

DRAFT

17 May 2007

The Honourable Michael Atkinson
Attorney-General
GPO Box 464
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Dear Attorney

Re Domestic Violence Laws Discussion and Options for Reform Paper

Current South Australian legislation covering domestic violence does not specifically recognise abuse of older people.

Lack of explicit recognition that harm and abuse is experienced by older people limits opportunities for prevention, intervention and redress in individual cases.

The extent to which services are provided for people experiencing abuse is reflective of the legislative recognition of that abuse. Lack of specific recognition of abuse experienced by older people will be reflected in a continued paucity of support networks.

Council on the Ageing policy is that a crime is a crime, irrespective of the victim's age. The law should treat older people as it treats all people. Age itself should not affect how the law applies to a person or how law is formulated. However where older people are vulnerable through illness, frailty, and dependence [financial, physical or otherwise], specific legal recognition of their needs for protection is required. As with violence and abuse experienced by younger women and children, and by men in dependent relationships, the older person experiencing the abuse may not initially recognise it as a crime, or have capacity to seek legal remedy without specific legislative and other support and recognition.

Given the rate of growth among the very old, and the inert nature of legislative frameworks, the Council on the Ageing calls for recognition of abuse of older people within the current reforms initiated by the Rann Government. The Discussion and Options for Reform paper includes very little reference to violence and abuse of older people as a specific group. This omission reflects lack of recognition of such abuse in the domestic violence legislative frameworks of other jurisdictions.

As there are complex familial and societal relationships and specific needs of older people where they are dependent or vulnerable, work needs to be resourced that can develop legislative options for public consideration.

Our population is ageing. From the middle of this century between one quarter and one third of South Australians will be aged over 65 years and will have a life expectancy well into their 90s. The legal needs of older people will be the legal needs of much of the population. More dramatically, people aged over 80 form our fastest growing cohort. Extreme old age creates greater levels of dependence and therefore increased likelihood of harm and abuse in a domestic and/or caring relationship.

The Australian Network for the Prevention of Elder Abuse defines abuse of older people as:

Any act that occurs in a relationship where there is an implication of trust, which results in harm to an older person. Abuse can be financial, psychological, physical, social, neglect or sexual.

The prevalence of harm and abuse experienced in the older population is high, as was clearly demonstrated at the World Elder Abuse Awareness Day Conference convened by the Aged Rights Advocacy Service [ARAS] and the Department of Families and Communities. Evidence is that, in Australia, financial abuse is the most common form of abuse of older people, often committed by a child. However, it is not common for a child defrauding a parent to be living with them, so the abuse is occurring within a relationship of trust, but not necessarily a residential relationship. Financial abuse by a resident spouse occurs but is not the most common form of financial harm suffered by older people.

Within domestic relationships, spouses, children, grandchildren and other relatives are responsible for considerable amounts of physical assault, and abuse or neglect through denial of liberty, sustenance, services, medical treatment and other forms of care. Because of the care needs of older people, and the common practice of care being provided by a relative, or sometimes a friend or neighbour, this relationship of trust can also on occasion be violated by harm and abuse. Emotional and psychological abuse through fear and control is also common. Less common but prevalent is abuse through misuse of medications.

Fear of harm can be particularly incapacitating for older people. Fear among older people has generally been considered in the context of fear of crime and perceptions of lack of safety. It can, however, be related to experience on actual or threatened violence and harm. As physical injury may very likely mean loss of independence and admittance to residential care, fear as much as actual assault results in considerable harm to older people. Likewise, fear of loss of financial independence can also result in harm for some older people. This would indicate that domestic violence legislation should include specific reference to behaviour that induces fear in an older person as well as actual harm.

The implication of complex familial and carer relationships for many aspects of domestic violence for older [eg restraining orders, witnessing violence, treatment of neglect or unintended acts] require close attention.

The State Government, under the Minister for Ageing, is currently developing a plan for the prevention of abuse of older people. COTA is a partner in the development of this plan, as is ARAS. Appropriate legislative responses to violence and abuse experienced by older people in domestic and caring relationships would form an appropriate action in conjunction with other initiatives.

The specific late life decisions in which a person relinquishes capacity to act to a proxy provides opportunities for abuse. This is being considered by a separate State Government review of advance directives.

COTA would be pleased to assist Government in developing legislative options that could be considered within the current reforms to domestic violence legislation.

Yours sincerely

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Chief Executive
Council on the Ageing

cc : Minister Jennifer Rankine
Minister for the Status of Women