



# Précis Paper

## Elder Abuse

Two representatives from the Seniors Rights Service in NSW share some interesting insights into elder abuse.

### Discussion Includes

- Common examples of elder abuse
- Appropriate responses to elder abuse
- Staffing and reporting in aged care
- Recent law reform reports and recommendations made by the Seniors Rights Service
- Criminal offences for elder abuse
- Barriers to reporting crime and elder abuse
- The role of the Seniors Rights Service

# Précis Paper

## Elder Abuse

1. In this edition of BenchTV, Melissa Chaperlin (Solicitor, Senior Rights Service, Sydney) and Pat Joyce (Manager Advocacy, Senior Rights Service, Sydney) discuss issues relating to elder abuse.

### The Seniors Rights Service

2. The Seniors Rights Service is a specialist legal centre. The Service gives legal advice to older persons where they have capacity, or their guardian or attorney where they lack capacity. Information and referrals can be provided to family or friends of older people who are not guardians or attorneys. The Service is also assisted by pro bono services through the Law Society, the Bar Association, or law firms.
3. The Service also has a number of advocates, including Ms Joyce, who can talk to anyone who calls seeking advice about aged care rights and services. In addition, the Seniors Rights Service runs education and training for the community and for aged care providers.

### What is Elder Abuse?

4. According to the World Health Organisation, elder abuse is any act or inaction that can cause an older person harm or distress. There are many types of elder abuse, including physical abuse; neglect (failing to provide a person with the necessities of life); psychological abuse (such as verbal abuse causing a person distress) and financial abuse (the unlawful interference with an older person's money). Statistics show that the adult son or daughter of an older person is the most likely perpetrator of elder abuse.
5. One common example of elder abuse that was the subject of attention in recent law reform efforts is elder abuse in the context of social security payments. The social security scheme allows a person to become a nominee for another through Centrelink, however there is concern that these arrangements may be entered into with undue influence over a person lacking capacity. The Seniors Rights Service therefore recommended that Centrelink workers meet with older people face-to-face in order to identify issues of this nature.
6. Issues also arise in the context of granny flat arrangements. An older person can be left without a home to live in and without their contribution to the home when "granny flat" arrangements break down. The Seniors Rights Service recommended that Centrelink undertake an advertising campaign to inform older persons of the risks of entering into arrangements of this nature, and refer people to independent legal assistance.

7. Financial abuse may occur in aged care facilities where the home fails to provide sufficient transparency regarding fees or charge additional unwarranted fees. Other types of elder abuse, such as physical abuse and neglect, may also occur in this setting. The presenters noted that staffing in aged care is changing, and there is not always a registered nurse onsite. There has been an increase in complaints in the aged care setting over recent years, perhaps reflecting the reduction in well-trained senior staff.
8. One of the factors that can perpetuate elder abuse is that a person may not be aware of the different types of abuse that can occur. For this reason, the Elders Rights Service provides community education to inform people about the nature of elder abuse and increase awareness about these important issues.

#### Responses to Elder Abuse

9. When elder abuse occurs in the home, the most appropriate responses are to report to the older person's GP, the Aged Care Assessment Team, or My Aged Care. These services can provide the older person with options and advise them where to go to obtain help and assessment. Sometimes, having a care worker come into the home can give the older person and the carer additional support and assist the older person to stay at home for longer.
10. Although there is some mandatory reporting in aged care, many incidents in aged care go unreported, and it is difficult for agencies to follow up on complaints.
11. Health care professionals deal with the elderly on a daily basis and their interactions are governed by the Elder Abuse Protocol. The Protocol indicates that where there is evidence of elder abuse that constitutes a criminal offence, or puts the older person at imminent threat or danger, then the abuse can be reported without the consent of the person. The presenters suggested that the law be changed to go beyond this, such that no imminent threat of harm or danger is needed to allow health care professionals to report elder abuse. There should be a broader discretion to report suspected elder abuse by health professionals.

#### Law Reform Recommendations

12. The Seniors Rights Centre has made a number of recommendations to law reform efforts in NSW that have looked at elder abuse, including:
  - The development of a standard Aged Care Agreement.

- Changes to superannuation, to prevent exploitation occurring when an older person receives a lump sum payment. One recommendation is to enable superannuation to be clawed back from an abuser, in order to make restoration.
- The development of mandatory standards applicable to financial services. At present, unbinding guidelines exist that suggest how banks and financial institutions should deal with vulnerable persons and persons under financial management orders. These should be compulsory, and banking staff should undergo mandatory training to assist in identifying elder abuse.
- A public advocate should be established, independent of the Public Guardian, with powers to investigate elder abuse of its own motion, including powers to interview people and enter homes where there is evidence that an older person is at risk. A public guardian would have investigatory powers, but the older person should be consulted before any prosecution takes place.
- Exemptions to privacy legislation should be implemented to allow financial institutions to report elder abuse to police.
- A national Power of Attorney register should be established. This would provide certainty to financial institutions that they were dealing with the correct document. It would also allow attorneys to be subject to random audits.
- A new tribunal should be established with the power to dissolve granny flat arrangements.

#### Elder Abuse and the Criminal Law

13. There are many forms that financial abuse of an older person might take. For example, an enduring attorney might spend an older person's money on themselves; an older person might move into a family home and contribute to the mortgage, only to be evicted from the premises; or an older person may enter into a loan document without understanding it and the beneficiary of the loan refuses to repay it.
14. In NSW, there is no specific criminal offence that deals with the situation of an attorney breaching its fiduciary obligations. However, attorneys could be prosecuted under the criminal law in two ways. First, where an attorney's power has been revoked, and they are aware of the revocation, it is a criminal offence to continue to act as the attorney. Second, if an attorney spends money of an older person on themselves, they have committed a theft and can be charged with theft or fraud. However, the presenters advocated for the implementation of a more specific offence, similar to Queensland legislation, that would hold an attorney criminally responsible for breaches of their fiduciary duties, such as the duty to act honestly or not enter into transactions in conflict with their obligations to the older person.

15. Although the criminal law currently contains the offences of assault and battery, the presenters recommended the creation of an aggravated offence if the person is over the age of 60.
16. Section 44 of the *Crimes Act 1900* (NSW) contains an offence of failure to provide a person with the necessities of life. The presenters indicated that there needs to be greater awareness of this offence among police officers in order to increase prosecutions under this section.
17. In healthcare, frontline staff should all receive elder abuse training. Moreover, the presenters contended that there should be more vulnerable persons' police officers in NSW. The elderly may face many social barriers in reporting crime or elder abuse, including social isolation, reduced capacity, reliance on a carer, and lack of mobility, and so specifically trained police officers can help to address these issues.

## **BIOGRAPHY**

### Melissa Chaperlin

Solicitor, Senior Rights Service, Sydney

Melissa has been a solicitor with the Seniors Rights Service practicing in the area of elder law for over 9 years. Melissa was involved with recent law reform submissions into elder abuse and guardianship laws in NSW. As well as providing legal advice to older people, Melissa presents community education on elder abuse and planning ahead. The Seniors Rights Service provides legal advice, advocacy and education to people over the age of 60 years in the community.

### Pat Joyce

Manager Advocacy, Senior Rights Service, Sydney

Pat manages the advocacy team at Seniors Rights Service and provides advocacy and education on rights to residents of aged care homes and to care providers. Pat also liaises with the Aged Care Accreditation Agency and the Aged Care Complaints Investigation Scheme. Pat has been a registered nurse in orthopaedics, rehabilitation and aged care for over 30 years, and has also trained and worked as an art therapist.

## **BIBLIOGRAPHY**

### Legislation

*Crimes Act 1900* (NSW)