



Section 2: Supporting information

What is elder abuse?

The World Health Organisation's (WHO) definition of the abuse of older people:

"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".²⁵

Elder abuse can take various forms such as physical, psychological or emotional, sexual and financial abuse. It can also be the result of intentional or unintentional neglect. In this context, abuse is generally perpetrated by a relative of the older person where the trust relationship involves dependency and proximity to the older person such as an adult child or spouse.

Supporting and educating the older person, no matter what their choices are in relation to their situation is paramount. Providing information about available support and options can support the older person in their decision-making and in making referrals.

Glossary

For the purposes of this toolkit the following terminology is used:

'Older person' is used to mean people over the age of 65 and Aboriginal and Torres Strait Islander people over 50 years of age.

'Agency' is a collective and generic term to mean: any government, non-government, community service organisation or service provider.

'Manager' includes: all senior staff such as directors, supervisors, program managers and senior coordinators/care advisors.

'Staff' includes: all staff in the agency, for example frontline and direct care staff, professionals and volunteers.

'CaLD' will be used to mean culturally and linguistically diverse and is in common usage as a broad descriptor for groups and individuals according to religion, race, language and ethnicity, but excluding those whose ancestry is Anglo-Saxon, Anglo-Celtic, Aboriginal or Torres Strait Islander (Community Relations Commission for a Multicultural Society Terminology).

KEY FACTORS IN RESPONDING TO THE ABUSE OF OLDER PEOPLE

Principles that guide the way we work with older people

The following principles are an extract from the NSW Interagency Policy which guides the way service providers work with older people who may be experiencing abuse.²⁶

- Older people who are at risk or have experienced abuse are to be:
 - Provided with information about all relevant options available to them, including services trained to support and empower them and equipped to help them end abuse when it occurs.
 - Encouraged and assisted to make decisions, including a decision not to act.
 - Respected and given the choice to accept or refuse services if they are competent to make that decision.
- Every effort must be made to ensure the views of the older person are taken into account even when they cannot make their own decisions.
- Responses to the abuse of older people will be in the interests of the older person at risk or who has been abused and focused on ensuring safety and ongoing protection from violence and abuse.
- Many forms of abuse of older people are crimes. Legal remedies and protections are available for older people who have experienced: violence, sexual assault, physical assault, domestic violence, abuse, threats, fraud, neglect, stalking, intimidation and harassment.
- Responses to the abuse of older people will be consistent with the *NSW Charter of Victims' Rights*, which is accompanied by the *NSW Code of Practice for the Charter of Victims' Rights*.
- Responses to the abuse of older people will as far as possible take into account of the needs of the older person in relation to Aboriginality, culture, disability, language, religion, gender and sexuality.
- The needs of the older person at risk of abuse or who has been abused and the abuser must be kept separate at all times. This is particularly important in situations where the abuser has been the victim's carer or has complex needs.
- When the safety of others is involved, confidentiality cannot be offered unconditionally. In situations where a report to NSW Police is required, the consent of the person involved is not necessary.
- Any person should be able to report abuse of older people without fear of retaliation or retribution and in a supportive environment.

Ageism and discrimination

Promoting the dignity and inherent value of older people is a crucial component of elder abuse identification, intervention and prevention. Ageism is pervasive and often facilitates poor decision-making on behalf of the older person. Ageism excuses or discredits abuse, often resulting in devastating outcomes for the older person.

²⁶ Family & Community Services, *NSW Interagency Policy*.

As advocates for the rights of older people, avoid cliches and stereotypes which perpetuate ageism and ageist attitudes. It's not simply about accepting older people, but embracing, valuing and involving older people in all generational levels of our society.

For additional information about ageism and other forms of discrimination, review the following websites and associated publications:



Australian Human Rights Commission

humanrights.gov.au/our-work/age-discrimination/about-age-discrimination

World Health Organisation Missing Voices (2002) report

who.int/ageing/publications/missing_voices/en/

NSW Ageing Strategy

ageing.nsw.gov.au

NSW Elder Abuse Helpline & Resource Unit (EAHRU)

elderabusehelpline.com.au

Charter of Victims' Rights

A victim of crime has rights; these are called the Charter of Victims' Rights. Under the charter a victim is a person who suffers harm as a direct result of a criminal offence. The charter requires NSW Government agencies to ensure that a victim has rights to:

- Respect and compassion.
- Information about and access to welfare, health, counselling and legal services.
- Protection, privacy and safety.
- Information about investigation and prosecution of the crime.
- Help with preparing victim impact statements.
- Make submissions about offenders in custody.
- Information about compensation.

For additional information about the *Charter of Victims' Rights* and accompanying *NSW Code of Practice for the Charter of Victims' Rights*, review the following website:



NSW Justice - Victims Services and Support page

victimsservices.justice.nsw.gov.au

Capacity and consent

One of the key considerations for agencies is determining if a person has mental/cognitive capacity to make decisions. 'Capacity' refers to an adult's ability to make a decision for themselves about their daily life.²⁷

According to the Capacity Toolkit and the NSW Interagency Policy:

"A person has capacity to make a decision or to give their consent if they can:

- Understand the nature and effect of a particular act or decision;
- Weigh up the consequences of the act or decision; and
- Communicate their decision."²⁸

²⁷ NSW Government, and Attorney General's Department, *Capacity toolkit*.

²⁸ Family & Community Services, *NSW Interagency Policy*.

In NSW there is a legal presumption that all adults have decision-making capacity and can give consent until proven otherwise.

Issues of consent and capacity should be assessed and decided in consultation with professionals, such as a medical practitioner or specialist medical officer, Aged Care Assessment Team or the Guardianship Tribunal.

Before taking any steps to have a substitute decision-maker appointed, agencies need to be sure that a client does not have capacity.

For additional information, review the following websites and/or associated publications:



NSW Department of Justice Capacity Toolkit

justice.nsw.gov.au/diversityservices/Pages/divserv/ds_capacity_tool/ds_capacity_tool.aspx

Law Society of NSW – When a client's capacity is in doubt – a practical guide for solicitors
lawsociety.com.au/cs/groups/public/documents/internetcontent/023880.pdf

Capacity Australia

capacityaustralia.org.au/wp-content/uploads/2013/10/NSW-Legal-kit-8pp-sept-2013-version-.pdf

Carers

Carers play an important role in the lives of older people living in the community. Whilst the caring role can be rewarding and fulfilling, it can also be stressful.

Some stress factors include:

- Physical and emotional demands of caring.
- Lack of skill in the caring role and/or lack of knowledge regarding resources.
- Lack of choice about being a carer which may lead to feelings of resentment.
- Conflict and frustration under the pressures of illness and adversity, or where the carer has a history of poor relations with the person they are caring for.
- Lack of support as a carer, feeling alone, isolated and finding it difficult to access services and supports.
- Social isolation because of the caring role, having to give up other employment or finding it difficult to visit friends and participate in activities.
- Cognitive decline of the carer.
- Other causal factors such as geographical isolation.²⁹

“Cultural factors impact on caring. People from culturally and linguistically diverse backgrounds may have different expectations about how and who will provide care.

“Caring is an important cultural value for Aboriginal people. Aboriginal concepts of care are based on the notion of family obligations, so Aboriginal carers often take on a large caring role. Poorer health and intergenerational disadvantage have also led to a higher proportion of Aboriginal people relying on unpaid care. Aboriginal carers are more likely to be caring for children who cannot live with their parents, as well as family members who are ageing or have a disability,

chronic condition or mental illness.”³⁰

For additional information, review the following websites and associated publications:



Australian Government website – Carers page
australia.gov.au/information-and-services/benefits-and-payments/carers

Carers Australia
carersaustralia.com.au

Carers NSW
carersnsw.org.au

Confidentiality

Confidentiality refers to the relationship between staff/agencies and a client, with an obligation not to disclose personal information unless consent of the person concerned is given. However, there will be situations where confidentiality is lawfully overridden. In these circumstances, workers should always consult their supervisors who will act in accordance with their agency’s policies and guidelines.³¹

Dementia

People with dementia are at higher risk of elder abuse (Cooper et al, 2008) due to their cognitive impairment, loss of capacity, communication challenges and increasing dependence on their caregivers.^{32 33}

Dementia can also make it harder to detect abuse as common reactions to abuse, such as withdrawal from communication, can also be symptoms of dementia. The person with dementia may also abuse the caregiver either due to lifelong habits or impact of the disease.^{34 35}

For additional information about dementia and support available, review the following website or contact the Helpline:

Alzheimer’s Australia
<https://fightdementia.org.au/>

National Dementia Helpline
Ph 1800 100 500 (9 am–5 pm, Monday to Friday)

Working with people from culturally and linguistically diverse backgrounds

“International research indicates that the traditional ethnic family is characterised by extended family systems with an emphasis on interdependence of family members, continuity between generations and familial duty. Older people in traditional ‘age-honouring’ cultures hold a position of prestige within the family, and obligation to older members is emphasised. Ethnic families often prefer to care for older family members at home (Ministry of Social Development, 2002). It is important to ac-

30 Family & Community Services, *NSW Carers Strategy 2015 – 2019*, NSW Government, p. 4.

31 Family & Community Services, *NSW Interagency Policy*, Section 5.

32 alzheimers.org.uk, Mistreatment and abuse of people with dementia.

33 alzheimer.ca, Elder abuse.

34 alzheimers.org.uk, Mistreatment and abuse of people with dementia.

35 alzheimer.ca, Elder abuse.

knowledge, however, that generalisations across cultures are risky and issues for ethnic communities are complex.

“Increased numbers of nuclear ethnic families and higher participation by women in the workforce can compromise traditional care-giving practices and may contribute to intergenerational conflict. Inadequate resettlement processes can prevent participation within the individual’s own ethnic group and limit integration into the wider community. Support networks can therefore be limited and the responsibilities of carers can be greater.

“There can be cultural, structural and economic barriers to using mainstream services, as well as language barriers, which can contribute to social isolations and inactivity. Differences in beliefs about health and illness and stigma attached to the use of particular health and community services are additional factors for some ethnic groups.

“Research indicates that a range of flexible, culturally appropriate services are required to meet the needs of ethnic older people and their families. The use of interpreting services, translated materials and multilingual staff are features of culturally appropriate services. Addressing structural and economic barriers to access and raise cultural awareness of service providers will also be required (Ministry of Social Development, 2002; Brownell, 1997; Kosberg and Garcia, 1995; Charlesworth, 1986).”³⁶

The abuse of older people or terms such as ‘elder abuse’ may take on a different context or lack meaning by people from culturally and linguistically diverse backgrounds. The concept of individual rights is an Anglo-mainstream way of thinking, where for many CaLD communities, collective decision-making in families is strong and may also include family members living overseas. Cultural traditions regarding family roles and responsibility may affect the way abuse is perceived and or understood. The notion of individual rights may inhibit appropriate help for the older person as they fear actions that separates them from their family.

The settlement process brings further barriers for people from CaLD backgrounds including low English language competencies, lack of knowledge of service systems and how to access them, and greater dependency on younger family members that have already integrated in to the Australian system and culture.³⁷

Implications for practice

The following points can guide working with CaLD people where abuse may be present:

- Understand the different cultural world views that can affect the way the abuse of older people is perceived.
- Awareness that there may be issues of shame.³⁸
- Cultural expectations of family and collective decision-making.
- Economic and social dependency.
- Cultural and experiential issues that relate to older age and a loss of status, as well as needing support in understanding the Australian legal system.
- Cognitive impairment results in less capacity to communicate in English.

36 ‘Elder Abuse & Neglect’ *Family violence intervention guidelines*, New Zealand Ministry of Health.

37 Family & Community Services, *Planning ahead in culturally and linguistically diverse communities (CaLD)*.

38 Bagshaw, D., Wendt, S., Zannettino, L., *Preventing the abuse of older people by their family members*, Australian Domestic and Family Violence Clearing House, 2009, Stakeholder paper 7.

- Seek advice from bilingual people experienced with the particular cultural background of the family concerned.
- Provide a safe environment so trust can be developed.
- Respond sensitively where actions reflect the important role of family and that separating older people from their family may be an inappropriate response.
- Provide appropriate support to older people from a CaLD background such as professional interpreter services as the lack of English language skills and cultural influences can mean that an older person is more vulnerable to abuse where it occurs, and that they are less likely to identify abuse or seek support. It is advisable not to use family members to interpret.
- Problems for women and new arrivals can be compounded by social isolation.
- Carers from culturally and linguistically diverse (CaLD) backgrounds may not identify as carers and therefore fail to recognise the services available to support them. With limited proficiency in English, for example, CaLD carers also face barriers in accessing services available to them and the person for whom they care.
- No culture is homogenous. Values, attitudes and practices to old age can be different from family to family and across and within cultures. Staff should be aware of their own values and belief system so they are not imposed on others.
- The concept of individual rights is an Anglo-mainstream way of thinking so consulting and engaging with members of the older person's community is important.
- Different cultural world views may affect the way that abuse is perceived, and a lack of understanding regarding the notion of 'individual' rights may inhibit appropriate help for the older person as they fear action that separates them from their family.
- Cross-cultural training assists staff to develop closer working relationships with older people and builds cultural competency. This means older people are more likely to disclose abuse as trust is built.



Multicultural NSW

multicultural.nsw.gov.au/about_us/

Telephone Interpreter Service (TIS: 131 450)

tisonline.gov.au/en/Interpreters

Ethnic Communities Council (02) 9319 0288

[EthnicCommunitiesCouncil](http://EthnicCommunitiesCouncil.org.au)

Cross cultural and working with interpreter training

startts.org.au/resources/resources-for-free/

Brochures in other languages such as from NSW Legal Aid and NSW Trustee & Guardian.

Multicultural health services – local health district multicultural contacts

health.nsw.gov.au/multicultural/pages/default.aspx

Australian Human Rights Commission

humanrights.gov.au/

Working with Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people should be provided with culturally appropriate services and support by acknowledging the impact of change, dispossession-

sion of land and culture, stolen generation and the breakdown of traditional ways of life in Aboriginal communities that contributes to the vulnerability of older Aboriginal people in the community.³⁹

Implications for practice

The following points can guide agencies in working with Aboriginal people where abuse may be present:

- Seek advice from Aboriginal people such as community leaders, exercising special sensitivity in relation to the abuse of older people in Aboriginal communities, issues of economic and social marginalisation, and shame.
- Decision-making may be collective, within communities.
- Provide service delivery that is flexible, provides choice and is culturally responsive to build family and community resilience.
- Recognise that service support should be provided from an Aboriginal-specific worker or organisation, depending on the person's choice and circumstances such as an Aboriginal Health Worker or Aboriginal Police Liaison Officer, where possible.
- Recognise that the term 'Elder' has different meanings for different Aboriginal communities. In some, an 'Elder' can be any respected member of the community regardless of age. It is important to recognise that Elder abuse is something that can happen to any older Aboriginal person, not just Elders.
- Understand that the average life expectancy of Aboriginal people is 17 years shorter than non-Aboriginal people and account for this difference in accessing aged care support as well as the expected increase in the Aboriginal population.
- The important role of kinship in Aboriginal communities where members of the community, including older members take on responsibility for multiple roles, such as caring for children who have been removed from parents.
- Aboriginal people who live in rural and remote areas can be isolated by geography as well as lack available services and therefore the risk factors for abuse are compounded. Aboriginal people are more likely to have family living with them as carers.⁴⁰



Aboriginal Medical Services

health.nsw.gov.au/aboriginal/Pages/contact.aspx

bettertoknow.org.au/AMS

Aboriginal specialist staff in NSW Police, Family & Community Services, Aged Care, Health NSW.

Aboriginal Housing Office aho.nsw.gov.au/

Aboriginal cultural awareness training and resources

community.nsw.gov.au/_data/assets/pdf_file/0017/321308/working_with_aboriginal.pdf

heti.nsw.gov.au/courses/aboriginal-culture---respecting-the-difference/

Working with Lesbian, Gay, Bisexual, Transgender and Intersex older people

Australia has an ageing population which means that there are increasing numbers

³⁹ NSW Government, Health, *Responding to family violence in Aboriginal communities*, 2011-2016. Aboriginal Family Health Strategy.

⁴⁰ <http://www.health.nsw.gov.au/aboriginal/Publications/pub-family.pdf>

of older people who identify as lesbian, gay, bisexual, transgender or intersex (LGBTI). Up to 11% of Australians may be of diverse sexual orientation, sex or gender. The Australian Human Rights Commission states:

“Sexual orientation and sex and/or gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse”.⁴¹

The Australian Human Rights Commission also states that the prevalence of violence, harassment and bullying in the LGBTI community is proportionally higher than that experienced in the general community citing a study where over 85% of the LGBTI community in NSW had experienced homophobic abuse, harassment or violence during their life. Workers must be particularly sensitive when working with older people experiencing abuse who identify as LGBTI.

Implications for practice

- Negative attitudes and discrimination towards LGBTI people may make them more vulnerable to abuse.
- Discrimination and invisibility are two key issues. It's a mistake to see all LGBTI people as being alike.
- Not everyone will be open about their orientation or identity, others may prefer to keep this part of their lives private and this can often be due to experiences of discrimination or stigma.
- Someone's sexual orientation or gender identity may not always be clear, so avoid making assumptions.
- Don't assume all clients are heterosexual or that they identify as one of two genders.
- Working in ways that are inclusive of gender and sexual diversity can help to ensure your LGBTI clients get the services they need.
- Discrimination against LGBTI people is unlawful under the *NSW Anti-discrimination Act (1977)* with some exceptions and exemptions.
- Legislation exists across Australia recognising some (but not all) of the rights and responsibilities of LGBTI people and same-sex couples in relation to tax, social security and family.
- Government services, including health care and community services are required to respect people's basic rights and make sure that people are not treated unfairly.
- Access resources from ACON such as the community visitor scheme to support socially isolated people, and safety planning and relationship planning to address domestic violence.



ACON (AIDS Council of NSW) – Anti-violence Project

<http://www.acon.org.au/lgbti-health/safety/>

Australian Human Rights Commission

<https://bullying.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-1>

LGBTI Health Alliance

lgbtihealth.org.au

Q & A for LGBTI – Top ten legal issues to consider for older lesbian, gay, bisexual, transgender and intersex people

seniorsrightsservice.org.au/wp-content/uploads/2014/08/qa-for-lgbti-booklet-.pdf

41 Australian Human Rights Commission, <https://bullying.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-1>

We live here too: A guide to lesbian inclusive practice in aged care. Matrix Guild Vic.
matrixguildvic.org.au/docs/booklet_WeLiveHereToo.pdf

Domestic and family violence

The current definition of domestic violence, under Section 5 of the *Crimes (Domestic and Personal Violence) Act 2007*, includes relationships involving those dependent on the ongoing paid or unpaid care of the other person, as well as family members, partners, those living in the same household, and those in an intimate relationship. The legal protections and services available to people who experience family violence apply equally to older people.

“Elder abuse shares a number of characteristics with other forms of family violence (Fanslow, 2005; Dunlop et al, 2000; Korbin et al, 1989). As with partner abuse and child abuse, elder abuse is largely hidden, private and underreported (see Fallon, 2006). Victims and families are often isolated, and in a weakened, powerless and dependent position, and families often lack support. There is often a history of family conflict, alcohol and/or drug abuse, psychological problems, low self-esteem and/or unemployment (Lachs and Pillemer, 2004; Gnaedinger, 1989).

“There are also a number of differences; gender differences, for example, are less clear-cut than in cases of partner abuse. In elder abuse both men and women may abuse or neglect (Thompson and Atkins, 1996). Similarly, both older men and older women are at risk of being abused, although older women are at greater risk according to most studies (Fallon, 2006).

“Issues of power and control can also be more complex. The older person may be dependent on others, making them vulnerable to abuse. However, the abuser may also be financially and emotionally dependent on the older person (Wolf, 2000; Anetzberger, 1987; Pillemer, 1986).

“In comparison with child abuse, older people are (generally) legally competent adults, able to make their own decisions about where they live, with whom they live and how they live. Older people may choose to remain in a living situation which is not physically, psychologically or financially safe for them. Such a decision made by a competent adult needs to be respected and options for improving safety within this context need to be explored.

“Other issues may complicate the picture in situations of elder abuse. For example, it may be a situation where there is pre-existing family conflict, or it may be partner abuse occurring between older people. Sometimes an older person may be abusing their partner and/or caregiver due to dementia or other conditions. There can also be specific elements that require specialist services, such as issues of consent and assessment of mental capacity, occurrence of abuse with rest homes and institutions, and/or responding to financial and material abuse.”⁴²



NSW Government
dvnsw.org.au/

domesticviolence.nsw.gov.au/_data/assets/file/0019/301177/DV-info-Sharing-Protocol.pdf

NSW Police
police.nsw.gov.au/community_issues/domestic_and_family_violence

42 ‘Elder Abuse & Neglect’ *Family violence intervention guidelines*, New Zealand Ministry of Health 2007

Enduring Guardianship

An Enduring Guardian is a person chosen to make health and lifestyle decisions on behalf of another person when they are no longer capable of making these decisions themselves. The Enduring Guardian must be appointed whilst the person has capacity and only takes effect if the person loses capacity to make their own decisions.

The Enduring Guardian can only make decisions in health and lifestyle areas. A person must choose the decision-making areas they give to their Enduring Guardian. These decision-making areas are called functions.

The most common functions (decision-making areas) are already included on the specific form of appointment. These are:

- Accommodation – to decide where you live
- Healthcare – to decide what healthcare you receive
- Services – to decide what personal services you should have to support and assist you.

Other functions

Some situations are more complicated and may need another function to give your Enduring Guardian the authority to make other types of decisions if needed.⁴³

While a person has mental/cognitive capacity they can cancel or change the Enduring Guardianship arrangement. Where a person has no Enduring Guardian and has impaired capacity, or where there is a dispute about the actions of the person who has Enduring Guardianship, an application to the NSW Civil & Administrative Tribunal (Guardianship Division) may be required.



NSW Justice, Public Guardian
publicguardian.lawlink.nsw.gov.au

NSW Trustee & Guardian
tag.nsw.gov.au/

NSW Government: legal resources for health professionals
healthlaw.planningaheadtools.com.au/

Powers of Attorney and Enduring Powers of Attorney

A Power of Attorney is a legal document which allows the person making the Power of Attorney (the principal), to appoint another person (the attorney) to take care of their financial affairs should the need arise. A Power of Attorney can be general or enduring.

“The term attorney in this sense does not necessarily mean a lawyer or solicitor. The attorney may be a family member, close friend or trustee organisation such as the NSW Trustee & Guardian.”⁴⁴

A general Power of Attorney will terminate if the principal loses mental capacity and is useful for short-term appointments, for example, if the principal is going

⁴³ *Enduring Guardianship in New South Wales: your way to plan ahead*, Revised 2014.

⁴⁴ NSW Trustee & Guardian, *A guide for Powers of Attorney*

overseas and needs someone to look after their financial affairs or sign documents in their absence.

An Enduring Power of Attorney will not cease to operate when the principal lacks capacity. A person can cancel or change a Power of Attorney at any time while they have mental capacity to do so.

“Making a Power of Attorney does not mean that you will lose control over your financial affairs. As long as you retain mental capacity you still have capacity to deal with your assets and money just as you did beforehand.”⁴⁵

Where a person has no Enduring Power of Attorney or where there is a dispute about the actions of the person holding the Power of Attorney, an application to the NSW Civil & Administrative Tribunal (Guardianship Division) may be required.



NSW Trustee & Guardian
tag.nsw.gov.au/

NSW Government: legal resources for health professionals
healthlaw.planningaheadtools.com.au/

United Nations Principles for Older Persons

The United Nations General Assembly adopted eighteen Principles for Older Persons on 16 December 1991 (Resolution No.46/91). Governments are encouraged to incorporate these principles into national programmes whenever possible. The principles call for action in many areas. These principles recognise rights to independence, participation, care, self-fulfilment and dignity of older persons. These key principles underpin a response to older people experiencing abuse.



United Nations Human Rights
ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx