



Welfare Rights Centre

A community legal centre specialised in social security law and its administration by Centrelink

ABN 76 002 708 714

Australian Law Reform Commission Inquiry into Elder Abuse and Commonwealth Laws

Issues Paper No 47

**A submission from the
Welfare Rights Centre (WRC) NSW**

5 September 2016

Introduction

The Welfare Rights Centre (WRC) welcomes to opportunity to provide a response to questions 5 to 10 from the Australian Law Reform Commission's *Elder Abuse Issues Paper No 47*. The WRC is a Community Legal Centre specialising in Social Security law and its administration by the Department of Human Services (DHS) Centrelink program.

This submission is informed by our extensive casework and understanding of older people's experience with the social security system. Forty-one per cent of our clients are over 50 years of age.

Much of the relevant legislative responsibility in the ambit of elder abuse lie with the state and territory governments, but we are encouraged that the ALRC inquiry into elder abuse may accelerate moves to greater consistency in approaches and cooperation across all jurisdictions. Moves to national consistency around problematic areas such as Powers of Attorney is encouraging. The current inquiry is built on *ALRC Report No. 124* that considers Commonwealth laws and legal frameworks and provides a series of recommendations to make the existing arrangements more responsive to the needs of people with disability and to advance, promote and respect their rights.¹ The WRC endorses this approach.

A national approach to the prevention of elder abuse must include legislative reforms, along with adequate resources to support people experiencing elder abuse. This should be complimented by increased efforts to improve financial literacy among older people, a priority identified in the Australian and Securities Investment Commissions' *National Financial Literacy Strategy*.

Effective responses to the needs of older people from cultural and linguistically diverse backgrounds, older Indigenous people and gay, lesbian and gender-diverse communities must be an integral component of the response to elder abuse. National prevalence studies, including additional research into how these groups experience elder abuse and their access services, especially in regional and remote locations, is critical.

Issues Paper No 47 is explicitly underpinned by a new model for decision-making based on "supported decision-making".²

Central to this approach is the principle that all Australians have rights, which do not diminish with age, to live dignified, self-determined lives, free from exploitation, violence and abuse, and the principle that laws and legal frameworks should provide appropriate protections and safeguards for older Australians, while minimising interference with the rights and preferences of the person.³ The Centre endorses this approach.

Question 5. How does Centrelink identify and respond to people experiencing or at risk of experiencing elder abuse? What changes should be made to improve processes for identifying and responding to elder abuse?

¹ Australian Law Reform Commission's Report, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124, November 2014, p. 99. https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_124_whole_pdf_file.pdf. Accessed 26 July 2016.

² Australian Law Reform Commission, *Elder Abuse Issues Paper 47*, p. 12.

³ *Ibid*, p. 12.

As the Toronto declaration on elder abuse proclaims: “Preventing elder abuse in an aging world is everyone’s business”.⁴ In Australia, the response is led by the Commonwealth Department of Human Services (DHS) whose key service delivery agency Centrelink delivers income support to 5.2 million individuals and families.

The DHS response to elder abuse is included in its *Family and Domestic Violence Strategy 2016-19*. The eight page response fails to directly mention or refer to elder abuse, but it covers “relationships involving carers...where care is provided to older people, people with disability or a medical condition.”⁵

In light of demands to increase community awareness of the problem of elder abuse, the significant under-reporting of elder abuse, and expectations that the numbers affected will increase substantially, it is appropriate that the ALRC examine the coverage of the current the DHS strategy. For example, should the DHS *Family and Domestic Violence Strategy* identify elder abuse specifically by name, include additional guidance, discussion and information of direct relevance to elder abuse, or should DHS develop a separate *Elder Abuse Strategy*.

Recommendation 1. That the ALRC seek stakeholder feedback on the DHS Family and Domestic Violence Strategy, including views on the development of a separate Elder Abuse Strategy and if the strategy should include specific reference to elder abuse or include additional examples of elder abuse situations to increase awareness of the problem.

The current strategy addresses six key areas: information, risk identification, referrals and support, training, DHS staff and DHS business processes.⁶

WRC notes the importance of DHS business processes and systems, including the collection and availability of de-identified data to inform service delivery improvements, guidance for its *Operational Blueprints* and processes to identify people experiencing elder abuse. These systems are key to ensuring that an organisation the size of DHS, with over 35,000 staff, has the ability to respond to elder abuse in a timely and sensitive manner.

DHS Social workers and elder abuse

Centrelink Social workers received 48,468 referrals from people experiencing domestic and family violence in 2014-15. The latest available DHS *Annual Report* does not include a breakdown of the numbers experiencing elder abuse that are referred to DHS social workers.⁷ *The Guide to Social Security Law* (“*The Guide*”), is an internal Department of Social Services (DSS) web-based policy directive that provides detailed information that describes the operation of the legislation that stands behind our social security arrangements.⁸ *The Guide* is primarily used by the Department of Human Services staff to guide decision-making, and it is also publically available. Centrelink staff also have access to DHS *Operational Blueprints*, a detailed web-based resource that include a wealth of information about DHS payments, its services and programs covering background, references, process summaries, flow-charts and resources for training and

⁴ World Health Organisation, *Toronto Declaration on the Global Prevention of Elder Abuse*, p. 2
http://www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf

⁵ Department of Human Services, *Family and Domestic Violence Strategy 2016-201*, p. 4.

⁶ <https://www.humanservices.gov.au/sites/default/files/12899-1511-family-domestic-violence-strategy.pdf>.

⁷ Ibid, p. 66.

⁸ *The Guide to Social Security Law*. <http://guides.dss.gov.au/guide-social-security-law>. Accessed 24 August 2016.

support.⁹ DHS guidelines for social work involvement and referrals are addressed in *The Guide*, which could be improved. First, it fails to even mention elder abuse and it is silent on whether a person experiencing elder abuse should be referred or offered a referral to a DHS social worker.¹⁰

The DHS *Operational Blueprints* note the role of social workers in relation to referrals from people experiencing family and domestic violence, however the document can only be obtained by making an FOI request, a drawn out and time-consuming process.¹¹ The Centre believes that this information should be publically available and not require an FOI request to access.

Information about nominees

The Centre found that a number of the existing DHS *Operational Blueprints* were not publicly available. DHS processes for appointing nominees and the requirements placed on nominees may only be obtained through a Freedom of Information request.¹²

The *Guide* provides information on family or domestic violence with links to nearly 100 documents.^{13/14} A mention of elder abuse appears only three times, and then only as a sub-set of domestic violence or family violence.

Recommendation 2. That the ALRC consider supporting changes to the *Guide to Social Security Law*, such as including a reference to elder abuse and noting service options, and provide guidance on the suitability of offer of referral to a DHS social worker for people experiencing elder abuse.

Recommendation 3. That DHS *Operational Blueprints* outlining the role of social workers in referrals related to family violence be publicly available.

Recommendation 4. That the Department of Social Services consider including references and examples relevant to the issue of elder abuse in the *Guide to Social Security Law*.

Role of specialist DHS workers in elder abuse

Highly skilled specialist DHS staff, including Indigenous Service Officers, Multicultural Service Officers and Community Engagement Officers are well positioned to provide support and referrals when responding to elder abuse.

⁹ Department of Human Services, *Operational Blueprints Site Map*.

<http://operational.humanservices.gov.au/public/Pages/SiteMap/siteMap.html>. Accessed 25 August 2016.

¹⁰ Department of Social Services, *8.1.7.10 Guidelines for Social Worker Involvement* <http://guides.dss.gov.au/guide-social-security-law/8/1/7/10>. Accessed 26 July 2016.

¹¹ Department of Human Services, *Operational Blueprints, Family and domestic violence 003-15000000*. Accessed 26 August 2016. <http://operational.humanservices.gov.au/public/Pages/help-in-an-emergency/003-15000000-01.html>

¹² Department of Human Services, *Operational Blueprints*, <http://operational.humanservices.gov.au/public/Pages/SiteMap/siteMap.html>. Information requiring an FOI request includes: *Cancelling a nominee arrangement*, 104-04090030; *Nominees* 104-04090000; *Appointing Nominees*, 104-04090010. For an example see: *Appointing nominees*. <http://operational.humanservices.gov.au/public/Pages/complaints-privacy-and-foi/104-04090010-01.html>. Accessed 26 August 2016.

¹³ Ibid. <http://guides.dss.gov.au/search/node/family%20violence>. Accessed 25 August 2016.

¹⁴ Ibid. <http://guides.dss.gov.au/search/node/elder%20abuse>. Accessed 26 August 2016.

DHS also has a network of specialist Complex Assessment Officers (CAO) who deal with complex products, and complicated investment and arrangements. Consideration could be given to enhancing the CAO role to include identification and referral in situations that may involve financial abuse and in the provision of specialist policy advice to DSS and DHS on risky practices and emerging areas of risk and financial abuse.

Centrelink's highly regarded Financial Information Service (FIS) officers are also strategically well-placed to identify and refer in situations involving elder abuse. FIS could utilise its unique knowledge of financial and investment issues to inform and educate older people, their families and carers and the broader community about elder abuse and the steps needed to reduce it.

Recommendation 5. That the ALRC consider opportunities for DHS specialist staff to increase their role in preventing, identifying and responding to elder abuse.

Calling Centrelink and stakeholder relationships

If DHS is to play a significant role in the national response to elder abuse it is essential its services are accessible and affordable. A key aspect of Centrelink's service offer is its *Smart Centre* phone system.

A quarter of the 62,691 complaints to Centrelink in 2014-15 were about poor phone services, wait times, engaged signals and call disconnections.¹⁵ An estimated 57 million calls went unanswered in 2013-14, with the average wait time 17 minutes, with 30 per cent waiting over 30 minutes.¹⁶ Another concern is that the general inquiry lines that provide information about payments and services that are most frequently used by older people do not provide a no-cost 1800 option. As a consequence, people seeking help to deal with elder abuse risk being saddled with unavoidably high telephone costs if required to wait for considerable periods when calling the Centrelink network.

DHS manages many relationships with stakeholders who assist vulnerable people for support. In recent years, DHS has failed to meet its own stakeholder satisfaction targets.¹⁷

Recommendation 6. That DHS take steps to ensure that its communication and telephone systems are both accessible and affordable so that its efforts to prevent, detect, and support people experiencing elder abuse are effective.

Question 5. What changes should be made to laws and legal frameworks relating to social security correspondence or payment nominees to improve safeguards against elder abuse?

Benefits of nominee arrangements

One of the key benefits of nominee arrangements is that they can provide and prolong independence. Having a nominee to manage complex Centrelink affairs or to respond to correspondence can in some

¹⁵ Department of Human Services, *Annual Report 2014-15*, pp. 144-45.

¹⁶ Australian National Audit Office, *Report into the Management of Smart Centres' Centrelink Telephone Services*, Auditor General Report No. 37, 2014-15.

¹⁷ Department of Human Services, *Annual Report 2014-15*, p. 12.

circumstances delay a move to an aged care facility and allow people to continue to live independently at home. This saved outlays on costly institutional care and support.

DHS, through its nominee arrangements, facilitates people or organisations (including state and territory Public Trustees) to manage an individual's Centrelink affairs. Generally, people who take on the role of a nominee prioritise the interests and well-being of the older person or person with a disability. However if nominee arrangements are misused, the impact can be extreme, leaving a person with no money or their home and accommodation put at risk.

Potential problems with nominee arrangements

Despite the advantages associated with establishing nominee arrangement, a range of issues can arise with the management of nominee arrangements such as:

- ensuring that the funds are spent according to the wishes of the recipient;
- the process of lodging forms to initiate nominee arrangements may be difficult for some, and processes for cancelling or amending nominee arrangements may not be understood;
- the nominees themselves may not understand Centrelink's requirements or subsequent requests for information; and
- the potential for overpayments.

Obtaining information about nominee arrangements

Historical data from 2007 reports that there were 347,000 nominee arrangements. The most common arrangement was correspondence only nominees, which covered 82 per cent of arrangements, affecting 285,000 people.¹⁸

Policy responses to nominees could be improved by more up-to-date data on the type of nominee arrangements and characteristics of existing principals, including a breakdown by age, gender, payment type, Indigenous status, country of birth, main language spoken at home, state and territory breakdown, the number of arrangements cancelled each year and the circumstances of the cancellations.

Recommendation 7. That the ALRC approach the DHS to provide up-to-date information on nominee arrangements along the lines proposed by the WRC.

Nominee's understanding of role and capacity to fulfil duties

DHS staff must be satisfied that a potential nominee understands the responsibilities they are taking on and appears capable of carrying out the duties of nominees.

DHS uses a set of triggers that can result in checks to ensure that the nominee is fulfilling their duties. Information relevant to the review of nominee arrangements are set out in an internal Operational Blueprint *Reviewing nominee arrangements*.¹⁹ DHS notes that "there are no automatic reviews of nominees", but it does include a range of questions that could trigger a review. The document set out

¹⁸ House of Representatives, *Older People and The Law*, Final Report, p. 101, 2007.

¹⁹ Department of Human Services. *Operational Blueprints, Reviewing nominee arrangements*.

<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-06090160-01.html>. Accessed 18 July 2016.

examples of when a review may be necessary, such when a complaint of abuse is made or when mail is returned.²⁰

As nominee arrangements can facilitate elder abuse it is essential that adequate processes are in place to minimise opportunities for financial abuse. DHS must satisfy itself and the wider community, that nominees are aware of their obligations, have the capacity to fulfil them, and are acting in the best interests of the principal.

Over eighty per cent of nominee arrangements involve correspondence arrangements, and the nominee arrangements that require greater levels scrutiny are payment nominees, which in 2007 numbered about 61,000 of the nominee arrangements in operation.²¹ The Centre considers that nominee arrangements involving Power of Attorney also demand greater scrutiny, and consideration should be given to introducing processes to check that these arrangements are freely entered into. One option would be to require nominee and the principal to attend a face-to-face interview prior to signing an agreement, where this is practical.

Recommendation 8: That DHS increase scrutiny of payment nominee arrangements to ensure that principals participation is voluntarily and that nominees are aware of their requirements and have the capacity to fulfil them.

Checks to ensure spending is of benefit to the principal

When a nominee is appointed, the nominee is required to act in the best interests of the principal.²² *Section 123L of the Social Security (Administration) Act 1999* outlines provisions for the financial protection of people who are subject to nominee arrangements.²³ These provision allow the DHS to issue notice to the nominee to provide details of how the funds were spent on behalf of the income support recipient. Nominee arrangements can be revoked or suspended under *Section 123E of the Social Security Administration Act 1999*.

It appears that DHS has no system for regularly reviewing nominee arrangements to ensure payments are being used appropriately and does not systematically collect data on financial abuse by nominees.

In 2007, a House of Representatives Committee proposed that Centrelink, as “part of its duty of care to its clients” undertake a regular review schedule of a random sample of nominee arrangements to determine if payments are being used appropriately. When asked about the incidence of financial abuse by nominees, Centrelink representatives advised “we do not know”.²⁴

Recommendation 9. DHS should undertake a regular review schedule of a random sample of nominee arrangements to determine if payments are being used appropriately.

²⁰ Ibid, p. 2. The DHS document previously accessed and printed was not available, with the advice that ‘the guideline you have requested is potentially FOI exempt. <http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-06090160-02.html>. Accessed 26 August 2017.

²¹ House of Representatives, *Older People and The Law*, Final Report, p. 101, 2007.

²² Social Security (Administration) Act 199 – Sect 123L. http://www.austlii.edu.au/au/legis/cth/consol_act/ssa1999338/s123l.html. Accessed 26 August 2017.

²³ http://www.austlii.edu.au/au/legis/cth/consol_act/ssa1999338/s123l.html. Accessed 19 July 2016.

²⁴ Ibid, p. 62.

Nominees and Centrelink debts

Overpayments, sometimes resulting in very large debts, are a significant and pervasive problem with the administration of the Australian Social Security system. The WRC receives calls every day from people wanting information or advice about a Centrelink debt.²⁵

If a person's nominee fails to alert DHS of a principal's change of circumstances, such as an increase in earnings, higher investment income, or income from an overseas pension, DHS may raise a debt.

When a nominee fails to advise DHS of a change of circumstances and receives an incorrect payment "*this error is taken to have been made by the customer*".²⁶ Although waiver provisions are available the extent to which such provisions are is not clear.

Recommendation 10. That the ALRC seek information from DHS about the prevalence and size of debts where nominee arrangements are in place and seeks information about the extent to which waiver provisions have been utilised in situations involving elder abuse.

DHS publications

DHS publishes a leaflet describing the duties of nominees, *Someone to deal with us on your behalf*.²⁷ The brochure fails to include any information or advice about what a person should do if they experience problems or who they should contact if they have concerns over the actions or behaviour of the Centrelink payment or correspondence nominee.

Recommendation 11. That DHS consider revising relevant publications to include information about managing problems with nominees and the process to be followed if any problems with nominee arrangements occur.

Question 6. What changes should be made to the laws and legal frameworks relating to social security payments for carers to improve safeguards against elder abuse?

Carer stress can be often raised as a factor and cause of elder abuse and carers at risk of committing elder abuse are often experiencing high levels of carer-related stress. Carers are often over-worked and under-paid, have poor health outcomes and generally have a marginal attachment to the labour force.²⁸ We also note that older carers are also at risk of being abused by the person that they care for. Minimising carer stress and ensuring that carers can access the available supports will assist in reducing abuse in care situations.

Later in this section we explore the main payments available to carers, the conditions for payment and the response from DHS in the event of fraud or if the required care is not provided. Carer Payment is provided in recognition of the fact that a carer is generally unable to support themselves financially through paid

²⁵ In 2014-15, there were 2.3 billion debts were raised, with total of \$1.43 billion recovered.

²⁶ Department of Human Services, *Operational Blueprints, Debts and Nominees, 107-02050040*. Accessed 15 August 2016.

²⁷ <https://www.humanservices.gov.au/customer/enablers/someone-deal-us-your-behalf>. Accessed 14 July 2016.

²⁸ Carers Australia, *Submission to the Australian Law Reform Commission: Elder Abuse and Commonwealth Laws*, August 2016, p. 2.

employment as a direct consequence of their caring responsibilities.²⁹ This is recognised in the *Guide to the Social Security Law* at 1.1.C.310. It is the Centre's view that the existing framework for dealing with situations where care is not provided is sufficient.

Carer requirements

There are two main social security payments for carers. Carer payment is a primary payment, paid at pension rates, while Carer Allowance is a non-means-tested fortnightly supplement of \$124 pf, paid to assist with the costs of care, available to 601,000 people. Carer Payment is paid to 258,000 people who personally provide "constant care" to one or more adults or children with a disability in their home and where care is expected to be needed for at least 6 months, unless the condition is terminal. While not defined in the *Social Security Act*, DSS policy requires that the care be provided for "significant periods", equivalent to eight hours per day, on a daily basis. This definition in practical terms imposes a very heavy care load and requirement on the Carer Payment recipients.

Care and stress

On-going stress associated with caring may contribute to creating an environment where elder abuse is more likely to occur. Strategies need to be put in place to identify, and respond to these rare instances. Allegations of neglect, abuse or fraud should be immediately investigated, and payments should cease if a Carer Payment recipient is not providing the required care and support.

Department of Human Services response to social security fraud

DHS has a long-standing, highly publicised process for responding to incidences of fraud. The DHS response includes the suspension or cancellation of payments, recovery of any money owed (including from withholdings from existing payments) and a garnishee of employment earnings and tax refunds. In some cases, a person can be subjected to prosecution by the Commonwealth Department of Public Prosecution (CDPP), which can result in incarceration. In 2014-15, there were 1,366 people referred to the CDPP for social security fraud. This equates to 0.02 per cent of the entire income support population.³⁰

DHS also operates and actively promotes its fraud "tip-off" line. In 2014-15 the Department received 103,803 tip-offs relating to social security payments.³¹

It is important that false community perceptions about the incidence of carer abuse are not created, as this can undermine carers and deter carers from offering this invaluable support. Carers Payment recipients provide significant benefit to the Australian economy and community, with the value of unpaid care to the wider economy is over \$60 billion per year, or 3.8 per cent of GDP.³²

Recommendation 14. That the existing laws legal frameworks for addressing instances of carer abuse are adequate and provide sufficient safeguards and protections for people requiring care.

²⁹ In 31 March 2016, there were 258,704 recipients of Carer Payment, paid at the rate of the Age Pension, of whom 114,045 (or around 44%) were over 55. A further 39,690 (around 15% or 1-in-7) were aged over 65. The Carer Allowance is paid at \$123.50 per fortnight. Nationally, there were 601,375 recipients of Carer Allowance, of whom 298,856 (around 50 per cent) were over 55 and 121,594 (around 20%) were over 65. Forty per cent of Carer Payment recipients, around 240,000, are also in receipt of the Carer Allowance. A further 104,000, about 1-in-6, are Age Pension recipients.

³⁰ //www.humanservices.gov.au/customer/contact-us/reporting-fraud. Accessed 16 August 2016.

³¹ Senate Community Affairs Legislation Committee, *Supplementary Budget Estimates, 22 October 2015, Answers to Questions on Notice*, Department of Human Services, HS 184.

³² Deloitte Access Economics, *The economic value of informal care in Australia 2015: A report for Carers Australia*, June 2015, p. iii.

Question 8. What role is there for income management in providing protections or safeguards against elder abuse?

It is the Centre's view that Income Management (IM) should not be considered as having a role in providing protections or safeguards against elder abuse. The WRC has consistently opposed Compulsory Income Management because there is no evidence to indicate the approach is of benefit to vulnerable people. In addition, IM is expensive, humiliating and stigmatising for those subjected to it. The WRC supports the rights of individuals and communities to "opt-in" to a genuinely voluntary Income Management (IM) scheme.

Limited evidence of beneficial outcomes

In 2016, 26,508 people were subject to IM, of whom 79 per cent were Indigenous. Twenty per cent were voluntary participants.³³ While it has been claimed that IM would address the problem of the "humbugging" of older Indigenous people, no solid evidence exists to suggest that this problem has declined. Evaluations found that it actually resulted in people being humbugged for both food and cash.³⁴

IM is most effective when applied after careful consideration of individual circumstances or when it is voluntarily applied. Opponents to IM claim that other options, including weekly payments, the use of the free Bill paying Centrepay scheme, or intensive case management services or support from social workers or financial counsellors can be just as effective for much reduced outlays of scarce tax payer funds.

The Debit Card Trial

The introduction of the Debit Card Trial in March 2016 is likely to have implications for IM and the delivery of social security payments across Australia.³⁵ All working age social security payments are "trigger payments," while Age and Service Pension recipients can volunteer to participate the trial.³⁶

Nominees and principals are exempt from the Debit Card trial. This exemption raises the potential for some people to be inappropriately placed in the trial, so that a nominee can avoid being subjected to the cash restrictions associated with the Debit Card Trial.

The role of conditional welfare and elder abuse

A key question for the ALRC is whether IM or the Debit Card is an appropriate response to elder abuse. In its 2012 *Discussion Paper* on family and domestic violence the ALRC highlighted concerns over the impact of income controls on people experiencing family violence, noting that a "lack of control over personal finances can interfere with a person's ability to flee a violent environment in times of crisis, or to take other actions to change the person's location."³⁷

³³ Department of Social Services, *Income Management Summary*, March 2016.

³⁴ Deloitte Access Economics, *Place Based Income Management – Process and short term outcomes evaluation*, Prepared for the Department of Social Services, August 2014 and Katz, I. and Bates, S. *Voluntary Income Management in the APY Lands*, Social Policy Research Centre, Prepared for the Department of Social Services, September 2014.

³⁵ Media Release, *Cashless debit card trial commences in Ceduna*, 15 March 2016, <https://www.mhs.gov.au/media-releases/2016-03-15-cashless-debit-card-trial-commences-ceduna> Accessed 17 August 2016.

³⁶ Trigger Payments, Debit Card Trial, <http://guides.dss.gov.au/guide-social-security-law/8/7/2/30> Accessed 17 August 2016.

³⁷ Australian Law Reform Commission, *Family Violence – Commonwealth Laws, Issues Paper No 39*, p. 32.

Just 250 people nationally were subject to the *Vulnerable Welfare Payment Recipient* (VWPR) IM measure as assessed by a DHS social worker.³⁸ The VWPR category of IM was designed to provide support for people who may be subject to financial abuse, elder abuse, homelessness or neglect. In spite of a billion dollar price tag, there is no available evidence that IM makes older people safer or that it is a protective mechanism against elder abuse.

The loss of control over a person's finances can be particularly difficult, even traumatic for people who have lived independent lives over many decades. Additionally, the compulsory nature of income controls runs counter to notions of "self-agency" which underpins a number of the ALRC's recent reports (including reports on *Family and Domestic Violence* and *Capacity and Disability*). Income controls can undermine the ability of individuals to manage their affairs, can disempower people and limit their capacity to make decisions which affect their lives.

A further concern is that the fear of being placed on IM could result in a reluctance to disclose elder abuse. People may also be reluctant to seek support from programs that could be beneficial.

Recommendation 15. That Income Management should not be considered as having a role in providing protections or safeguards against elder abuse because it is expensive, humiliating and stigmatising and if compulsorily applied, may create barriers to the disclosure of elder abuse or discourage people from accessing support to deal with elder abuse.

Opportunities for abuse and the Debit Card

While opposing mandatory income controls, the operation of the Debit Card trial could actually facilitate elder abuse in some circumstances. Consider the experiences of people with experience mobility problems, who lack transport, have vision or speech problems and are unable to personally travel to a shop. With access to only 20 per cent of their social security payment in cash, people may be unable to provide small amounts of cash to a carer, friend or neighbour so that they can make purchases on their behalf.

A person may have no option but to hand over their confidential Personal Identification Number (PIN) and debit card each time they need to make a purchase.

This runs counter to instructions from financial institutions that a person not disclose their PIN. If a person discloses their PIN and experiences fraud or a financial loss, this may not be covered by the financial institution.

Recommendation 16. That ALRC examine the extent to which the Debit Card Trial arrangements may facilitate opportunities for financial abuse.

Question 9. What changes should be made to residence requirements or waiting periods for qualification for social security payments, or the assurance of support scheme, for people experiencing elder abuse?

³⁸ Department of Social Services, *Income Management Summary*, March 2016.

Residency waiting periods and assurance of support

The Centre is concerned that there are very limited options for older migrants who find themselves wanting to exit from abusive situations, a problem also noted by the ALRC.³⁹ Most income support payments require that a person has been an Australian resident for a certain period of time. New migrants to Australia are subject to waiting periods which apply to most social security payments.

A person may meet the residential criteria to qualify for a payment, however the payment may not be payable if the person is subject to a waiting period, usually referred to as a *Newly Arrived Resident's Waiting Period* (NWAP). Carer Payments are subject to a NWAP for a period of, or periods totalling 104 weeks.

The 10 year qualifying residence requirement for the Age Pension and the Disability Support Pension may mean that a person experiencing elder abuse may be unable to access income support and, as a result, may have no option but to remain in an abusive, unsafe and harmful environment.

A person may be particularly vulnerable due to their dependency on a carer who is the source of abuse and neglect. Older people may not be residentially qualified, have poor or limited language skills, be socially isolated and experience other significant barriers to accessing services and support.

Special Benefit – payment of last resort

A key social security payment relevant to many people experiencing residence problems is Special Benefit, often referred to as the “payment of last resort”. It is available to people unable to obtain any other income support and may be available to people in severe financial hardship due to circumstances beyond their control.

Eighteen people over the age of 65 contacted the Welfare Rights Centre NSW about Special Benefit in the 12 months to 30 June 2016, up from only eight the previous year. There were 5,175 people in receipt of Special Benefit as at March 2016, half whom live in NSW.

Special Benefit is most commonly granted to an older person with residency problems. DHS administrative data paints a concerning picture of people currently in receipt of Special Benefit:

- 70.5 per cent (or 3,871) of recipients were not residentially qualified for the Age Pension;⁴⁰
- 19 out of 20 recipients were born outside of Australia, with just 477 Australian-born;⁴¹
- data by country of birth reveals that 34 per cent of Special Benefit recipients were born in China.⁴²

Assurance of support

Before Centrelink will grant payments during an assurance of support period, it will contact the assurer to see whether they can support the assuree. If the assurer is willing and able to support the person, and if Centrelink believes that it is reasonable for the person to accept the assurer's support, then Centrelink will not pay the assuree. If an assurer refuses or can't provide financial support to the assuree, Centrelink may pay the person social security payments. In cases of domestic violence or other instances of violence or intimidation, Centrelink will generally not notify the assurer prior to making payments.

³⁹ Australian Law Reform Commission, *Issues Paper No 47*, p. 21.

⁴⁰ Department of Social Services, *Income Support Recipients: A customer profile*, June 2013, p. 59.

⁴¹ Senate Community Affairs Committee, *Answers to Estimates Questions on Notice, Social Services Portfolio, 2013-14 Supplementary Estimates Hearings. Question No. 225.*

⁴² *Ibid.*

Centrelink payments made to a person while they are under an assurance of support ordinarily becomes a debt the assurer must repay to Centrelink. The money can be deducted from any assurance of support bond the assurer has given, or will be recovered directly from the assurer. For situations where repaying the debt is unfair or in special situations, an assurer can request that recovery of the debt be waived on the grounds that there are special circumstances. Most social security payments are recoverable from an assurer if they are received by a person under an assurance of support.

Limited options available

Difficulties can arise when a person has signed the assurance of support but the relationship has broken down. Where elder abuse is involved, people can be left in vulnerable situations. In limited cases which impact on a person's capacity to provide support, the assurance of support may be cancelled. The *Guide* recognises that some contact between parties could place an assuree at risk when, for instance, domestic violence has occurred: *"In cases where advising the assurer could have a negative impact on the assuree, the Centrelink customer service adviser must liaise closely with Centrelink social workers to ensure that the assuree is not put at risk."*⁴³ Specific reference to elder abuse in *The Guide* could assist in encouraging DHS decision-makers to turn their minds to the possibility that a person is experiencing elder abuse.

As noted previously, if an assuree is granted a payment, they may still be subject to a waiting period. They may be placed on payments less than the pension rate of payment if they don't meet residence rules. Being placed on a low rate of payment may result in a person being vulnerable to elder abuse as they are reliant on others for food, medicines and accommodation.

In practical terms, often the only social security payment potentially available is Special Benefit. The Centre's recommendations for reform relate to broader changes required to existing social security legislation as this avenue offers the only protections and safeguards for many older migrants experiencing or at risk of elder abuse.

Recommendation 17. That the Parliament consider amending social security legislation to increase access to Special Benefit for people experiencing or at risk of elder abuse.⁴⁴

Recommendation 18: That Special Benefit payment conditions be replaced by Newstart payment conditions for people experiencing or at risk of elder abuse.

Recommendation 19. That the Parliament consider amending social security legislation to exempt assurees who are entitled to access from residence related waiting periods for social security payments, including the Age Pension and Disability Support Pension.

⁴³ Guide to Social Security Law. <http://guides.dss.gov.au/guide-social-security-law/9/4/7>. Accessed 31 August 2016.

⁴⁴ To qualify for Special Benefit a person must be: in severe financial hardship, and unable to earn a sufficient livelihood for themselves and their dependants by reason of age, physical or mental disability or domestic circumstances or for any other reason over which the person has no control, and ineligible to receive any other income support payment, and residing in Australia throughout the period for which payment is sought (except under certain rare circumstances), and a permanent Australian resident or the holder of an approved visa.

Question 10. What other risks arise in social security laws and legal frameworks with regard to elder abuse? What other opportunities exist for providing protections and safeguards against abuse?

As financial abuse is the most common form of elder abuse it should be no surprise that social security arrangements can present a range of risks that can leave older people at risk of elder abuse. In addition to the matters covered elsewhere. In this submission, the Centre nominates issues involving “gifting” and loans against the principal residence as areas that consideration in the Commission’s current inquiry.

Many older people have a strong desire to assist their family financially. They may do this in two main ways, in addition to handing over some of their fortnightly pension. A person can “gift” an amount of money, or they can provide a loan, usually secured by borrowing against an unencumbered family home. Both of these options can have significant consequences for a person’s access to social security entitlements. The financial impacts can be enormous, resulting in extreme, enduring and severe financial hardship.

Loans against the home

Older people are increasingly finding themselves in situations that involve loans against the assets in the family home, where an older person borrows funds primarily for the financial benefit of a close relative.

Disputes can arise when promised loan repayments cannot be honoured. In the instances described below, the older person can be left in extreme financial hardship or risk losing their home, but the circumstances which led to the difficulty may not necessarily be identified as elder abuse or fraud and may be a consequence of lack of information or poor or inadequate financial advice.

The type of situations impacting on older people varies, but can include:

- when a loan taken against the home is deemed to be in default and the older person who consented to the loan loses their home,
- when a loan is taken out on the title deeds to a person’s home without their knowledge,
- when a relative fails to honour a commitment to provide accommodation and care in exchange for money or assets, or both, or
- where an elderly person provides guarantee for an adult children’s business against the unencumbered family home, and the business subsequently fails.

One area of growing concern to the Centre is where a person borrows, say \$100,000 from the bank against their home and they lend this to their adult children who agree to make all repayments to the bank. The older parent agrees willingly, as they prefer this approach to going guarantor for the loan.

However, once the loan is made, the loan amount is treated as an asset of the pensioner. The key point to note is that the value was previously excluded from the pension assets test because the value of the home – of any amount – is exempt from the means testing arrangements and does not impact on the rate paid. But once the house has been borrowed against, the value of the loan amount now becomes an asset for Age Pension purposes.

The negative consequences for an older person is that the amount of fortnightly pension may be reduced – permanently. The value of the loan may also have implications for any aged care fees. The loan may also

affect the aged care fees that an older person's partner has to pay, but their pension may be reduced because of the treatment of the loan.

In our experience, older people are generally unaware of these impacts to their social security entitlements.

Gifting or deprivation rules

Under the Centrelink "gifting" or deprivation rules, a person may gift up to \$10,000 per financial year but not more than \$30,000 over any five year rolling period. These limits apply to a single person and to both members of a couple taken together. Any gift or combination of gifts that is in excess of these limits is assessed under the assets test and under the Centrelink deeming rates for the income test for a period of five years from the date of the gift.

The Centre notes, however, that some people not eligible for a pension use the gifting rules as part of a financial planning strategy in order to obtain a part-pension (and the Pensioner Concession Card), often on advice from a financial adviser.

The rate of income support payment a pensioner and their partner receives may be affected if assets given away and the amount assessed as gifted is more than the allowable gifting amount. If a person gifts or is forced to gift more than the allowed limits their pension can be reduced for five years and they can also be assessed for higher aged care fees, although they have a reduced level of income. This is a significant impact for a person who may be vulnerable or in poor health.

The final section of the Centre's submission, considers the availability of information about elder abuse, what information is available to assist people to understand their rights, and where to locate support when elder abuse occurs, is relevant to the recommendation on loans and gifting.

Recommendation 120: That the ALRC examine the opportunities for elder abuse that arise from the social security treatment of loan and gifts, that consideration be given to the development of targeted information and resources to increase awareness of risks of entering into gifting and loan arrangements.

How can older people be better informed about elder abuse, their rights, and how to find services and supports? What assistance can Government agencies, industry bodies and non-Government organisations play in improving awareness of and better responding to elder abuse?

Older people can fall victim to family or fraudsters, or professionals who are expected to help them manage their financial affairs. Older people can sometimes make financial decisions that are risky or based on wrong or misleading information, or on the recommendation of a family, friend or professional that they trust.

Financial or other abuse can leave an older person destitute or homeless is a cost on the Government, which must find the funds to support people who might otherwise have been financially independent.

Information, services and supports to prevent financial abuse

Below the Centre looks briefly at the information sources available to older people and sources of legal advice and assistance that is essential to preventing and responding to elder abuse.

Many older people are not financially literate and less likely to access information to help them in their financial decision-making. ASIC, the regulator of financial advice and investment products, has a central role in relation to increasing levels of financial literacy in Australia. The *National Financial Literacy Strategy* highlights programs that are aimed at building financial literacy. It nominates Australians over 65 years as a key target audience, with this cohort identified as being “least likely to consult a range of information sources to stay informed” and as having “gaps in their knowledge and engagement and declining cognitive skills”.⁴⁵

A valuable source of information is the FACS NSW *Interagency Policy* that provides guidance for agencies and workers in identifying and reacting to elder abuse and addresses issues including mental capacity, duress, police reporting, privacy and consent.⁴⁶

The DHS Financial Information Service (FIS) provides a free, highly regarded education and information service about financial issues and investments and their impact on social security. The most recently available data on FIS activities reveals a major reduction in access to its services, with a substantial reduction in phone calls by 55 per cent for the period 2014-15.⁴⁷ The FIS provides an excellent service, though the decline in calls is concerning.⁴⁸

The National Information Centre on Retirement Investment (NICRI) provided a valuable source of independent information and advice about investment issues and products and their impact on social security payments through a nation-wide telephone information service for over 25 years. In February 2015 the service was closed after the Department of Social Services withdrew its funding.

Recommendation 21. That the Commonwealth Government provide funding for a phone-based information and advice service for older people that provides independent financial information and advice on general investment issues.

Legal sector funding cuts a threat to people experiencing elder abuse

Community Legal Centres (CLC) provide free legal assistance to people and are well-placed to provide independent legal information advice, and specialist advocacy services to people experiencing elder abuse.

Unresolved legal problems can have a range of flow-on effects, including significant costs to the government and broader community. Access to legal help can prevent or reduce the escalation of legal problems and reduce costs in areas of justice, health and housing. Community legal centres provide unique and essential free legal help to the most vulnerable and disadvantaged members of the community.

Independent sources of information and advice services are highly valued by older people. However, services provided by CLC's, including the WRC NSW and other members of the National Welfare Rights

⁴⁵ Australian Securities and Investments Commission (ASIC), *National Financial Literacy Strategy 2014*, p. 23.

⁴⁶ NSW Government, Department of Family and Community Services, *Preventing and responding to abuse of older people*, NSW interagency policy, Op Cit.

⁴⁷ Department of Human Services, *Annual Report 2014-15*, p.

⁴⁸ In 2014–15 FIS officers answered just 35,400 phone calls, compared to 79,204 in the previous 12 months.

Network are under threat as a consequence of a so-called “funding cliff”. From 1 July 2017, CLC’s will be faced with a 30 per cent reduction in funding for its services. Community Legal Centres helped over 215,000 people with free legal advice last year and had to turn away over 160,000 people seeking help, largely due to lack of funding.⁴⁹

These funding cuts will have a devastating impact and will mean that people needing legal assistance and advice to deal with elder abuse and family violence may be unsupported.

Recommendation 22. That the Commonwealth Government reverse the 30 per cent reduction in funding for Community Legal Centres from 1 July 2017.

Recommendation 24. That Commonwealth and State Government’s provide funding for an information campaign and strategy to address elder abuse arising from Powers of Attorney arrangements.

Conclusion

Child abuse and family and domestic violence is now firmly at the centre of public policy debates, are finally being addresses through national frameworks, coordinated through Council of Australian Government (COAG) deliberations and processes. Australia is now halfway through its *2010-22 National Plan To Reduce Violence against Women and Children*. Recommendations from recent Royal Commissions will potentially result in transformational change to the policy landscape in many of these areas.

Placing elder abuse on the national agenda must also be a priority. Elder abuse is an issue that, finally, has come of age. The ALRC’s current inquiry is an important step along this path.

The WRC looks forward to responding to the Commission’s Discussion Paper to be released later in 2016.

⁴⁹ The deficit for Community Legal Centres under the National Partnership Agreement for Legal Assistance is a \$34.83 million cut between 1 July 2017 and 30 June 2020. In addition, the legal aid sector has already experienced funding cuts to Aboriginal and Torres Strait Islander Legal Services.