



**NATIONAL
WELFARE RIGHTS**
NETWORK

National Welfare Rights Network

Submission

to the

Australian Law Reform Commission

Elder Abuse Inquiry

About the National Welfare Rights Network

The National Welfare Rights Network (**NWRN**) is the peak community organisation in the area of social security law, policy and administration. Our members and associate members are community legal centres and organisations across the country which provide free and independent legal services in the area of social security law.

The NWRN draws on the experience and expertise of its members, who provide legal services to social security recipients, in developing its submissions and policy positions.

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Introduction

The National Welfare Rights Network (**NWRN**) welcomes this inquiry into how Commonwealth laws and legal frameworks can be reformed to better protect older Australians from elder abuse. This submission addresses questions 5 to 10 in the Issues Paper which relate to social security law and its administration by the Department of Human Services (**DHS**) through its Centrelink program. It draws on the experience of our members who provide legal services to social security recipients.

Although we focus on social security law, a comprehensive and coordinated approach to elder abuse is necessary. This includes a comprehensive approach to Commonwealth areas of responsibility and their interaction, such as between social security and aged care. Coordination between Commonwealth and State and Territory areas of responsibility is also vital, especially in relation to financial abuse of older Australians.

This approach should encompass a framework for the prevention of elder abuse, including community education and carer support, and effective responses to elder abuse when it occurs. It should be a principled approach that respects the autonomy of older Australians. The development of this framework should consider the specific needs of culturally and linguistically diverse communities and Indigenous communities.

Identifying those at risk and responses (Question 5)

DHS has general strategy dealing with how it responds to family and domestic violence, the Family and Domestic Violence Strategy 2016-2019.¹ Although it does not use the term “elder abuse”, its explanation of family and domestic violence encompasses aspects of it. For example, it refers to relationships involving carers.

The strategy outlines six areas of response, including staff training, information and referrals and support.

The Guide to Social Security Law (**the Guide**), the Department of Social Services’ policy guidance for DHS decision-makers, does make explicit reference to elder abuse in some places. For instance, it refers to elder abuse in the context of explaining qualification for Crisis Payment, which may be paid in certain circumstances involving domestic and family violence.² It does not, however, define or explain the term elder abuse.

This overarching framework for responding to family and domestic violence, coupled with specific guidance for DHS decision-makers in key areas of social security administration, is a sound foundation for identifying and responding to elder abuse.

We make the following recommendations for building on this foundation.

First, elder abuse is an issue which has only relatively recently received widespread attention. There is a recognised need for greater understanding of this issue, including greater community education and awareness. In light of this, we think there is merit in providing greater and more specific detail about the nature of elder abuse in both the DHS Family and Domestic Violence Strategy 2016-2019 and the Guide to help DHS staff and decision-makers understand, identify and respond to elder abuse. For example, the reference to “elder abuse” in the section on Crisis Payment could be defined with illustrative examples to help decision-makers identify instances of elder abuse.

Second, the Guide should contain express discussion of “elder abuse” in sections which deal with areas of social security law where its identification is important. For example, the section dealing with nominee arrangements (discussed further below) contains only a brief reference to elder abuse. This is a key area of concern, and a more comprehensive explanation of elder abuse is warranted. Other key sections are those dealing with residence waiting periods, the assurance of support scheme and asset hardship rules.

Third, as well as general training for DHS staff, there is room to develop and trial innovative and specific training for key service areas and officers within DHS. As financial abuse is a prevalent form of elder abuse and often has significant consequences for the older person’s social security entitlements, potential enhancements to the role Financial Information Services (**FIS**) officers already play in identifying and responding to elder abuse are worth exploring. FIS officers have been within the elder abuse arena for some time and would have a valuable contribution to make to any strategy developed by DHS. Other key areas include specialist officers in relation to carer payments and complex assessment officers, given their role in reviewing complex financial arrangements.

¹ <https://www.humanservices.gov.au/corporate/publications-and-resources/family-and-domestic-violence-strategy-2016-2019>.

² For example, Guide to Social Security Law, 3.7.4.25 (“Qualification for CrP – Remaining in the Home after Removal of Family Member due to Domestic or Family Violence”), <http://guides.dss.gov.au/guide-social-security-law/3/7/4/25>.

Fourth, DHS's Multicultural Services Branch and specialist Indigenous teams should be involved in the design and delivery of strategies in this area to ensure the specific needs of culturally and linguistically diverse communities and Indigenous communities are acknowledged.

Nominees (Question 6)

Like power of attorney arrangements, DHS nominee arrangements have the potential to prevent elder abuse, including financial exploitation, but may also be used to facilitate abuse.

The Guide contains a policy framework in relation to nominee arrangements.³ This policy framework contains a number of safeguards against abuse, including requirements relating to the process of appointment, such as written consent and signatory arrangements, processes aimed at ensuring the capacity of the principal to consent and processes around the review and revocation of nominee arrangements.

The ALRC's discussion of concerns about the nominee arrangements (such as conflict between a DHS nominee and an attorney) and summary of a range of reforms proposed to address those concerns in chapter 9 of its report "Family Violence and Commonwealth Laws – Improving Legal Frameworks",⁴ remains a relevant and useful starting point for reform in this area.

Payments for carers (Question 7)

There is widespread acknowledgment of the potential link between carer stress and abuse. Our members regularly talk to carers struggling to meet the considerable demands of the caring role, such as social isolation. Many report little support, including limited access to respite care.

The primary strategy to address the risk of neglect by carers should be preventative and focus on increased support for carers, including respite care. Many submissions to the NSW Legislative Council's inquiry into elder abuse in NSW, for instance, emphasised the need for more support for carers to help them fulfil their role and reduce the risk of elder abuse.⁵

Income Management (Question 8)

The NWRN is opposed to income management on a number of grounds, including lack of evidence of efficacy and its huge expense. We are particularly opposed to compulsory or blanket income management, where it applies regardless of whether a person is at risk of abuse or not.

If an older person is identified as experiencing, or being at risk of, abuse, the appropriate response is support, services and referrals. Money should be put into improvements in these areas, not overlaying existing mechanisms with expensive Commonwealth administrative machinery.

³ Chapter 8.5, at <http://guides.dss.gov.au/guide-social-security-law/8/5>.

⁴ <https://www.alrc.gov.au/publications/9-social-security%E2%80%94crisis-payment-methods-payment-and-overpayment/nominee-arrangements>.

⁵ NSW Parliament, Legislative Council, General Purpose Standing Committee No. 2, "Elder Abuse in New South Wales" (Report No. 44, June 2016), p 42-45, <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6063/Report%2044%20-%20Elder%20abuse%20in%20New%20South%20Wales.pdf>.

Waiting Periods and the Assurance of Support scheme (Question 9)

Waiting periods apply to most payments for most new migrants to Australia. For payments more likely to be accessed by older people – Disability Support Pension and Age Pension – the waiting periods are longer, a 10 year qualifying residence period as opposed to 2 years (with limited exceptions). Carer Payment is subject to a 2 year Newly Arrived Residents Waiting Period (**NARWP**).

New migrants may also be prevented from receiving a social security payment if their visa was subject to an “assurance of support”. In certain cases, a person is permitted to migrate to Australia only if a person (the assurer) assumes financial responsibility for their support for a certain period. They are liable to repay amounts to the Commonwealth, if the person does receive a recoverable social security payment during the assurance of support period.

The assurance of support period is normally 2 years but it is 10 years for contributory parent visas (sub classes 143 and 864), visas usually held by older persons.

An assurance of support may be cancelled early in limited cases, such as accident or disability affecting the assurer’s capacity to provide support or their death.

If an assuree claims a payment before the expiry of the assurance of support, a DHS decision-maker must contact the assurer before granting payment to ascertain whether:

- they are willing and able to provide an adequate level of support; and
- whether it is reasonable for the assuree to accept that support.

The policy guidance acknowledges that there may be cases where the assurer should not be contacted, if it might put the assuree at risk such as in a case of domestic violence. Decision-makers are required to involve a DHS social worker in these cases.⁶

As noted above, we think it is important to provide specific guidance to decision-makers around elder abuse in this context.

Where payment is granted to an assuree, they are still subject to the normal waiting periods. For older persons, this may mean that they are placed on a much lower payment than the one they would normally be placed on. For instance, a contributory visa holder over retirement age who has less than 10 years residence in Australia will only be eligible for Age Pension after 10 years. The only alternative payment in practice is Special Benefit. If under retirement age, they may be able to access Newstart Allowance after two years residence in Australia or the Disability Support Pension, if exempt from the 10 year qualifying residence period because their inability to work occurred in Australia.

Special Benefit is generally paid at the same rate as Newstart Allowance for unemployed job seekers, which is significantly lower than the rate of Age or Disability Support Pension. Special Benefit is also subject to a unique and harsher means test than other payments. Any income reduces it dollar for

⁶ Guide to Social Security Law, 9.4.7, <http://guides.dss.gov.au/guide-social-security-law/9/4/7>.

dollar, from the first dollar. In addition, free board and/or lodging can reduce the payment by as much as two-thirds.

Our members have assisted older Australians who have been victims of elder abuse to access Special Benefit. Many remain in an extremely vulnerable position even after accessing Special Benefit, due to its low rate of payment and harsh means testing arrangements. This can make them vulnerable to further abuse and exploitation, such as an inability to negotiate formal rental agreements. We have also had clients who did not access regular and appropriate medical care, delaying appropriate diagnosis or treatment of medical conditions.

Inability to access appropriate income support may also lead victims of elder abuse to remain in, or return to, abusive situations.

Social security legislation should be amended to exempt assurees who are entitled to access social security payments from residence related waiting periods for social security payments, including Age and Disability Support Pension.

Other risks or opportunities for safeguards (Question 10)

Financial abuse and exploitation is one of the most common forms of elder abuse. The illegal or improper use or mismanagement of an older person's income, property or other assets can have a devastating impact on their wellbeing. It can also impact on their ability to access income support, such as the age pension. Low socio-economic status has been identified as a strong risk factor for elder abuse.⁷ Financial abuse is often facilitated by legal arrangements, especially enduring powers of attorney.

Our members see the impact of financial abuse on social security entitlements regularly. One example is coercion or undue influence of an older person to become a guarantor for a loan without them having sufficient knowledge to make an informed decision. If a guarantee is called on and the loan repaid, the social security deprivation ("gifting") rules apply and the person's social security payment may be reduced. This can have serious flow on impacts, such as an escalating debt to a nursing home if fees exceed the reduced payment. In situations like this one, there can be few remedies under social security law. For instance, the hardship rules are generally inapplicable in circumstances of gifting. Civil action against the abuser may ameliorate the impact of the abuse by, for example, converting a deprivation into a debt (which does not attract deemed income provisions).

In our experience, the key issue in this area is improved protections against financial abuse and remedies for abuse under general civil law and support to access them, rather than change to social security law. Often the necessary step to addressing the social security issue is a civil action such as an action in debt or equity. Changes to improve the ability to access a remedy in a timely fashion are therefore the key.

⁷ World Health Organisation, "World Report on Ageing and Health", p 74, <http://www.who.int/ageing/events/world-report-2015-launch/en/>.

This includes consideration of improved regulation of powers of attorney and improved access to compensation for losses caused by an attorney or to resolve disputes about a life interest (such as improved powers for State civil and administrative tribunals to provide timely redress in situations such as this, avoiding the need for expensive and slow applications to superior courts). There is also need for improved resources for support services, community legal services, and Legal Aids to help older persons access appropriate civil remedies.

As discussed above, there is also a key role for DHS officers who are likely to come into contact with older persons considering entering into such arrangements in identifying the risk of financial abuse and providing appropriate information, support and referrals.