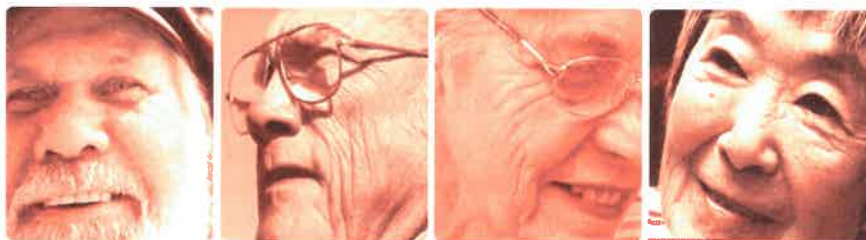


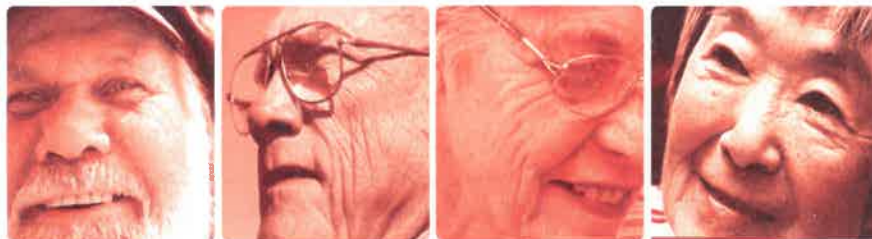
Aged Rights Advocacy Service Inc.

Submission to Australian Law Reform Commission Inquiry into Elder Abuse

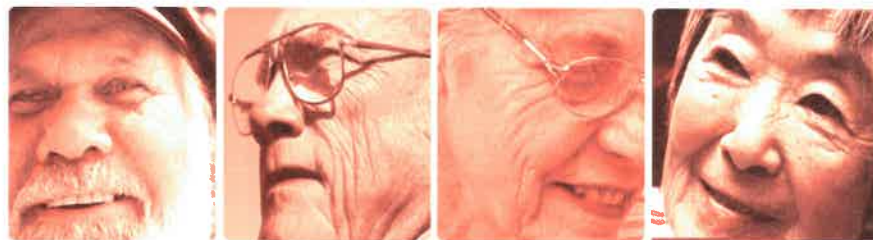
Question	ARAS Commentary
What is Elder Abuse?	<p>ARAS uses the Australian Network for the Prevention of Elder Abuse (ANPEA) 1999 definition of elder abuse which is : Abuse of an older person 'is any act occurring within a relationship where there is an implication of trust, which results in harm to the older person. Abuse may be physical, sexual, financial, psychological, and social and/or neglect'.</p> <p>ARAS also notes the Government of South Australia, SA Health and the World Health Organisation definitions of elder abuse:</p> <ul style="list-style-type: none"> • http://sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/stop+elder+abuse/what+is+elder+abuse/what+is+elder+abuse • http://www.who.int/ageing/projects/elder_abuse/en/ <p>ARAS believes a consistent agreed national definition would assist in obtaining data as well as informing a national framework for addressing this complex social issue.</p> <p>Abuse by non-family members is also possible and does happen. Elder abuse can be perpetrated by friends, neighbours, and professionals such as; lawyers, accountants and aged care providers who have a relationship of trust with the older person.</p> <p>When SAPOL deals with issues around domestic and family violence they reportedly do not include situations of elder abuse. These situations are often considered to be private family matters with the older person being offered little or no information about options and support services. There have been improved responses through the SAPOL 'Family Violence Investigation Section' (FVIS) although it has been reported that the FVIS doesn't necessarily routinely advise the older person about the option of applying for an 'Intervention Order'.</p>



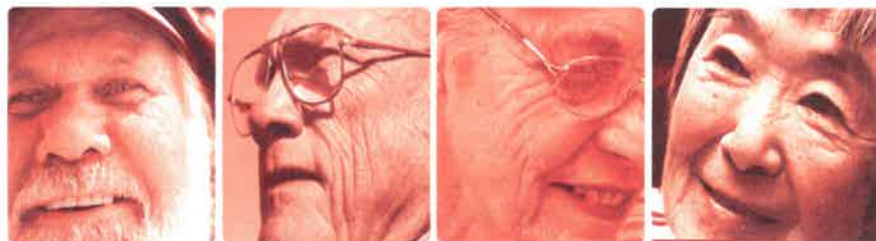
<p>Question 1</p> <p>To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse:</p> <ul style="list-style-type: none"> • harm or distress; • intention; • payment for services? 	<p>ARAS believes that harm and/or distress are relevant elements, and should be taken into account when describing 'elder abuse'. In the current definition used by ARAS it is accepted that the conduct or action will result in some form of harm or distress.</p> <p>ARAS notes that from a CALD perspective the word 'harm' is generally more widely recognised rather than the term 'elder abuse'. Due to cultural expectations in the Aboriginal community the notion of abuse is differently understood due to kinship structures, and 'sharing' of financial resources is not seen as abusive.</p> <p>There is a significant amount of neglect that may occur without intent, however it is nonetheless abusive. It is useful to consider what the end result, outcome or consequence is for the victim.</p> <p>The relevance of context becomes apparent and depending on the type of law, different concepts come into play in terms of a response to the abuse. The criminal law for example generally requires 'intention' to be proven whereas in civil litigation you may be negligent without having intent to cause harm.</p> <p>The response is context-specific, but ultimately ARAS believes there must be an appropriate response that stops the abuse and where possible is guided by the victim.</p> <p>The decision to include 'payment for services' depends on whether all abuses of older people will be considered 'elder abuse' or if scams and other forms of exploitation of older people would be considered under consumer law?</p> <p>It is also important to consider whether the above definition includes or excludes the rights and entitlements of older people in the aged care system, or whether a distinction is drawn between rights and entitlements under the <i>Aged Care Act 1997</i> and/or as part of a service agreement (contractual obligations), and whether they are distinguished from elder abuse?</p> <p>In terms of defining 'elder' ARAS generally recognises older people as 65 years and for Aboriginal & Torres Strait Islanders being over 50 years due to their shorter life expectancy.</p>
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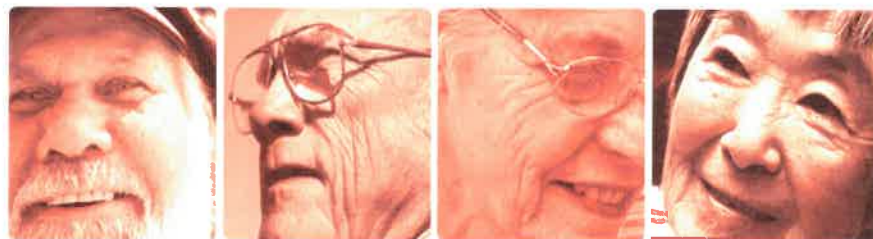
<p>Question 2</p> <p>What are the key elements of best practice legal responses to elder abuse?</p>	<p>ARAS believes consideration should be given to:</p> <ul style="list-style-type: none"> • Establishing 'elder abuse' as a prosecutable offence recognising the vulnerability of some older people. Consideration could also be given to reversing the burden of proof; • Timeliness of the response; • Preventative strategies ; • Implementing the appropriate balance between freedom for older people to make choices and take risks balanced with the appropriate safeguards; • Introducing compensation for older people whose finances have been misused; • Presuming that all older people have capacity to make decisions; • Seeking expert evidence if there is doubt about the older person's mental capacity; • Providing low-cost legal services specifically for older people experiencing elder abuse; • Routinely providing referral to advocacy support for the person who has reported abuse; • National framework with consistent responses and laws in all jurisdictions – for example Enduring Power of Attorney; • Knowledge of risk factors for elder abuse; • Knowledge of barriers to speaking up about elder abuse; • Knowledge of barriers to taking action, including legal impediments; • Consideration of an Adult Protective Service; • Research to understand: <ul style="list-style-type: none"> ○ Prevalence of abuse; ○ The barriers to obtaining criminal convictions; ○ Research to understand the transfer of wealth between generations or others prior to the older person death (accelerated inheritance); ○ Outcomes/gaps to the current compulsory reporting scheme; ○ Preventative Strategies; ○ Research to identify the economic cost of elder abuse – including from financial abuse as well as the costs to the health & support systems; ○ Any other gaps.
<p>Question</p>	



<p>3</p> <p>The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning:</p> <ul style="list-style-type: none"> Aboriginal and Torres Strait Islander people; people from culturally and linguistically diverse 	<p>Example Case Study – Abuse of older Aboriginal Person.</p> <p>ARAS received a call from a home care service provider with concerns for a client (D) who identifies as Aboriginal, and who reported experiencing abuse by relatives. The service provider (SP) described D as vulnerable and showing signs of cognitive decline. D had given consent for the service provider to contact ARAS on her behalf, and ARAS also obtained consent from D.</p> <ul style="list-style-type: none"> D disclosed that a relative and her friends had been using her money and staying in her home. She was afraid for her safety as her relative would often have other people coming over to her home at all hours of the day and night and stay there indefinitely. D was often confined to her room out of fear and had no access to food or essentials, as her money was taken by her relative; D had asked her relative to leave her home but she had refused and became verbally threatening; D's family lived in a rural/remote area and whenever the service provider spoke to them about the issues they had stated that they would support D however, the support was not reliable or consistent; An ARAS advocate worked with the service provider and D to provide information and support to explore options; Due to D's level of vulnerability, and subsequent concerns about her decision making capacity, she was referred to a geriatrician for an assessment of her capacity to make decisions. <p>D is currently awaiting an appointment for an assessment to determine whether a referral can be made to Office of the Public Advocate (OPA)/South Australian Civil and Administrative Tribunal (SACAT) for a determination.</p> <p>Example Case Study – Abuse of an older person from a non-metropolitan area</p> <p>A staff member from one of M's services contacted ARAS (with M consent) after concerns about M being financially abused. ARAS sought consent from M to provide information and support. M is 82 years old and has some help around the home by her son. M also receives some home support services with shopping, cleaning and showering. A country trip was organised to visit with M face to face.</p> <ul style="list-style-type: none"> M explained that her son (D) used to help her out including with her banking and paying bills. M had given D her ATM card and PIN number and provided consent for him to access her pension account to pay bills or withdraw money for her; M went to the bank and found that there was \$2,000 missing from one account and \$50,000 from another. When M followed this up with the bank, she was informed that she had signed authority for her son to access her bank account. M was very upset as she had never withdrawn such large amounts; M approached D and asked him to return the money. D told her that she needed to wait until he had the money from a business deal; M also said that her daughter had been entering her house using a key she has and taking items whenever she felt like it; M stated that she doesn't see her daughter any other time and she is fed up with her using her home like a 'shop'; M also expressed a sense of loneliness and wanted more services for social support;
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<p>e comm unities ; • lesbian , gay, bisexu al, transg ender or interse x people ; • people with disabili ty; or • people from rural, region al and remot e comm unities</p>	<ul style="list-style-type: none"> • She said that she feels afraid as she doesn't know what her children may do to her and if they will harm her; • M would like to change her Will and agreed to consider setting up an Enduring Power of Attorney EPoA). <p>After the visit and several phone calls M was provided with the following options:</p> <ul style="list-style-type: none"> • M to seek legal advice to have the money returned to her; • M to notify the bank that her son does not have the authority to access her bank accounts any longer. She can change her ATM PIN and cancel the second card given to her son; • M to consider reporting the theft of the money to the police; • Police can be notified about M's daughter entering her property without her consent and request the keys back. She could also consider changing the locks and applying for an Intervention Order; • M was provided with information about EPoA and Advance Care Directives. <p>Since then, M has paid for additional services so she does not need to rely on family members for assistance. M also considered her options for additional social supports to address her isolation.</p> <p>Example Case Study – Abuse of a person with a disability ARAS conducted an information session for users of a community aged care service provider. Following the session and older person with a disability (J) approached the ARAS advocate and requested to talk in private</p> <ul style="list-style-type: none"> • J was born with a disability which impacted on her opportunities to learn and develop a sense of independence. J is estranged from her family; • J has been assessed as having mental capacity, but is highly vulnerable due to her disability; • When J's parents passed away an old family friend began taking control of J's life. She changed her GP, appointed herself as EPoA and substitute decision maker, coerced her into changing her Will and arranged for J to make regular payments to her bank account; • J experienced psychological and financial abuse by this old family friend - someone she should have been able to trust. <p>The community information session provided J with information about her rights, and offered options to enable her to address the abuse and regain control. The ARAS advocate and the service provider supported J to obtain access to appropriate services, and obtain information and legal support.</p> <p>Example Case Study – Abuse of an older person from a CALD background. ARAS was contacted by a Social Worker in relation to D, an Italian-speaking older woman who was in hospital. An ARAS advocate visited D with an interpreter and D advised that she had appointed her son M as her Power of Attorney (POA). Since his appointment, M has reportedly been telling everyone that she has lost mental capacity. However D has recently been assessed by a geriatrician as having her mental capacity.</p> <ul style="list-style-type: none"> • D told the advocate that M had taken over her finances and has been 'pressuring' her to move into a residential aged care facility; • M has told D that he wants to sell her house, and he has already started to move her furniture into her shed. D stated that she and her husband
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had helped M financially many times in the past as he had often made bad financial decisions;

- D was also concerned because her Will had disappeared from her home;
- D was very frightened of standing up to M, whom she described as being very forceful and having a bad temper.

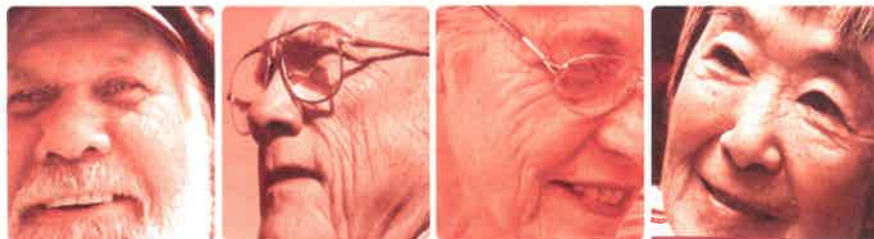
With support of the advocate D has taken positive steps and is now living independently in her own home with support services. D has revoked POA through her solicitor and has changed her Will.

Example Case Study - Abuse of an older person CALD background

ARAS received a call from a community aged care Social Worker who expressed concerns for 82 year-old T who had recently been discharged home from hospital. T speaks little English having recently returned to using her first language.

- The Social worker reported that T had started displaying signs of cognitive decline, and was having some difficulties with daily tasks. She started approaching her long term neighbour for help with general daily tasks;
- T migrated to Australia many years ago. She has no family members in Australia;
- Prior to her hospital admission, T had lived independently in her own home. She used community services for occasional maintenance only. The consultant geriatrician at the hospital assessed T as having capacity to make her own decisions; however community care had observed some short term memory loss and a decline in T's cognitive function;
- Prior to discharge, the hospital Social Worker held a meeting with T and her neighbour where it was agreed that the neighbour would take on the role as carer;
- The neighbour arranged for T to see a lawyer and appoint her as EPoA. She also had her Will changed and the neighbour was appointed as executor of T's Will;
- The neighbour had control of T's finances and held her bank card. Information had been provided to the service provider that the neighbour was taking T shopping and leaving her at the supermarket while she gambled at the nearby hotel. After some time alone, T became confused and distressed;
- With the assistance of ARAS advocates, T was referred to a Community Geriatric Team for assessment and follow-up. Subsequently T was supported with a number of support services.

T's situation highlights the need for improved safeguards to protect isolated, vulnerable older people from abuse and exploitation. Older people who face language barriers and have few or no supports in place, can be targeted by abusers. A common tactic used by abusers is to give false information to the older person about consequences of not signing a document, such as the "government will take your house away and put you into a nursing home". Many isolated and older people, who had believed that they would be cared for in older age, are vulnerable to abuse.



ARAS is concerned that capacity assessments that are not culturally appropriate are affecting CALD older people's capacity to be self-determining, and to address issues of elder abuse.

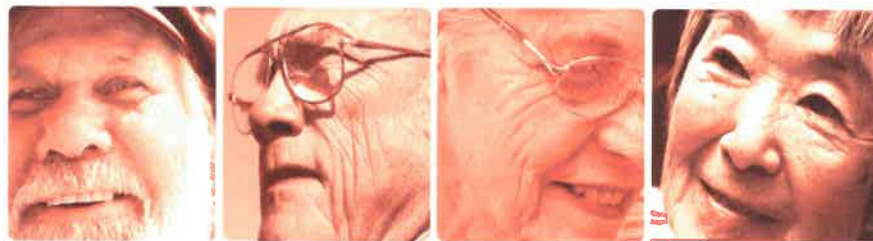
A recent example of an older person who underwent an assessment that was not culturally appropriate, and who was subsequently denied the opportunity to change her Will and revoke her EPoA, highlights the importance of appropriate systems. Access to independent interpreters and information /assessments that have been appropriately translated, are also vital to ensure that older people can exercise their rights and live free from elder abuse.

ARAS believes that a vital issue to consider when planning any systemic changes in relation to elder abuse is independence from government. Many older people, especially those from CALD and Aboriginal backgrounds express reluctance and indeed some fear of engaging with support services that are operated by government departments.

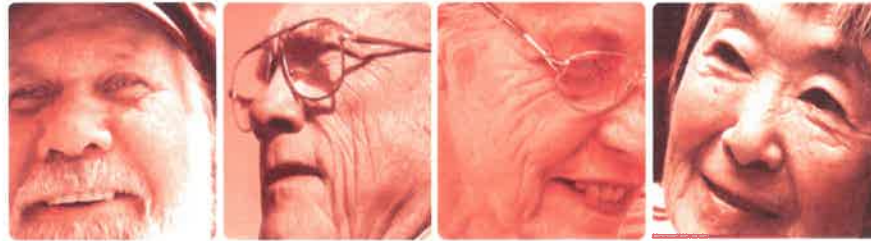
SA Elder Abuse Prevention Phone Line

In late 2015 ARAS commenced the South Australian Elder Abuse Prevention Phone Line trial. The Phone line provides a state-wide point of contact for information, advice and referral to other services such as the office of the Public Advocate, Legal Services Commission, Public Trustee, SA Police and ARAS. During the short timeframe since implementation the types of issues raised by callers to the phone line include, but are not limited to:

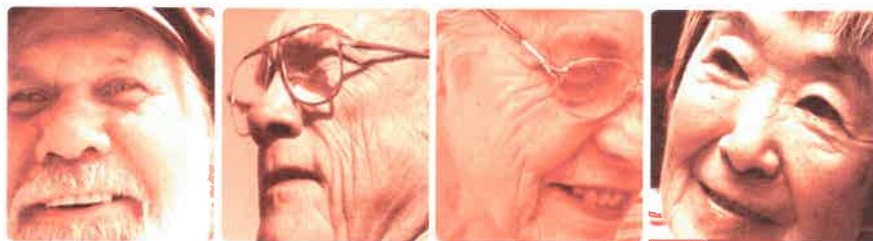
- Frail older person has been taken to her son's remote rural property to live. The son has sold the older person's house. Family members suspect financial and psychological abuse, and have been refused access to the older person;
- CALD older person taken by daughter to Trustee organisation to make a Will in her favour;
- Daughter reportedly bullying Father into lending her money;
- Older person experiencing physical abuse by son;
- Daughter states her father is being abused/neglected by her step-mother;
- Daughter concerned re her sister not upholding her responsibilities as EPoA for their father;
- Daughter concerned for welfare of her father who has Parkinson's disease. Caller states her step-mother is not caring for him properly;
- Caller states mother has been cut off from the rest of the family by his sister;
- Older person is being intimidated by her neighbour;
- Son reports financial abuse of father by his partner;
- Neighbour concerned about welfare of older person with dementia who she states is "allowed to wander the streets unaccompanied".



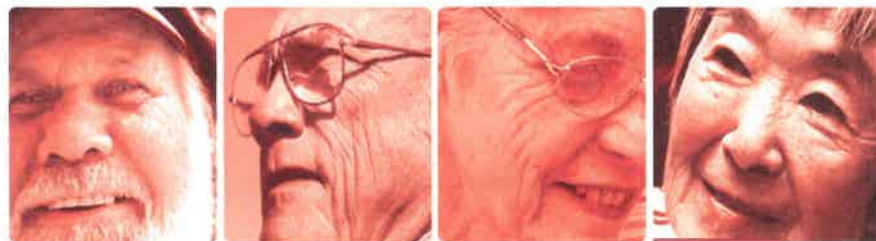
	<p>Please note that the case studies above are a compilation of examples, and are fictitious. Any similarity to real situations is entirely coincidental. ARAS is willing to provide further case studies to the ALRC.</p>
<p>Question 4 The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?</p>	<p>See ARAS responses to Question 2 & 11. Additionally ARAS believes consideration should be given to:</p> <ul style="list-style-type: none"> • An Australian Bureau of Statistics (ABS) national survey of Elder Abuse (similar to the Women's Safety Survey of 1996) that has the potential to reveal the extent and nature of elder abuse. <p>ARAS is also aware that a Prevalence Study is being undertaken in South Australia by Professor Wendy Lacey who is the Dean and Head of the School of Law at the University of South Australia Business School.</p>
Social Security	
<p>Question 5 How does Centrelink identify and respond to people experiencing</p>	<p>ARAS experience from consumer reports to our service about Centrelink include but are not limited to:</p> <ul style="list-style-type: none"> • Centrelink staff are too willing to accept the word of people presenting to them and not verifying or asking for proper documentation; • Carer's payment are being made to nominees, but the care recipients are not receiving the care; • Centrelink staff speaking with older person in front of other person (who may be the alleged abuser) meaning that the older person cannot speak freely about their situation – no privacy or confidentiality accorded to the older person; • Older people being restricted in their access to Centrelink because services are being centralised and are increasingly online;



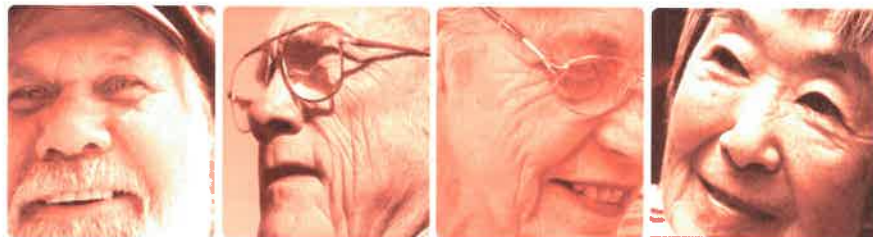
<p>or at risk of experiencing elder abuse? What changes should be made to improve processes for identifying and responding to elder abuse?</p>	<ul style="list-style-type: none"> • That older people are not IT savvy and are subsequently handing over information such as access to their 'my gov accounts' to others to access. This scenario does not support older people remaining in control and may be a contributing factor to potential elder abuse as access to information and accounts is being made easier. <p>ARAS is generally of the view that Centrelink staff require education and training about recognising and responding to elder abuse as well as understanding the role/meaning of various documents such as Enduring Power of Attorney & Advance Care Directives.</p> <p>Ensuring that the older person is interviewed by themselves in a private place when they are nominating other persons to act on their behalf. Centrelink staff need to be clear when various nominations and legal documents authorising others to act become operational.</p>
<p>Question 6 What changes should be made to laws and legal frameworks relating to social security correspondence or payment nominees to improve</p>	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Ensuring that the older person's money is sent into their bank accounts; • A screening tool for detecting when an older person is vulnerable or at risk of being abused – this could be triggered when the Age Pension age is reached; • If the screening tool indicates risk then Centrelink Social Worker could be allocated to discuss with older person options for safeguards including : <ul style="list-style-type: none"> ○ Direct debit of certain Bills – ARAS hears many stories of the older person's phone being cut off because their nominee (the abuser) hasn't paid the phone bill ensuring that they remain socially isolated from other family and friends; ○ Income Management may be considered an option to ensure that the older person is at least receiving essentials such as food and medication; ○ Centrelink can provide information regarding 'centrepay' or services that would assist the older person such as financial counselling.



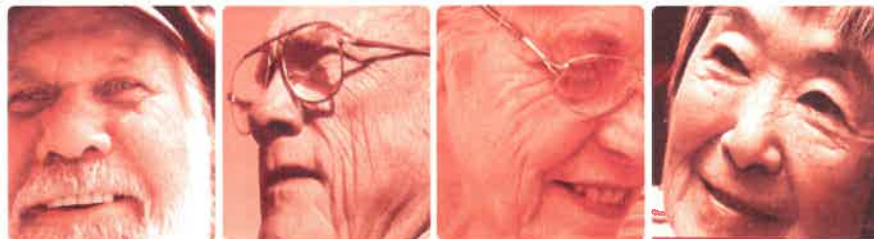
safeguards against elder abuse?	
Question 7 What changes should be made to the laws and legal frameworks relating to social security payments for carers to improve safeguards against elder abuse?	<p>ARAS generally believes that consideration should be given to ensuring that Centrelink staff are aware of services in the community and are trained to discuss and refer to appropriate staff.</p> <p>ARAS is aware of reports that some carers accept payment of the Carers Payment and subsequently fail to deliver the support to the older person.</p> <p>ARAS generally believes that consideration should be given to greater accountability for carers receiving a Carers payment.</p>
Question 8 What role is there for income management in providing protections or safeguards against elder abuse?	<p>ARAS believes that consideration should be given to income management; however ARAS is of the view that income management is not appropriate as a one-size-fits-all response to all older people. Individual assessment is required on a case by case basis.</p> <p>Income Management should be considered for those who are at risk and vulnerable and should not be seen as an overly interventionist response if we are trying to safeguard the older person against elder abuse.</p>



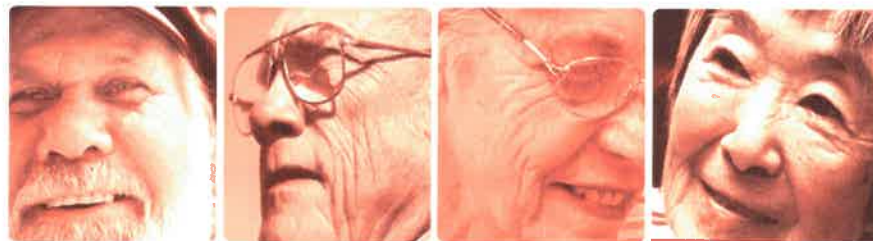
abuse?	
Question 9 What changes should be made to residence requirements or waiting periods for qualification for social security payments, or the assurance of support scheme, for people experiencing elder abuse?	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Assessment of cases on an individual basis. If an older person is being abused by their immigration sponsor there should be a means for the older person to access income support; • Support for those who enter the country on an 'assurance of support' provided by family; • The fact that the older person has very limited options to escape from the abusive situation with no money and nowhere to go; • The fact that older people with no or limited English language skills are very vulnerable and have no choice but to go back home after being abused; • There is no consequence for the alleged abuser; • The fact that having to wait for some kind of support for 10 years is an impossible test. If the government has agreed to bring people to Australia, then we have a responsibility to ensure that their health and safety is properly protected. <p>Example Case Studies</p> <ul style="list-style-type: none"> • Older person from a CaLD background was approved under the support of her daughter to live in South Australia. The older person was neglected, and abused physically and psychologically by the 'supporter' who was her own daughter. The older person had to ask for food from her neighbour and was not allowed to use the toilet. Her daughter told her she was using too much water and had to toilet in a bucket. This has had a devastating effect on the older person who had no choice but to return to her home country. Her grandson had to pay for her ticket home. • A daughter syphoned hundreds and thousands of dollars from the older person's account. The older person went back home with virtually no money left.
Question 10 What other risks arise in social security laws and legal frameworks with regard to elder	<p>ARAS considers that a hefty penalty should be imposed if the 'assurance of support' is not given. Perhaps information needs to be provided on the breach of their role and the consequences.</p>



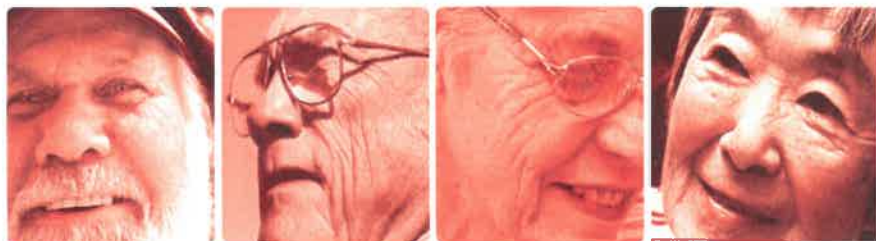
<p>abuse? What other opportunities exist for providing protections and safeguards against abuse?</p>	
<p>Aged Care</p>	
<p>Question 11 What evidence exists of elder abuse committed in aged care, including in residential, home and flexible care settings?</p>	<p>ARAS believes that evidence exists from a number of sources including but not limited to:</p> <ul style="list-style-type: none"> • Reports to the Aged Rights Advocacy Service & other Advocacy /Elder Abuse Prevention Units in other jurisdictions; • Reports to the SA Elder Abuse Prevention Phone Line & other jurisdictions' equivalent phone lines; • Reports to Aged Care Complaints Commissioner (Annual Report); • Reports to the Compulsory Reporting Line (Reported into the Operation of the <i>Aged Care Act 1997</i>; • Various jurisdictional grant funding reports; • Relevant jurisdictions' websites such NSW Health Complaints Commission Website which publishes public statements and prohibition orders; • Consideration should be given to reviewing court documents including, but not limited to: <ul style="list-style-type: none"> ○ Coronial Inquest Findings in each jurisdiction; ○ Guardianship and Administration Tribunals in each jurisdiction; ○ Industrial Relations Tribunals. <p>Jurisdictions might consider whether general court transcripts headers across all jurisdictions should include age of victim/complainant or other key word – 'elder abuse' that would facilitate easily searching case records & identifying elder abuse.</p> <p>More recently evidence exist of serious assault in SA Residential Aged Care Facility: http://www.abc.net.au/7.30/content/2016/s4507208.htm</p> <p>ARAS remains concerned that in terms of compulsory reports – the numbers are recorded in the various reports, but we have no transparent information about the outcome of such reports and whether there are any barriers to prosecutions, evidence considered unreliable, false allegations or other relevant</p>



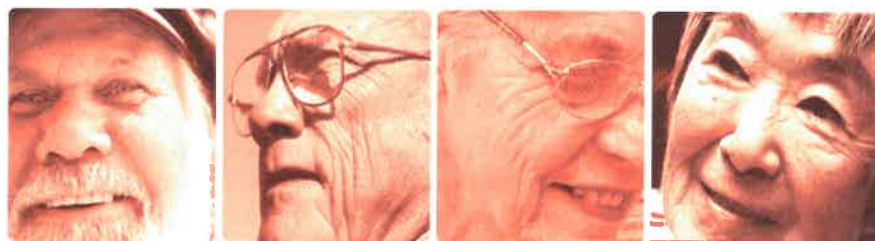
	information.
Question 12 What further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?	<p>ARAS generally believes that consideration should be given to ACAP and Assessors:</p> <ul style="list-style-type: none"> • Identifying and responding to elder abuse including a clear referral pathway to a specialist elder abuse non-government/ non service provider organisation; • Having clear processes to ensure that ACAT Assessors know who their client is; • Incorporating questions in the ACAT assessment process about elder abuse; • Compulsory reporting to Aged Care Complaints Commissioner; • Mandatory training about identifying and responding to elder abuse. <p>ARAS would recommend that the above is critical because ARAS has specifically worked with people where the ACAT assessors have taken information from a family member (as opposed to directly from the older person) who the older person has identified as the abuser.</p> <p>Another example: ACAT phones to do an assessment and it is cancelled by the abuser. Sometimes the older person is even threatened to cancel the assessment. This should be a red flag. The assessors have a responsibility to get back to the doctor to respond to this collaboratively. Perhaps an application should be made to SACAT to safeguard the older person from possible neglect.</p>
Question 13 What changes should be made to aged care laws and legal frameworks to improve safeguards	<p>ARAS Generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Making elder abuse a stand- alone prosecutable offence; • Powers of Attorney /Substitute decision-makers should be held accountable (i.e. prosecuted if they misuse an older person's funds or act outside their responsibilities); • Consistency of language and powers between various statutes would be useful; • Extending Compulsory Reporting to all forms of abuse in Residential Aged Care noting that financial abuse is a significant issue; • Removing the "Discretion not to report" as it currently stands. <p>ARAS experience suggests that Enduring Power of Attornies & Substitute Decision makers have a limited knowledge of their own obligations.</p>



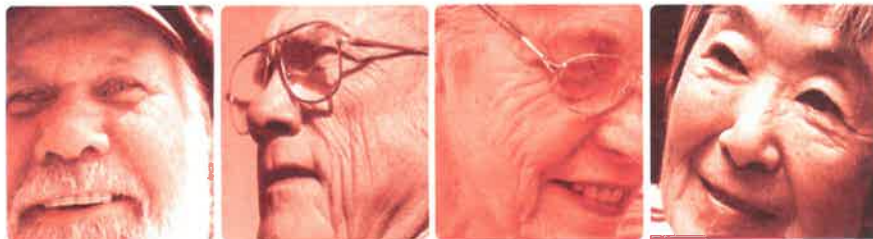
<p>against elder abuse arising from decisions made on behalf of a care recipient?</p>	<p>Additionally ARAS experience is that Service Providers, including health professionals need to ensure that they understand the law and their requirement to seek consent from a substitute decision maker if the older person is unable to give valid consent.</p> <p>Consideration needs to be given to implementing an Adult Protective Service legislative framework – we currently have child protection and domestic violence services but no specific service for elder abuse. Australia needs a comprehensive national framework for protecting older people against elder abuse.</p>
<p>Question 14 What concerns arise in relation to the risk of elder abuse with consumer directed aged care models? How should safeguards against elder abuse be improved?</p>	<p>ARAS considers that on the one hand it is important to support the older person in choosing the services they wish, and having control over the funds to provide that service, but on the other hand there may be significant risk to the older person from financial abuse.</p> <p>The risks of CDC are dependent upon what model(s) are actually implemented. There are legitimate concerns if a person can access funds that they are required to self-manage. This may provide additional incentive for financial abuse or exploitation if the situation isn't monitored in some way.</p> <p>Tightening of Enduring Power of Attorney laws may provide some further protections.</p>
<p>Question 15 What changes to the requirements concerning</p>	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Clearer accountability pathways between the Department, the Australian Aged Care Quality Agency (AACQA)& the Aged Care Complaints Commissioner (ACCC) in terms of reporting the outcomes/gaps and barriers of current compulsory reporting requirements; • Implementing penalties or compensation should the Charter of Rights be breached; • Option of having a CCTV camera in a resident's room with control of the camera resting with the older person or their representative;



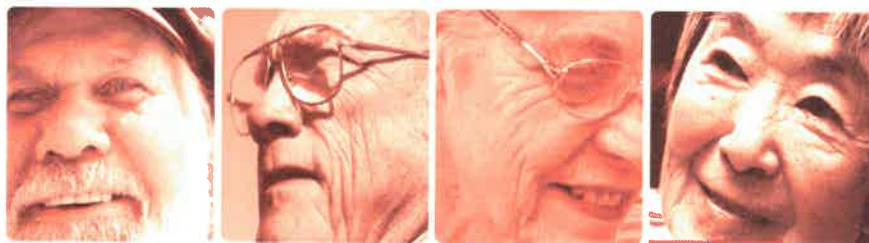
<p>quality of care in aged care should be made to improve safeguards against elder abuse?</p>	<ul style="list-style-type: none"> • Mandatory/Compulsory training about elder abuse recognition and response; • Compulsory training of all managers about how to respond to a report of suspected or alleged elder abuse; • Enhanced police checks that take into account whether a person has been charged (perhaps <i>Working with Older People Certificate</i> similar to the <i>Working with Children Certificate</i>); • Extending Compulsory reporting to all areas of elder abuse ; • Revoking the discretion not to report older people with a cognitive impairment; • Care Workers Register; • Staff ratios.
<p>Question 16 In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse?</p>	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Regulations that clearly stipulate the specific circumstances, and the evidence required for restrictive practices; Restrictive practices must be assessed in context and the rights and wishes of an individual must be given due consideration. There is a pervasive belief that all restraint is bad or wrong when in reality this isn't always the case. Sometimes 'restraint' is requested by an individual for their own safety or piece of mind and that request is denied because the Residential Aged Care Facility (RACF) has a no restraint policy. Once again a resident's right to make choices about their own life, and their right to take risk is ignored. Any regulation must take into account safety considerations and the wishes of those that it affects. <p>ARAS is also aware of a particular issue in South Australia which with section 32 Powers which suggests that each Resident residing in a 'secure dementia unit' or is unable to leave the Residential Aged Care Facility when they wish is considered to be detained and should by the letter of the law have a SACAT Guardianship Order with section 32 Powers in place. http://www.opa.sa.gov.au/resources/restrictive_practices. ARAS believes that this requirement is not generally enforced and if done so may lead to significant issues for SACAT as well as the current Coroners Court.</p> <p>The broader concern as to a person's right to not be detained against their will and have the opportunity to be brought before a court to consider whether they have been deprived of their liberty should also be considered.</p> <p>There does appear to be a 'greyness' in the law in South Australia in terms of what may be considered 'chemical restraint' or 'medical treatment' and this will in turn determine who may be able to consent to such treatment. ARAS is generally of the view that only the older person or their substitute decision maker should be consenting to medical treatment as is currently the requirement. However if a person has not formally appointed a substitute decision</p>



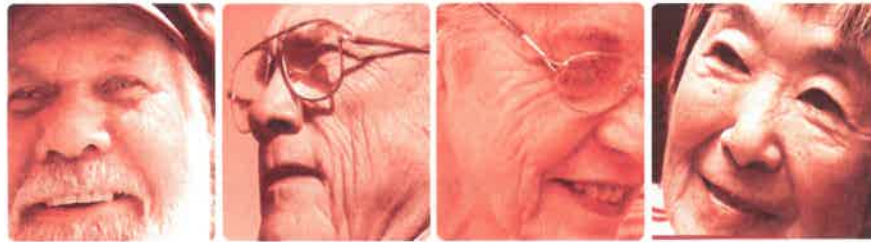
	<p>maker then a list of persons is provided for in the Act. The last person currently listed is a person 'charged with the day to day care of an older person' may consent. However under the regulations they are specifically excluded from consenting to 'chemical restraint'.</p> <p>ARAS receives reports where the substitute decision maker hasn't been consulted about care changes or medical treatment. ARAS believes the broader issue of consent needs to be considered.</p>
<p>Question 17 What changes to the requirements for reporting assaults in aged care settings should be made to improve responses to elder abuse?</p>	<p>ARAS believes consideration should be given to:</p> <ul style="list-style-type: none"> • Compulsory reporting extended to all categories of abuse; • Extending reporting to Home Care noting that older people are potentially remaining at home for longer periods whilst receiving higher levels of care and increasingly vulnerable; • Ensuring the right to self-determination is also considered; • All assaults should be reported regardless of whether or not the perpetrator has a cognitive impairment; • Some type of feedback loop between State police and the Department of Health so that reports and outcomes can be tracked and evaluated. Currently we have no idea of the outcome of the current reports. What were the issues? – lack of evidence, false allegation, evidence considered unreliable because complainant is a person living with dementia; • Education of police officers. Currently it is suspected that they may have little understanding of why people are reporting abuse based only on suspicion without any other evidence; • Staff training on forensic wound identification, preservation of evidence and crime scene preservation. This may contribute to having reliable evidence to back up suspicions or allegations of physical and sexual assault.
<p>Question 18 What changes to aged care complaints mechanisms should be</p>	<p>ARAS would like clarity about the fact that if a service provider has a responsibility to provide a safe and secure environment then all elder abuse should potentially fall into the realm of the Aged Care Complaints Commissioner (ACCC). However there is limited information about how ACCC manages elder abuse and appears to be limited interaction with elder abuse prevention teams. Consideration should be given as to how the different agencies work together.</p> <p>ARAS is concerned that the ACCC may rush to resolve complaints based on a reconciliation and early resolution model. This model may not suit a more sophisticated evidence gathering model that may be required to uncover elder abuse.</p>



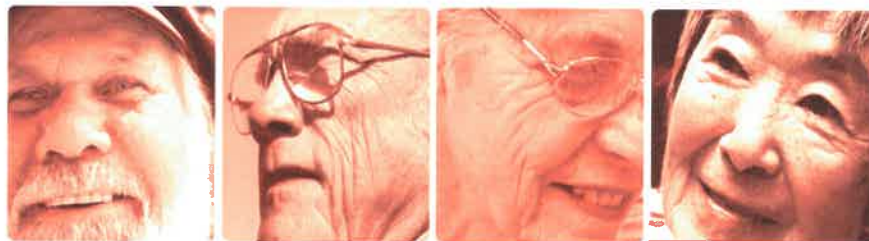
made to improve responses to elder abuse?	Older people also need to know that ACCC is an independent umpire and they should be advised that they may request 'as a right' an advocate to support them with the complaints process.
Question 19 What changes to the aged care sanctions regime should be made to improve responses to elder abuse?	ARAS generally considers that there does need to be a penalty/sanction when a breach of a person's human right occurs. Alternatively consideration should be given to a mechanism for the ACCC or delegate of the Department of Health, for compensation or the waiving of care fees of the older person if they have been abused /care needs not met and there was a failure by the service provider.
Question 20 What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification	<p>ARAS currently provides advocacy support to older people across the current spectrum of aged care services.</p> <p>This includes support for older people at risk of or who are experiencing elder abuse. However ARAS remains concerned about our ever expanding client base with decreasing /limited funding. In real terms the National Aged Care Advocacy Program funding has failed to keep pace with the requirements for support from advocates.. Being resourced for a longer period of time – such as for five years would be welcome and would provide certainty to staff about job security, noting that advocates are highly skilled professionals, as well as allowing for business certainty such as entering into contracts.</p> <p>It is important to ensure that Advocacy services are adequately resourced to provide direct advocacy services as well as education sessions to both residents/clients as well as service providers. ARAS consumers/ clients tell us that they hear advocates give information talks about their rights and provide real life examples, and in turn they feel confident in raising their concerns with an advocate. ARAS suggests that each jurisdictional advocacy service should be resourced and funded adequately to provide a minimum of 1 resident/ staff talk per RACF as well as 1 client/staff talk per service provider in a location; such as suburb, region, country town to ensure that all older people have access to information about their rights and entitlements as well as living a life free from abuse.</p>



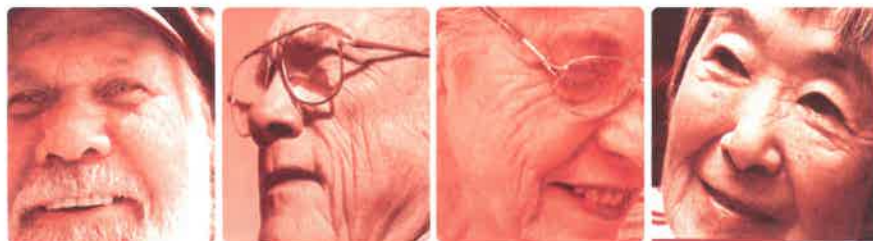
<p>n of and responses to elder abuse?</p>	<p>Consideration should be given to whether a levy is applied as part of accreditation which is used to ensure independent education from Advocacy services about rights, entitlements and elder abuse is made available to all residents/clients and staff.</p> <p>Consideration could also be given to expanding Advocacy Services role to be part of an adult protective service. Given ARAS current expertise and knowledge in this area the Advocacy services are well placed if adequately resourced to move into such a role.</p> <p>In terms of the community visitors scheme ARAS believes that the current purpose of the scheme to visit an older person and to alleviate loneliness is essential to ensuring older people do not live in social isolation. ARAS believes it would also be beneficial for community visitors to receive education and training about elder abuse.</p>
<p>Question 21 What other changes should be made to aged care laws and legal frameworks to identify, provide safeguards against and respond to elder abuse?</p>	<p>See previous answers including the need for national frameworks and consistent laws across jurisdictions.</p>
<p>National Disability Scheme</p>	
<p>Question</p>	



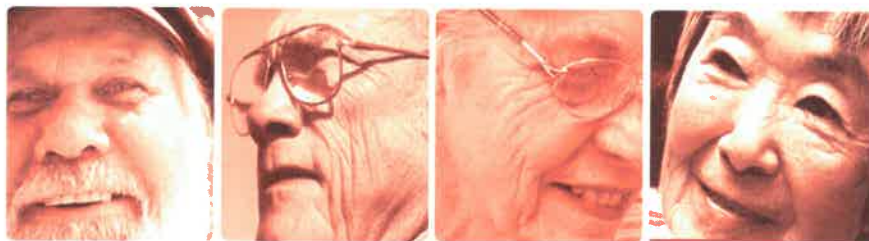
<p>22 What evidence exists of elder abuse being experienced by participants in the National Disability Insurance Scheme?</p>	
<p>Question 23 Are the safeguards and protections provided under the National Disability Insurance Scheme a useful model to protect against elder abuse?</p>	
<p>Superannuation</p>	



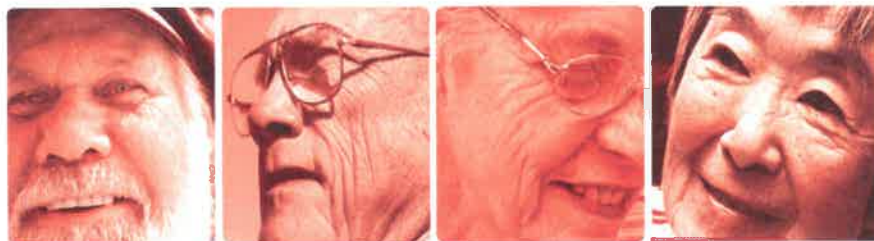
<p>Question 24 What evidence is there of older people being coerced, defrauded, or abused in relation to their superannuation funds, including their self-managed superannuation funds? How might this type of abuse be prevented and redressed?</p>	<p>ARAS has been contacted by clients in regards to pressure, threats and coercion from family members to withdraw their Superannuation with the benefits going to the abuser and not the older person. The older person cannot save the money again and is left financially devastated. There is no known agency who can deal with this form of abuse re superannuation funds.</p> <p>Current laws do not seem to be adequate to respond to abuse in the context of superannuation funds.</p> <p>The outcome is that the government provides financial support to the older person who is left with no superannuation and no one to investigate or to retrieve the funds lost.</p>
<p>Financial Institutions</p>	
<p>Question 25 What evidence is there of elder abuse</p>	<p>ARAS receives many reports of financial abuse which has some form of involvement with the banking sector including but not limited to:</p> <ul style="list-style-type: none"> • Reports of older people without mental capacity being taken to the bank to make withdrawals; • Use of ATM cards without consent; • Financial institution accepting an Advance Care Directive when dealing with an alleged abuser instead of a Power Of Attorney document;



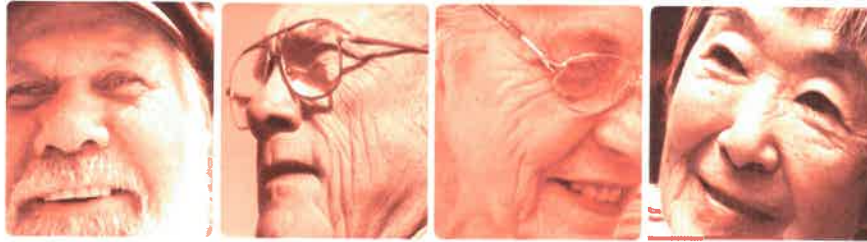
<p>in banking or financial systems?</p>	<ul style="list-style-type: none"> • Financial Institutions not speaking directly to the older person, but instead to the person who presents at the bank with them regarding information about the older person's account; • Bank teller providing the alleged abuser a form to be a signatory on the older person's account when it is the older person does not understand what it is happening and what permission they have just given; • An older person with mental capacity not receiving any mail or bank statements and when visiting the bank to ask for their account balance being denied by the bank teller as they normally deal with the son. The older person was then escorted out the door by bank security. The older person left feeling very upset and humiliated; • Another elderly gentleman (mental capacity assessment by a geriatrician) revoked his son as POA went to the bank with the assessment and a letter of revocation from a legal service. The bank manager would not acknowledge the revocation form or the letter from the legal service as the bank manager knew the son; • Alleged abusers accessing older person's banking details by internet banking with information and statements being redirected to the alleged abuser.
<p>Question 26 What changes should be made to the laws and legal frameworks relating to financial institutions to identify, improve safeguards against and respond to elder abuse? For example,</p>	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Public education as an abuse prevention strategy. Banks can educate their customers by providing them written information on how they can safeguard themselves from financial abuse; • Monitoring of transaction trends to alert people of uncharacteristic transactions; • Compulsory reporting (internally). <p>The Australian Banker's Association has developed a voluntary online education/assessment tool, but it seems there has not been a large uptake by staff.. ARAS believes that there should be mandatory training for all bank staff about financial abuse and that reporting requirements should be imposed. It should be flagged on the bank's system when there is a POA so that if someone else presents a POA, staff would be alerted. Registrations of POA would assist staff to establish the authenticity and currency of this legal document.</p> <p>Greater accountability for banks facilitating transactions made by the alleged abuser.</p>



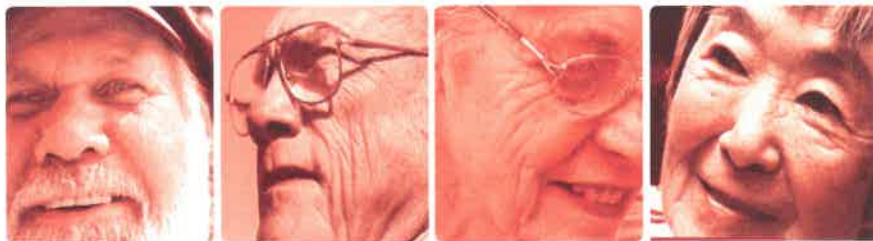
should reporting requirements be imposed?	
Family Agreements	
Question 27 What evidence is there that older people face difficulty in protecting their interests when family agreements break down?	<p>Reports to ARAS and the Elder Abuse Prevention Phone Line of verbal agreements that are broken.</p> <p>Cases have been reported where the older person has invested a great deal of money into the granny flat only to end up homeless when her son or daughter's marriage breaks down or the relationship between the older person and their child breaks down.</p>
Question 28 What changes should be made to laws or legal frameworks to better safeguard the interests of older	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Formalising family agreements via legislation; • Legislation having provision for enforcement or compensation; • National framework to provide education /toolkit to families undertaking such an agreement. Information from Seniors Rights Victoria about family agreements is a good resource that could be made available across jurisdictions. <p>ARAS understands that in 2007, Older People and the Law, the House of Representatives Standing committee on Legal and Constitutional Affairs concluded that family agreements warranted a greater deal of formalisation and some form of regulation with the recommendation that there be an investigation of legislation to regulate family agreements. ARAS understands that the Australian Government accepted these recommendations in principle.</p>



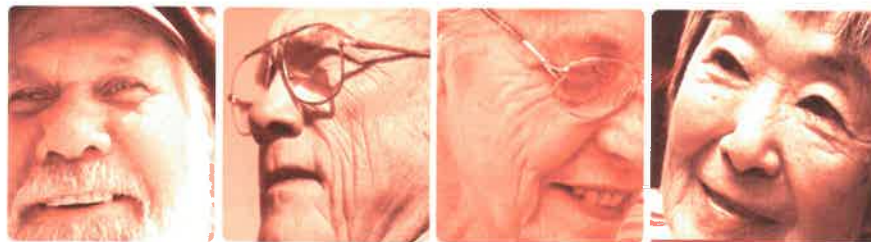
people when family agreements break down?	
Appointed Decision Makers	
Question 29 What evidence is there of elder abuse committed by people acting as appointed decision-makers under instruments such as powers of attorney? How might this type of abuse be prevented and redressed?	<p>ARAS has received reports to ARAS Advocates and the Elder Abuse Prevention Phone Line.</p> <p>I refer to data provided for the last ten years. Financial abuse is a significant issue and misuse by an Enduring Power of Attorney is also an issue.</p> <p>ARAS also received reports that Substitute Decision Makers are not being consulted in terms of consent for care when the older person is not able to consent.</p>
Question 30 Should	<p>ARAS is of the view that registration of an Enduring Power of Attorney/ Advance Care Directive is essential.</p>



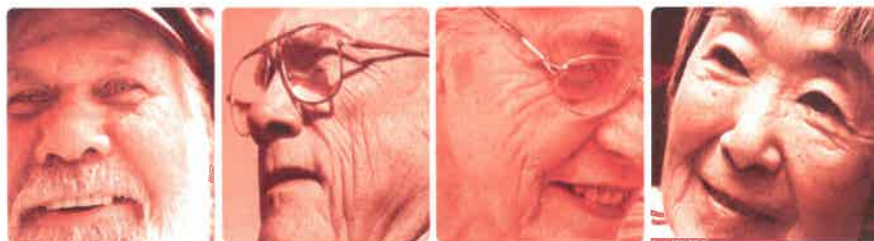
<p>Id powers of attorney and other decision-making instruments be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?</p>	<p>ARAS's view is that a government department such as the Attorney General's Department would be appropriate. Other options could be the relevant Public trustee, Office of the Public Advocate or Land Titles Office.</p>
<p>Question 31 Should the statutory duties of attorneys and other appointed decision-makers be expanded to give them a greater role in protecting</p>	<p>ARAS's experience of the number of Attorneys potentially abusing older people would make us caution against expanding the role. Additional accountability mechanisms with private guardians and administrators should be in place with periodic reporting and auditing of decisions.</p>



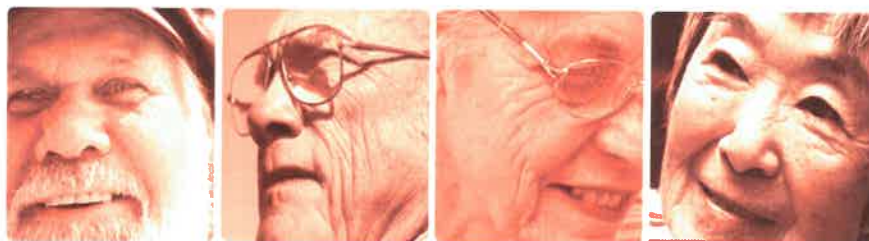
older people from abuse by others?	
Question 32 What evidence is there of elder abuse by guardians and administrators? How might this type of abuse be prevented and redressed?	<p>Reports to ARAS Advocates and the Elder Abuse Prevention Phone Line. See previous reference in Q.29. ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Periodic reporting by guardians and administrators; • Auditing of PoA bank statements/records; • Training of POA attorneys who do not fully understand about their responsibilities and duties and not abuse their position of trust; • A new offence for dishonestly obtaining or misusing a POA; • Information about preventative strategies being promoted throughout communities; • More education to communities on the roles of administrators and guardians, with easier access to legal services for advice before signing such documents; • Promotion of advocacy services which have been set up to provide information about rights and to assist in protection of those rights (such as the right to revoke a POA to prevent further abuse, once capacity is established - this right is not known by many consumers); • Strengthening the legislation, with heavier penalties for those who do abuse; • Education and awareness of the roles and responsibilities of the POA, with training for Donees; • Training for JPs/solicitors witnessing these documents; • Insisting that Banks and Financial institutions see proof of loss of mental capacity when a POA has been activated.
Public Advocate	
Question 33 What role should public advocates play in	<p>It is important for Office of the Public Advocate (OPA) to continue its role to provide a protective service for those who cannot speak for themselves due to dementia or diminished capacity. This group is more vulnerable when there are family members in conflict in regards to making financial and caring decisions. Perhaps this role should be extended to those who need assistance even though they have the capacity to make decisions but are not able to, due to family pressures and undue influence from family members.</p> <p>More staffing resources should be available to appropriately investigate and to respond upon receipt of a complaint, particularly entry onto premises with a</p>



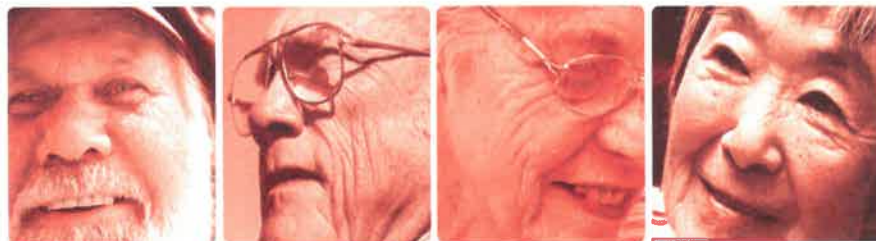
investigating and responding to elder abuse?	focus on providing support services to assist in circumstances of suspected or actual abuse.
Question 34 Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?	<p>ARAS is generally of the view that an Adult Protective Service should be considered such as in other international jurisdictions.</p> <p>A report could be made to a government department who in turn could refer the report to a non- government adult protective service that could partner with the Police and other services to investigate the report and provide support as necessary.</p>
Health	
Question 35 How can the role that health professionals play in identifying and responding to elder abuse be improved?	<p>ARAS is generally of the view that Health professionals role can be improved by:</p> <ul style="list-style-type: none"> • Compulsory training in identifying and responding to all forms of elder abuse; • Training being included in undergraduate programs and Certificate-level qualifications; • Health assessment tools to include section on elder abuse; • Elder Abuse 'Toolkit' for health professionals (i.e. a tool that outlines what to do next, when elder abuse has been identified); • Including questions about elder abuse in annual health assessments of older people.



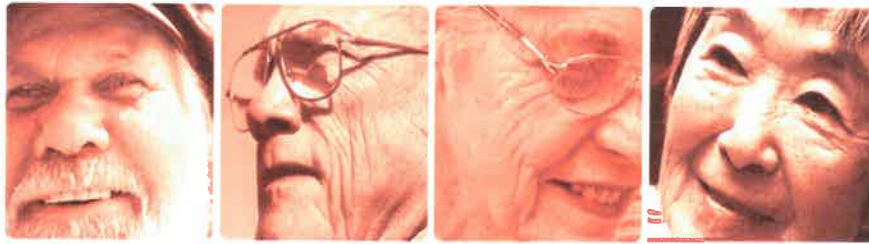
<p>Question 36 How should professional codes be improved to clarify the role of health professionals in identifying and responding to elder abuse?</p>	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Including elder abuse in codes of ethics for health professionals and social workers; • Addressing elder abuse in key competencies for health workers and social workers; • Training so that all health and allied health professionals have better communication and clinical skills to be able to identify referral pathways to respond to elder abuse; • As with the example given re Justice Connect Seniors Law and co-health in north western Melbourne to help older people experiencing elder abuse, this may be the only time that an older person can speak openly about their home situation in a safe environment with a lawyer and a health professional present at the same time, giving the older person easier access to legal advice without the alleged abuser present.
<p>Question 37 Are health-justice partnerships a useful model for identifying and responding to elder abuse? What other health service models should be</p>	<p>ARAS generally believes that considerations should be given to:</p> <ul style="list-style-type: none"> • Health-justice partnerships; • Health organisations should also partner with agencies that work specifically with the issue of elder abuse; • Being provided advice from a legal perspective and a health professional in a safe environment without the presence or knowledge of the alleged abuser, providing the older person with a co-ordinated response immediately. The health-justice partnership is a model that could work in SA; • Advocacy in a health setting where the older person can discuss their abusive situation in a health setting and be provided with advocacy support could also work; • Advocacy in health settings or councils in rural and remote having a greater presence in areas providing a model of care of those involved to identify pathways for intervention based on the preferences of the older person when undertaking safety planning.



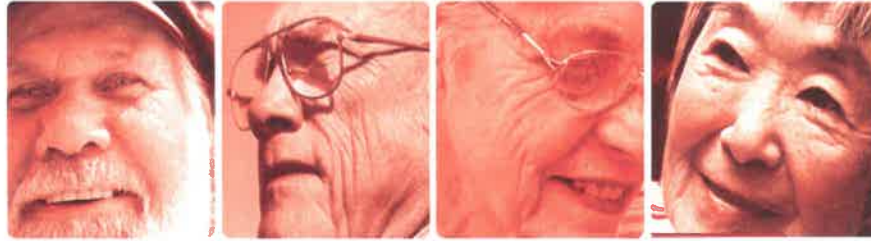
developed to identify and respond to elder abuse?	
Question 38 What changes should be made to laws and legal frameworks, such as privacy laws, to enable hospitals to better identify and respond to elder abuse?	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> • Care worker registration; • A training framework to identify the roles and responsibilities of staff including health and allied health professionals; • Perhaps a consent form signed by the older person when there is suspected abuse in order to respond to the abuse collaboratively, as soon as possible; • If the older person is at risk then it warrants information sharing without consent of the older person – Information Sharing Guidelines.
Forums for Redress	
Question 39 Should civil and administrative tribunals have greater jurisdiction to hear and determine	<p>ARAS is generally believes consideration should be given to:</p> <ul style="list-style-type: none"> • Adult protection systems; • Expanding jurisdiction as addressing financial abuse may involve very costly and complex applications to courts, especially in regards to financial abuse and could be heard through SACAT (particularly in the areas of service provision orders, protection orders and removal and placement of orders as well as accessibility issues and changes to procedural requirements to take into account the vulnerability of a party or witness); • If a person has capacity or capacity is questioned and is vulnerable, matters related to elder abuse should be considered to be heard through SACAT due to family threats and strong family influences; • Ensuring that the relevant tribunal has transparent processes and independent support from an Advocate;



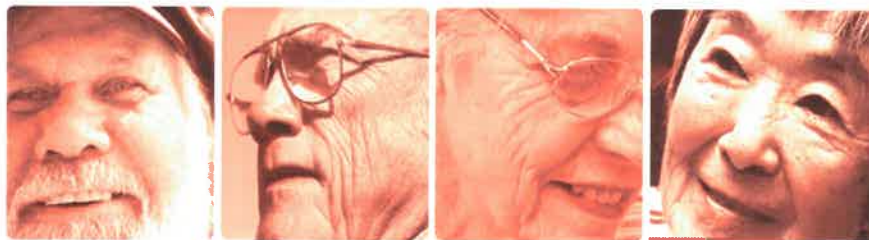
matters related to elder abuse?	<ul style="list-style-type: none"> It would also be useful if the tribunal could order compensation.
Question 40 How can the physical design and procedural requirements of courts and tribunals be improved to provide better access to forums to respond to elder abuse?	<p>ARAS generally believes consideration should be given to:</p> <ul style="list-style-type: none"> The use of technology; this would enhance access for rural and regional communities and could encourage those reluctant to enter the court system to take action. Many older people may be deterred by the formality of a courtroom, and be intimidated by procedures; The fact that Aboriginal people may be disinclined to become involved with the legal system, and CALD older people may have particular sensitivities to the traditional court system; Tele or video conferencing to provide better access to respond to elder abuse particularly those in rural and remote areas or for those who cannot attend due to health needs.
Question 41 What alternative dispute resolution mechanisms are available to respond to elder abuse? How should they be improved? Is	<p>ARAS generally believes that consideration should be given to:</p> <ul style="list-style-type: none"> Dispute resolution services and mediation services. These should be limited to financial abuse and guardianship issues, not physical abuse and sexual assault; Office of the Public Advocate would be the appropriate location – Mediation Resolution Service prior to going to SACAT; Relationship Australia - Elder Relationship Centre – pilot program; There should be options available for people living outside the metropolitan area.



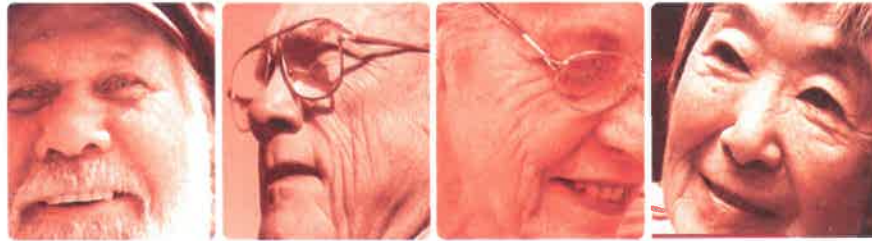
there a need for additional services, and where should they be located?	
Criminal Law	
Question 42 In what ways should criminal laws be improved to respond to elder abuse? For example, should there be offences specifically concerning elder abuse?	<p>ARAS generally believes consideration should be given to:</p> <ul style="list-style-type: none"> • Having specific elder abuse offences such as we currently have laws for child abuse and Domestic Violence situations; • Learning from these models given the constant increasing numbers of older people being abused; • Learning from these models given the fact that these issues have been openly discussed in the community longer compared to elder abuse; • The fact that although there are distinct differences between child abuse, domestic violence and elder abuse, these are all matters dealing with human rights issues and responses should be equally as important; • Reversing the burden of proof.
Question 43 Do state and territory criminal laws regarding neglect offer	<p>ARAS believes that the current laws do not provide an appropriate response to the neglect of older people. Consideration of an Adult Protective Service would assist in potentially addressing this gap.</p>



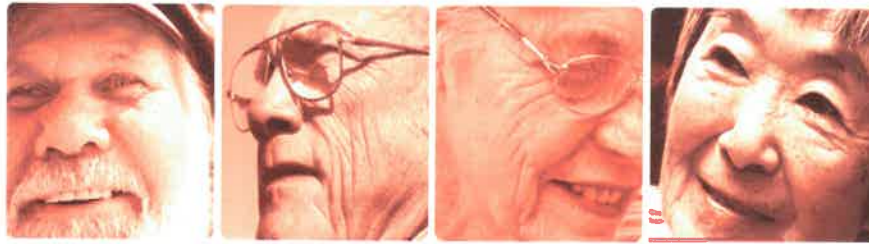
an appropriate response to elder abuse? How might this response be improved?	
Question 44 Are protection orders being used to protect people from elder abuse? What changes should be made to make them a better safeguard against elder abuse?	ARAS believes that currently Intervention Orders are not being used as widely as they could and changes may need to be made to give a greater effect to such orders.
Question 45 Who should be required to report suspected	<p>ARAS believes consideration should be given to a broad range of people to report elder abuse including but not limited:</p> <ul style="list-style-type: none"> • Aged Care Service providers; • Health professionals; • SA Police; • Bank Staff;



elder abuse, in what circumstances, and to whom?	<ul style="list-style-type: none"> • Office of the Public Advocate; • Public Trustee; • Advocacy Services; • Elder Abuse prevention Phone Lines.
Question 46 How should the police and prosecution responses to reports of elder abuse be improved? What are best practice police and prosecution responses to elder abuse?	<p>ARAS believes considerations should be given to:</p> <ul style="list-style-type: none"> • Mandatory education about identifying and understanding elder abuse for all Police as they are often first responders or who people will seek to report to; • A similar policy of mandated response to report domestic and family violence and should include elder abuse; • Criminal laws to be reviewed to ensure that elder abuse is susceptible to prosecution; • A dedicated elder abuse unit similar to a family violence unit to investigate elder abuse including financial abuse; • Rectifying the fact that an alleged abuser living in an older person's home is unable to be evicted by SA Police due to rights of tenancy.
Question 47 How should victims' services and court processes be improved to support victims of	<p>ARAS believes the court system should support advocates who can assist and support older people with special needs through the court processes. Court systems should take into account older people's needs and fast track any cases to ensure that evidence can be given in a timely manner and possibly before any potential cognitive decline may occur. Improving funding to victims' support agencies and counselling services due to the level of psychological abuse experiences.</p> <p>The specific needs of the older person should be considered (cf - younger people experiencing family violence).</p>



elder abuse?	
Question 48 How should sentencing laws and practices relating to elder abuse be improved?	ARAS believes that sentencing laws relating to elder abuse should be strengthened. The recent 7.30 Report case led to a sentence of 3 weeks being finally served. ARAS believes that this is inadequate.
Question 49 What role might restorative justice processes play in responding to elder abuse?	ARAS believes that restorative justice may have a role in relation to financial abuse and neglect.
Question 50 What role might civil penalties play in responding to elder abuse?	ARAS believes that many people may consider civil action rather than criminal charges. If severe penalties are put in place, particularly in cases of financial abuse, this may act as a deterrent. Currently there is no requirement to pay back the monies owed unless the older person takes the alleged abuser to court



Other Comments:

Any changes to laws or legal processes should be considered with consideration to Aboriginal and CALD communities as well as all other special needs groups including, but not limited to LGBTI community, care leavers, veterans and rural and regional communities in mind.

Also of importance is the need to consider an older person's right to self-determination when notions of compulsory reporting are discussed.