

Elder Abuse in the ACT

Report Number 11

Standing Committee on Health and Community Care

August 2001



Committee membership

Mr Bill Wood MLA (Chairman)

Mr Rugendyke MLA (Deputy Chairman)

Mrs Jacqui Burke MLA (February 2001- present)

Mr Harold Hird MLA (1998 - February 2001)

Secretary: Mr David Skinner

Administration: Mrs Judy Moutia

Resolution of appointment

The following general purpose standing committees be established to inquire into and report on matters referred to it by the Assembly or, after the

Assembly's endorsement, matters that are considered by the committee to be of concern to the community.

... a Standing Committee on Health and Community Care to examine matters related to health and community care policy, planning and purchasing acute, community health and population health services, hospitals, housing and housing assistance and any other matter under the responsibility of the portfolio minister.

Legislative Assembly for the ACT, *Minutes of Proceedings*, (1998), No. 2, 28 April 1998, pp 15 and 16.

Amended on 7 December 2000, *Minutes of Proceedings* (2000), No. 110, p 1129

Terms of reference

Inquire into, and report by the last sitting day in August 2001 on the prevalence of, and options to prevent elder abuse including unreasonable financial demands for accommodation, and the efficacy of reporting, resolution and support mechanisms for elder abuse issues in the ACT

Minutes of Proceedings, No. 88, Thursday, 11 May 2000, p 845.

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Summary of recommendations

Recommendation 1

The committee recommends that the Government examine all the material produced by the NSW Advisory Committee on the Abuse of Older People to assist in developing policy and service delivery responses. In particular, the committee recommends that the Government adopt and explicate in policy documents the principles outlined in paragraphs 2.7 and 2.10 as a basis for policy development and interventions.

Recommendation 2

The committee recommends that the Government take a whole-of-government approach in developing policy and service delivery responses in the area of elder abuse.

Recommendation 3

The committee recommends that the Government develop inter-agency protocols for detecting and addressing instances of elder abuse.

Recommendation 4

The committee recommends that the Government establish a single contact telephone number for members of the public, family and friends and other service delivery agencies and individuals to report instances of elder abuse as well as to provide an information and education resource for older people and their loved ones concerning elder abuse prevention and redress/intervention.

Recommendation 5

The committee recommends that the Government investigate and initiate programs to reduce the incidence of social isolation.

Recommendation 6

The committee recommends that the Government increase access to appropriate forms of crisis accommodation for older women who are victims of physical abuse.

Recommendation 7

The committee recommends that the Government require mandatory police checks for all workers in aged care institutions and for all workers who make home visits in aged care institutions.

Recommendation 8

The committee recommends that the Government make representations to the ACT Law Society to ensure that legal practitioners in the ACT are taking reasonable steps to guarantee that people signing over an enduring power of attorney are, in fact, competent to understand the implications of this and that,

where necessary, the opinion of a medical specialist be required to make a determination as to competence.

Recommendation 9

The committee recommends that the Government:

- a) investigate provisions for compulsory registration of all Powers of Attorney;
- b) make representations to the Federal and State and Territory Governments to undertake a review of Power of Attorney Acts operating in each jurisdiction in order to provide some consistency and to look at cross-border issues;
- c) develop safeguards to assess the capabilities of the person handing over the Power of Attorney;
- d) institute a requirement that the person handing over the Power of Attorney be given comprehensive information on the legal issues involved, including information on how to report abuse;
- e) develop a systematic mechanism to monitor for abuses of Powers of Attorney; and
- f) develop a widespread education program in all areas of elder abuse which would include comprehensive information on Powers of Attorney.

Recommendation 10

The committee recommends that the Government increase the number of respite care services and places available in the ACT

Recommendation 11

The committee recommends that the Government consult with the NSW Government and NSW Departmental officials to examine a means of utilising '*Dealing with Abuse of Clients and theirs Carers, A Training Kit*' in the ACT.

Recommendation 12

The committee recommends that the Government:

- a) fund a campaign to educate professionals working in the field of elder abuse or likely to come in contact with victims of elder abuse to recognise and deal with elder abuse in an appropriate fashion; and
- b) fund a broad based community education campaign on elder abuse in an attempt to raise general public awareness about elder abuse issues.

Recommendation 13

The committee recommends that the Government establish education and training standards for workers in aged care institutions.

Recommendation 14

The committee recommends that the Government consult with the ACT Division of General Practice to help raise the issue of elder abuse with General Practitioners and to promote effective strategies for addressing the issue.

CHAPTER 1. Introduction

1.1. The Assembly referred this inquiry to the committee on 11 May 2000. Members of the Assembly have been aware for some time that elder abuse is serious problem confronting people in jurisdictions across Australia and indeed, the world. It is widely acknowledged that elder abuse is under reported and although not a new phenomenon, it has only recently reached prominence as an issue of policy.

1.2. The committee has accepted a broad definition of the term elder abuse and has taken it to pertain to all forms of abuse including physical, emotional/psychological, sexual and financial abuse.

1.3. A submission for the Council on the Ageing ACT (COTA) defined elder abuse as, ‘any pattern of behaviour which caused physical, psychological, financial harm or neglect to an older person’.¹

1.4. The committee considers that older people are some of the most vulnerable in our community and deserve to be treated with respect and afforded appropriate levels of protection.

1.5. The committee has produced a streamlined report addressing some basic policy issues in the ACT context as well as producing a number of recommendations aimed at improving the way that the ACT Government, ACT service providers and other agencies deal with the issue of elder abuse.

Background.

1.6. The committee received 14 submissions.

1.7. The committee held four public hearings on: 7 May 2001; 4 July 2001; 11 July 2001; and 18 July 2001, taking evidence from community groups, the Community Advocate, individuals and the ACT Government.

1.8. The committee has drawn on the submissions and evidence received in the public hearings to produce this report and the committee would like to thank all those who participated.

1.9. This report is not intended as an extensive examination of elder abuse. It does not go into the minutiae of policy development and service delivery responses. Rather, the committee has produced a brief report which aims to highlight some of the main issues, proposing some approaches which may be useful in preventing elder abuse as well as suggesting basic improvements in

¹ Submission 4, p 3.

service delivery areas. The committee has included a bibliography (Appendix 2) at the end of the report for readers who may wish to gain a more comprehensive understanding of the issues².

1.10. The committee is aware that NSW is considerably advanced in developing services delivery responses and policy development in the area of elder abuse. The committee has therefore made reference throughout this report to the work of the NSW Advisory Committee on Abuse of Older People and the NSW Ageing and Disability Department

1.11. The committee understands that ACT Community Care and the Department of Health, Housing and Community Care are currently in the process of developing a range of policies in relation to elder abuse issues. The committee received a copy of a draft policy and protocol from the ACT Community Care relating to elder abuse issues. This draft document presents some good steps aimed at guiding, 'health care professionals on identification, intervention and available options when elderly abuse is suspected'.³

1.12. The committee looks forward to the adoption of this policy and protocol in the near future.

² The committee would like to thank Ms Helen Marx from ACT Community Care for providing the committee with this comprehensive bibliography.

³ ACT Community Care, Intake and Assessment Unit (2001) '*Elder Abuse Discussion Paper (Draft Policy and Protocol)*' p 5.

CHAPTER 2. Issues

2.1. This chapter examines the primary issues raised during the course of the committee's inquiry.

Definition of elder abuse

2.2. As noted above, the committee has taken a broad view of what is meant by the term elder abuse. In its submission to the inquiry, the Council on the Ageing ACT (COTA) noted that:

Elder abuse covers a broad range of behaviours experience[d] by older persons. The definition adopted by COTA (ACT) is similar to the definition adopted by the NSW Advisory Committee on abuse of older people, but COTA (ACT) has extended it to include neglect.

Types of abuse include:

Physical – the infliction of physical pain, injury or force

Psychological/emotional – Behaviour including verbal abuse which causes mental anguish, stress and fear

Sexual – Sexually abusive and exploitative behaviours involving threats, force or the inability to give consent

Material/financial – Illegal or improper exploitation and/or use of funds or other resources

Neglect – Can be either active or passive and occurs as a result of another person failing to meet the physical or emotional need of an older person.⁴

2.3. The ACT Government, too, takes a fairly broad view of the term elder abuse. In its submission, the ACT Government noted that:

The term elder abuse is used to describe behaviour or actions which result in harm to an older person where the older person and the person carrying out the action or behaviour are in some relationship which involves trust, dependency or proximity. Elder abuse therefore includes abuse by family, friends, neighbours, paid or volunteer support workers and service-providers, where the abuse happens in the context of this relationship.⁵

2.4. However, all wrongdoings against an older people are not necessarily considered to be elder abuse. The ACT Government submission points out that:

⁴ Submission 4, p 3.

⁵ Submission 1, p 2.

Elder abuse does not generally include action carried out by strangers such as bag-snatching, home invasions, confidence tricks targeting older people or street assault on older people.⁶

2.5. The issue of trust is important in a discussion of elder abuse. Research shows that elder abuse is most commonly found in relationships where one person is dependent on another. Dependency is often the result of frailty, illness and disability.⁷ An older person may be dependent upon a spouse, a child, grandchild or sibling or in the care of an institution of some kind. Where a person is to a greater or lesser extent dependent upon another, the duty of care is amplified as the dependent person's capacity for self-determination may be limited to some degree and they may require a great deal of assistance in managing their affairs, whether financial, emotional or physical.

2.6. The issue of elder abuse, therefore, primarily involves a breach of a trust which may exist between an older person and their carer, family member or friend. It is the issue of trust that distinguishes elder abuse from abuse generally.

Principles

2.7. In terms of developing responses to elder abuse, the NSW Advisory Committee on Abuse of Older People outlined a number of important principles in its Legal Issues Manual which are outlined below.

- Older people have a right to live safely in their own homes, free of violence, abuse, neglect and exploitation.
- Older people are entitled to make their own decisions on matters affecting their lives.
- Older people are entitled to participate in the development and implementation of services, policies and programs affecting them.
- Older people are entitled to autonomy and dignity.
- The welfare, rights and interests of older people should be of paramount consideration in decisions affecting them.
- Older people are entitled to comprehensive, accurate and accessible information and advice about their rights and options, to enable them to make informed decisions.

⁶ Submission 1, p 2.

⁷ Department of Ageing, Disability and Home Care, NSW Government, '*Abuse of Older People*' accessed from <http://www.add.nsw.gov.au/ageing.htm#abuse>

- Older people should be provided with assistance which is culturally and linguistically appropriate.
- Communities of non-English speaking background should be encouraged and supported to establish infrastructures and services to meet the needs of older people within their community which cannot be met by mainstream services.

2.8. The committee considers that these are all important principles which should underpin service delivery responses and policy development. The committee is, therefore, pleased to see that the ACT Government draft policy and protocol on elder abuse has incorporated some of these tenets.

2.9. The draft protocol states the policy position as evolving from a human rights perspective and notes that, '[it incorporates]... principles for older persons relating to independence, participation, care, self fulfilment, and dignity'.⁸

2.10. The NSW Advisory Committee on Abuse of Older People also makes mention of principles for intervention which are listed below.

- Self determination is to be encouraged. Individuals are to be encouraged and assisted to make their own decisions, provided with information about all the relevant options and given the option to refuse services if able to do so. Even where people cannot make all of their own decisions, their views should be taken into account.
- The interests of the victim take precedence over those of the victim's family or of other members of the community.
- Intervention must be victim focused with a view to ensuring safety and ongoing protection through legal remedies.
- Victims of violence, abuse, threats, intimidation and harassment should be offered protection through legal remedies.
- Assault and some other forms of abuse (e.g. theft fraud) are criminal offences.
- Confidentiality of information is to be respected in accordance with professional ethics, agency policy and legal obligations.
- The desire of an older person for an independent advocate of their own choice should be respected.⁹

⁸ ACT Government, Intake and Assessment Unit op cit, p 5.

⁹ NSW Advisory Committee on Abuse of Older People (1995) '*Abuse of Older People: Inter-Agency Protocol*' p 5.

2.11. The committee believes that these, too, are important principles and should form the basis of developing interventions. The committee would like to see the ACT Government examine all the material produced by the NSW Advisory Committee on Abuse of Older People to assist in informing its policy development. In particular, the committee would like to see the ACT Government adopt and explicate in policy documents the two sets of principles outlined above.

Recommendation 1

The committee recommends that the Government examine all the material produced by the NSW Advisory Committee on the Abuse of Older People to assist in developing policy and service delivery responses. In particular, the committee recommends that the Government adopt and explicate in policy documents the principles outlined in paragraphs 2.7 and 2.10 as a basis for policy development and interventions.

Extent of the problem

2.12. It appears that current data on the extent of elder abuse is limited in the ACT and nationally. In its submission the Government pointed out that, ‘precise information on the extent of abuse of older people is not available and it is generally accepted that this issue is significantly under-reported’.¹⁰

2.13. COTA noted in its submission that:

As with child abuse and domestic violence, abuse of older people is seriously under-reported. However, reliable studies in the USA, UK and Canada have shown that between 3% and 5% of older people living in their own homes are victims of abuse; this is supported by Australian research.¹¹

2.14. In its submission, COTA cites information in a NSW publication that as many as 52,000 people in NSW are victims of abuse each year.¹² Extrapolating the NSW data COTA notes that:

If we accept that the ACT is likely to experience similar levels of abuse as NSW, then even allowing for the reduced proportion of the ACT population aged 65 and over, we could expect over 1,500 cases to occur each year in the ACT.¹³

¹⁰ Submission 1, p 2.

¹¹ <http://www.add.nsw.gov.au/ageing.htm#abuse> cited in submission 4, p 1

¹² NSW Department of Ageing and Disability ‘Abuse of Older People: The Hidden Problem’ cited in submission 4, p 1.

¹³ Submission 4, p 2.

2.15. The Government submission cites a 1992 study by Kurrle, Cameron and Sadler (Patterns of elder abuse, Medical Journal of Australia, vol. 157, pp 673-6) which estimated that, ‘approximately 4.6 percent of older people in Australia are abused in some way’¹⁴.

2.16. The committee also notes that the ACT’s ageing population is increasing and that policy makers must consider how an increase in this population will impact policy development, service capacity and funding issues vis-à-vis elder abuse.

Council on the Ageing Public forum

2.17. In its submission to the Inquiry COTA ACT noted that it had conducted a public forum on the issue of elder abuse. The committee considered that it was worth outlining some of the findings of the forum and has done so below.

The results of the forum are summarised as follows:

- Much abuse of elders comes about as a result of “carer burnout” and adequate respite care is required to reduce elder abuse.
- Social isolation contributes to elder abuse. The lack of adequate transport options for isolated people is one of the key factors preventing older people from seeking help.
- The dependence of some older people in connection with their social isolation from peers and the rest of the community leaves them vulnerable to abuse.
- People suffering from dementia are particularly susceptible to abuse and need specific legislative protection so that professional can intervene.
- Workers and carers of older people must be subject to a police check.
- In the absence of an existing reporting mechanism, it is not possible to provide prevalence rates. Nevertheless, workers with caseloads in the area stated that they could identify 10% of caseloads as abused elders/
- Adequate funding of support mechanisms is essential including the need for supported accommodation, training of workers, and improving the skill level of workers – with appropriate remuneration.
- Mandatory reporting is a vexed issue with some people adamantly opposed. In the main, these people are concerned that the rights to self determination might be ignored in the process and that older people should not be reduced to the status of dependants. Most people, however, are supportive of mandatory reporting in order to remove the risk of professional being sued for reporting; enable collection of

¹⁴ Submission 1, p 2.

statistical information; provide a single contact point of support for victims, develop guidelines for identification of abuse, and to protect the rights of victims. The majority of people supported a model similar to that provided by the Office of the Community Advocate and suggest that the funding and resourcing of a new branch of that office would meet this requirement.

- Education campaigns are an essential response. Widespread education of the community, General Practitioners, Carers, Community Nurses and other Community Workers is essential if we are to raise community awareness of the problem and develop a community attitude that will see abuse reported and dealt with adequately. The general consensus is that while this educational campaign should be broadly based, a television campaign is the only effective way of reaching the wider community.¹⁵

2.18. The committee agreed with most of the findings arising from COTA's forum and has addressed them variously in this report. However, the committee did not agree that mandatory reporting be instituted and has also examined this issue in more detail in a section below.

Office of the Community Advocate

2.19. The Office of the Community Advocate is one of the primary agencies involved in addressing instances of elder abuse. The Community Advocate has a range of responsibilities. Primarily the Community Advocate is concerned with the protection of people, both young and old, who may not be in a position to look after their own interests. The web site of the Community Advocate notes that:

The Community Advocate is an independent statutory office holder who has a legal duty to promote and protect the interests of children and adults with physical, mental, psychological and/or intellectual conditions that result in a need for protection from abuse, exploitation or neglect.¹⁶

2.20. In terms of intervention, the Community Advocate noted in evidence before the committee that:

If a matter is referred to my office, we conduct an investigation. The provisions of the Community Advocate Act allow us to conduct an investigation where a report has been made to us that there has been misconduct on the part of a guardian, financial manager or a person acting under the power vested in them through an enduring power of attorney. If a report is made, then we conduct the investigation and we form a view as to whether the allegation of elder abuse is substantiated or not.

¹⁵ Submission 4, pp 6-7.

¹⁶ <http://www.oca.act.gov.au/>

If it is a matter of financial abuse, that is the way that we proceed - in that orderly manner - and we conduct a slow and methodical investigation. If it is a matter of physical abuse where a person's immediate safety might be at risk, then we take immediate action. On the basis of medical evidence, we apply for an emergency guardianship order, which empowers me as Community Advocate to become the substitute decision-maker for the person who has been subjected to the physical abuse. That puts me in a position to make decisions that achieve safety for the person and protection for the person.¹⁷

2.21. While the Office of the Community Advocate does have a responsibility to identify and address instances of elder abuse, the responsibility also extends to other agencies and services. Nursing homes, retirement villages, hospitals, General Practitioners, community nurses, the police service, social workers and a range of other organisations and individuals may come across instances of elder abuse.

2.22. Because so many disparate areas are potentially contact points for people experiencing elder abuse, it is important that inter-agency co-ordination is effective and that individuals working in these areas are well educated about how best to handle elder abuse where it is suspected. The NSW Advisory Committee on the Abuse of Older People has developed an approach to inter-agency co-ordination in its publication, *'Abuse of Older People: Inter-Agency Protocol'*. The Government would be wise to examine this document for guidance about how to better co-ordinate policy and service delivery responses across agencies. It is important that policy development and service delivery responses are devised with involvement from all areas of Government so that gaps in service delivery can be identified, responsibility delineated and co-ordination improved.

2.23. As noted above, a suggestion was made by COTA that there be a single point of contact for people wishing to report instances of elder abuse and provide advice and information. It was suggested that the Community Advocate would be an ideal place to locate this contact point. The committee considers that this is a useful approach.

Other agencies

2.24. A submission from the Domestic Violence Crisis Service and others made mention of other agencies responsible for providing advocacy services for older people who are victims of abuse. They are: ADACAS (ACT Disability Aged Carer Advocacy Service Inc); DVCS (Domestic Violence Crisis Service); COTA (Council on the Ageing); OWN (Older Women's

¹⁷ Transcript, 4 July 2001, p 26, Ms McGregor.

Network). Mention was also made of community services providing carer support. They are: Regional Community Services; Carers' Association, Respite Services; Community Options. The committee has included a list of these agencies and their contact numbers at the end of the report (Appendix 3) for the information of readers.

2.25. The submission from the Domestic Violence Crisis Service and others identified the major problems, as it saw them, associated with elder abuse. The committee has included these problem areas below.

- One of the major barriers to older/elderly people reporting abuse themselves is that they are most often reporting their carer, for example, a spouse, child, grandchild or carer in an institution. These are the very people on whom they depend for many of their basic needs.
- Another of the major barriers preventing older/elderly people who have been subjected to violence taking up the options available to them, is their concern for the wellbeing of the person using the violence. For example, in the experience of DVCS, it is often necessary for workers to refer the person who has been violent to support agencies. This means that the needs of the perpetrator need to be urgently addressed in order to assist the person against whom the violence has been committed.
- When a complaint is made by an older person, in either private homes or aged care institutions, fear of retribution is of real concern to the abused person. Indeed many people resign themselves to living out their lives in environments where basic human rights are routinely abused.
- Abuse can be reported to any of the agencies mentioned previously in this submission [cited above]. However, these agencies are unable to provide the required levels of services due to lack of resources.
- If the person subjected to abuse does not receive the required levels of support, they often have no alternative but to return to, or remain in, the abusive environment.
- ADACAS' stated position is that aged care facilities are institutions are, therefore, inherently abusive. Residents are usually frail and have little or no choice in where they live. Residents and their families or carers often accept behaviour from staff which they would never dream of accepting in their own homes. Many aged care facilities are operated on the medical model and are like extensions of hospital wards.
- Loss of privacy and dignity are important issues in institutional care. Also recreational activities as well as food and hygiene issues need to be addressed.
- Problems around staffing (including insufficient numbers of staff and inadequately trained staff) is one of the most common complaints heard from the residents of aged care facilities.
- No safeguards appear to exist in the *ACT Power of Attorney Act*. There is no consistency across Australia with relevant legislation dealing with

guardianship and power of attorney issues. There are no existing safeguards which assess the capabilities of the person handing over the Power of Attorney. In the case of an Enduring Power of Attorney, it is unclear when it takes effect. The Office of the Public Trustee and the Office of the Community Advocate have powers to investigate abuse of Powers of Attorney. Unfortunately, however, they are usually not involved until it is too late and the assets have been lost.¹⁸

2.26. The committee touches on the issues raised above in more detail throughout the report.

Recommendation 2

The committee recommends that the Government take a whole-of-government approach in developing policy and service delivery responses in the area of elder abuse.

Recommendation 3

The committee recommends that the Government develop inter-agency protocols for detecting and addressing instances of elder abuse.

Recommendation 4

The committee recommends that the Government establish a single contact telephone number for members of the public, family and friends and other service delivery agencies and individuals to report instances of elder abuse as well as to provide an information and education resource for older people and their loved ones concerning elder abuse prevention and redress/intervention.

Neglect

2.27. The committee was informed that neglect is one facet of elder abuse affecting older people. The Community Advocate noted that:

Some of them [older people] have been deserted by their families. Some of them do not have families. One of the things that have surprised me since I have been in this job is the number of people who are truly isolated. We do the best we can to find family, and sometimes we do find family in far off lands, but often we do not. There are people who just have nobody.¹⁹

¹⁸ Submission 2, p 7.

¹⁹ Transcript, 4 July 2001, p 32, Ms McGregor.

2.28. It is also the case that even where friends and family members are present in the life of an older person, the requisite attention to their needs may not be provided. Neglect was defined in the submission made by the Domestic Violence Crisis Service and others as:

The failure to provide adequate food, shelter, clothing, medical or dental care. This may involve the refusal to permit other people to provide appropriate care. Examples include abandonment, non-provision of nourishing food, adequate clothing or shelter, inappropriate use of medication (including over medication) and poor hygiene or personal care.²⁰

2.29. The ACT Government draft policy and protocol on elder abuse sets out a series of indicators of neglect. They are:

- If food or drink are being withheld there is mal-nourishment, dehydration, weight loss, wasting and dehydration, all without an illness-related cause. The older person may have constipation or faecal impaction. Pallor, sunken eyes and/or cheeks may be evident.
- Hypothermia, recurrent colds, bronchitis or pneumonia.
- There may be evidence of inadequate or inappropriate use of medication, for instance, the older person may be over-sedated in the middle of the day. Alternatively medicines are not purchased or are incorrectly administered.
- No social, cultural, intellectual or physical stimulation.
- Older person may be lacking necessary aids such as spectacles, dentures, hearing aids or walking frame.
- There may be poor hygiene or inadequate skin care. The older person may be very dirty or smell strongly of urine or be infested with lice. There may be a urine rash with excoriation and chafing. There may be evidence of unmet physical needs such as decaying teeth or overgrown nails.
- Clothing may be dirty and in poor repair, it may be inappropriate for the weather or the person's gender.
- In some cases where the older person is immobile and injuries have not been properly cared for, pressure sores may have developed over the sacrum, hips, heels or elbows. Sometimes medical care and attention are withheld until the person is almost moribund.²¹

2.30. To address some of the issues relating to neglect the committee has picked up a recommendation from the COTA advocating better programs

²⁰ Submission 2, p 3

²¹ ACT Community Care, Intake and Assessment Unit op cit, p 19.

aimed at reducing social isolation. Of course, neglect goes beyond the issue of social isolation. It can be case that while an older person is reasonably socialised, their carer or other important people of trust are not adequately providing for their needs in terms of medical attention, food and water, and hygiene.

Recommendation 5

The committee recommends that the Government investigate and initiate programs to reduce the incidence of social isolation.²²

Psychological/emotional abuse

2.31. A submission from the Domestic Violence Crisis Service and others defines psychological abuse as:

The infliction of mental anguish, including actions that lead to fear of violence, to isolation, or deprivation, feelings of shame, indignity or powerlessness. Examples include treating the older person as a child, humiliation, emotional blackmail, blaming, swearing, intimidation, name-calling and isolation from friends or relatives.²³

2.32. The ACT Government draft policy and protocol outlines indicators of psychological abuse and they are listed below.

Psychological/behavioural Indicators the elderly person may exhibit

Signs that psychological abuse is occurring may involve sudden or unexplained changes in behaviour. Older people often suffer the physical and emotional pain associated with abuse, in silence

- Many symptoms of psychological abuse appear similar to psychiatric illnesses, and such abuse may easily be misdiagnosed as depression or paranoia. Fearfulness, helplessness, hopelessness, passivity, apathy, resignation, withdrawal, anger, agitation or anxiety can be attributed to abuse or to a psychiatric disorder.
- Withdrawal by the patient, carer treating the patient like a child, or caregiver's insistence on providing the history
- Insomnia, sleep deprivation/disturbance and loss of interest in self or environment, unexplained weight loss, sudden mood or behaviour change.

²² Drawn from submission 4.

²³ Submission 2, p 3.

- There may be ambivalence towards a family member or care-giver. Observe the emotional reactions of the older person and the care-giver during your conversations and by observing the face to face interactions between the two. Often there is reluctance to talk openly, and the older person avoids facial or eye contact with both the Health Care Professional and care-giver. The older person may be huddled when sitting, or nervous with the family member or care-giver near-by, particularly regarding discussion of injuries or financial loss

Psychological/behavioural Indicators the person inflicting abuse may exhibit

- Abuser may be hostile or dismissive of the patient, refuse treatment for the older person or access to the older person by health professionals. Alternatively the abuser may seek assistance from multiple agencies or service providers.
- The abuser may be evasive when responding to questions, or does not want the older person spoken to alone. There may be minimal eye, physical or verbal contact with the older person.
- Carer may refuse to supply information regarding the older person, or attributes injury to a third party. The carer may display excessive concern or undue lack of concern for the aged person.
- An absence of warm, positive, supportive human contact – emotional or physical alienation of the abused or over concern with costs/expenditure for services or activities. Taking control of the senior's money, assets or possessions.
- Blaming the older person for his/her behaviour (e.g. wandering, incontinence). Exhibiting unreasonable anger towards the senior and/or worker.
- Experiencing difficulty managing his/her own life.

2.33. The committee also notes that all forms of abuse whether financial, sexual or physical may have serious psychological repercussions. That is to say that all forms of abuse have a psychological dimension.

Sexual and physical abuse

2.34. The committee did not receive a great deal of evidence in relation to physical and sexual abuse of older persons. However, it must be acknowledged that sexual and physical abuse are amongst the most serious forms of abuse – they are, indeed, criminal offences.

2.35. In the *Legal Issues Manual* for the NSW Advisory Committee on Abuse of Older People these types of abuse are described in the following terms.

Physical Abuse

The infliction of pain or injury or physical coercion. Examples include hitting, shoving, pushing, burning and physical restraint.

Sexual assault and abuse

Sexually abusing or exploitative behaviour, ranging from violent rape to indecent assault and sexual harassment.²⁴

2.36. The ACT Government's draft policy and protocol on elder abuse make mention of both sexual and physical abuse. The draft sets out the types of evidence that might indicate where these types of abuse are present. They are included below.

Physical indicators

- A history of unexplained accidents or injuries (inexplicable falls). Any story of an older person being "accident prone", or conflicting, implausible stories from the patient or carer should be viewed with suspicion, as should multiple injuries, especially at different stages of healing and untreated old injuries. The severity of the injury may not fit with the given explanation.
- There may have been a long delay between the injury occurring and reporting for treatment, or the older person may have been to several different doctors or hospitals, or a series of missed health/medical appointments.
- Malnutrition, bed sores/ulcers, hypothermia, dislocations, unexplained pain, dehydration, over-sedation, scalding, poisoning, swelling.
- The care giver may be reluctant to allow Health Care Professionals access to treat or assess the older person or refuse to leave the elderly person alone with a health care practitioner.
- In the absence of a formal physical examination, note the presence of any bruising or abrasions on exposed areas such as the face, neck, forearms and lower legs. Check the nose and mouth for swelling, bruising, lacerations and missing teeth. Check for black eyes and bleeding in the white part of the eye. Fractures of the skull, nose and facial bones or ribs can be evidence of abuse.
- Notice if any signs of physical restraint are present. Especially look at the wrists or around the waist. Older people may be tied to a bed, to a chair, even a toilet...

Sexual Abuse Indicators

- Medical and nursing staff should examine the genital area for bruising, bleeding and painful areas. Check for torn, stained or blood stained underwear. Evidence of sexually transmitted diseases. Watch for

²⁴ NSW Advisory Committee on Abuse of Older People (1995) *'Legal Issues Manual'* p 3.

difficulty walking or sitting. Any of these signs may be indicative of sexual abuse.

- Older person recoils when receiving physical or hygiene care.
- Withdrawal or depression.²⁵

2.37. An area that is problematic in the context of physical and/or sexual abuse is that many older people are reluctant to report these experiences. It was noted in evidence that often a considerable degree of trust needs to be developed between a carer, health care worker or other interested party before such experiences are disclosed. COTA noted that:

... workers underline how they had to be in contact with a person over an extended period before people would explain even the most obvious things, like when you see bruising and signs of things that don't add up. Even that would be sort of covered for some considerable period until there was a real trust relationship running. It isn't a thing that's spoken of very quickly by the victim...

And we found again that people were incredibly reluctant to admit to it and would continue to remain in the relationship, even if there was significant sexual or physical violence occurring within the relationship.²⁶

2.38. Of particular concern was the evidence given that older people in institutions who may have been victims of abuse fail to report it out of a fear of retribution. COTA noted:

... when you get into the more complex area of elder abuse where they feel they are being neglected or they are being physically abused in some way, they are even less likely to complain about that. And one of the problems is that they believe if they complain there will be some sort of retribution from the institution itself.²⁷

2.39. The committee received evidence from the Domestic Violence Crisis Service, reporting that the service does have significant contact with older people who are victims of physical abuse. The Service noted that:

Between 1989 and 2000 we saw a total of 136 people aged 60 years and over at the time of their contact. Now, that is not many, but in the last 12 months - the last 12 months you have to consider is back 6 months ago - 29 new referrals of people aged 60 and over had been made to DVCS. This

²⁵ ACT Community Care, Intake and Assessment Unit op cit, pp 16, 18, 19.

²⁶ Transcript, uncorrected proof, 7 May 2001, p 4, Mrs Lang, Mr Purcell.

²⁷ Transcript, 7 May 2001, p 4, Mr Purcell.

was an increase of approximately 140 per cent for that year. Now, what we put that down to is the fact that we made it a priority area for our service.²⁸

2.40. The Service further noted that:

Of the persons alleged to have used violent and abusive behaviours, 50 per cent have been identified as the spouse of the person subjected to violence. Of these, 90 per cent were male spouses and 10 per cent were female spouses. Fifty per cent were the child or grandchild, and of these 60 per cent were male and 40 per cent were female.²⁹

2.41. The Service noted that these figures did not give a good indication of the extent of elder abuse in the community due to the issue of underreporting.

2.42. The submission from the Domestic Violence Crisis Service and others provided a number of case studies exemplifying the problems confronting older victims of physical abuse. The committee has included two of these case studies below.

- A 67 year old woman married and living with her husband for the last 45 years. She has two adult children from the marriage.
- Her husband is a heavy drinker and *through out the marriage she has been subjected to his abusive behaviour*. He has been verbally abusive and threatening to her and the children regularly used controlling and demanding behaviour. He has often thrown things at her and has physically abused her on many occasions.
- The woman rang DVCS after contact with the Social Worker at the Woden Valley Hospital who was concerned for her safety and wellbeing. *The Woman's daughter had to tell the social worker of the existence of violence in the home, because the woman would not do so.*
- She was admitted to hospital for several days as a result of a severe laceration and bruising to the side of her face. The injury nearly resulted in the loss of vision in her right eye. The injury was sustained as a result of her husband throwing a gold club at her, which hit her in the face.
- *As a result of the assault by her husband she was forced to flee her home to stay with her two daughters.* She found it very difficult after the assault and is slowly coming to terms with the abuse she has been subjected to for the past 45 years.

The woman and her daughters told DVCS workers that they did not know that help was available.

²⁸ Transcript, 7 May 2001, p 13, Ms Simpson.

²⁹ Transcript, 7 May 2001, p 13, Ms Simpson.

Whilst wanting a new life finally free from the many years of violence it was difficult for her to conceive of leaving an ailing old man without any support. Even though he has treated her so badly she worries about his ability to care for himself. In this situation care for the person using violence is sought at the same time as things are put into place for the person subjected to violence.³⁰

2.43. The fact that this family was unaware that services were available to assist and support this woman points to the fact that more needs to be done to inform and educate people about what services are available as well as about elder abuse generally. The committee has made recommendations about the need for better education and an information campaign in a section below.

2.44. The submission from the Domestic Violence Crisis Service and others also noted that there were no appropriate crisis accommodation services available for the woman when she finally chose to flee the family home. The submission points out that, ‘There was absolutely no **appropriate** crisis accommodation that was suitable to house this woman (what was available was for women with young children or for single women, again young and often with alcohol and/or drug problems). The above arrangement placed an immense amount of stress on the mother and the daughters as it took just over one month to find accommodation for the mother’.³¹

2.45. The committee is aware that the Government has paid some attention to the need for crisis accommodation in the recent budget but the committee believes that the Government must ensure that crisis accommodation is available to *all* people in need of it. Where it is untenable or unsafe for an older victim of physical abuse to live in the home where abuse is occurring, it is imperative that options are readily available for alternative accommodation.

Recommendation 6

The committee recommends that the Government increase access to appropriate forms of crisis accommodation for older women who are victims of physical abuse.

2.46. Another case study included in the submission from the Domestic Crisis Violence Service and others outlined a different scenario with a different set of problems. The committee reproduces this case study below.

- The woman took on care and control of her grandson when he was 2 years old.

³⁰ Submission 2, p 11.

³¹ Submission 2, p 12.

- Over the ensuing years she and the boy suffered many assaults from her partner. The woman is now 78 and the grandson 33.
- The grandson is addicted to heroin and has been diagnosed with a mental illness.
- Over the last ten or so years he has become verbally and at times physically abusive towards his grandmother and has destroyed a great deal of her property.
- *The woman has take out a DVO on a few occasions, only to revoke the order soon after. She says that she cannot add to the burden he is already dealing with. She just wants him to get help, so he will stop abusing her.*

This woman's health becomes increasingly worse until such time as she is bedridden and helpless. *She says that even though her grandson is abusive, he is the only family member who visits her, She says she cannot afford respite care, and is "still in debt for the last time she stayed there."* Her calls to our service become increasingly desperate and demanding, mostly to do with loneliness, fear and isolation and extreme helplessness. Her grandson would appear to be continuing to take advantage of her love for him and her helplessness.³²

2.47. The submission noted that the following issues were raised by this case:

- **Protection** from violence which does not involve cutting off from only family.
- **Isolation** – if she had ongoing daily support services in place she may not be such easy prey to the abuses of her grandson.
- **Health** – she was bedridden and unable to get up and feed herself. She had no-one to care for her basic needs.
- **Mental health** – she seemed to be suffering from severe anxiety (understandably so).
- **Financial abuse** – she had no money and was constantly being asked for money under threat by her grandson.

2.48. This case illustrates that a complex set of circumstances requires a complex response, involving various agencies and various interventions. Again, this underscores how inter-agency co-ordination is important and multi-pronged approaches may often be required to address a particular instance of elder abuse.

³² Submission 2, pp 13-14.

Police checks

2.49. In order to prevent instances of elder abuse in relation to people residing in aged care institutions or in the care of people outside of the family, COTA ACT urged the committee to recommend that police checks be mandated for people working in these organisations. The committee has done just that below.

Recommendation 7

The committee recommends that the Government require mandatory police checks for all workers in aged care institutions and for all workers who make home visits in aged care institutions.

Financial abuse

2.50. The committee was informed that one of the most common forms of elder abuse is financial abuse. A discussion paper for the NSW Advisory Committee on Abuse of Older People, '*Financial Exploitation of Older People in Their Homes*' prepared by Annette Marie Field notes that, 'Previous research on abuse of older people has indicated that financial exploitation of older people is common. Anecdotal evidence received also suggests that it occurs regularly.'³³

2.51. In that paper, financial or material abuse is defined as, 'the illegal or improper use of the older person's property or finances. This could include misappropriation of money, valuables, or property, forced changes to a will or other legal documents, and denial of the right of access to, or control over, personal funds.'³⁴

2.52. The Community Advocate advised the committee that in the course of the last 12 months as at July 2001, seven of the nine cases of elder abuse that had been reported related to financial abuse.³⁵ The Community Advocate informed the committee that:

One of the most common scenarios that come to our attention goes something like this. An older person becomes aware that they are not going to be able to look after themselves in the way that perhaps they would like. They have a house, and one of their adult children offers to have them come and live with them. This is a well-worn story that repeats itself in our lives. The older person sells the house and invests an amount of money into the [children's] property that is jointly owned, or sometimes not jointly owned -

³³ Field, Annette Marie Field (1997) '*Financial Exploitation of Older People in Their Homes*' a discussion paper prepared for the NSW Advisory Committee on Abuse of Older People, p 1.

³⁴ Ibid, p 3.

³⁵ Transcript, 4 July 2001, p 27, Ms McGregor.

you get variations on a theme here. Sometimes the older person's name does become part of the lease agreement or the property arrangements, and other times it does not. So it is an act of faith that occurs. The money gets invested into the adult son or daughter's property, or sometimes it might be a granddaughter, a niece, as nephew or a relative of some kind. It is usually a relative.

Then things go wrong. Either the person is being severely neglected or the person develops serious dementia and is not in a position to be cared for by the family any longer. The stress rises and the strain in the household becomes very difficult and untenable, and a crisis point is reached. Alternative accommodation needs to be found for the older person, but the older person's money is tied up in this property.

Good records of some of these transactions may not be kept. There may be differences of opinion about what actually happened and what amounts of money were involved.³⁶

2.53. The Community Advocate saw that better education regarding accommodation related transactions, of the types described, is a priority. She noted in evidence that, 'It would be really good if there were provisions in place that ensured that when a transaction of that kind occurred there was protection for the person investing the money and that their name must be part of the deal. There should be arrangements that the person can access their money if they need to move out of the granny flat somewhere else'.³⁷ The committee discusses the issue of better education in more detail in a section below.

2.54. The Community Advocate noted that her office usually becomes involved in these cases by, 'someone saying, "this person needs protection, this person is really vulnerable, this is the situation they're in and you need to intervene in this situation."'

2.55. A number of illustrative case studies are set out in the discussion paper prepared by Field. The committee has included one of these case studies below.

CASE 1

Mr and Mrs T. both in their mid-70s owned their home and were looking forward to a peaceful retirement. Their daughter illegally transferred their house into her name by informing the bank that the title deeds to the property were lost. She proceeded to get new deeds at the Land Title Office and forged her parents signature to transfer the property into her name. She borrowed money from the bank using the house as collateral. The parents only became aware of the problem when a Sheriff came to their door with a notice to quit giving them 7 days to vacate the premises. The parents

³⁶ Transcript, 4 July 2001, p 27, Ms McGregor.

³⁷ Transcript, 4 July 2001, p 30, Ms McGregor.

*contacted a financial counsellor who immediately contacted the bank which agreed to stop the process for a time. As no payments had been made by the daughter to the bank, technically the bank had the right to take the house. The parents engaged a Solicitor to take legal action. After nine months the parents were reinstated as lawful owners of their house. The daughter was taken to Court and received a Community Service Order. Subsequently she was written out of the parents' will.*³⁸

2.56. While particularly egregious, this case illustrates how older people can be victimised by people who are in positions of trust. In evidence, the Community Advocate noted another common form of financial abuse.

Other reports made to us are about people coming into nursing homes with cheque books and people getting them to sign cheques when they do not know what they are doing. They do not understand the consequences of what it is they are signing.³⁹

2.57. This raises the issue of competence and how older people with a serious mental impediment such as dementia are particularly vulnerable. The committee discusses competence in relation to enduring power of attorney in a section below.

2.58. The committee was informed that it was the case that sometimes older people did not report instances of financial abuse due to a concern that they would jeopardise the relationship with the perpetrator with whom they may be close to. The Community Advocate noted in evidence that:

I think a lot of elder abuse goes on when people are frail but have not lost their mental competence to make their own decisions. They are matters we will not hear about. People say, "Well, he did withdraw that money from my bank account and he did gamble that \$3,000, but my relationship with him is too important and I am not going to upset it, so I am not going to report it." I think a lot of that goes on.

As people get older, they treasure their relationships with their family members, and they feel very vulnerable without family relationships and family bonds. They are very loath, very reluctant, to make reports about family members that might put in jeopardy that vital relationship. That leads to under-reporting.⁴⁰

³⁸ Field op cit (1997) p 6.

³⁹ Transcript, 4 July 2001, p 28, Ms McGregor.

⁴⁰ Transcript, 4 July 2001, p 29, Ms McGregor.

Enduring power of attorney

2.59. The Community Advocate characterises enduring power of attorney in the following way:

During the onset of Dementia, Brain Damage or a Mental Illness, an individual's ability to manage their own affairs may become limited. An Enduring Power of Attorney gives individuals the power to choose who will make their decisions, what decisions they will make and who will manage their affairs if anything happens to them to limit their ability to make decisions for themselves [sic].⁴¹

2.60. In relation to the exercise of powers under enduring powers of attorney, section 14 of the *Powers of Attorney Act 1956* states that:

14. (1) In exercising powers under an enduring power of attorney while the donor is incapacitated, the donee shall act, so far as possible, as the donor would have acted if the donor were not incapacitated.

(2) In doing so, the donee shall take into account –

(a) the need to prevent the donor from becoming destitute; and

(b) the desirability of maintaining, so far as possible, the donor's style of life as it was before the incapacity.

(3) Without affecting any other obligation imposed by law, in exercising powers under an enduring power of attorney –

(a) the donee shall not, unless the power of attorney expressly authorises it, enter into a transaction if the donee's interests and duty in relation to the transaction could conflict with the donor's interests and duty in relation to the transaction;

(b) the donee shall keep the donee's property and money separate from the donor's; and

(c) the donee shall keep proper accounts.

(4) The obligation of a donee under an enduring power of attorney to keep the donee's property and money separate from the donor's property and money does not apply in relation to property and money owned jointly by the donor and the donee.⁴²

2.61. This part of the Act clearly limits exercise of powers under enduring power of attorney so that the interests of the donor, the person who is incapacitated, are not infringed. However, the committee was informed that often these provisions are not abided.

⁴¹ <http://www.oca.act.gov.au/endure/power.html>

⁴² *Powers of Attorney ACT 1956*, Section 14

2.62. In a public hearing, the Community Advocate outlined a common scenario involving abuse of enduring power of attorney.

A person is appointed as an attorney and that person proceeds to withdraw moneys from the bank account of the person who has now become disabled and to use those moneys for their own purposes as distinct from the purposes of the disabled person.⁴³

2.63. Often it is a family member who reports to the Community Advocate that an abuse of an enduring power of attorney is taking place. The Community Advocate noted that:

Often one family member makes a report to us that this another family member is misbehaving in this way. So it is often very delicate and conflictual family situations that are brought to our attention. Our role in all of this is to represent and assert the interests of, and achieve justice for, the person who has become disabled...

A lot of reports are made to us by nursing homes or by family members who are often making very difficult, and for them, disquieting allegations about another family member. Sometimes medical practitioners might make a report to us.⁴⁴

2.64. The submission from the Domestic Violence Crisis Service and others outlined several case studies where financial abuse arising from abuse of power of attorney had occurred. The committee reproduces those cases below.

Case Study 1

Mrs B. lives in a hostel. When her husband died her daughter convinced her that the family home was too big and that she should move to Canberra to be close to the daughter. The daughter asked her mother to sign a Power of Attorney explaining to her that she did not need to worry about many of the finances. The legal circumstances were never explained to Mrs. B.

The daughter sold Mrs B.'s home without her knowledge and invested the money in her own home.

Case Study 2

Mr L. lives in a hostel. His son has a Power of Attorney. Mr L. owned a string of shops in another capital city. The son sold the shops one by one and used the proceeds to support his failing business.

Case Study 3.

Mrs F. lived in her own home in the community. Her niece usually came once a week and did Mrs F's Shopping. As Mrs F. was becoming frailer she

⁴³ Transcript, 4 July 2001, p 28, Ms McGregor.

⁴⁴ Transcript, 4 July 2001, p 28, Ms McGregor.

willingly gave her niece Power of Attorney so that the niece could access the bank. The niece regularly took money from the bank account for her own use.

Case Study 4

The management of one aged care facility in the ACT proceeded to withhold medical treatment of a resident on the basis of having been told that an Enduring Power of Attorney existed. The manager of the facility admitted that the did not have a copy of the Enduring Power of Attorney on file nor had it been sighted. The withholding of medical treatment could well have resulted in the death of the resident.⁴⁵

2.65. Another area of concern was the claim by the Community Advocate that some lawyers in the ACT are not properly considering whether an older person is competent to sign a document to provide enduring power of attorney.

2.66. The Community Advocate informed the committee that:

[Another]... scenario, unfortunately, is one where a person is already obviously unable to make their own decisions and is, for example, in a specialised dementia nursing home. A family member or somebody brings a lawyer to the nursing home and arranges for the older person to sign an enduring power of attorney, long after the evidence indicates this person has lost their capacity to do that. And this is more common than I can sometimes believe.⁴⁶

2.67. The Community Advocate argued that some Lawyers were abrogating their responsibility to ensure that a person signing over enduring power of attorney is, in fact, competent. The Community advocate noted that:

A lawyer does not do what a lawyer should do and does not ask questions about competence and does not make inquiries about whether this person is able to sign this document.⁴⁷

2.68. This is in direct contravention to the general principle at law that a person must be mentally competent to understand the implications of signing legal documents. That is to say that a donor of enduring power of attorney must be competent in order to donate that power to another person.

2.69. The committee believes that more must be done to ensure that the process of signing over an enduring power of attorney is properly conducted and with due regard to the competence of a person. The Community Advocate noted that she, along with the Public Trustee, have made representations to the Law

⁴⁵ Submission 2, pp 15-16.

⁴⁶ Transcript, 4 July 2001, p 28, Ms McGregor.

⁴⁷ Transcript, 4 July 2001, p 28, Ms McGregor.

Society about ensuring that lawyers are fulfilling their legal obligations in this regard. However, in commenting on the response from the Law Society, the Community Advocate noted that:

To be frank, I have not seen any positive consequences of our doing that, but we wanted to draw it to the attention of the Law Society that there actually is a legal requirement that a person be competent when they sign power of attorney. That is one thing that this inquiry might think about taking up with the profession.⁴⁸

2.70. The committee is concerned that there appears to have been no positive response in relation to the approaches from the Community Advocate and the Public Trustee and urges the Government to make strident representations to the ACT Law Society in this regard.

2.71. The committee was urged to consider a number of other measures relating to power of attorney issues. The submission made by the Domestic Violence Crisis Service and others noted that:

There should be:

- Compulsory registration of all Powers of Attorney
- A review of Power of Attorney Acts in each State and Territory across Australia in order to provide some consistency and to look at cross-border issues.
- Safeguards to assess the capabilities of the person handing over the Power of Attorney.
- A requirement that the person handing over the Power of Attorney be given comprehensive information on the legal issues involved, including information on how to report abuse.
- A systematic mechanism to monitor for abuses of Powers of Attorney.
- A widespread education program in all areas of elder abuse which would include comprehensive information on Powers of Attorney.⁴⁹

2.72. The committee agrees with the thrust of these suggested actions and has made a recommendation to this effect below.

Recommendation 8

The committee recommends that the Government make representations to the ACT Law Society to ensure that legal practitioners in the ACT are

⁴⁸ Transcript, 4 July 2001, p 29, Ms McGregor.

⁴⁹ Submission 2, pp 9-10.

taking reasonable steps to guarantee that people signing over an enduring power of attorney are, in fact, competent to understand the implications of this and that, where necessary, the opinion of a medical specialist be required to make a determination as to competence.

Recommendation 9

The committee recommends that the Government:

- a) investigate provisions for compulsory registration of all Powers of Attorney;**
- b) make representations to the Federal and State and Territory Governments to undertake a review of Power of Attorney Acts operating in each jurisdiction in order to provide some consistency and to look at cross-border issues;**
- c) develop safeguards to assess the capabilities of the person handing over the Power of Attorney;**
- d) institute a requirement that the person handing over the Power of Attorney be given comprehensive information on the legal issues involved, including information on how to report abuse;**
- e) develop a systematic mechanism to monitor for abuses of Powers of Attorney; and**
- f) develop a widespread education program in all areas of elder abuse which would include comprehensive information on Powers of Attorney.**

Carer stress

2.73. The committee wanted to briefly mention that elder abuse can often come about in situations where the perpetrator is also, in a sense, a victim. It is the case that where one person is caring for another individual with very high care needs, a certain level of stress can occur which may cause a person to behave in a manner than they otherwise would. As the Domestic Violence Crisis Service noted in its evidence:

It is important to realise that not only are older people the recipients of care, but a significant number of older people, at least 42 per cent of people over

60, often themselves with disabilities, also have responsibility for an older person.

Although reliance upon the informal care network can be indicative of strong family and community bonds, that network can vary in quality and strength. The stressful nature of the caring role, complex family dynamics and a loose and largely unregulated system of support provide an environment in which abuse situations can and do arise.⁵⁰

2.74. In a similar vein, COTA noted that:

Often you will find that where somebody has to take on the role of carer their income will reduce significantly, their opportunities in life reduce significantly, their social isolation increases, and the pressure on them is untenable.⁵¹

2.75. The committee has previously examined some of the issues surrounding carer stress in its report on respite care in the ACT. Respite care is an essential area of service delivery for alleviating carer stress or carer burden. In the committee report on respite care, the committee highlighted the high degree of unmet need. In order to improve the quality of life for carers and mitigate against potential elder abuse which may arise from carer stress, the committee urges the government to increase the number and availability of respite services.

Recommendation 10

The committee recommends that the Government increase the number of respite care services and places available in the ACT

Education and training

2.76. The committee was repeatedly informed that more has to be done to educate older people as well as the general community about elder abuse. The committee was also urged to recommend specific training programs for service agencies and other parties that are likely to come in contact with cases of elder abuse. The Community Advocate noted in evidence that:

I would like to see better education. I would like to have more resources go into educating older people about their choices, to have arrangements put in place so that they make informed decisions and that they do things not on the basis of trust but on the basis of good sense...⁵²

⁵⁰ Transcript, 7 May 2001, p 14, Ms Simpson.

⁵¹ Transcript, 7 May 2001, p 8, Mr Purcell.

⁵² Transcript, 4 July 2001, p 30, Ms McGregor.

2.77. A broad based community education campaign was also seen as a useful step forward. COTA noted that:

... a campaign of education is probably the best way to go to alert the whole community to this particular issue, because it is hidden, people do not talk about it, and most people in the street out there do not think about it at all. But we are all now sensitised to the issues... of child abuse and that is being managed reasonably well.

If we alert the community to the fact that elder abuse is not on and you cannot do these sorts of things, then I think that people will start to change the culture over a period of time.⁵³

2.78. The committee supports a community education campaign and has made a recommendation to this effect below.

Training manual

2.79. As noted the NSW Government has made considerable inroads in terms of policy development in the area of elder abuse. The committee received a copy of an excellent training kit produced by the NSW Ageing and Disability Department, *'Dealing with Elder Abuse of Clients and their Carers'*. The ACT Division of the Australian Association of Gerontology suggested in a public hearing that the kit could form the basis of a similar training manual for use in the ACT noting that, '... [it] could be adopted as the training manual straight off. It is excellent'.⁵⁴

2.80. The committee has made a series of recommendations about training and education below.

Recommendation 11

The committee recommends that the Government consult with the NSW Government and NSW Departmental officials to examine a means of utilising *'Dealing with Abuse of Clients and theirs Carers, A Training Kit'* in the ACT.

Recommendation 12

The committee recommends that the Government:

⁵³ Transcript, 7 May 2001, p 6, Mr Purcell.

⁵⁴ Transcript, 4 July 2001, p 42, Ms Seddon.

- a) **fund a campaign to educate professionals working in the field of elder abuse or likely to come in contact with victims of elder abuse to recognise and deal with elder abuse in an appropriate fashion; and**
- b) **fund a broad based community education campaign on elder abuse in an attempt to raise general public awareness about elder abuse issues.**⁵⁵

Recommendation 13

The committee recommends that the Government establish education and training standards for workers in aged care institutions.⁵⁶

Recommendation 14

The committee recommends that the Government consult with the ACT Division of General Practice to help raise the issue of elder abuse with General Practitioners and to promote effective strategies for addressing the issue.

Mandatory reporting

2.81. The committee received submissions raising the issue of mandatory reporting by service providers and other agencies where they become aware of instances of elder abuse. This is a difficult issue and revolves around resolving the tension between the right for older people to self-determination versus the need to ensure that older people are able to have their safety, health and wellbeing protected. In its submission to the inquiry, COTA noted that:

Mandatory reporting is a vexed issue with some people adamantly opposed. In the main, these people are concerned that the rights to self determination might be ignored in the process and that older people should not be reduced to the status of dependants. Most people however, are supportive of mandatory reporting in order to remove the risk of professionals being sued for reporting; enable collection of statistical information; provide a single point of contact of support for victims, develop guidelines and standards for identification of abuse, and to protect the rights of victims.⁵⁷

2.82. However, the committee is aware that no jurisdiction in Australia mandates reporting of elder abuse. The Government made the argument that

⁵⁵ Drawn from submission 4.

⁵⁶ Drawn from submission 4.

⁵⁷ Submission 4, p 8.

mandatory reporting could have the potential for ignoring the capacity of older people to make important decisions that affect their lives. The Government noted in evidence that:

... in terms of older people, I believe that we have to respect that they have a decision making capacity. Some perhaps have a decision making disability and in those cases, I would hope that the Community Advocate would take up that role. But I think that it's very vexed in that older people are concerned about losing contact with the only people who mean anything to them, and by taking the decision of reporting out of their hands, there is a risk there for them and they have lived long lives, they do have wisdom, they do have the capacity to make their own decisions and I think that ought to be respected.⁵⁸

2.83. In a similar vein, a discussion paper for the NSW Advisory Committee on Abuse of Older People, '*Elder Abuse and Dementia*' prepared by Elizabeth Weeks and Paul Sadler notes that:

Mandatory reporting has been suggested as one method of managing the problem of abuse, because it would put the issue of abuse on the social agenda, and ensure adequate funding. It has been adopted in most states of the USA. However mandatory reporting stops older people making decisions for themselves, endangers their autonomy, and represents an invasion of privacy.⁵⁹

2.84. The committee understands that where criminal conduct is involved that reporting requirements are obviously less problematic, especially where there is a risk to an individual's personal safety. However, noting the often very delicate situations that can arise in issues of elder abuse, it would seem to the committee that a blanket requirement to report instances of elder abuse may have the effect of depriving older people of control over their destinies and making their own decisions about their futures. For this reason the committee does not support mandatory reporting.

Unreasonable demands for accommodation

2.85. During the course of the committee's inquiry, the terms of reference were amended to include an examination of, 'unreasonable demands for accommodation'. This arose as a result of representations to many members of the Assembly from a group of retirement village residents who were in dispute with the management of that village on the issue of maintenance fees.

⁵⁸ Transcript, uncorrected proof, 11 July 2001, pp 2-3, Ms Healy.

⁵⁹ Kurrle and Salder cited in Weeks, Elizabeth and Sadler, Paul (1997) '*Elder Abuse and Dementia*' a discussion paper for the NSW Advisory Committee on Abuse of Older Persons, p 15.

2.86. The committee received evidence from the residents, the ACT office of Fair Trading and the President of the Aged and Community Services Association of New South Wales and the ACT (ACT and Southern Tablelands Regional Committee) about the specifics of the case.

2.87. The committee was not equipped, nor is it the role of an Assembly committee, to undertake a dispute resolution process with the various parties and therefore it did not do so. It is also not appropriate for the committee to make any findings of fact as this may prejudice other processes should they be entered into. Therefore, the comments of the committee in this matter are brief.

2.88. At the heart of the complaint was a contract dispute about the level of maintenance fees being charged by the management of a particular retirement village. There was a claim that management had verbally agreed not to raise maintenance fees above a certain level (except for CPI increases) during the course of residents' leases. However, it would appear that due to the financial circumstances of the village, a quite dramatic increase in the maintenance fees was required. It was acknowledged by one witness that the initial fees were most favourable and in all likelihood, would never have been able to be sustained in the long term.

2.89. It is unfortunate that the residents have found themselves in a position where their financial situation has been adversely affected by the increase and it was noted that the financial capacity of many residents was extremely limited, especially for those people on fixed incomes such as the pension.

2.90. It became clear to the committee that there has been a fundamental breakdown in communication between the two parties about resolving the issue. It was also apparent that emotions were running high and that a crisis point in relations between management and residents had been reached.

2.91. The committee urges both the residents and the management of the particular village to engage in a dispute resolution process with an independent mediator in order to reach a compromise and develop a better understanding of the concerns and issues confronting both parties. It may be worthwhile for the management and residents to establish a Disputes Committee and develop a Disputes Resolution Charter as is allowed for under the Code of Practice.

2.92. For the information of interested readers the committee has included a schedule of maintenance fees applicable in the various retirement villages around Canberra. The committee thought it useful for older people considering their options regarding retirement villages to have this information readily at their disposal.

Bill Wood
Chairman

20 august 2001

Appendix 1 - Submissions

1. The ACT Government
2. ACTCOSS, Domestic Violence Service, Council on the Ageing, Older Women's Network, ACT Disability, Aged and Carer Advocacy Service
3. Ms Carolyn Stuart
4. The Council on the Ageing (ACT)
5. Mr Jack Davis
6. Mr M Moore, Addendum to Government submission
7. Ms Fay Padarin
8. Mr Jack Davis and others
9. A McCormick
10. M Stewart
11. Ms F Gray
12. Mr Brendon Kelly, Goodwin Aged Care Services
13. ACT Division, Australian Association of Gerontology
14. Ms Helen Marx, ACT Community Care

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Appendix 3 Contacts

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Phone: 6242-5060 **Fax:** 6242-5063

Email: adacas@asiaonline.net.au

Web: <http://users.asiaonline.net.au/~adacas/>

Domestic Violence Crisis Service

Phone: 6280-0900 (24 Hour Crisis Line)

Fax: 6280-9777

Email: admin@dvcs.org.au

Older Women's Network ACT

GPO Box 2735, Canberra ACT 2601

Phone: 6296-9740

Council on the Ageing ACT

Hughes Community Centre, Wisdom St, Hughes ACT 2605

Postal Address: PO Box 66, Hughes ACT 2605

Phone: 02 6282 3777 **Fax:** 02 6285 3422

Email: cotact@cota-act.org.au

Web: <http://www.cota-act.org.au/>

Tuggeranong Community Service

Tuggeranong Community Centre, Cowlshaw St, Greenway ACT 2900

Postal Address: PO Box 1066, Tuggeranong ACT 2901

Phone: 6293-6500 **Fax:** 6293-6555

Web: <http://www.tcs.tuggcomm.com.au/>

Gungahlin Regional Community Service

Gungahlin Community Resource Centre, Ernest Cavanagh St, Gungahlin ACT 2912

Postal Address: PO Box 35, Gungahlin ACT 2912

Phone: 6242-8200 **Fax:** 6242-8201

Email: grcs@alphalink.com.au

Carers Association of the ACT Inc

Minns Pl, Weston ACT 2611

Postal Address: PO Box 3390, Weston ACT 2611

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Web: <http://www.carersact.asn.au/>

Community Options Inc

Jamieson House, 43 Constitution Ave, Reid ACT 2612

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Phone: 6230-1733 **Fax:** 6230-1805

Email: commopts@webone.com.au

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Phone: 6288-0955 **Fax:** 6288-0996

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Appendix 4 Schedule of fees