

ELDER MEDIATION AND ELDER ABUSE

AN APPROACH TO PREVENTION & EARLY INTERVENTION

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Elder Mediation Australasian Network



UNIVERSITY OF SOUTH AUSTRALIA RESEARCH

(BAGSHAW, WENDT & ZANNETTINO)

1. 2007 - Conducted research and wrote the South Australian State Plan for the SA Government's Office for the Ageing :

'Our Actions for the Prevention of Abuse of Older South Australians'

<http://www.sapo.org.au/pub/pub11143.html>

2013 – Bagshaw is an ongoing Member of the South Australian Government's *'Safeguarding the Rights of Older People'* Steering Committee, Office for the Ageing, which has reviewed the above plan and developed a new plan – *Strategy to Safeguard the Rights of Older South Australians (2014-21)*.

2. Australian Research Council Linkage Grant

2009: *'Preventing the Financial Abuse of Older People by a Family member. Designing and Evaluating an Older Person-Centred Model of Family Mediation'*.

ARC-LINKAGE GRANT RESEARCH 2009

‘Preventing the Financial Abuse of Older People by a Family member. Designing and Evaluating an Older Person-Centred Model of Family Mediation’.

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In partnership with

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Relationships Australia SA

Office of the Public Advocate SA

Alzheimer’s Australia SA

Guardianship Board SA

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A BROAD DEFINITION OF ELDER MEDIATION

Elder mediation refers to mediation where the dispute involves an older adult and another party, or contains issues that have a particular impact on older adults

Joan Braun (2013)

ELDER MEDIATION INTERNATIONAL NETWORK

Elder mediation is a focused, preventative, respectful process – usually multi-party, multi-issue and intergenerational

The mediator facilitates discussions focusing on present strengths and assists participants in addressing their stated wishes or concerns.

Elder mediation can include many people related to the issues.

- the older person and/or
- a support person or advocate for the older person,
- members of their immediate and/or extended family,
- friends, neighbours and/or
- significant others who are involved with the care of an older person such as paid or unpaid carers, nursing home or hospital staff, general practitioners, social workers, psychologists and other professionals.

ELDER ABUSE



29/06/2018

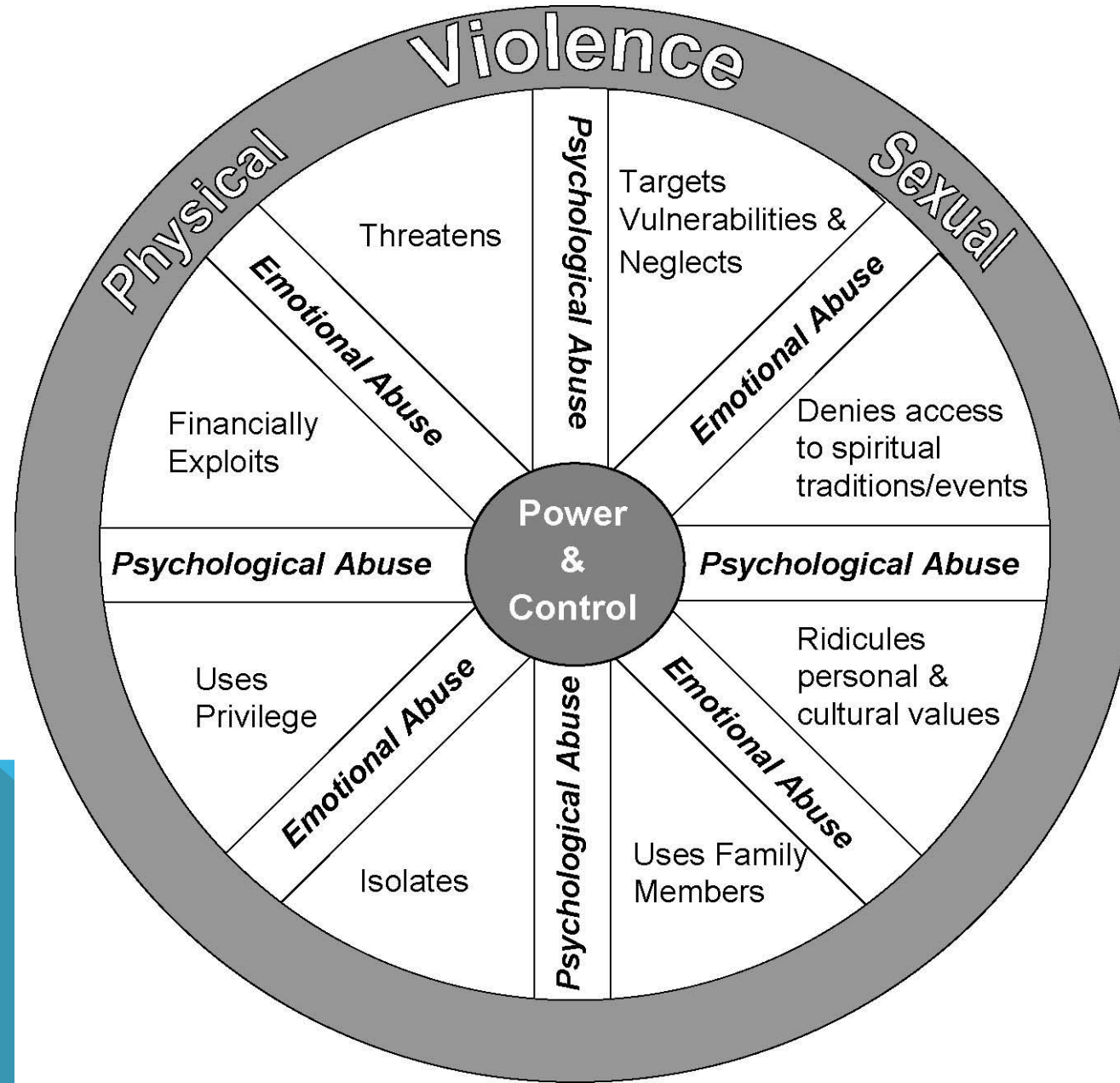
, 2018.

WORLD HEALTH ORGANISATION DEFINITION

Elder abuse can be defined as "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person".

Elder abuse can take various forms such as financial, physical, psychological and sexual. It can also be the result of intentional or unintentional neglect'.

MISUSE OF POWER AND CONTROL IS CENTRAL TO MOST FORMS OF ABUSE



DOMESTIC VIOLENCE IN LATER LIFE

- Domestic violence is an escalating pattern of violence or intimidation by an intimate partner, which is used to gain **power and control** and intimidate the victims (usually women, children and pets), who live in **fear** of the perpetrator.
- **When domestic violence begins or is exacerbated in old age, it is likely to be linked to one or more of the following:**
 - Retirement
 - Disability – a stroke, heart attack, dementia etc
 - Changing roles of family members
 - Sexual changes
 - Entering into new and abusive relationships late in life

ABUSE OF ELDERS

- is an under-researched and hidden problem
- occurs across the spectrum of our society
- is often unrecognised, unreported, and hard to detect
- some families and/or cultures do not recognise that their behaviour is abusive or label it that way

THERE MAY BE DIFFERENT UNDERSTANDINGS OF WHAT CONSTITUTES ELDER ABUSE

- 'abuse' and 'violence' have different meanings in different cultures and generations.
- may not have heard the term 'elder abuse' or believe that behaviour is not 'abusive' unless it is physical.
- non-physical forms of abuse (e.g. verbal, psychological, emotional, social and abuse of pets) may be subtle and hard to detect.
- the elder may be subjected to several different kinds of abuse at the same time, to a lesser or stronger degree.
- the 'silent' generation (born prior to WW2) and elders from Indigenous, CALD, refugee, rural or LGBTQI communities may not tell anyone what is happening.

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SUMMARY OF BARRIERS TO ELDERS REPORTING ABUSE

- lack of knowledge of their rights or of resources
- diminished cognitive capacity
- mental or physical disability
- poor or restricted mobility
- lack of awareness of what constitutes abuse
- social isolation
- fear of alienation
- the need to preserve a family relationship
- fear of removal from their family and community

- dependency on others in the family
- stigma and shame associated with abuse
- literacy and language barriers
- religious, generational and cultural barriers
- fear of retaliation or reprisal from the perpetrator
- and/or
- a perceived or actual lack of options or access to services.

HEARING THE VOICE OF THE ELDER IN MEDIATION

From a human rights perspective, elder mediators must ensure that the voice of the elder is heard, directly or indirectly, and respected.

This applies to elders with and without capacity.



ASSESSING CAPACITY TO MEDIATE

A range of factors can affect an elder's capacity to participate in mediation, including:

- cognitive [dis]ability, such as brain damage after a stroke, dementia
- **abuse and/or neglect**
- mental illness, such as depression, anxiety, PTSD
- the influence of alcohol or drugs
- physical [dis]ability (sight, hearing, mobility, pain etc)
- stress.

DEFINITION OF CAPACITY

Capacity in Australian law is defined as an adult's ability to make a decision for him or herself

Law Society of New South Wales, 2009

IN AUSTRALIAN LAW ...

An older person has the capacity to make a decision if they can

- **understand the facts**
- **weigh up the choices**
- **appreciate the consequences, and**
- **communicate the decision**

PRINCIPLES FOR ASSESSING CAPACITY - A NSW GUIDE FOR PROFESSIONALS

- always presume a person has capacity;
- capacity is decision specific;
- don't assume a person lacks capacity based on appearances;
- assess the person's decision-making ability not the decisions they make;
- respect a person's privacy; and
- only use substitute decision-making as a last resort.

New South Wales, Attorney General's Department, *Capacity Toolkit: Information for Government and Community Workers, Professionals, Families and Carers in New South Wales* (2008) 27

ENHANCING PARTICIPATION IN MEDIATION

To enhance the elder's participation the mediator must make appropriate accommodations, for example by

- providing education and information to all involved about the rights of elders, elder abuse and relevant legislation
- seeing the older person (and all other participants) separately prior to mediation
- involving advocates or support persons if needed
- referring to appropriate support services
- having a longer intake session and shorter mediation sessions
- using shuttle mediation or separate meetings as required
- using blended processes - e.g. mediation & counselling or advocacy, therapeutic mediation, restorative justice approaches

To enhance the elder's participation the mediator can make appropriate accommodations, for example by (cont)

- addressing any disability – e.g using an interpreter if language, speech or hearing is an issue
- enhancing capacity – e.g. by considering time of day, effect of mediations etc
- considering cultural and religious norms, names, values and rituals (prayer times) + cultural attitudes to ageing, conflict and its resolution
- slowing down communication, reflecting verbal and non-verbal and high context/low context communication
- organising regular breaks
- adjusting noise levels, lighting, temperature of the day/room, seating
- using a familiar, comfortable and accessible setting
- providing access, to toilets, food and drinks

SCREENING FOR ELDER ABUSE PRIOR TO MEDIATION

Purpose:

- to detect signs and risks of abuse or intimidation of the elder
- and
- to assess whether or not the the mediator can accommodate for any disabling factors, especially those related to fear, competency and communication

SCREENING TOOLS SHOULD

- be developed as guidelines only
- be used respectfully
- identify if abuse or neglect is present, or if there is a risk
- indicate whether or not mediation is appropriate and should go ahead, and if so,
- to determine what safeguards or accommodations need to be put in place to ensure the participation, comfort and safety of the people involved.

WHEN SCREENING FOR ELDER ABUSE

Guidelines

- Use an interviewer experienced in working with elders and with knowledge and understanding of elder abuse, cognitive changes and capacity.
- Interview the elder and all other potential participants on their own, if possible.
- Establish rapport with the elder being interviewed before screening for abuse.
- Use an opening statement to describe the purpose of the screening questions.
- Consider what you will do if you discover there is a risk of, or actual abuse

SCREENING FOR ABUSE

There are three main groups of screening tools available:

Direct questioning of the elder with the aim of eliciting disclosure of abusive behaviours by family members

Tools aimed to check for evident signs of abuse, such as suspicious bruises and burns (physical abuse), transfer of property (financial exploitation) and low hygiene and dehydration (neglect), although in elders these signs of abuse are often difficult to distinguish from signs of illness.

Tools aimed at the identification of risk factors based on the rationale that many elders who are at high risk of abuse are actually abused. However, many elders suffering from abuse do not meet the risk criteria and others who are at high risk of abuse may not actually suffer abuse

(Cohen et al 2007).

WHEN QUESTIONING THE ELDER

The way questions are asked of the elder is important:

- Use open-ended, reflective questions rather than closed or directive questions.
- Normalise things first – e.g. ‘Sometimes older people feel lonely How is it for you?’
- Be careful not to give examples that may give the elder with capacity issues ideas that are not based on what is really happening.

EXAMPLES OF SCREENING QUESTIONS

Not all of the questions listed in the next slides need to be asked – these are examples only and some are openings for other questions (*examples in red*).

If there are concerns, follow up with further questions or examples - when, who, where, how often, what and/or how?

GENERAL QUESTIONS

- What is your understanding of mediation and its purpose?
- Describe your communication with the other people who will be present.
- How have decisions been made in the past?
- What concerns do you have about expressing yourself in the mediation?
- Is there anything that may help you to feel comfortable participating in mediation – physically, emotionally or otherwise?
- Do you prefer a time of day or location for the mediation?
- Do you have any special needs or concerns that I need to be aware of?

QUESTIONS ABOUT THE ELDER'S FAMILY AND CAREGIVER RELATIONSHIPS

- Please tell me about your relationship with your family, especially the important members of your family? *Who are you close to? Who do you rely on? Now and in the past?*
(Can use picture cards or an ecomap or genogram).
- How do members of your family get on with each other now? ... *Has it always been that way?*
- How comfortable do you feel when you are in the same room with each member of your family?
- Sometimes families fight. How do members of your family usually handle conflict?
- Do you have any relatives or caregivers who are substance abusers, have a mental illness or who are financially dependent on you?

QUESTIONS ABOUT SOCIAL SUPPORT

- What sort of help do you need – during the day and at night?
- Who can you count on when you need help?
- Has anyone ever refused to help you (e.g. with household chores, medications, appointments)
- How could members of your family be more helpful?
- How do you feel about your other caregivers?
- How could they or others be more helpful?

POSSIBLE SOCIAL ABUSE AND/OR NEGLECT

- What happens when members of your family visit you?
- If you could wave a magic wand, who would visit you more and how often?
- When did you last feel appreciated?
- Does anyone prevent you from seeing your friends and family or from using the phone or computer?

- Sometimes older people feel lonely. How do you fill your time?
- How often do you go out? *Would you like to be able to go out more? Who with where do you like to go?*
- What sort of food do you like to eat? ... *Who prepares your food? Do you like what is prepared and do you have enough to eat?*
- Have you ever needed help and no one has been there for you?

EMOTIONAL OR PSYCHOLOGICAL ABUSE

- What behaviours, stresses and worries tend to upset you?
- Do any of these make you feel depressed or anxious?
- What do you do to help you to feel better?
- Do you tell anyone about how you feel? *If so – what do they do to help you?*
- Has anyone called you names you don't like?
- Ask about pets in rapport building and then ask about their care or threats to the pet(s) (important to identify potential abuse)

RELIGIOUS OR SPIRITUAL ABUSE

- What opportunities are provided for you to practice your religion or spirituality?
- Who in your family or community share or support your beliefs?
- What would you like to be different?

MEDICAL, PHYSICAL AND SEXUAL ABUSE

Medical:

- How do you make sure you are taking the right medication at the right time?
- What sort of help do you need with your medication?

Physical:

- How many times have you been to hospital in the last 6 months?
- Has anyone hurt you physically or threatened to hurt you?

Sexual:

- Has anyone touched you inappropriately without your permission, or made inappropriate comments or advances?

FINANCIAL ABUSE EXAMPLES

Sometimes elderly people need assistance with their money and finances.....

- How do you manage your money, property and/or finances?
- Who takes care of your money, banking, and/or credit cards? ... *Do you trust that person? Do you have any concerns?*
- What sort of access do you have to your own money when you need or want to buy something?
- Which family members depend on you for care, shelter or financial support?'

- Has anyone ever borrowed or taken any thing or money of yours without your permission?'
- Have you ever been asked or forced to sign documents you don't understand?'
- Have you completed a Will, Power of Attorney or Enduring Power of Attorney, and/or Advanced Care Directive documents? (*....Who assisted you ? Do you have a copy and do you know who else has copies?' Are you happy with the arrangements? etc*)

QUESTIONS ABOUT GENERAL SAFETY AND SECURITY

Can use a scale which can be written on cards. For example:

How safe do you feel where you live now?

1 = never feel safe; 2 = often feel unsafe; 3 = occasionally feel unsafe; 4 = feel safe most of the time; 5 = always feel very safe.

Are you ever afraid of anyone that you know?

1 = always frightened, 2 = often frightened, 3 = occasionally frightened; 4 = rarely frightened; 5 = never frightened.

Do you have anyone you can ring or call on if and when you feel frightened or unsafe?

If you woke up tomorrow morning feeling safe and secure, what would be different?

FINALLY, GENERAL QUESTIONS

If the elder wants to be involved in the mediation and the mediator assesses that there are some risks:

- If we go forward with mediation, what do you need from me or from others to feel comfortable?
- Would you feel more comfortable if a support person or advocate came with you? ... or spoke for you?
- Would you feel more comfortable if you were not in the same room as X or Y and I (the mediator) took messages between you?
- Would you prefer a different approach e.g. counselling, advocacy, the courts?

CAUTION

Mediation involving an elder should not begin, or should be terminated when an elder

- lacks the ability to identify his or her interests and to weigh the consequences of agreements to be made by them or about them
and
- appropriate protections and accommodations cannot be made.

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Evidence suggests, however, that appropriately qualified elder mediators can

- provide opportunities for elders to take ownership of and be empowered by the process of elder mediation;
- detect when elders are at risk of abuse or are being abused and put appropriate safeguards, referrals and plans in place;
- involve the professional and social network surrounding a vulnerable older adult develop interdisciplinary understanding and collaborations;
- address the ageist, gendered and cultural contexts in which abuse occurs; and
- uphold the rights of older people.

EVIDENCE?

The Service for the Protection of Older People in Ireland (2011), for example, reported that 80% of cases of elder abuse can be dealt with by family meetings , extra supports and day care.

OUR ELDER MEDIATION & ELDER ABUSE PUBLICATIONS TO DATE

1. Dale Bagshaw. 'Elder Mediation: An Emerging Field of Practice'. Chapter in Maria-Frederica Moscati, Michael Palmer, and Marian Roberts (eds) *Comparative Dispute Resolution: A Research Handbook*, (Research Handbooks in Comparative Law Series, eds Francesco Parisi & Tom Ginsburg), Cheltenham, UK & Northampton, MA: Edward Elgar Publishing, In Press, 2018.
2. Bagshaw, Dale 'Elder mediation: Opportunities and challenges'. Chapter 6 in *Essays on Mediation. Dealing with Disputes in the 21st Century*. Editor: Ian Macduff, Wolders Lluwer International: The Netherlands, 2016, pages 63-76.
3. Bagshaw, D., Adams, V., Zannettino, L. and Wendt, S. (2015), 'Elder Mediation and the Financial Abuse of Older People by a Family Member'. *Conflict Resolution Quarterly*, 32: pages 443–480.
4. Wendt, S. Bagshaw, D., Zannettino, L. & Adams, V. (2015), 'Financial abuse: a case study', *International Social Work*. 58, 2: pages 287-296.
5. Adams, Valerie, Bagshaw, Dale, Wendt, Sarah, Zannettino, Lana (2014) 'Financial Abuse of Older People by a Family Member: A Difficult Terrain for Service Providers in Australia', *Journal of Elder Abuse and Neglect*. 26: pages 270–290.
6. Zannettino, L., Bagshaw, D., Wendt, S. & Adams, V. (2015) 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse (CaLD) Communities in Australia', *Journal of Elder Abuse & Neglect*, 27, 1, pages 74-89.
7. Bagshaw, Dale, Wendt, Sarah, Zannettino, Lana and Adams, Valerie (2013). 'Financial abuse of older people by family members: The views and experiences of older Australians and their family members'. *Australian Social Work*, Vol 66, Number 1, March, pages 86-103.
8. Bagshaw, D., Wendt, S & Zannettino, L. '(2009) 'Preventing the Abuse of Older People by their Family Members'. *Stakeholder Paper 7, Australian Domestic and Family Violence Clearing House*, September, pages 1-16.
9. Bagshaw, Dale, Wendt, Sarah & Zannettino, Lana 2007, *Our actions to prevent the abuse of older South Australians*, Office for the Ageing, Department of Families and Communities, Government of South Australia, Adelaide

FOR MORE INFORMATION

Elder Mediation Australasian Website (EMAN)

<http://elder-mediation.com.au>

Elder Mediation International Network (EMIN)

<http://elder-mediation-international.net/>

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