



women's
law centre



Submission to Parliament of Western Australia: Inquiry into Elder Abuse

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Introduction

Women's Law Centre of WA (WLCWA) welcomes the opportunity to make a submission to the Parliament of Western Australia's Legislative Council Select Committee into Elder Abuse.

The WLCWA is a not-for-profit community legal centre funded by the Commonwealth Attorney General's Department to provide quality legal services to disadvantaged women in Western Australia.

The WLCWA specialises in providing legal advice and assistance to women in need, particularly those who have experienced or who at risk of experiencing family violence.

We provide legal advice and assistance predominantly in the areas of:

- family law (parenting);
- family violence restraining orders;
- care and protection proceedings;
- criminal injuries compensation for victims of family and domestic violence and/or sexual assault.

As a legal service provider, WLCWA lawyers and staff are experienced in assisting women from all walks of life, all ages and from diverse cultural and linguistic communities from all areas of Western Australia. While based in Perth, WLCWA assists women from all over Western Australia including outreach services delivered in self-managed remote Aboriginal communities. WLCWA in partnership with Relationships Australia also operate Djinda Services (the Perth Aboriginal Family Violence Prevention Legal Service) to provide legal assistance to Aboriginal and Torres Strait Islander women living in the Perth metropolitan area. In addition, the WLCWA hosts a coordinator for the Domestic Violence Legal Workers Network, the network being a collaboration of legal practitioners who work in the area of family and domestic violence.

At WLCWA we recognise that family violence, including elder abuse, is an issue which can affect women from any background and the recommendations in our submission reflect what we have observed in practice.

Summary of Recommendations

- 1. The Western Australia government take a whole of government approach to elder abuse (and family violence) led by a central agency, e.g. Department of Premier and Cabinet with cooperation by the recently formed Department of Communities and Department of Justice.**
- 2. The strategy implemented in relation to Elder Abuse be aligned with the suggested response for family violence in so far as it focuses on:**
 - (1) Prevention of Elder Abuse**
 - (2) Early Intervention; and**
 - (3) Tertiary Responses, including targeted responses for people in communities who require additional assistance (e.g. LGBTQI, women with disabilities, Aboriginal and Torres Strait Islander, CALD and older people living in remote and regional areas.)**
- 3. Fund cross-sector training for social workers, GPs and legal practitioners to assist them to properly screen for, identify and respond to family violence and elder abuse.**

This should include training about:

- a) risk assessment and screening,**
- b) trauma-informed practice (to recognise the effects of trauma on persons' cognitive functioning, the difference between effects of trauma, disability and impaired capacity and how to engage with persons experiencing some or all of such conditions);**
- c) cultural competency training to ensure that professionals have the skills to recognise when an older person is experiencing or at risk of experiencing abuse or family violence regardless of their cultural background.**

The training should be cross-sector to ensure older persons experience a consistent response across professions.

- 4. Improving the response of WA Police to family violence and elder abuse with specialist capability in both.**
- 5. Improve the response of the WA Department of Health to both elder abuse and family violence by recognising and responding to them as a public health issues and not social issues.**
- 6. Developing transparent standards and guidelines for medical professionals in collaboration with legal practitioners for the assessment of capacity of older patients.**

General Comments

Elder Abuse and Family Violence

While different concepts, there is significant overlap between 'elder abuse' and family violence – both of which are gendered concepts.

The term elder abuse is often used by legal practitioners to refer to physical, sexual, emotional or psychological, financial or social abuse and neglect that is experienced by older persons. It could refer to abuse in a residential setting but also includes abuse perpetrated in private settings by carers (related and professional in relationships of care, dependency and trust) as well as by family members.

In their submission to the Victorian Royal Commission into Family Violence, Senior Rights Victoria summarised the relationship between elder abuse and family violence as:

Elder abuse is family violence when it occurs within the context of a family relationship and this is commonly the case. An analysis of [Senior Rights Victoria] helpline data for a recent 2 year period showed that over 90% of alleged perpetrators were related to the older person, or in a de facto relationship, with two thirds of abuse being perpetrated by a son or daughter of the older person¹.

Family violence is very similar to elder abuse in so far as it too concerns behaviour which includes (or can include) physical, sexual, emotional or psychological, financial or social abuse and neglect. It too can be experienced by persons of any age or background and it too is particularly traumatising as it involves betrayals of persons in relationships of care, dependency and trust with the perpetrator.

Both elder abuse and family violence are gendered by nature with the overwhelming number of victims being female and the overwhelming number of perpetrators male. Any effective responses to both elder abuse and family violence need to reflect this.

¹ See page 6 of their submission available at <http://www.rcfv.com.au/getattachment/932E26C4-5B30-4D2D-8F4C-26529FAFADEE/Seniors-Rights-Victoria>

Addressing the Terms of Reference

For convenience, this submission will address each of the terms of reference separately using the terms of reference sub-paragraphs as headings.

Appropriate definition of elder abuse

Aligning with definition of family violence

There is significant overlap between family violence and elder abuse. To ensure a consistent response to the needs of the victims and those at risk it is essential that the definition of elder abuse is sufficiently wide in its scope to incorporate both family violence and abuse that does occur outside of a family or family-like (care dependent) relationship.

The submission by Senior Rights Victoria (SRV) to the Victorian Royal Commission into Family Violence:

- draws many parallels between the definitions of elder abuse used by The World Health Organisation (WHO) and Australian Network for the Prevention of Elder Abuse (ANPEA) and to the definition of family violence as used in Victoria for the intervention orders (equivalent in WA are violence restraining orders)².
- Many of the behaviours considered as elder abuse fall into the definition of family violence used for the protection orders.
- Considers that elder abuse that occurs within families should be situated squarely within the family violence framework.

In Western Australia, the definition of family violence in the Restraining Orders Act 1997 (WA) was amended in July 2017 to:

Section 5A: Term used family violence

*(1) A reference in this Act to **family violence** is a reference to —*

- (a) violence, or a threat of violence, by a person towards a family member of the person; or*
- (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.*

(2) Examples of behaviour that may constitute family violence include (but are not limited to) the following —

- (a) an assault against the family member;*

² See page 12 <http://www.rcfv.com.au/getattachment/932E26C4-5B30-4D2D-8F4C-26529FAFADEE/Seniors-Rights-Victoria>

- (b) *a sexual assault or other sexually abusive behaviour against the family member;*
 - (c) *stalking or cyber-stalking the family member;*
 - (d) *repeated derogatory remarks against the family member;*
 - (e) *damaging or destroying property of the family member;*
 - (f) *causing death or injury to an animal that is the property of the family member;*
 - (g) *unreasonably denying the family member the financial autonomy that the member would otherwise have had;*
 - (h) *unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;*
 - (i) *preventing the family member from making or keeping connections with the member's family, friends or culture;*
 - (j) *kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;*
 - (k) *distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;*
 - (l) *causing any family member who is a child to be exposed to behaviour referred to in this section.*
- (3) *For the purposes of this Act, a person who procures another person to commit family violence is taken to have also committed the family violence.*

Sub-paragraphs (g) and (h) specifically relate to some types of financial abuse while the other highlighted sub-paragraphs describe behaviour which is also commonly found in the context of elder abuse in the experience of our lawyers and staff.

The definition of family violence under the Family Law Act 1975 (Cth) is similar to the definition above³.

The definition of elder abuse should align and be consistent with family violence where the abuse occurs within the context of a family relationship (whether perpetrated by a spouse, former spouse, child, step-child, grandchildren or any other family member including relatives and partners thereof).

Increased community awareness of what constitutes elder abuse will aid earlier identification and labelling of violence against older persons appropriately as a form of elder abuse (and vice versa) so that appropriate steps can be taken to empower the older person including where appropriate to seek a family violence restraining order or other legal protections as

³ http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4ab.html

may be available (e.g. for example injunctions under the family law legislation or restraint from entering property).

Greater understanding of family violence behaviours may also assist to prevent elder abuse being carried out inadvertently by family members who are unaware that their treatment of the older person in their family actually meets the legal definition of family violence.

Additional considerations

Not all elder abuse occurs within family or family like relationships. The definition of elder abuse therefore needs to be broader than that as defined in s5A of the Restraining Orders Act 1997 (WA) and include abuse that occurs outside of family or family like relationships.

Some caution needs to be exercised such that definitions of elder abuse do not avoid the reality that these behaviours are crimes of assault and fraud.

Age Specific

WLCWA supports a definition of elder abuse which is not dependent on the physical age of the person in question.

Many of the examples of elder abuse as recounted to our lawyers and staff at WLCWA involve women who are perceived as elders within their community but who would be considered as young or middle-aged by mainstream Australian culture. This is particularly so with our Aboriginal clients, many of whom may be grandmothers when they are aged 35-45 or great grandmothers when they are aged 50-60.

Rather it supports the fundamental concept that harmful behaviours involving older persons is the exploitation of vulnerability as it is for other adults and should be covered by criminal and civil law frameworks and should not be substantially differentiated.

We agree with the ALRC Inquiry that “cultural expectations relating to kinship structures and sharing and reciprocity may complicate the way in which abuse is experienced and understood in those communities.”

Prevalence of elder abuse

Women are more likely to be victims

While the WLCWA is not a legal service provider specifically assisting older persons, or providing advice in those practice areas typically associated with older persons about family

agreements, powers of attorney, guardianship or wills, our centre does assist women from all walks of life, including older women experiencing abuse and family violence.

It is now well accepted that an effective response to family violence needs to be gendered in nature as women are overwhelmingly more likely than men to be victims of violence perpetrated by a male family member. This could be their spouse, former spouse or a son, uncle, brother or other male family member.

The prevalence of elder abuse (at least in WA) is not so clear. WLCWA considers in light of the significant overlap between family violence and abuse this is likely to be the same for elder abuse.

It is significant that statistics in Queensland have shown that women are twice as likely to be victims of elder abuse as men⁴. For example, the Queensland Crime and Misconduct Commission reported in 2013 that 14% of homicides of victims aged 70 years and over were committed by an intimate partner⁵.

Women in certain communities are more likely to be victims

It is also not clear the extent to which certain groups in Western Australia may have higher prevalence of elder abuse than others and who may require targeted assistance to provide them with access to justice and meet their legal and non-legal needs.

Again, with family violence it is well established that women from these communities in society:

1. May experience family violence differently (i.e. experience different forms of family violence specifically arising from certain social, physical and cultural factors in addition to the family violence experienced by other women).

For example for women with disabilities, abuse and family violence could be perpetrated by refusing access to supports needed to perform basic daily tasks which may not be obvious or evident to anyone else but the carer and the women with disabilities. The physical appearance of a women with disabilities or a women experiencing trauma may be construed by a perpetrator as evidence of lack of capacity. A service provider without proper

⁴ <https://www.communities.qld.gov.au/resources/communityservices/women/qld-women-2015.pdf>

⁵ <http://www.ccc.qld.gov.au/research-and-publications/publications/research/vulnerable-victims-homicide-of-older-people.pdf>

training may not recognise this is happening and inadvertently collude with the perpetrator by ignoring the wishes of the person.

2. Are at an increased risk of experiencing family violence.

Their physical, social or cultural characteristics make such women especially vulnerable to abuse and family violence.

3. Require different, additional and culturally safe responses to elder abuse and family violence both at primary prevention, early intervention and tertiary response levels. This is discussed further below.

This includes women:

- from Aboriginal and Torres Strait Islander communities;
- from Culturally and linguistically diverse communities (CALD);
- Older women;
- who identify as LGBTIQ,
- in remote and regional areas; and
- with disabilities

Solutions need to be co-designed

Different strategies co-designed by service providers experienced with working with those communities are required to effectively engage with and implement primary prevention and early identification strategies – a ‘one size fits all’ approach will not work across the diversity of Western Australian communities.

Cultural Competency

For any response or primary prevention strategy to be effective it is also critical that the implementation of the strategies discussed above be delivered by cultural competent professionals so they are culturally safe options for the persons experiencing abuse or family violence.

If services are not culturally safe, people from those communities where abuse and family violence is more prevalent will not access the services and the intergenerational perpetuation of the trauma, abuse and family violence is likely to continue.

Consistent with family violence response

The WLCWA considers the response to elder abuse should be consistent with the above response to family violence. This could be better achieved by a prevalence study to identify not only the prevalence of elder abuse but also when it occurs in and outside of family violence.

The WLCWA supports the recommendation of the Law Council of Australia that any prevalence study include particular examination of elder abuse:

- Against Aboriginal and Torres Strait Islander people (see below for more detail)
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- Against people from CALD communities;
- Against women compared to men;
- In regional and remote communities and
- Against women (and people) with disabilities; and
- Those occurring within institutional settings.

Financial abuse is the most prevalent but not only form of elder abuse

The WLCWA agrees with the ALRC report that financial abuse is the most commonly reported form of elder abuse. The WLCWA also agrees with the Financial Services Council that a lack of awareness significantly contributes to the increased prevalence of elder financial abuse.

However, it is also the form of elder abuse that the public most commonly and readily associates with elder abuse, partly due to a broader societal lack of understanding of the complexities and the dynamics of family violence and abuse occurring within relationship of trusts and dependency.

It is important that responses to elder abuse are not limited to only financial abuse and includes other forms of abuse which are under-reported as is the case. This is especially when the abuse overlaps with family violence.

Solutions for Responding to and Preventing Financial Abuse

In terms of financial abuse, the WLCWA agrees that efforts need to be directed towards preventing and assisting people experiencing financial abuse.

Financial independence is the key to financial empowerment which lessens the risk of persons being victims of abuse and family violence. Access to legal advice, especially free legal advice provided by community legal centres is a critical step to empowering people, especially women, who are more likely than men to be victims of elder abuse and family violence about their rights, to structure their lives in an way to lessen their vulnerability, to identify behaviour which may lead to abuse and family violence and be sufficiently independent and empowered to proactively act to protect against such behaviour.

These could be delivered through targeted outreach programs with community legal centres and aged care accommodations as well as through health-justice partnerships with medical providers.

Other initiatives to support older women's financial literacy include the provision of community legal education programs delivered by community legal centres.

Responses need to be culturally co-designed to ensure they are tailored to the needs of particular communities, e.g. the ALRC report discusses that seniors from culturally and linguistically diverse communities also suffer lack of access to community networks, computer illiteracy, transport related difficulties and entrenched social views about what is acceptable behaviour towards and of elders in their community which may be different to the view held by mainstream Western Australians.

Financial abuse includes consumer affair matters

Increased access to legal advice about consumer affairs legal issues is also important as the most disadvantaged people in Western Australia can experience financial abuse differently due to the lack of assets or income.

They may instead (or in addition) experience financial abuse through:

- the stealing of Centrelink and pensions (including pressure to engage in fraud with government departments to increase social security benefits),
- obtaining credit or signing up for utility or service accounts for a perpetrator (often the adult children or grandchildren) and
- being left with the debt and no means to pay,

- Pressured into using the family home or other assets to secure loans for perpetrators (and being left with the legal liability).

Need for mandatory professional training about dynamics of family violence and abuse

Training, awareness raising and accreditation through existing professional standard bodies about the dynamics of family violence and abuse is also a key element in identifying, preventing and more effectively responding to elder abuse, particularly financial abuse.

In Continuing Professional Development sessions with family lawyers and estate planning lawyers it was openly discussed and consensus reached that Powers of Attorney were the most widely abused legal document and were increasingly used by others as a means to perpetrate financial abuse.

Without training in relation to the underlying dynamics of such abusive relationships, professional service providers including lawyers inadvertently collude with the perpetrator to perpetuate the abuse.

The WLCWA suggests that to be effective, professionals including lawyers, financial planners, and accountants undertake such training and the training be cross-sectoral to ensure advice to clients is provided consistently.

Forms of elder abuse, including but not limited to neglect

As a legal service provider, the WLCWA provides limited assistance to women experiencing disadvantage in the areas of family law, child protection and family violence (i.e Restraining Order) matters.

As discussed above, the forms of elder abuse closely align to the behaviours associated with (and now formally defined as) family violence.

In the context of our matters, forms of elder abuse experienced by our clients have included:

- Taking the property or assets of an older person
- Damaging their property. This can lead an older person to become homeless if that damage is then used as grounds for evicting the older person from state housing.
- Threatening to harm other members of the family (including great grandchildren and grandchildren). This can include threats to expose another

family members to drugs, substance abuse or other non-social and criminal behaviour.

- Preventing the older person from accessing or spending time with their spouse or other family members when at hospital or at a residential aged care facility (e.g. this often happens in relationships where the adult children act on authorities provided by their parent to prevent their parent's new spouse (or spouse who was not their parent) from seeing their spouse once that person is unable to make decisions for themselves.
- Providing guarantee loans to their adult children
- Physically harming the older person to cause that person to become permanently dependent on others (e.g. from acquired brain injuries, or long term trauma or from physical injuries)
- Providing the equity in their home as security for their adult children or grandchildren
- Being left to financially support grandchildren or other family members who are left in their care or who otherwise care for them when others are unable to

In the context of some of our Aboriginal clients family refers to a broader kinship relationship not necessarily people within the concept of the nuclear family in Anglo-Australian mainstream culture.

- Threatening to put older person's in care if they don't do what their family member wants
- Forcing older family members to finance legal fees for private lawyers in family law or estate planning matters
- Taking control over an older person's internet banking and income without their knowledge
- Misusing a power of attorney

- Damaging property to prevent the return of bond
- Physically changing the locks to prevent a tenant or owner from occupying their home.
- Misusing a power of guardianship
- Construing the physical symptoms of trauma or disability exhibited by an older person as evidence they lack capacity and as the basis for invoking a power of attorney
- When the marriages of adult children end, using the threat of not agreeing to allow the grandparent of the child of that marriage or de facto relationship to spend time with the grandparent as a means of pressuring the grandparent into agreeing to an outcome related to the adult child's financial arrangements.

Our Centre provides outreach services to remote Aboriginal communities near the Western Australia, Northern Territory and South Australian borders. A common scenario observed by our lawyers during outreach is elder abuse perpetrated by a family member by preventing the older family member in need of medical services from being able to access those services. This is particularly of concern in these communities in light of their remoteness and the lack of alternatives to services available.

It is increasingly common in family law property matters that people are entering into financial arrangements with their parents for assistance to purchase homes for their families. In other families, intergenerational business arrangements exist with respect to trusts, corporate entities or business loans.

When the relationship of the adult child and their spouse ends, the grandparents become involved as third parties in the family law matters. They can often be pressured into agreeing not to pursue their legal rights or to pay out more money to their child's spouse on the basis of threats to now allow them to spend time with the children of the relationship.

It is important to recognise that due to the limited funding available for community legal centres or legal aid to provide family law property advice and the increasing costs of private family lawyers, many parties can not afford to obtain legal advice about their family law

matter. Many victims of family violence or elder abuse simply do not pursue their legal rights to property for fear of the repercussion by the perpetrator.

In lower socio-economic families, elder abuse and financial abuse takes different forms and often involves stealing of pension and consumer related and tenancy liabilities rather than power of attorney.

Homelessness as a risk factor and consequence of elder abuse and family violence

Homelessness is a risk factor for elder abuse. Homelessness is also a consequence of elder abuse.

An example provided by the National Aboriginal and Torres Strait Islander Legal Services is an illustrative example⁶:

An elderly woman sought advice from a Brisbane civil lawyer on housing issues. The elderly woman resides with her daughter, who has locked her out of her own house. The daughter continued to claim Centrelink carers' payments, despite her mother no longer residing with her. The elderly woman was effectively homeless and only has the clothes on her back, as all her property is held in the house. She has no way to retrieve the property. A Brisbane civil lawyer referred her to an appropriate legal service

Lack of long-term housing options for victims of elder abuse, and particularly older women contributes to the prevalence of elder abuse as it means that family members perpetrating financial abuse of their older family member can use the threat of the person being homeless to force them into arrangements against their will (e.g. moving into the home without permission, occupying the house for their exclusive use, threatening to do so etc).

Elder abuse against Aboriginal women and Intersection with care and protection matters

In the context of our clients, the most common example of elder abuse our Centre is when an older Aboriginal woman has the care of her grandchildren or her great-children. This is often due to the parents or other carers of the child posing a direct and unacceptable risk to the children. Often the Department of Communities (formerly Department of Child Protection, DCP) is involved.

⁶ <https://www.alrc.gov.au/publications/potential-intersection-between-social-security-and-elder-abuse>

“Older” in the context of this example could mean as young as 35 for a grandmother or 55 for a great-grandmother.

The older Aboriginal woman is then subjected to direct physical violence and abuse by their grandchild or other family members. The occurrence of violence, usually accompanied by damage to the house, is used by the Department of Housing as grounds to evict the older woman.

As the older woman had been approved as a carer to the children by DCP, the extent to which she is able to care for the children is called into question by the DCP on the grounds that she is not acting protectively enough (i.e. she is unable to prevent the family members from inflicting physical violence against her and/or exposing the children to such violence) and on the grounds that she cannot accommodate the children due to her lack of stable permanent housing.

The interconnectedness of elder abuse, family violence and the care and protection of younger people needs to be acknowledged and responded to as part of a primary prevention strategy to prevent the continuation of the intergeneration effects and perpetration of trauma and abuse.

Aboriginal women in remote WA

Abuse against older Aboriginal women outside of the metropolitan regions in Western Australia can often be compounded by issues such as geographical isolation, limited access to technology (control of the limited technology, including mobile phones is often a tactic used by perpetrators of abuse/violence in remote communities), the increased vulnerability if they are not fluent in English as well as computer illiteracy.

There are other barriers including:

- E.g. in small remote Aboriginal communities it is common knowledge when an older person receives money.

They can often then become the targets of pressure, physical violence, threats of violence by their extended kinship community who seek to access those funds. In our Centre, the ‘money’ in question is often the receipt of compensation by a female Aboriginal victim for criminal injuries sustained by her from a family member.

It is unacceptable that the receipt of what is intended to compensate the victim for prior abuse and violence is the factor that causes her to be exposed to further abuse and violence in her community.

- Lack of services or limited services.

In many of these communities, there are no permanent services available. Services are often delivered on an outreach basis. For those services which are permanent, the service providers are usually known to the victim. The victim can feel a sense of shame such that she does not wish to access the services. The community members tend to be known to each other which can make it difficult to access assistance particularly if the older person experiencing abuse feels their concerns won't be addressed or that the disclosure of the concerns may lead to further harassment and abuse by people known to the perpetrator.

- The entrenched socio-economic poverty in such communities.

An example observed by lawyers in our outreach services highlights the difficulties posed by Aboriginal women in remote communities.

An older Aboriginal woman who had severe physical and psychological injuries (including the removal of parts of her nose, ears and significant head injuries) arising from years of family violence from her spouse was forced to live in with a younger female family member because she was no longer able to live independently following her injuries.

That younger family member was herself in a family violence situation with her own partner. The older woman was unable to focus on her own recovery as her trauma was current as she and the younger family member were continuously trying to protect themselves and evade the perpetrator spouse.

They were unable to stay in the one community as the perpetrator spouse and his family continued harassing the younger family member and the older Aboriginal woman.

The 'older' Aboriginal woman in this example was only in her 40's.

These barriers may be addressed by programs co-designed with individual remote Aboriginal communities to rebuild community support networks and focus on empowering older persons, especially women, within those communities as part of a broader primary prevention, early intervention and tertiary response strategy.

Risk factors of Elder Abuse

Some of the risk factors for elder abuse as distinct from family violence which we have observed from our matters have included:

- When the spouse of an older person passes away or their relationship ends.
- Where an older woman has been in an abusive relationship with her spouse, the adult male child of that women effectively ‘steps into their father’s shoes’ and takes over in terms of controlling the older woman – psychologically, physically and financially. They may move into her home, take over her bank accounts, force her to sign over the inheritance or the home to the adult child and even move the older woman out of the home into care or with another family member.
- Outside of the context of family violence, where an older couple separates (either because of death, physical separation due to care needs or lack of capacity of one of the parties) it can be common for the adult children of the spouse to intervene and evict the other older person from the home, to prevent them from accessing the funds or credit they had used to meet their living expenses.
- They can also prevent an older person from visiting their spouse in hospital or a residential aged care facility.

This can be a form of emotional abuse that is extremely distressing for the older person involved, especially if it prevents that person from spending time with their partner prior to that person’s passing.

Assess and review the legislative and policy frameworks/ Assess and review service delivery and agency responses

Health Justice Partnerships

WLCWA supports the recommendation of the Law Council of Australia that consideration be given to health-justice partnerships in the context of elder abuse.

Access to legal assistance is difficult many older persons. An integrated service response where an outreach legal practitioner from a community legal centre is located at an aged care accommodation at identified times and works in partnership with the aged care service provider will increase the access to justice and assistance that older persons experiencing abuse and violence currently have and enable the legal practitioner to provide advice in a safe way taking into account the level of care required for that person. A social worker from an external provider could also be on hand to ensure the older person can understand the information and advice being provided.

A health-justice partnership also has broader systemic positive changes by assisting the aged care provider service provider staff and other residents and their families to learn more about their rights and engendering the cultural change within the sector that will better protect against abuse and violence in the future.

There are many CLCs in Western Australia interested and capable of establishing health-justice partnerships subject to being properly funded to do so.

The WLCWA supports legislative and policy changes to better facilitate legal practitioners being able to deliver legal services through health-justice partnerships at aged care accommodation and also medical centres, including King Edward Hospital and other public hospitals.

Capacity of the Western Australia Police to identify and respond to allegations of elder abuse

Fundamental to the capacity of the WA Police to respond to elder abuse is an acknowledgement and change of cultural within the police force as an institution that their core business arises from violence, including elder abuse, committed in family or care dependent relationships.

It is telling that in Victoria, the Victorian Police force have undertaken significant restructure over the past 10 years or so to reflect their public acknowledgement that they needed to improve their response to family violence. A recent statistic released by them shows that over 75% of their work arises from family violence situations.

What they do day to day is overwhelmingly family violence related – they acknowledge that it is their core business.

This acknowledgment only came to light following internal reviews into the data collection methods used by Victorian Police as previously they were trained and institutionally geared

towards identifying just the criminal law elements of behaviour rather than taking a step back and be trained to identify the broader dynamics of the relationship to see the pattern of violent behaviour in which the individual criminal elements occurred.

The appointment of a Family Violence Command within the police force and the commitment and leadership of this initiative by the State Premier has been instrumental to the change of culture that is starting to emerge in Victoria.

Prior to the Royal Commission into Family Violence in 2015, the Victorian Police did have a Code of Practice for the investigation into Family Violence Matters. Yet, in their own submission to that Royal Commission they transparently and openly identified and critiqued their systemic, procedural and cultural flaws which were letting down victims and have since played a proactive and significant role in consultation and assisting to implement the Royal Commission recommendations, which has included:

- a revision to their Code of Practice,
- the establishment of a Centre of Knowledge and Training to ensure police officers are sufficiently trained in the dynamics of family violence, trauma informed practice and can make supported referrals to other service providers,
- a review of their L17 (their common risk assessment screening tool), the creation of new family violence specialists within the police force and
- a stronger commitment to the RAMP model – a multi-disciplinary case work meeting to ensure professionals working with very high risk families are can share the information and strategize consistently in relation to the perpetrator and maximise safety for the woman and children.

In stark contrast, a recent search undertaken on the WA Police website for family violence has shown up with only 1 result related to sexual assaults – see <https://www.police.wa.gov.au/search?query=family+violence> .

There has been no commitment from the WA Police force that family violence is their core business and it would be reasonable from their lack of information on their website that there is a public perception that the WA Police still consider family violence to be a private and non-police matter - let alone elder abuse.

How to Improve the Response and Build Capacity with the Police Force

To build the capacity of WA Police to respond to elder abuse, there needs to be wider systemic and cultural change within the WA Police force in relation to how their core business is perceived and the role they play. This initiative and cultural change needs to be championed from the top (by the State Premier and Minister for the Prevention of Family Violence) in order to be effective and examples of initiatives that have successfully worked in other jurisdictions include:

- Creation of a Family Violence Commissioner within the Police Force, with the status of at least Assistant Police Commissioner
- Commitment by the Premier and Minister for Family Violence to change and a similar whole of system approach to family violence and elder abuse adopted by the government (the recent creation of the Department of Communities is a step but there needs to be oversight by the Department of Premier and Cabinet as a central leading department to effectively coordinate a whole of government response to these issues);
- Creation and updating of a Code of Practice for the Investigation into Family Violence, undertaken with family violence specialists. This could form the basis of a Code of Practice for the Investigation into Elder Abuse.
- Creation and consistent use and training of a Common Risk Assessment Tool used by all services responding to family violence and abuse
- Training of police in relation to the dynamics of family violence and abuse and the recognition that such behaviour is criminal in nature and something that the police should
- Changes to data collection by the police and other related agencies and organisations to ensure that data about the prevalence of family violence and abuse is properly captured. See <https://www.crimestatistics.vic.gov.au/> for an example of the Victorian Crime Statistics Family Violence Data Portal.
- Internal changes to ensure that police officers who are perpetrators of family violence within their own relationships can not abuse their position as a police

officer to effect control and intimidation over the partners, including by encouraging other police officers not to assist or believe what the victim is alleging.

This is an issue reported by some of our clients.

- Internal changes to ensure that police officers receive sanctions if they do engage in behaviour which perpetrates or enables family violence to be perpetrated.

Without such sanctions, there is a perception held by victims of family violence and the wider community that the police won't provide assistance which will deter others from reporting and seeking assistance.

Initiatives to empower older persons to better protect themselves from risks of elder abuse as they age

As with victim survivors of family violence, older people at risk of experiencing abuse or violence often are unable to identify themselves as such.

The reasons for this are subjective and complex and can include amongst other things:

- Cultural factors (i.e. cultural background is not an excuse for family violence or abuse but rather someone from a CALD background may have been always treated in such a manner and lack the knowledge of what is appropriate behaviour in Australia.

Similarly, the gendered derogatory behaviours and attitudes especially towards women that are entrenched (to different degrees) in patriarchal cultures which reinforce and lead to abuse and violence experienced by women, may not be recognised as anything but normal for certain people - especially women.

All the information about where to get help will be ineffective if the person needing help doesn't recognise that they do or experience barriers preventing them from accessing or understanding that help.

- Familial factors (e.g. in families where there is family violence, it can be common for the adult male children to replicate the attitudes and behaviour of their perpetrator father which can lead to adult male children placing their older mother (and sometimes father as well) in care against their will as a threat and a means to maintain control, perpetrate abuse and intimidate them.

Risks of elder abuse in family violence relationships

While elder abuse can occur outside of family violence, when it occurs within family violence, the dynamics of the persons involved became more complex.

Those victims who are often traumatised may present as lacking capacity or as cognitively impaired which is then used to justify the actions of the perpetrator placing them in care.

If the adult son perpetrator is the person responsible for their parents care at the aged care accommodation it is doubtful whether that son will act in his parents' best interests which will limit the extent to which the older persons can be empowered to take control, especially if the aged care inadvertently colludes with the perpetrator child by acting in accordance with his wishes regarding the care of his parents. This can be avoided by further awareness raising and training of professionals in relation to the dynamics of family violence and abuse and trauma informed practice.

To empower older persons and the people that care for them to better protect the older persons, education and community awareness raising is needed to ensure that:

- Older persons first recognise what is abuse and family violence so they can identify if they or someone else is experiencing it
- Older persons recognise what the behaviours and derogatory attitudes which lead to abuse and violence are so they are better placed to realise when they or someone else is at risk of experiencing abuse and family violence
- If an older person feels they are at risk, they know where to go for independent assistance (including assistance outside of the aged care home and their family) and that such independent assistance can be accessed by them.

People experiencing abuse in aged care facilities may not have any friends or family who could call for assistance or those persons who otherwise could

help may themselves be the perpetrator. A co-located service at the facility may assist in this.

- The aged care workers, families of older persons and the older people themselves better understand the difference between capacity and trauma and what happens in terms of decision making when a person does lack capacity.

Older persons in care would feel more empowered to ask for help if they had increased confidence that independent assistance would come.

WLCWA supports the Law Council of Australia's submission to the ALRC Inquiry that there should be an official visitors scheme for residential aged care, which empowers official visitors to enter and inspect a residential aged care service, confer with residents and staff and make complaints or reports about suspected elder abuse [and family violence noting the significant overlap] to the appropriate person or organisation.

New proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse

Other jurisdictions have already undertaken significant inquiries in Elder Abuse, including the ALRC Commonwealth Inquiry and the Victorian Royal Commission into Family Violence.

As part of the Royal Commission into Family Violence a number of advocacy organisations for older persons in Victoria made detailed submissions and comprehensive recommendations aimed at both primary prevention, early intervention and improving the tertiary response to elder abuse in Victoria.

The work already undertaken and publicly available should be considered as part of the Western Australian Inquiry to enable our state to learn from other jurisdictions.

In particular, WLCWA recommends the following submissions and reports be considered:

- Senior Right's Victoria [submission](#)⁷ to the Royal Commission into Family Violence.

Their submission went into detail about initiatives around Australia and overseas and then explained the extent to which those could be helpful to inform reform in Victoria.

- The Law Council of Australia's submission to the Australian Law Reform Commission's Inquiry into Elder Abuse

In particular, the WLCWA supports the recommendation that strengthened the capacity of aged care homes to respond to serious incidents, the requirements of to provide evidence rather than self-assessment, for how they respond to such incidents and broadening what is perceived as reportable from assaults to incidents.

The WLCWA also supports the recommendations that facilitate improved data collection by aged care homes and the measures to increase the transparency of such information and oversight of the sector by the Commissioner.

Acknowledgments

The WLCWA wishes to thank Celine Harrison for the research undertaken her on a volunteer basis which has informed this submission and Sarah Bright, Principal Legal Officer of WLCWA, for drafting the submission on behalf of WLCWA.

Further Information

WLCWA has prepared this submission on the basis that will be made public (i.e. it is not confidential) and we have no objections to our submission being uploaded on the Parliament website.

⁷ Available to view as at 16 November 2017 at <http://www.rcfv.com.au/getattachment/932E26C4-5B30-4D2D-8F4C-26529FAFADEE/Seniors-Rights-Victoria>

If you have any queries in relation to this submission please contact Sarah Bright, Principal Legal Officer of WLCWA at sarahb@wlcwa.org.au or contact our office on (08) 9272 8800.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Carrie Hannington', with a long horizontal flourish extending to the right.

Carrie Hannington

Senior Executive Officer

Women's Law Centre of WA (Inc)