

FMC

Mediation and
Counselling Victoria

Elder Abuse (DP 83) Discussion Paper

**Submission to the
Australian Law Reform Commission**

February 2017

Introduction

FMC Mediation and Counselling Victoria have been providing an Elder Abuse and Conflict Resolution Service consisting of specialist mediation, facilitated family discussion, coaching and counselling for over two years. We have had over 70 referrals to the service; with 22 clients utilising FMC services, the outcomes to the service were:

- 80 % who underwent mediation reported that abuse had ceased
- 85 % reported an increase improvement in decision making
- 82 % reported a reduction in conflict
- 81 % reported feeling happier

The FMC service was also able to refer some enquirers to other more appropriate services such as medical and home support services. Very few other organisations have had as much experience in dealing with elder person conflict issues, in this way, in Australia. The following FMC response to the Australian Law Reform Commission (ALRC) Discussion Paper, considers the experience of the organisation in providing these services, as well as the feedback provided by the clients of the service over the past two years.

Recognising the wishes of the older person

FMC's mediation service was mentioned in the original Elder Abuse Issues Paper (in point 173 under forums for redress). Unfortunately, alternative dispute resolution and other complementary non-legal forms of redress were largely dropped from the subsequent Elder Abuse Discussion Paper. In section 12.6 – 12.11, there is some discussion of a multi-disciplinary health-justice type response and the support of the ALRC to pursue these options, although these types of responses immediately engage the legal system. From FMC's experience of older persons' personal situations, the legal route is not necessarily the preferred pathway for older people experiencing elder abuse conflict.

FMC agrees with the majority of the recommendations in the paper relating to legal reform, but are concerned that there are limited or no alternative approaches for older people to consider, prior to entering the court or tribunal process. In the experience of FMC, the priority of an older person in most situations of financial or emotional abuse is to maintain or improve the relationship with the 'abuser' (most likely to be a family member) and the desire to make the abuse stop. The desire to mete out a legal punishment to the 'abuser' is not the foremost reason for seeking support.

FMC would suggest a stepped approach should be considered in response to Elder Abuse. The first stage is to allow the older person to access a support framework with minimal intervention, followed by a range of complementary and more interventionist options, until the final option is court for cases with serious and significant risk or abuse. FMC will present their model that meets the client needs and wishes, later in this response.

Elder abuse is a different dynamic

Elder abuse has been defined by many as a subset within the broader definition of Family Violence and as such, responses are often recommended that have been successful in dealing with the most common forms of family violence, i.e. partner to partner violence. FMC consider this view to be too broad an approach, as in our experience, there are significant differences between the experiences of those involved in Elder Abuse to the more commonly understood experiences of family violence. There are also often significant differences in the victims desired outcomes and therefore, the approach that needs to be taken between the two forms of violence/abuse also needs to vary.

NARI's* analysis of data collected by Senior's Rights Victoria over a two-year period showed that, 92% of abuse was occurring within families and 67% was perpetrated by adult children against their parents. Financial

abuse and psychological/emotional abuse are overwhelmingly the two most frequent types of matters reported by all SRV clients.

The context of Elder Abuse is generally within a family relationship. FMC has been involved in family and relationship counselling and mediation for over 30 years, and has run an elder specific mediation and counselling service for over two years. Up to 60% of family dispute clients have experienced family violence. Drawing upon its experience, FMC would like to highlight the differences between the two forms of violence and also provide some insight gained from our clients about their desired outcomes, in the hopes that any future planning of response frameworks will be appropriately informed.

In partner to partner family violence, the victim often feels guilt ('I chose the wrong partner' and 'why can't I protect myself or my children'), shame ('what will people think of me'), vulnerable ('I can't see a way out without them hurting me more and the law can't protect me'), responsible and minimising of the abuse (they were just drunk, I shouldn't have upset them), and stuck (I can't leave because I can't afford it, I have nowhere to go). All of these feelings / experiences are common and with increasing awareness, more victims are able to summon broader resources to change their circumstances. With greater resources addressing this situation it is hoped that they are able to find the strength and motivation to change through a desire to protect their children, because they know they have time to rebuild their lives, they know they will have family support once they make the decision, or they know it is in the media and there is community sympathy and support for such cases, and that there are specific legal approaches that have been specifically designed to support them.

The same cannot be hoped for in situations of elder abuse. The victim often feels all the above negative feelings with few, if any of the positive resources. An older person doesn't have the motivation to leave because they have their children or grandchildren to protect, they generally don't have time (or don't think they have time) to rebuild their lives, there is little societal recognition or support for such an issue, and they are aware that taking any action is likely to split the family rather than bring them together in support - given that the perpetrator is often one or more members of the family. On top of all this, the older person will often feel that it is their fault and feel extra shame as they raised their family, so they must be to blame, and they rarely, if ever, want to see their own family members (children or grandchildren) get in trouble (either with the law, or in a practical sense by becoming homeless).

FMC notes that of its elderly clients 86% presented with depression /anxiety. Older victims also are often fearful that if they say something then they will be either not believed, or will lose their carer and be put in a home, or both. Other victims may have been living in this type of abusive relationship for years so may see it as normal so don't define it as abuse, don't tell anyone and don't look for an alternative. The issues that come up regarding elder abuse are often long term entrenched issues, that are generally difficult to understand or get to the bottom of by an external party. FMC has experienced situations where it has taken a number of sessions with the older person to be able to clearly understand the situation, whether abuse of any description has occurred, who the abuser is (and potentially what the motivation or intent behind the abuse is), and what the desired outcome of the older person is. FMC does not seek to resolve decade long sibling rivalries and parental conflicts. Its service focuses on coaching the older person to a position where they can self-advocate to their family (and abuser) to resolve their issues.

*Profile of elder abuse in Victoria. Analysis of data about people seeking help from Seniors Rights Victoria. SUMMARY REPORT
June 2015. National Ageing Research Institute in partnership with Seniors Rights Victoria

The value of family relationships in older people’s lives

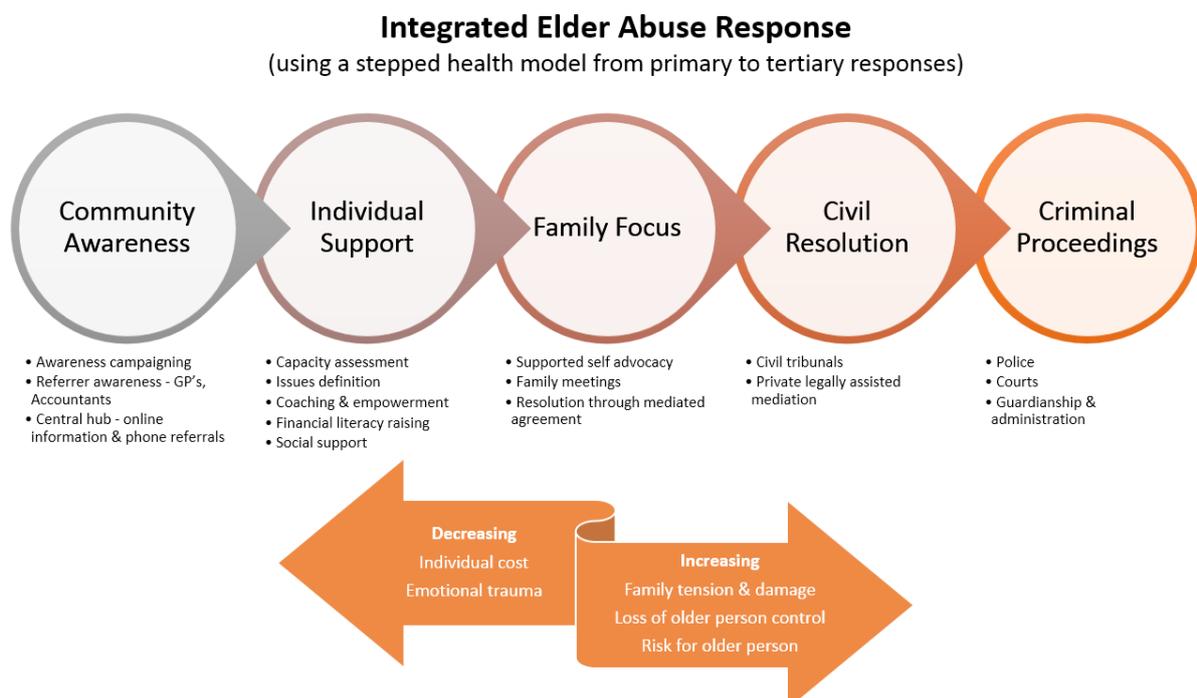
Clients who have come to the FMC seniors program with issues of financial and/or emotional abuse invariably want to retain their relationship with the abuser (child, grand child, other family member), so will not consider calling the police or a lawyer. They often struggle to acknowledge the abuse even to a counsellor or mediator for fear of starting a process they don’t want, and can’t stop. So, taking a hard line legal approach is very unlikely to be successful in dealing with the very emotional and damaging issue of elder abuse. Taking a punitive approach is more likely to drive the issue behind closed doors with victims too scared to speak out as they know their (related) abuser will get in ‘trouble’. As an example, FMC have seen a number of clients who have difficulties with their family members ‘abusing’ them, and initially went to Seniors Rights service who suggested they take legal action. These older people are reluctant to go back to Seniors Rights service, because they don’t want to take legal action and feel they want an alternative way to stop the abuse. FMC believes that if older people were aware of, and had access to alternative ways to stop the abuse and maintain family relationships a community need would be met.

This, from the FMC perspective, is what is missing in the discussion paper from ALRC. Victims of Elder Abuse seem to want a stepped approach to dealing with their situation rather than a purely legalistic approach. They want to try an approach that has the potential to retain some sort of relationship with the ‘perpetrator’ and will get the abusive behaviours to stop. This stepped approach is used more in the health sector than the legal sector, but seems consistent with what older people are looking for. To FMC, facilitated family discussions and mediation and the empowerment of the older person represents a valuable and effective earlier stage intervention for Elder Abuse that complements the legal process.

Proposed Model

FMC would advocate for a holistic stepped approach to the issue of elder abuse (similar to health/mental health approaches and frameworks), offering services at the primary, secondary and tertiary levels of support/need, as well as some ongoing consistent support for the older person throughout the process.

The model considers a number of options for older people at risk of, or experiencing elder abuse. FMC is suggesting that an integrated model with options decreases the emotional and financial risk that can hold back older people from seeking support to resolve the abuse they are experiencing.



Primary support could include activities / services such as providing community education and awareness of the issues, risk factors and signs of potential abuse, and providing a central hub that provides information to individuals as well as the general public, as well as being the central operational centre, where suspected abuse can be reported and appropriate referrals made. Some of the education / awareness activities would be focussed on 'at risk' populations but is less about individual situations and more about information dissemination to the broader population. This would also include appropriate training and development of key professionals such as GP's, those in aged care or health services, and also those in the financial sector, to assess for and recognise risk factors associated with elder abuse.

Secondary support starts to provide a service to individuals when they need it, either in a preventative way or in a reparative way. The framework around supporting those experiencing elder abuse would require key professionals to be able to undertake a professional and appropriate individual risk assessment, when seeing older people, providing clarity around referral pathways and support options, providing services that take a preventative or 'soft' approach such as specialist counselling, mediation, facilitated family discussions or other alternative dispute resolution options. Other 'soft' approaches could include linking the older person into the community for social connection, and also looking at options for (potential) 'perpetrators' such as alternative accommodation for adult children who are at risk of (or already are displaying signs of) perpetrating elder abuse. Often the 'perpetrator' has their own difficulties or issues that will need to be addressed if the abuse of the older person is to cease. For example, if the victim's son is living with her in the house because he has his own financial or housing issues, then just kicking him out of the house is unlikely to be an appropriate or successful response. Firstly, the victim is unlikely to want to see her son homeless and likely to get into more trouble, and secondly, the perpetrator being made homeless just creates further societal issues – so fixing one problem may create others.

Finally, Tertiary support needs to be made available for those that have already been victims of elder abuse and require immediate and significant responses to ensure the safety of themselves or their property. Those services are likely to include tribunals, courts, police, public advocates and public administrators and other legal options.

At all points along this stepped support model, the older person needs to be supported. Supported emotionally, supported with information about next steps and what is happening, supported with the provision of options and the opportunity to determine what they wish to happen next. Some of these processes will be very confusing for an older person if they haven't been involved in them previously, and what no one wants is for the older person to become the victim of secondary trauma at the hands of the system that has been set up to protect them.

Key points to consider are the client's wishes in all this and what they will be willing to be involved in i.e. non-punitive, non-legal approach that supports communication and relationship management. This model also provides a cheaper, quicker diversionary approach, similar to Family Dispute Resolution in the family law context, given that this issue is likely to increase in number with the increase in societal understanding of the issue and therefore reporting, as well as the aging population and subsequent rise in elder abuse as a ratio of the broader population.

The cases that have arisen at FMC have been complex and emotive, with entrenched family dynamics that have been playing out for decades. There needs to be solutions available that are flexible, use friendly, and accessible with an emphasis on supporting the older person.

The ALRC paper has highlighted the right to self-determination in its considerations, and that "the will, preferences and rights of the older person must be respected." A key way to fully protect the rights of seniors

to self-determination is to provide safeguards against abuse occurring, and resources to appropriately address it once it has occurred. Once abuse is present, the right to make choices is significantly undermined.

Thank you for your time and consideration.

Yours Sincerely,

Serge Sardo
Chief Executive Officer