



ELDER LAW: IDENTIFYING AND ACTING ON ELDER ABUSE

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EASTERN SUBURBS LAW SOCIETY

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OVERVIEW - RESEARCH TO PRACTICE

Elder abuse and lawyers' ethical responsibilities: incorporating screening into practice

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- What is known about abuse?
- What is the role for law and lawyers?
- NSW pilot project and toolkit for legal practitioners
- Overcome gerontological illiteracy



GERONTOLOGICAL ILLITERACY

‘much of the research, methodological development, and training in elder abuse has been developed within the **healthcare and social care sector**, but a great deal of elder abuse occurs outside of this environment ... [and] the involvement of the financial, banking and **legal sectors** is vital. This is challenging because **gerontological illiteracy** (a failure to adapt policy and practice to advances in the gerontological sciences) is widespread...’

Martin Mulroy and Desmond O’Neill, ‘Elder Abuse’ (2011) 343 *British Medical Journal* d6027

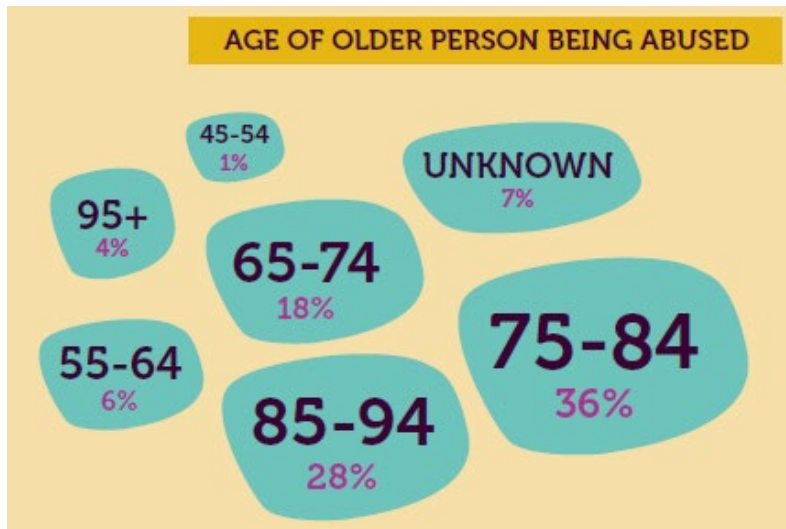
TYPES OF ABUSE



Note: Calls can involve more than one abuse type, hence the percentage total is greater than 100%.

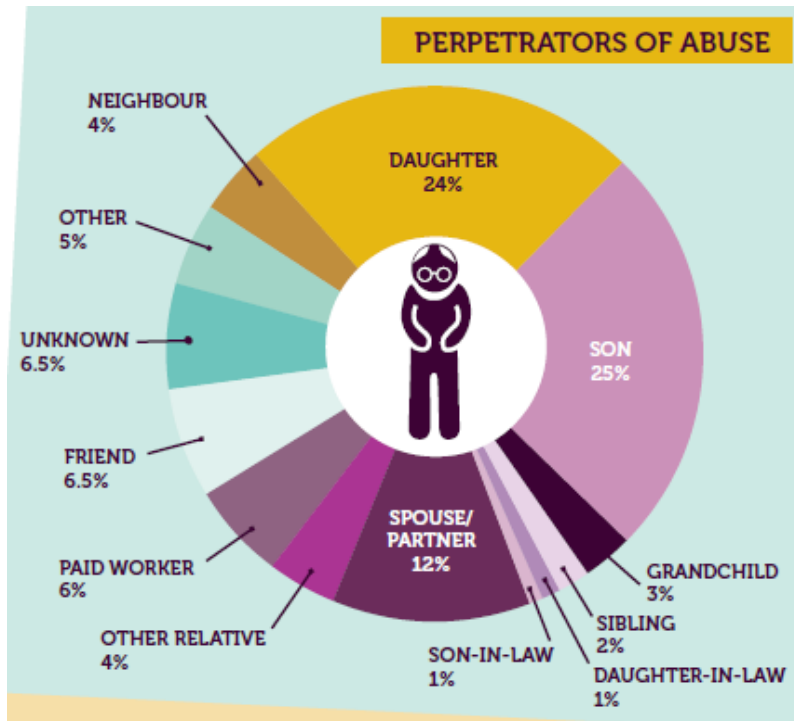
Source: NSW Elder Abuse Helpline & Resource Unit
<http://www.elderabusehelpline.com.au/>

RISK FACTORS FOR OLDER PERSON



- Social isolation
- Declining health
- Cognitive impairment
- Dependence on others
- Family dysfunction
- Lower education, literacy, numeracy
- Earlier life trauma

WHO COMMITS ABUSE AND WHY?



- Relationship dynamics
- Dependence on older person
- Sense of financial entitlement
- Addiction
- Mental health
- Family conflict
- Carer stress
- Depersonalisation



Financial Abuse of People Lacking Mental Capacity

A Report to the Dawes Trust

Gillian Dalley

Mary Gilhooly

Kenneth Gilhooly

Priscilla Harries

Michael Levi



Institute of Environment,
Health and Societies
Ageing Studies

Financial abuse is “a
feature of family life.”

“It is clear that families can
be **dangerous places**
rather than the ‘haven’,
‘refuge’ or ‘hearth’ of
popular discourse.” (p 94)

LAWYERS - PART OF THE PROBLEM

The committee takes very seriously the allegations that some lawyers unwittingly – and in some cases, deliberately – facilitate financial abuse.

... there is a need for action to improve legal practitioners' assessments of people's mental capacity and that some lawyers do need to devote more time to ensuring that the parties to wills, enduring powers of attorney, contracts of sale and other financial transactions understand the implications of the documents they are about to sign. As was pointed out to us, a failure on the part of legal practitioners to take the necessary care in fulfilling their responsibilities provides a ripe opportunity for abuse by others.

The evidence before us has also highlighted the weighty responsibilities that the law confers on lawyers here, the complex issues of which legal practitioners should be aware, and the substantial risks of not exercising their duty as carefully as they should.

LAWYERS – PART OF THE SOLUTION

- Elder abuse is “**everybody’s responsibility** – a responsibility not only to **recognise** elder abuse, but most importantly, to **respond** to it effectively.” (ALRC 2017)
- The **coordinated involvement of health, legal and community service providers** is considered the “gold standard for programs, policies, and practices, as **no single discipline or sector alone has the resources or expertise** needed to address the issue.” (DuMont et al 2015)

THE ROLE OF LAW ...

Cochrane Database of Systematic Reviews

Interventions for preventing abuse in the elderly

Review

Intervention

Philip RA Baker [✉](#), Daniel P Francis, Noran N Hairi, Sajaratulnisah Othman, Wan Yuen Choo

First published: 16 August 2016



Legislation on elder abuse

- Legislation resulting in advocacy-based programmes, law-orientated programmes and legal provisions such as mandatory reporting, adult protection statutes, and specific laws to protect whistle-blowers, specifically on elder abuse.

WHAT CAN LAWYERS DO?

prevent

- educate self and clients
- consider client capacity - assess and support
- inform – rights and services
- draft preventive documents

identify

- have conversations
- ask effective questions
- establish privacy, safety and trust
- consider cultural and other needs

respond

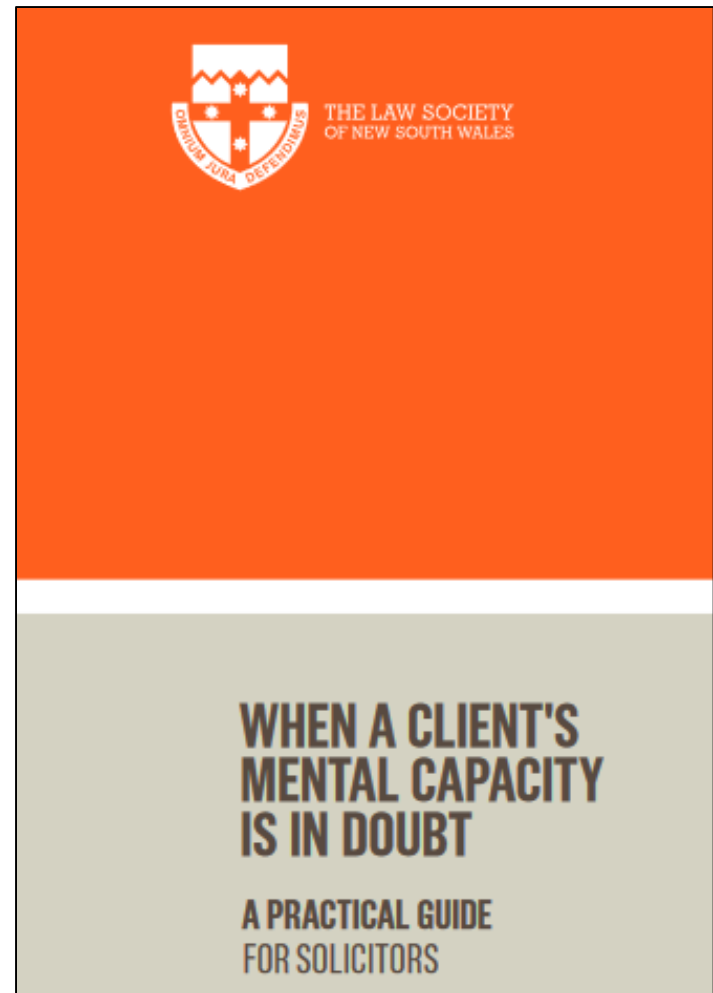
- use principles-based approach
- identify options
- support decision-making
- respect choices



ASKING QUESTIONS ABOUT ...

- elder abuse
- decision-making capacity
- suitability of supportive or substitute decision-maker

Questions to consider when preparing an Enduring Power of Attorney



EFFECTIVE ELDER ABUSE SCREENING TOOLS

Features

- standard set of questions
- valid, reliable, accurate
- quick to use
- acceptable to professionals and clients

Goals

- to **identify** clients who are at risk for or experiencing abuse
- to **advise and support** clients
- to **raise community awareness**
- to **reduce stigma** surrounding elder abuse

Strengthen approaches to assessing clients' needs and capabilities, which are often subjective, ad hoc and based on gut feelings (Law & Justice Foundation 2014)

Elder Abuse Suspicion Index

In the last 12 months:

1. Have you **relied on people** for any of the following: bathing, dressing, shopping, banking or meals?
2. Has anyone **prevented you** from getting food, clothes, medication, glasses, hearing aids or medical care, or from being with people you wanted to be with?
3. Have you been upset because someone talked to you in a way that made you **feel shamed or threatened**?
4. Has anyone tried to **force you to sign papers** or **to use your money** against your will?
5. Has anyone made you **afraid, touched you** in ways that you did not want, or **hurt you** physically?
6. [For assessment by professional]: Elder abuse may be associated with findings such as: poor eye contact, withdrawn nature, malnourishment, hygiene issues, cuts, bruises, inappropriate clothing, or medication compliance issues. Did you notice any of these today or in the last 12 months?

Source: MJ Yaffe et al, 'Development and Validation of a Tool to Improve Physician Identification of Elder Abuse: The Elder Abuse Suspicion Index (EASI)®' (2008) 20(3) *Journal of Elder Abuse and Neglect* 276.

PILOT PROJECT

IDENTIFYING & RESPONDING TO ELDER ABUSE

Participants

- Legal and health practitioners in Newcastle region, NSW
 - Lawyers – private firms, CLCs, Legal Aid
 - Aged Care Assessment Team members – nursing and allied health

Steps

- Initial interview / focus group
- Training on screening and response
- Use of screening in practice
- Final focus group

Funded by NSW Department of Family & Community Services
and University of Newcastle, NSW

WHAT WE LEARNED

- Regularly encounter situations of concern
 - experiences reflect available data about types and perpetrators of abuse
- Most lawyers see screening for all types of abuse as part of their professional role
 - see value in screening tools
- Recommend a triage approach for asking and acting
- Elder abuse is everyone's responsibility

DRAFT

Australian Elder Abuse Screening Instrument (AUSI)



SCREENING QUESTIONS:

1. Do you need help from another person with any of the following tasks?

- | | | |
|---|-----------------------------------|--|
| <input type="checkbox"/> Social activities | <input type="checkbox"/> Dressing | <input type="checkbox"/> Bathing / showering |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Meals | <input type="checkbox"/> Medication |
| <input type="checkbox"/> Finances / bills / banking | <input type="checkbox"/> Shopping | <input type="checkbox"/> Toileting / personal care |
| <input type="checkbox"/> Other | | |

2. Do all of the people helping you treat you with respect? Yes No Unsure

**If YES, no further questions may be needed. However, the assessor should use professional judgment.
If NO or UNSURE answered, go to question 3.**

Source:

https://www.nari.net.au/files/files/documents/nari_mv080_australian_elder_abuse_screening_instrument_ausi_-_a4_2pp_-_update_v1_0.pdf

3. Do any of these people refuse to help you when you need help? Never Sometimes Often

4. Do any of these people stop you from seeking help from others? Never Sometimes Often

5. Do any of these people make you sign documents that you are not comfortable signing or do not understand? Never Sometimes Often

6. Do any of these people take anything of yours without asking, such as your money (including accessing bank accounts) or valuables? Never Sometimes Often

7. Do any of these people make you feel afraid? Never Sometimes Often

8. Do any of these people speak to you in ways that make you feel upset? Never Sometimes Often

9. Would you like help with any of this now?

Yes
(provide relevant referrals from overleaf then continue to question 10)

No
(respect client's wishes and provide them with information about help that is available if they decide to seek it in the future)

10. Do any of these people threaten you? (E.g. threats with respect to money, property or access to grandchildren?) Never Sometimes Often

11. Do any of these people touch you in ways that make you feel uncomfortable? Never Sometimes Often

12. Do any of these people hurt you physically? Never Sometimes Often



<https://opus.lib.uts.edu.au/handle/10453/130872>

PRINCIPLES BASED APPROACH

- Older people are **not children** (ALRC, 2017)
- Provide **information** about options, taking account of **risk severity**
- Encourage and assist the older person to make their **own decisions**
- Give and respect the choice to **accept or refuse** services
- Consider **diversity** needs

NSW Elder Abuse Toolkit

Identifying and responding to
the abuse of older people:
the 5-step approach

Prepared by:
NSW Elder Abuse Helpline & Resource Unit (EAHRU)
2016

<http://www.elderabusehelpline.com.au/for-professionals/EAHRU-toolkit>

QUESTIONS

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