

Questionnaire of the Independent Expert on the enjoyment of all human rights by older persons on best practices in the implementation of existing law related to the promotion and protection of the rights of older persons

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1. **Name of the practice:** Seniors Mediation Program

2. **Area concerned:**

- Discrimination (e.g. legal/institutional framework, access to facilities and services, etc.)
- Violence and abuse
- Adequate standard of living (e.g. resource availability, housing, etc.)
- Independence and autonomy (e.g. legal guardianship, accessibility, etc.)
- Participation
- Social protection (e.g. social security, incl. pension)
- Education, training and lifelong learning
- Care (home, family or institutional care, long-term care, palliative care, geriatric services, quality of care and availability of services, care workers, etc.)

3. **Type of practice:**

- Legal (Constitution, law, etc.)
- Policy/Programme/Strategy/Action Plan on Ageing
- Institution
- Regulation
- Administrative practice
- Case law/jurisprudence
- Disaggregated statistical data by age/gender
- Training programme
- Other (please specify):.....

4. **Level of implementation:**

- National
- Local (Sub-national, community, urban/rural area)

5. Please describe the practice, including a) its purpose; b) when and how it was adopted; c) how long it has been used/implemented; and d) its geographic scope.

Background

The Seniors Mediation Program is an innovative conflict resolution service aimed at resolving family conflict involving older persons, without the need for recourse to formalised legal proceedings. Family conflict can often occur during periods of age-related transition where changes in physical or cognitive capacity of an older person require family involvement in discussion and decisions about changes in lifestyle, accommodation, healthcare, and estate planning. In Australia, a recent survey found that 16% of older respondents (65+ years) and 30% of younger respondents were concerned that aged care and inheritance decisions would create conflict within their families (Relationships Australia 2014). For families caring for an older person within the home, conflict can arise regarding division of care giving responsibilities, differing perceptions of the seriousness or impact of parental disability, perceived inequities in the provision or control of financial resources, and decisions regarding nursing home placement. The interaction involved in negotiating these issues can reignite dormant tensions and challenging inter-familial dynamics that disrupt effective decision-making processes. Without effective management and resolution, these dysfunctional family dynamics can escalate to incidents or allegations of neglect and abuse, often precipitating a total breakdown in communication and cooperation between members of a care network.

Purpose and Development

The purpose of the elder mediation program was to provide an accessible and effective conflict resolution service for older persons and their families to prevent elder abuse, promote the rights of older persons, and avoid costly and unnecessary legal proceedings. The pilot program was a joint partnership between a not-for-profit aged care provider, Benetas, and a specialist dispute resolution service, Family Mediation and Counselling Victoria. The project planning process begun in March 2015. The initial stages of the program involved a detailed literature review, aimed at establishing international best practice approaches in the area of Elder Mediation. This literature review highlighted the need for models of dispute resolution which specifically address the needs of older people and the complexity associated with what are often long-term, emotionally charged family disputes.

The mediation model was developed with the overall mission of *incorporating the voice of the older person in decision making for the future*. The core elements of the FMC/Benetas Seniors Mediation Model included:

1. Voluntary and non-adversarial – focused on improving communication between parties, rather than punishment or shame. Making the program as accessible and welcoming for the older person as possible.
2. Placing the best interests and wishes of older persons at the centre of decision making – viewing conflicts and disagreements by asking ‘and what does this mean for the older person’
3. Placing an initial needs and capacity assessment with older person key to the program – mediation is not always a safe, effective or worthwhile avenue for all older people. Some disputes *do* require more legalistic intervention.
4. Being able to put the voice of the older person *in the room* if they are unable to participate – using advocates, shuttle mediation and facilitated communication tools to make sure the voice of the older person was heard.

5. Being flexible with regards to assessment locations, times, and schedules – responding to the needs of older persons, rather than adhering to a rigid mediation structure or process.

Scope and viability

Funding was provided by Benetas for FMC to provide mediation to Benetas clients and families experiencing conflict. The program was open to clients throughout the state of Victoria, with most referrals generated from within Metropolitan Melbourne. Since beginning in March 2015, uptake of the service has been lower than anticipated, with only a handful of clients proceeding to a mediation session or resolution. However, it should be noted that the service was only made available to a relatively small population of around 4,000 older people and their families. On a broader scale, we believe the mediation model we have developed may be an effective intervention for reducing family conflict and responding to elder abuse in early stages.

6. Which actors are involved in the development and implementation of such practice?

The Seniors Mediation Program was a collaborative effort between two not-for-profit organisations (FMC and Benetas), older persons themselves. Civil society organisations were also involved in the planning and implementation stages to provide feedback and advice on various aspects of the mediation model. Ideally, the pilot program would have benefited from Government and or philanthropic support, who's funding may have allowed us to offer the service more broadly. More effective delivery of alternative dispute resolution programs for older people would also be achieved through legislative reforms within the Guardianship system in the State of Victoria. Currently, deferral to mediation or other forms of alternative dispute resolution is not mandatory under the *Guardianship and Administration Act 1986* (Vic), meaning that mediation is often only available through private, fee-paying arrangements. For older people without the financial means to make these arrangements, there is often little choice but to pursue matters through more formal and legalistic avenues. We believe that senior's mediation should form a compulsory element of Guardianship hearings and that the cost of such proceedings should be borne by the relevant administrative body, rather than older people themselves. In many other areas of Australian family law, this is already a standard process.

7. Which rights of older persons does the practice promote and protect?

With reference to the Report of the Secretary-General to the General Assembly on the human rights of older persons, the seniors mediation program responds to two of the key challenges highlighted:

Area: Discrimination

Description in Report to Secretary General on Human Rights of older persons:

Ageism is too often tolerated in societies across the world. Discrimination on the basis of age is often combined with other forms of discrimination, on the grounds of gender, race and ethnicity, religion, disability, health or socio-economic conditions, among others negatively affecting the enjoyment of the full range of human rights of older persons.

Seniors Mediation Program:

Existing research suggests that older people are often discriminated against in the area of personal decision making, particular in areas of health and medical care, and accommodation. This can occur in professional contexts, but is also frequently reported to occur within families. The result can be that the older person is removed from a position of autonomy and independence over their own lives, which constitutes one form of elder abuse. The Seniors Mediation seeks to protect and promote the rights of older people to make decisions about their own lives, and be involved in all decisions which affect them. By placing the older person at the centre of our mediation framework, we placed these rights of the older person as the pivot of all discussion between family members or professionals.

Area: Violence and abuse

Description in Report to Secretary General on Human rights of older persons:

Abuse of older persons - physical, emotional and/or sexual - by someone in a position of trust, occurs worldwide. Financial exploitation, too, is not infrequent and goes under-reported, and under-documented.

Seniors Mediation Program:

Research suggests that many incidents of elder abuse often begin as a consequence of poor communication, stress, and family conflict. Cases of neglect and physical abuse for example, are often precipitated by carer burnout and a lack of other family support. The Seniors Mediation Program sought to intervene in the earliest stages of such maltreatment or abuse, to prevent the escalation of such incidents whilst also preserving healthy relationships between family members and the older person. While mediation will not be an effective resolution for more serious forms of elder abuse, we believe the model we have developed can provide an effective model for early intervention in cases where family conflict has begun reaching an escalation point.

8. What groups of older persons

The Seniors Mediation program was designed to be as inclusive and accessible as possible for a diverse population of older people. Translators were often used to enable participation of culturally and linguistic diverse clients, and facilitated communication processes were implemented to ensure the participation of older people with communication difficulties. It should be noted that the service was not made to be specifically responsive to Indigenous and Torres Strait Islander populations, for whom our model may not be particularly appropriate or accessible.

9. How has the practice been assessed and monitored? Please provide specific information on the impact of the practice, with data, indicators, among others, if any.

The program is yet to be formally evaluated or assessed, although the authors would be pleased to provide a copy of such an evaluation when completed. The evaluation of the program has focused on the number of resolutions reached, the effectiveness of the

process as judged by older persons and their family members, and the preservation of relationships at follow-points after the conclusion of the mediation session.

10. What lessons do you believe could be learnt from this practice? How could it be improved?

This program has demonstrated that alternative conflict resolution can be a viable alternative to formalised legal proceedings for some older people and their families. The program may have been improved by broadening the availability of the service, as recruitment proved more difficult than anticipated. Pursuing a more collaborative approach involving a group of aged care providers and/or representative groups, may have helped ensure a more effective and efficient use of resources. Secondly, gaining support from key legal and/or administrative bodies involved in formal dispute resolution involving older persons may have improved the visibility and support for the program. For example, a program liaison officer would have been a beneficial addition to our program, whose role would have been to publicise and manage referral processes. Unfortunately, funding did not allow for such a position to be made available.

11. How could this practice be a model for other countries?

Senior related conflict is a serious social issue in many countries around the world. While our model was developed within a specific cultural and jurisdictional context, we believe the principles underlying the model could be adapted and adopted in other countries around the world. This pilot program has demonstrated that partnerships between non-governmental organisations can result in creative and responsive program development. Alternative dispute resolution can provide an accessible, cost effective, and relationship-centred alternative to formalised legal proceedings. We believe the viability of such models should be explored in other countries around the world.