



Submission to Victorian Law Reform Commission Family Violence and the Victims of Crime Assistance Act 1996

October 2017



Seniors Rights Victoria is a program of COTA

Seniors Rights Victoria acknowledges the support of the Victorian Government, Victoria Legal Aid and the Commonwealth of Australia Attorney-General's Department.



Introduction

The Royal Commission into Family Violence and the subsequent reform agenda has established that elder abuse is a form of family violence. Despite this recognition, elder abuse and the significant impact it can have, is often overlooked in discussions of family violence. This submission will focus on older people as victim survivors of elder abuse, the nature of that abuse, and how financial assistance and compensation for their experience may assist in an individual's recovery, recognise the impact elder abuse can have on a person and their family, and draw the community's attention to the underreported issue.

Seniors Rights Victoria

Seniors Rights Victoria is the key state-wide service dedicated to stopping elder abuse. It is a program of Council on the Ageing Victoria (COTA) and supported by the Victorian Government. Operating under the principle of empowering older people, Seniors Rights Victoria provides information, support, advice, casework and education to help prevent and respond to elder abuse and safeguard older peoples' rights, dignity and independence. Services include a helpline, specialist legal services, short-term support and advocacy for individuals, and professional and community education. Seniors Rights Victoria also participates in elder abuse policy development and law reform and work with organisations and groups to raise awareness of elder abuse.

Elder abuse as a form of family violence

Elder abuse is any form of violence or mistreatment that causes harm to an older person, and occurs within a relationship of trust. Elder abuse can include acts of psychological, financial, physical and sexual abuse, as well as neglect. Some older people may describe this type of behaviour as disrespect or mistreatment, rather than abuse or violence.

Some examples of elder abuse include:

- threatening and coercive behaviour
- forcing an older person to hand over money or an asset, or misusing their funds
- physical assault
- limiting a person's choices or placing pressure on them regarding decisions they make
- preventing contact with family and friends
- occupying a person's house against their will
- neglecting to provide a person with appropriate care.

As elder abuse most often occurs within the family or a domestic setting, it is recognised as a form of family violence. Elder abuse is often intergenerational and perpetrated by an adult son or daughter against their parent.¹ Some older women also experience violence in later life as a result of continuing intimate partner violence, or within a new relationship. Elder abuse can often happen over a number of years and can be an accumulation of events of different type (e.g. co-occurring emotional abuse and financial abuse) rather than a one-off incident.

SRV believes victims of family violence (including elder abuse) should be eligible for compensation as victims of crime. While physical abuse and resulting injury is an aspect of elder abuse (accounting for 16% of all abusive acts reported to the Seniors Rights Victoria helpline over a two-year period²), emotional or psychological abuse is a more significant element and often takes place alongside other forms of abuse. Seniors Rights Victoria therefore recommends that recognition of family violence and elder abuse by VOCAT should include both crimes against the person (including psychological abuse), and crimes of a non-violent nature including some property offences, fraudulent transactions, contraventions of intervention orders, etc.

Definition of injury

Question 7. Should the definition of 'injury' be expanded to include the non-physical and/or psychological injuries often experienced by victims of family violence? If so, what injuries should be included?

Physical abuse is a component of elder abuse but more commonly occurring in our client base is psychological or emotional abuse, coupled with financial abuse and social abuse. We therefore believe the definition of 'injury' should be amended to include the non-physical and/or psychological injuries experienced by victims of family violence. In relation to elder abuse, we have seen the following impacts experienced by our client base:

- verbal and psychological abuse
- onset of or exacerbation of depression
- social isolation

¹ National Ageing Research Institute in partnership with Seniors Rights Victoria (2015) Profile of elder abuse in Victoria.

² *ibid.*

- declining health exacerbated by abuse
- denying access to health and aged care service
- trauma
- ongoing fear and anxiety.

Elder abuse has been shown to lead to an increased risk of depression and thoughts of suicide, and can increase the risk of physical ill health and early death.³ It can also mean an increase in hospital visits or early admittance to residential care.⁴ Elder abuse can result in homelessness and poverty, which can make it more difficult for the older person to cope with illness and disability.

As these consequences can have ongoing impact on an older person's health and wellbeing, we believe it is important for them to be recognised and compensated for in the same way as a one-off physical injury, as will be discussed further below.

Question 8. Should the definition of 'injury' be amended to better reflect the cumulative impact of family violence over time? If so, how should this be done?

The definition of injury should be amended to better reflect the cumulative effect of family violence over time. Often our clients have been experiencing elder abuse for a long time (with the abuse involving multiple acts and behaviours) before disclosing it or seeking help from a service such as Seniors Rights Victoria. This is particularly the case when the abuse is intergenerational as many older people will be reluctant to report their children as perpetrators, particularly if they have identified extenuating circumstances for their child's behaviour (such as substance misuse or mental health problems).

The same barriers to reporting family violence that can occur in younger generations (such as feeling it is a private or family problem, feeling shame and responsibility for the perpetrator's actions, and not knowing what help is available) can be even more apparent in older cohorts and may lead to a delay in seeking help, which may extend the period and extent of abuse.

³ Ruijia Chen and Xinqi Dong (2017) "Risk Factors of Elder Abuse" in Xinqi Dong (Ed.) Elder Abuse: Research, Practice and Policy, Springer International Publishing, pp. 93–107.

⁴ Elizabeth Podnieks and Cynthia Thomas (2017) "The Consequences of Elder Abuse" in Dong (Ed.), 2017, *ibid.*, pp. 109–123.

In addition, elder abuse is often comprised of multiple behaviours and abuse types, and while each individual act may not in and of itself cause ongoing injury it is the accumulation of such acts over time that can have such a devastating result. Rather than relying on reporting of a single, specific incident to police, the definition of injury could be changed to incorporate multiple events as reported by the older person when detailing a chronology of their experience to a service organisation such as Seniors Rights Victoria.

Many older people may not feel comfortable reporting abuse to police as they may feel it is not a police matter, that reporting may have significant adverse consequences for the perpetrator (who may have a substance abuse problem or other concerns), and it might entail retaliation or worsening behaviours. Recognising and awareness of elder abuse is a relatively recent development, and the response of the attending police may significantly affect whether an older person's story is properly heard and understood, and be a deciding factor in whether they take further action. This would also influence their willingness to access any assistance schemes.

Compensation

Seniors Rights Victoria believes that compensation as a symbolic expression of sympathy could go some way to recognising the impact of elder abuse. Seniors Rights Victoria clients have experienced significant grief, distress, trauma or injury due to various abusive behaviours including:

- being removed from their own home
- adult children isolating their parents from other family members, grandchildren or partners
- physical injury through shoving and pushing
- ongoing verbal and psychological abuse over a number of years.

Case study

Joan, a 75-year-old woman lived alone near her son, Simon. She saw Simon's three children on a regular basis (three times a week) and looked after them when their parents were working. Simon told his mother, Joan, to sell her house and move in with them as his family was struggling financially. When Joan refused, Simon told her she could no longer see her grandchildren, and that if she came to the house he would immediately call the police.

Seniors Rights Victoria gave Joan legal advice about grandparenting issues and wrote to Simon requesting access and setting out the times. Seniors Rights Victoria facilitated mediation with an accredited family dispute resolution practitioner.

This case demonstrates the emotional abuse that can happen within a family and often goes unresolved. While Joan's situation was resolved and she was able to continue a relationship with her grandchildren, in situations where reconciliation is not possible the older person may need ongoing counselling and support to cope with not being able to see their grandchildren, family breakdown and lack of support.

Older people who have experienced elder abuse should be entitled to compensation that would provide acknowledgement of the harm they have suffered and validate their experience of abuse.

Elder abuse is an underreported form of abuse partly because of ageist assumptions that older people do not experience abuse or that they are unreliable victims likely to be affected by cognitive decline or dementia. These types of negative stereotypes, which paint old age as a time of decline, loss and vulnerability, result in older people being marginalised and afforded less power and social status. These feelings can be internalised by all of us as we age, and can be exploited by family members who determine that older people are unable to make decisions for themselves, opening the family dynamic to opportunities for abuse. Compensation for someone who has experienced abusive behaviour by a trusted family member would be a way of acknowledging the harm they have suffered and also remind the community that ageism and elder abuse are unacceptable behaviours.

Financial assistance

Expenses incurred by the abuse

Financial assistance for older people who have experienced elder abuse would go some way to helping them recover from the experience. Financial abuse is the most common type of elder abuse and can include:

- threatening, coercing or forcing an older person into handing over an asset (including the signing of paperwork concerning property, wills or power of attorney)
- misusing powers of attorney
- stealing goods from an older person
- using an older person's bank accounts without permission

- appropriating the proceeds of the sale of an older person's home with the promise of providing care and accommodation, and then not providing it
- pressuring an older person to hand over a loan, gift or anticipated inheritance
- incurring bills in the older person's name.⁵

This financial abuse can be very costly to the older person and often the money cannot be recovered from the perpetrator, leaving the older person with financial hardships and debt. Because of their age or state of health, there is often no way of the older person working or gaining income to improve their financial position, meaning this financial hardship can compound over time.

As well as direct financial abuse, other behaviours by perpetrators can see expenses incurred by older people including:

- theft of savings
- destruction of property
- sabotage of disability aids
- increased household costs from adult children returning to live with parents
- moving costs to leave an abusive situation
- accumulation of unpaid utility and other bills.

Financial assistance for older people who have been victims of elder abuse would go some way to addressing some of their immediate financial concerns directly caused by the abuse.

Case study

Sofia, a 72-year-old woman had allowed her son to move into her house with his family. He gradually took over all the rooms in the house by filling them with his and his family's belongings. When her son was perpetrating abuse against his partner, Sofia was subject to an altercation resulting in physical injury. Her son was issued with an intervention order and required to leave the property. While Sofia's physical injuries healed, she was left with emotional injuries. Her son also left her house full of his belongings and waste, which Sofia had to have removed.

⁵ Victorian Government (2009) With Respect to Age: Victorian Government Elder Abuse Practice Guide

While Sofia had physical injuries that eventually healed, she required ongoing counselling to deal with the experience. In order to make her house habitable again, she had to pay to have her son's belongings removed and the house cleaned.

Expenses incurred by addressing the abuse

In addressing elder abuse, additional expenses are often incurred. These include:

- costs associated with purchasing or moving to new accommodation
- family mediation costs
- safety-related costs such as changing locks.

Case study

Shauna's son moved back in with her after her husband died. The son had substance abuse issues and was physically and psychologically abusive towards her. While she was fearful for her own safety, Shauna did not want to involve the police or bring an intervention order against her son. Instead she decided to move into aged care accommodation where she would be away from her son and receive better care.

In addition to the emotional toll of this situation, Shauna incurred costs with moving to aged care accommodation, and property damages to her home.

Case study

Kenneth, a 68-year-old man allowed his daughter to move back in with him. She had a substance abuse issue and was physically and psychologically abusive towards him. Despite being issued with an intervention order the daughter continued to return to the property to harass her father.

Kenneth required extra security arrangements to feel safe in his home including new locks and safety screens for the windows. While older women are often able to access funding from women's services for this type of safety-related costs, there is not the equivalent support available to older male victims of abuse.

Expenses incurred when recovering from the abuse

As previously noted, elder abuse can have a profound and negative impact on an older person. This can be somewhat alleviated by ongoing support including:

- medical and health costs (particularly addressing exacerbation of age-related illness caused by stress and anxiety)
- counselling to address psychological damage
- acquiring new disability aids
- costs of damage to property or removing perpetrator's belongings
- transport costs to appointments and to access programs addressing social isolation
- travel to visit supportive family members (including interstate or overseas)
- payment for relaxation classes – e.g. hydrotherapy, yoga, meditation.

Financial assistance to allow older people to undertake these activities would be beneficial in their recovery.

Case study

Bob, an 85-year-old man with cognitive decline was persuaded to go and live with a distant relative, Sue, following the death of his wife. Sue took Bob's bankcards, gave him limited meals and kept him socially isolated. She withdrew \$60,000 from his account for her own use, and would not let him return to his own home despite repeated requests. Bob, through friends, found Seniors Rights Victoria who assisted him to revoke the power of attorney, relocate to his home with extra care supports and recover the money from Sue after threatening legal action.

While Bob was able to recover the money from Sue, this is not always possible in situations where the money has been spent. Recovery from abuse such as this can also entail financial costs including: moving costs; health costs to recover from neglect and malnutrition; and transport costs to access social programs.

Conclusion

Seniors Rights Victoria recommends that the definitions of 'act of violence' and 'injury' used in the Victims of Crime Act are reconsidered to take into account the abuse experienced by victims of family violence, including elder abuse.

While people who have experienced elder abuse have not commonly accessed VOCAT or sought financial assistance or compensation in the past, we consider it an important option considering the significant impact elder abuse can have, particularly the financial burden of the abuse itself and recovery from that abuse. While financial assistance is necessary for many people who have experienced elder abuse in order to recover, compensation as symbolic expression by the state of the community's sympathy and recognition of harms suffered, is also an important aspect of the scheme and raises community awareness of elder abuse.