect in Tasmania and call on all relevant agencies to work toward the following ends:

1. Improve knowledge of elder abuse through research to improve understanding of the incidence, vulnerability factors and enabling culture.
2. Enhance strategies to address ageism including the development and use of guidelines promoting positive ageing language and images consistent with commitment under the *Strong Liveable Communities Tasmanian Active Ageing Plan 2017-2022* to address ageism and combat age-related stereotypes.
3. Promote community understanding and shared responsibility for addressing elder abuse and neglect through awareness raising campaigns.
4. Embed a human rights culture within the Tasmanian community through the adoption of a Tasmanian Charter of Human Rights, containing a duty incumbent on all persons and public authorities to act consistently with human rights. The Charter must also contain mechanisms to allow individuals to seek remedy where protected human rights are violated.
5. Endorse and adopt the recommendations of the Australian Law Reform Commission's report into Elder Abuse – A National Legal Response including the adoption of state and territory adult safeguarding laws to give adult safeguarding agencies the role of safeguarding and supporting at risk adults.
6. Establish a transparent, independent and quick State-based complaints mechanism for taking, investigating and addressing elder abuse and neglect, including broad provisions for 3rd parties to make complaints.
7. Ensure that appropriate independent legal support, including access to mediation and family conferencing, is available to all adults including prior to signing residential aged care and related contracts.

Appendix A: Responses to Session Questions

Ageism and the Culture of Invisibility

(Sue Leitch, COTA and Dr Susan Banks, PEAT)

1. What's in a number? As a community, how do we address ageism?

- Call it out
- Celebrate not blame
- Use the term 'older' not 'old'
- 65 is an arbitrary number. It does not equate to being 'old'.
- Accept diversity and difference
- See age-related impacts as a result of how a person has lived life. As a result of their life choices. As something beyond their control. Ill health at some stage just happens. Remove the blame.
- Prioritise dealing with the problem not the person. Improve accessibility. Don't patronise.
- The concept of ageing should be a whole of community issue requiring education starting from infancy.
- Check our language across all spheres of public life. In the way older people are referred to in political policies and campaigns. In the jokes we tell.
- Deconstruct ageism.
- Remove enforced age-related requirements, such as in employment.
- Age-related issues will become more contentious as the baby boomers move through the ageing cohort. More likely to speak out and not accept ageism.
- Highlight and prevent ageist language and conversations.
- Showcase the positive contributions of older persons within the community
- Deal with unconscious bias – encourage everyone to reflect on their own self bias.
- Understand the importance of aids and other assistive technologies.
- Focus on usefulness. Reflect on the fact that we ask children and young people 'what will you be?' whereas we ask older people 'What were you? Shift to a focus on achievements: What are your achievements?'
- Changing culture is critical. Can't rely on law reform alone.
- Culture of corporate care leads to a focus on \$.
- The 'magic number' is usually 50 – but 65 is the pension age.
- Ageism is about young and old.
- We need to understand ageism and educate the community in ways of countering it.
- Encourage respect. Foster a culture that values older people.
- Name up ageism in the community and in employment contexts. We need workplaces that include and employ older people. People of all ages.
- Lack of Government recognition of ageing and the safeguards required for older people.
- Educate future leaders about ageism and elder abuse.
- Introduce specific media standards and provide more information to the media as is done with family violence.
- Change language and the way we use language to define older people
- Challenge individuals to examine their own unconscious biases
- Adopt an intersectional approach and address ageism as a problem with multiple layers.

- Improve the visibility of older people in our community. Retirement of leads to a decline in community involvement. Our status is linked to employment. Change the way we view retirement. Retire from employment, not life.
- Create organisational cultures that value staff and promote best practice.
- Build a culture of kindness and generosity from the top down and the bottom up (Government, organisations, individuals).
- Provide appropriate resources to address elder abuse.

2. What changes would you make to prevent elder abuse in Tasmania? What resources skills and relationships would be important to achieve this change?

- Introduce a human rights charter, which recognises and protects the fundamental rights of all humans of all ages.
- Improve education about capacity (what it is, what options are when it is lacking, what the legal requirements are) at both community and organisational levels.
- Re-focus research
- Legislate for change so that one body has overall responsibility where elder abuse is present
- Help families to have early conversations and opportunities to talk before decision-making becomes fraught.
- Encourage early diagnosis and focus on making decisions when people do have capacity. Families are then more likely to be accepting of their wishes.
- Look between the lines with regard to decision-making capacity. Find out about the person. Capacity is not black and white.
- Introduce an independent State-based process for assessing concerns.
- Triangular structure – start with social.
- Make things accessible to everybody. Enable not disable.
- Promotion for awareness
- Mandatory training related to vulnerable adults.
- Provide support for carers through training and more funding for community packages.
- Improve the process and timeliness for undertaking capacity assessments.
- Look for ways to empower the person experiencing abuse.
- Know the person and provide person-centred care, rather than just a number.
- Avoid segregation of older people.
- Introduce older people into the workforce
- Flip the idea that older people are a burden and associated problematizing of older people.
- Put ageing issues on the political agenda – valuing older people.
- Get the whole community to see that it as an issue. We are all ageing.
- Stop stereotyping older people and their needs. Too many, including politicians view older people in stereotyped ways.
- Awareness and training for the public so that they recognise elder abuse.
- Multi-pronged approach is needed.
- Respect older people to teach and mentor.
- Councils have a strong role in the community.
- Cultures
- Human rights

- Data linkages – counter invisibility
- Use and improve available data from health care providers and coroner's information systems.
- Affordable housing
- Counter/deal with the motivation to take advantage of older people
- Look at issues of poverty among older age cohorts.
- Screening. Education. Intervention. Changing wills shouldn't be as easy.
- Respect a person's capacity when speaking on behalf of an older person.
- Improve legislation governing power of attorney, capacity.
- Teach people how to identify elder abuse and provide information on what steps they can take to address it.
- Adopt a multi-disciplinary approach to addressing elder abuse
- Shift views that ageing is bad. Draw on non-western views of 'elders' as the wisest and most respected members of our community.
- Provide increased information around estates and inheritance.
- Provide more resources to carers
- Restructure the funding model for 'packaged care' so that it is based on actual needs. Change the 'care' \$\$ brackets.
- Lobby MPs Government.
- Educate everyone – schools, communities. Elder abuse is not just about victims and perpetrators.
- Escalate elder abuse hotline as a marketing tool for support, awareness and remedies.
- Campaign about positive ageing – but reframe the images and narrative to reflect empowerment and not just vulnerability (ie, the SA marketing model)
- Legislate to stop restrictive practices in aged care homes and other institutional settings.
- Change the culture and practices around patient discharge for older people leaving hospital to address systemic failures, lack of resources and disconnected agencies.
- Rebut presumptions that older people aren't useful or valued by reframing their contributions around experience, life skills and wisdom.
- Provide stronger support for people who don't have families through Strong Families program
- Ensure a balance between rights and protections.
- Work to educate the 84,000 carers in Tasmania
- Broaden the duty of care so that elder abuse becomes everyone's responsibility.
- Respect self-determination and personal choice.
- Consider mandatory registration and education for carers
- Provide nuanced care frameworks for CALD communities.
- Improve way to identify elder abuse.
- Educate people in the front line (banks, community supports etc)
- Remove the barriers between agencies – especially with regard to information exchange
- Contractual arrangements as part of Centrelink carers' payments and monitoring of same.
- Concrete reporting processes – make one agency responsible for investigation and on-referral. Must be independent.

Giving Older People a Voice

(Anti-Discrimination Commissioner Sarah Bolt, EOT)

1. What gaps exist in current complaint mechanisms for reporting abuse and neglect?

- Complaint mechanism gaps – it's not clear what elder abuse is; silos need to be removed (older people, carers, disability, family)
- Pathways to complain are too complicated. Need one phone number. Need to simplify. Need legislation to facilitate this process.
- Emergency packages of care to take disincentives to report if the carer is the abuser
- Stockholm
- Abuse is not always recognised.
- Often those who witness it don't know what to do or who to report it to eg, EOT, Advocacy Tasmania
- Often there is a fear of heavy-handed responses. Need more options that enable mediation. Limited powers to respond.
- Need overarching legislation based on human rights principles
- Establish one key effective agency.
- Ensure that successful outcomes are seen.
- Provide simple processes for people to complain.
- Extend RACF complaint mechanisms to home care recipients.
- Introduce mechanisms to flag and halt financial abuse (eg, change in cash withdrawal patterns).
- Provide legislative oversight.
- Identify good practice.
- John Doe would not know how to make the first step.
- DHHS obligation to record/keep data but not investigate.
- No current investigation agency.
- Lack of mandatory reporting of non-physical/sexual/financial abuse.
- Capacity lacking to monitor in-home situations.
- Low-paid devalued workers.
- Barriers to reporting in facilities due to fear of retribution.
- Minimum standards vs optimum standards for aged care.
- Acute injury assessment vs elder abuse
- Need for multiple agency involvement.
- Cognitive impairment – capacity to report accurately may be impaired. Are these complaints being taken seriously?
- Referral fatigue
- Single agency for referrals – responsive in time along process continuum and multidisciplinary team. Helpline attached.
- Bigger picture – community awareness/support
- Victim/perpetrator
- Literacy – not everyone is capable of using paper based complaint forms
- Attrition rate of cases is aged person if not involved in the conversation.
- Support for whistle blowers – how can we help you?
- Acceptance of inadequate supports as 'normal'

- CALD communities – support for interpreters.
- Unclear pathways for making complaints
- no expert to go to
- ‘abuse’ often wrongly implies physical abuse and other forms of abuse and neglect are ignored
- people don’t see themselves as victims/don’t want to be a burden or hurt their families
- guilt and shame
- what will happen to my family member if I report
- Need to find ways of preserving relationships while stopping abuse.
- Capacity
- Dying over a long time vs violent act.
- Mitigating factors – pinpoint the actual criminal act vs negligence.
- Remedies aren’t individualised. Penalties on providers don’t bring justice outcomes for victims (via the Aged Care Act)
- Individuals complaining about carers or families are afraid, not sure how to complain or to who. Coupled with a lack of ongoing support for complainants.
- Placing the onus on the person at risk/experiencing abuse is the wrong burden. Whose responsibility is it? Police? Others?
- How to rebut/create a complaints culture that identifies and responds to elder abuse as it is happening as per family violence.
- Legislative arrangements for reporting abuse in homes and facilities precludes individual complaints – remains provider-focused.
- Full scope of instances of elder abuse may not be captured from residential services
- Gaps in community packages re reporting abuse.
- Safety reporting for services can be robust but doesn’t allow individual complaints.

2. What can be done to encourage older people (and their families, carers and other service providers) to speak up?

- Empowering complainants so that they can be heard/have their say in relation to formal prosecutions in relation to crimes or potential crimes where it involves abuse by a family member.
- Look at what can be done to encourage older people (and families) to speak up. Provide knowledge and education. Options that are safe.
- Need more education regarding reporting options eg, Elder Abuse Hotline, Advocacy Tas, Guardianship Board, Office of the Public Guardian, Ombudsman.
- Information should be provided to carers at formalisation of relationship
- Provide opportunity for one-on-one discussions without the carer/family member being present.
- Increased knowledge/education about complaint mechanisms
- Support for older person to make complaint
- All complaints taken seriously, followed up and investigated.
- Confidence in competence around making complaints and power balance in family relationships.
- Timely/accessible forms of justice – mechanisms
- Addressing impediments in legislation that restrict use of evidence in criminal proceedings.
- Feeling valued

- Knowing they will be believed.
- Education – telling them about measures that are in place, knowing rights and alternatives for care.
- Advocates to preserve relationships
- Oversight.
- Whistleblower culture.
- Encouraging use of advocacy services
- Case by case consideration
- Trust building
- Knowing where to go/who to talk to.
- Ensure that elder abuse is captured as a form of family violence. Definitions expanded to capture older person plus carers and resources made available to address as part of responses to family violence.
- Often elder abuse is the perpetuation of the same cycle of abuse within families – need to break the cycle.
- Awareness raising is fabulous, but without action, it is a lost opportunity.
- Just as in response to family violence – include the capacity to issue order to make perpetrators leave
- Need to look at codes and responsible agencies
- Obligate agencies to act.
- Ensure there is timely assessment and investigation of each case.
- Before crisis interventions, need to have a ‘light at the end of the tunnel’ approach to encourage reporting.
- Encourage goal setting and prepare
- Increase understanding of enduring guardian vs power of attorney.
- Educating concerned people and frontline responders, families etc about elder abuse with the emphasis on letting them know it is OK to complain/call out/question abusive behavior.
- Elder abuse is ‘Everybody’s Business’
- Nothing about us without us – care needs to be multi-disciplinary and person-centred.
- Older people in homes aren’t ‘customers’ or ‘clients’ – they are human beings. They do/should have ‘rights’ and be able to exercise those rights and feel free to exercise those rights. Not feel afraid.
- Grow family awareness about what is elder abuse, how to complain and the remedies that are available.
- Education programs for health professionals/GPs/nurses
- Specialist education for people working in regional areas.
- A themed ‘year’ like the year of disability awareness (IYDP 1981) in which awareness of the needs and rights of older people are raised.
- Seniors Week isn’t reaching everyone – reframe, create new strategies.

Financial Elder Abuse

(Dr Jeremy Prichard UTAS, Kate Hanslow, TLRI)

1. The Australian Law Reform Commission and the Victorian Royal Commission have examined the financial abuse of elderly people. To what extent do their key findings reflect the situation in Tasmania? Are there any differences in light of our demographics, including rural and regional considerations?

- Isolation from services in rural and regional Tasmania.
- Property (farm) division often involves several family members.
- Public transport and the expense of travel often preclude people seeking out expert advice.
- Increase in user pays leads to poorer outcomes for those who cannot afford to pay.
- Inequity between men and women (superannuation)
- Tasmanian Public Trustee fees should be reduced.
- Guardians should be audited and reports prepared.
- Specific education and training regarding the fiduciary duties of those holding Powers of Attorney
- Can the superannuation system provide checks and balances when they are releasing funds? Look at possibility of providing a superannuation guarantee and other legal protection mechanisms
- 'Law insurance' in your super, particularly to address accumulated wealth.
- Distribution of funds (early intervention or pre-plan). Plus equivalent for people on age pensions.
- Indexation of aged pensions.
- Often only 1 provider in rural areas = no choice.
- Smaller communities = caring/trust established. But can be easier to 'burn bridges'.
- Internet access.
- More risk factors in Tasmania that may lead to abuse (demographics, literacy etc)
- Reliance on informal care.
- Rural areas older people can often be asset rich but income poor. Greater emphasis on the value and condition of properties.
- Ownership of multiple properties – eg, holiday homes.
- The lack of bank branches in rural areas is particularly difficult for older people. Few avenues for them to discuss issues with someone in person. End up being reliant on non-professional advice. Ability to use IT is limited for some.
- Services in rural and regional areas are de-prioritised (health, legal services, transport). This all impacts on ability to get independent advice.
- Access to professional advice can be costly
- More outreach services are required (law school/legal clinics, Community Legal Centres, Legal Aid).
- Low literacy levels
- Low rates of online banking among older Tasmanians.
- Lack of professionals in rural areas.
- Lack of broader services.
- Lack of rural residential aged care facility beds.
- Vetting and supporting core staff.

- Learn from countries that are doing this well.
- Increase taxes for the use of social services.
- Improve intergenerational communication.
- Increase peak body funding for training and information provision. COTA presence/ongoing funding to provide impartial advice re contractual issues.
- Improve knowledge of what is available free of charge in the community.

2. How could we better enable elderly people to navigate financial and contractual arrangements to secure the services and care they need?

- Need for one stop shop for advice
- Automated phones lines are a particular problem for older people. Need real people to talk to.
- Independent ombudsman
- Independent financial planners/counsellors are required to provide planning and support.
- Need for family mediation prior to contract signing.
- Earlier conversations re wishes.
- Meaningful reviews of contracts as needs change.
- What mechanisms are in place for pre-cursor financial abuse eg, grooming
- Community Visitor programs
- Repercussions for individuals if not explicit 'theft'?
- Prosecution for abusers of powers under Power of Attorney arrangements.
- Simplify working of documents relating to Powers of Attorney and Guardianship Orders
- Formal application to enact Power of Attorney arrangements
- Legal advice/protections around family agreements.
- Pay nominee forms/information on nominees for Centrelink to have independent referees and other checks/protections.
- Nomineeship forms from Centrelink are problematic as they divert a pension to the nominee. Should be better checks. Centrelink should require two referees before the pension is transferred.
- Checks and education on appointees - enduring powers of attorneys
- For carers pension there should also be a referee system. In rural and regional areas, this issue is compounded.
- Confusing online information on pay nominees. No service interface leads to the potential 'abuser' being enabled to transfer \$\$.
- Contracts for aged care homes – unclear, no simple terms and conditions. Need to make them easily understood and accessible.
- Universally accessible plain English and easy English contracts
- Access to pre-contractual legal advice and independent conveyancing.
- Pre-contract legal advice on aged care contracts. When you buy a house providers often use their own conveyancer.
- What services are available to protect consumer rights at the outset? Particularly when purchasing packages from aged-care homes?
- Simpler plain English contracts.
- New regulations/legal framework, including dispute resolution provisions, for older people entering contracts for service arrangements.
- Early decision-making advice ie, financial counsellors.

- Overcome geographical isolation from services and providers by using place-based outreach services for advice, referrals, and contracts.
- Use of technology ie, LINC/telehealth style services for people in rural and remote areas to access legal advice, financial counselling etc.
- Salaries of workers in aged care facilities is \$21.00 per hr. We need better rates to ensure quality care and prevent financial abuse/exploitation.
- Underemployment and lack of choice in rural compounds the issue.
- Checks and framework for monitoring people claiming carers pension ie, Working With Vulnerable People checks
- Pay carers a decent wage and give them job security
- Superannuation guarantee for law insurance/financial planning
- Use telehealth style outreach for law and financial services
- Multi-disciplinary team service
- Clearly list what a person would be paying for
- comparative services
- easy clear and visible for lay people to understand
- Complaint mechanisms for contracts, including information on how to get out of contracts.
- Centrelink make it easier.
- Improved training and education for financial institutions so that they can pick up 'red flags'.
- Wills written without coercion or beneficiaries present.
- Education around conflicts of interest.
- Availability of advocacy services.
- Access to independent financial advice
- Education for banks, real estate agents, GPs, accountants
- Complexity of aged care fees for residential aged care facilities and home care packages.
- More accountability for powers of attorney
- Ensuring people understand fully what they are signing eg, interpreters.
- Difficulties in law where abuse occurs in the context of power of attorney or other orders.
- Power of Attorney: few checks and balances; lack of flexibility when circumstances change.
- Lack of clarity around guardianship orders: what they are used for and when.
- Informal arrangements are widespread (eg, neighbours accessing accounts on behalf of an older person). Banks should be more proactive in questioning these arrangements.
- Commonwealth regulation of banks.
- Better system for registering property and major asset transfers.
- Better classification of financial assets.
- Improved advice on implications of contracts – legal implications, fine print.
- Use UTAs/supervised students in outreach.
- Plain English contracts.
- Implications where admissions to aged care facilities are 'urgent'. Build in limited time for emergency respite so that financial arrangements can be dealt with in an orderly manner. Need step up/step down units as an interim measure.
- Contributes to a rise in suicide rates.

- Changing demographics. Impact on older women. Older single women at high risk of homelessness.
- Improved training for police in forensic accounting. As well as other issues such as dementia and related neurological conditions.
- Easy to read contracts with full costs clear and upfront as well as information regarding whether the contract is for lease or buy, whether there are exit fees and other vendor disclosure requirements.
- Power of Attorney: no oversight currently. Needs reporting arrangements and improved oversight. Siblings might provide an alert. See ALRC recommendations and develop them into a framework and implementation plan.
- Advanced care directives relating to finances needs further oversight or appoint Public Trustee.
- Enforce existing requirements for checking Attorney's etc.
- Consider advanced planning instruction for finances.
- Improve education around the role of Powers of Attorney and the penalties for misuse.
- Consider nationally consistent legislation around the roles and functions of Powers of Attorney and penalties for misuse.
- Improve capacity to navigate contractual agreements. Make available informed free and independent advisors and advocates; ensure documents are in plain English and contain appropriate explanations; standardised clauses in contracts (for some points).
- Audit Powers of Attorney.
- Improve mid-life education so that people own the issues and set aside resources to plan for these audits.
- Education re Powers of Attorney responsibilities for family members.
- Capacity assessments.
- Simple plain English understandable contracts.
- Risk of vested interest by financial 'specialists' emerging – no 'for profit' involvement.
- MAC? Embedding system for what contracts should look like.
- Information/training on internet access and for financial requirements.
- Financial security for carers. Better pay and conditions for support workers.

Appendix B: Evaluation Form Responses

Elder Abuse and Neglect Symposium, Nov. 2017: Feedback form responses

Total feedback forms completed: 34

	Tally
1. Let us know why you came to the Symposium (please select all that apply):	
<input type="checkbox"/> to gain more understanding of current research and knowledge on elder abuse	23
<input type="checkbox"/> to network with other stakeholders	16
<input type="checkbox"/> it is relevant to my work	31
<input type="checkbox"/> because I am concerned about elder abuse	23
<input type="checkbox"/> other (please specify):	2
2. Please tell us something that you learned today about elder abuse	
3. How will you change your practice as a result of attending this Symposium (select all that apply):	
<input type="checkbox"/> Create/revise protocols, policies, and/or procedures	9
<input type="checkbox"/> Change the management and/or treatment of clients or relatives	5
<input type="checkbox"/> Revise training packages for staff	15
<input type="checkbox"/> Be more aware of my language about and attitudes to older people	22
<input type="checkbox"/> The Symposium validated my current practice	12
<input type="checkbox"/> I will not make any changes to my practice	0
<input type="checkbox"/> Other (please specify):	8
4. Are there any perceived barriers to making the changes you have identified?	
<input type="checkbox"/> No	10
<input type="checkbox"/> Yes (please name one):	19

1. Let us know why you came to the Symposium (please select all that apply):

Other (please specify):

- I have difficulties in what I see occurring in a nursing home but not sure – Is it elder abuse?
- Because I believe that every opportunity to discuss issues should be taken
- To help implement change in practice, law and education in this area
- I am involved in educating family carers
- Within CALD Communities and complexities surrounding addressing issues

2. Please tell us something that you learned today about elder abuse:

- Many wider perspectives
- That financial abuse is the most prevalent form experienced by older people
- Volume of “suspected advise”
- That there is no one organization that can help
- That it remains a growing blot on our city
- It is complex and we all have a part to play in improving Systems, legislation and education
- That it is an extremely complex issue! That there are similarities with family violence and therefore solutions could draw on work done in this area. Also that it is way beyond just abuse in institutions.
- The details of the legal framework
- The gaps in the legislative end
- Research at UTAS and legal sources
- The vacuum of legal, reporting, investigating powers. [especially those who still have decision making capacities]
- The data collection issues
- The amount of research being undertaken
- Some details regarding legislation, such as the states are ultimately responsible for addressing elder abuse as current legislation stands
- It is going to be difficult to fix
- Equal Opportunity Commissioner’s presentation was very informative
- The importance of change required at multiple levels, e.g.: legal/ governmental/ institutional/ community/ personal level, etc.
- The need for an investigating agency
- Wendy’s evidence of cases and international law references (lack of appropriate sentencing)
- That there is very limited data on elder abuse
- There is a lot to do
- Lack of reporting
- I think I understand better how multifaceted the issue is, and how solutions need to work at a political/social/individual level all at once
- Not getting enough complaints/evidence to use to amend wrongs
- That it is wide spread, needs research and funding
- I was concerned that many see black/white victim/perpetrator when many EA situations are not a deliberate manipulative action to harm the other person

- Legislation complexities
- Just how many different stakeholders in this issue! That elder abuse comes down to a human rights issue

3. How will you change your practice as a result of attending this Symposium (select all that apply):

Other (please specify):

- To inform future development of strategies for Elder Abuse
- I would guess that I am the sole non-practitioner at the Symposium -- ?
- I am keen to look at what knowledge there is currently in my organization and how my organization can gain training in this and also how we can share our knowledge as a social service provider with the aged care sector.
- I plan to organize some training within my local community
- Refer to Legal Aid Commission Specialist for Elder Abuse
- Better recognition and naming of elder abuse (and have response)
- The need to collate data to provide to governments
- Talk to more people about elder abuse
- Consider some of our organisations _____
- I think my organization needs to make this a priority area with both staff and clients
- Gives me fuel to motivate more strategies to enable better outcomes for older persons
- Use the information obtained to assist members in the workplace
- Need to network and promote my profession (elder mediation) as a factor that needs to be considered in multi-disciplinary approach

4. Are there any perceived barriers to making the changes you have identified?

Yes (please name one):

- Money! Political will!
- Where I go when I have concerns
- Enabling confidence for and receiving services to be willing to speak out
- Lack of direct influence in my role
- People with 'I do have good practice' attitude, rural restrictions, cultural perceptions
- Hard to speak out as a public servant criticizing neglect of Housing Tasmania Tenants who are refused ramps and home modifications by Housing Tasmania
- Managing those people who will not report and have capacity to refuse to do so
- Political motivation
- Whose job is it? E.g. who will enact public education campaigns? COTA is already doing what it can, but doesn't have a broad reach.
- MONEY
- Resources to devote to revising training and packages
- Resources, funding politics
- There is no responsible body, I know it's everyone's responsibility but we need expertise, sensitivity, and skilled workers

- The culture I live in
- Time
- No not to mine but need to lobby MPs
- Legislation
- \$ - lack of
- financial
- fear
- financial support from government; culture of ageism and discrimination in our society

Appendix C: List of participating organisations

Thank you to the following organisations and individuals for being a part of the Symposium on Elder Abuse and Neglect in Tasmania. The Symposium would not have been a success without your contributions.

About the Little Things
Advocacy Tasmania
Aged & Community Services
Aged Care Complaints Commissioner
Anglicare
Australian Nursing and Midwifery Federation
Carers Tasmania
Cassy O'Connor, MP
Coroner
Council on the Ageing Tasmania
CPA Australia
Department of Health and Human Services
Equal Opportunity Tasmania
Forensic Medicine
Guardianship & Administration Board
Health & Community Services Union
Hobart Community Legal Service
Hunnifords
Jocelyn Hansson, Advisor, Minister for Human Services
Legal Aid Commission
Magistrate's Court
Older Persons Mental Health Service
Professor Wendy Lacey
Psychogeriatrics
Public Guardian
Public Trustee
Relationships Australia Tasmania
Sexual Assault Support Service
Tanya Brooks-Cooper, Office of Brian Mitchell, MP
Tasmania Aboriginal Community Legal Service
Tasmania Police
Tasmanian Health Service
The Narrative Centre
Tasmanian Health Service
Uniting Agewell
University of Tasmania