

7 March 2023

Attention: Dr. Claudia Mahler,  
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United Nations Human Rights Council  
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Re: Submission to the call for inputs on violence against older persons – 2023 HRC

The Aged Rights Advocacy Service (SA) Inc. (ARAS) welcomes the opportunity to provide feedback into the widespread phenomenon of violence, abuse, and neglect of older persons to inform the forthcoming report at 54<sup>th</sup> session of the Human Rights Council.

ARAS notes the objectives of the Independent Expert's report is to:

- examine existing international and regional legal protection arrangements and standards
- analyse manifestations and forms of violence, abuse and neglect towards older persons in different settings
- identify and analyse good practices to safeguard and protect older persons in prevention of violence and abuse through ensuring victims have access to justice, remedies and reparations.
- intersections with social factors, i.e., gender, identity, disability, race, ethnicity and other factors

### ***About Aged Rights Advocacy Service (SA) Inc.***

ARAS is a statewide, not-for-profit, independent, community-based organisation that has been providing information, education and advocacy support for older adults across South Australia since 1990.<sup>1</sup> Older people who use community or residential aged care services, people who live in retirement villages, and older people who are experiencing, or who are at risk of abuse from family or friends, can use an ARAS Advocate, at no cost, to assist them to address their concerns.

ARAS also has specialist Aboriginal Advocates who provide culturally safe and appropriate support and host an annual intergenerational gathering in regional South Australia. Additionally, ARAS delivers the Care Finder service in the northern suburbs of Adelaide, South Australia. Care Finders support older people to navigate the aged care system and access services.

ARAS hosted the annual South Australian World Elder Abuse Awareness Day (WEAAD) Conference online again in 2022. There were over 600 registrants, including from overseas and interstate, with feedback received that the online event had allowed greater access for rural and remote registrants. WEAAD is supported by the United Nations and the World Health Organisation and is acknowledged annually on 15th June every year. The conference brings together policy makers and frontline workers, covering the latest research and reviewing the progress that is occurring while also ensuring the key message, that abuse of any older adult is unacceptable, is at the forefront.<sup>2</sup>

<sup>1</sup> Aged Rights Advocacy Service (SA) Inc.: History: [http://www.sa.agedrights.asn.au/about\\_us/history](http://www.sa.agedrights.asn.au/about_us/history)

<sup>2</sup> Aged Rights Advocacy Service (SA) Inc. See Annual Report 2021/2022: <https://www.sa.agedrights.asn.au/resources/publications>

An experienced volunteer Board of non-executive Directors and committed staff support ARAS. In addition to supporting older adults with individual advocacy support, ARAS also provides information and education sessions about aged care rights, retirement village rights and broader human rights, contributing to community understanding and empowerment and ensuring the voice of older adults, including younger people with a disability who are residing in residential aged care, are heard on issues that matter to them.

ARAS is one of the five founding members of Elder Abuse Action Australia (EAAA)<sup>3</sup> which is funded by the Commonwealth Attorney General's Department. ARAS volunteers its expertise and knowledge to support the development of EAAA as a peak body and the ongoing refinement of the national knowledge hub 'Compass'. Additionally, ARAS is a founding member of the South Australian Alliance for the Prevention of Elder Abuse (APEA).<sup>4</sup>

ARAS is the only South Australian member of the Older Persons Advocacy Network (OPAN), which delivers the National Aged Care Advocacy Program (NACAP).<sup>5</sup> ARAS is funded by OPAN, the Australian Government, SA Health, Office for Ageing Well and COTA.<sup>6</sup>

## DISCUSSION POINTS

### 1. Legal, policy and institutional frameworks

International human rights instruments in conjunction with the *Age Discrimination Act 2004* (Cth) (the Act) and the Office of the Age Discrimination Commissioner at the Australian Human Rights Commission, are fundamental in raising greater community awareness of the human rights implications of elder abuse and the promotion of human rights, and as the guiding principles for all remedial policies and programs. The provisions in the Act relate mainly to matters with respect to age discrimination in the workplace, the education system, the provision of accommodation, goods, and services and including the administration of Commonwealth legislation and programs. Nevertheless, at the Commonwealth level the '*National Plan to Respond to the Abuse of Older Australians 2019-2023*' is the first national aged care policy framework that prioritises and reports on activity to reduce the prevalence and impact of abuse, violence, and neglect of older Australians by taking a whole of government approach and collaborating with community stakeholders on priority areas.<sup>7</sup> The Council of Attorney Generals is responsible for reporting publicly on outcomes of evaluations across state and territory policy and program initiatives. The impact of the National Plan in driving responses in prevention of abuse of older persons is presently under review.

In addition, Elder Abuse Action Australia (EAAA) has also undertaken sector wide consultation with peak bodies and key stakeholders and collaboratively developed a community blueprint, titled '*Our Nation's Shame*' for actions that need to occur to address and end all forms of elder abuse and neglect of older people across communities. However, the blueprint is yet to be endorsed by the Australian Government.<sup>8</sup>

<sup>3</sup> Elder Abuse Action Australia (EAAA): <https://eaaa.org.au/welcome-to-elder-abuse-action-australia/>

<sup>4</sup> Alliance for the Prevention of Elder Abuse: <https://www.apea.org.au/>

<sup>5</sup> Older Persons Advocacy Network: <https://opan.com.au/>

<sup>6</sup> Aged Rights Advocacy Service (SA) Inc.: Annual Report: Aged Rights Advocacy (SA) Inc. See Annual Report 2021/2022: <https://www.sa.agedrights.asn.au/resources/publications>

<sup>7</sup> Australian Government, Attorney-General's Department: National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023: <https://www.ag.gov.au/rights-and-protections/publications/national-plan-respond-abuse-older-australians-elder-abuse-2019-2023>

<sup>8</sup> Elder Abuse Action Australia: <https://eaaa.org.au/publication/our-nations-shame-sector-led-engagement-in-the-next-national-plan-to-respond-to-the-abuse-of-older-australians/>

ARAS remains concerned that their needs to be a measurable plan across Australia that focuses on abuse of older people.

At the state level, the *'South Australia's Plan for Ageing Well 2020-2025'* is the policy framework that guides the Office for Ageing Well's strategic priorities and practical guidelines in supporting the rights of older people to live free from violence, abuse, and neglect. In 2019 the South Australian Government established the Adult Safeguarding Unit in accordance with the *Ageing and Adult Safeguarding Act 1995* (SA) to complement other statutory bodies in safeguarding the rights of older people at risk of harm or abuse. Furthermore, the South Australian Law Reform Institute (SALRI) undertook an independent evaluation into its operations and functions. The *'Autonomy and Safeguarding are not Mutually Inconsistent': A Review of the Operation of the Ageing and Adult Safeguarding Act 1995* (SA) report details the findings of the review, including the proposed recommendations for legislative changes and reforms to practices to improve outcomes in safeguarding older people at risk of harm.<sup>9</sup>

ARAS wishes to stress that violence and abuse of older persons occurs outside of these parameters.

## 2. Manifestations of violence

ARAS has direct experience in working with older people or their legal representatives in providing information and advocacy support in safeguarding and protecting the rights of older people. The World Health Organisation defines elder abuse as a repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person. *'Elder abuse can take various forms such as psychological, financial, physical, sexual and neglect'* (WHO, 2002). ARAS also includes social abuse, as it involves restricting the older person's right to have social relationships with other family members or friends.

Elder abuse is a serious and underestimated problem in Australia that can have serious implications and consequences such as decreased quality of life, morbidity, premature mortality, physical injuries, depression, cognitive decline, financial ruin, and premature placement in residential aged care accommodation. During 2020 to 2022, ARAS' Abuse Prevention program received 1,319 requests for assistance mostly from older people or a family member. The main types of abuse reported during this period was psychological and financial abuse, followed by neglect. Sons and daughters of the older person were reported as the main perpetrators of the abuse.

The presenting issues, included:

- a family member having a strong sense of entitlement to the older person's assets and possessions
- dependence on assistance by a family member in managing assets or decisions about their care
- misuse of Enduring Power of Attorney or guardian
- older people with diminished capacity may not be able to disclose or are not believed when they do disclose the abuse
- unwanted admissions into residential care
- residential care staff with limited knowledge of supported decision making, sometimes take direction without consulting or seeking consent from the older person
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<sup>9</sup> South Australian Law Reform Institute, *Autonomy and Safeguarding are not Mutually Inconsistent': A Review of the Operation of the Ageing and Adult Safeguarding Act 1995* (SA): <https://law.adelaide.edu.au/ua/media/2202/salri-aas-report.pdf>

- living with the abuser, due to an adult child moving back in with their parent and financially abusing and neglecting them by not providing care and often while claiming carer payments
- a family member with drug and alcohol problems.

ARAS is deeply concerned that, as we experience a demographic ageing transition, incidences and the prevalence of the abuse of older people will continue to increase and correlate with more individuals in need of advice, support, and assistance to stop the abuse.

### 3. Intersectionality

Elder abuse is a complex policy area that intersects across sectors such as aged care, disability, health, legal, banking, housing, and others. In addition, some specific population groups encounter additional barriers when seeking help and assistance in accessing support services.

Below are three concrete case examples where the human rights of an older person have been violated:

- Unwanted admission into residential aged care often involves Enduring Powers of Attorney or guardians placing an older person into residential aged care following a hospital visit or informing the individual they are attending a short respite stay and then permanently admitting them into residential care against their wishes. In some instances, the older person's assets are sold and possessions are disposed of, without consultation or their consent.
- Diverse sexually orientated and gender identity older people are likely to have experienced a history of stigma and discrimination due to the criminalisation of homosexuality for most of their lifetime, which can reinforce fears of intolerance when transitioning into residential aged care accommodation.
- The voice of an older person is silent when cases of allegations of indecent assault perpetrated by an aged care worker following investigations by law enforcement agencies and other statutory authorities, results in no criminal charges laid due to insufficient evidence. This situation re-traumatises the older person due to the alleged offender's denial and rebuttal of the allegations.

### 4. Data

There is very limited evidence that supports an understanding of the prevalence of elder abuse and increasing community consensus of the need for more systematic research in this field. There is some limited evidence on incidences of elder abuse mainly from telephone calls to state-based elder abuse helplines, however this data is not a reliable source in verifying incidences of abuse. Although in 2021 the Australian Institute of Family Studies undertook a '*National Elder Abuse Prevalence Study*' which showed that 15 percent, or 630,000 older persons, from a population of 4.2 million people aged 65 years and over were victims of abuse<sup>10</sup>. This number is considered conservative, as the research had significant limitations as it excluded older people living in residential aged care, First Nations people and LGBTIQ+ communities from the study.

### 5. Access to justice

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<sup>10</sup> The Australian Institute of Family Studies, National Abuse Prevalence Study, <https://aifs.gov.au/research/research-reports/national-elder-abuse-prevalence-study-final-report>

Several pathways are accessible to older people in response to the violation of their human rights and also in alleviating any forms of abuse or neglect. For example, financial exploitation, mistreatment, withholding basic care needs, physical attacks, social isolation, pressure to change wills and Powers of Attorney, disputes about Advanced Care Directives amongst other issues.

The key protective statutory agencies and community services involved in safeguarding the rights of older persons, include:

- South Australian Police - respond without delay to reports of violence to ensure the protection, safety, and welfare of victims
- Adult Safeguarding Unit - responds and acts on reports of suspected abuse or neglect of older people who are, through their health, life, or other circumstances at risk of mistreatment
- Legal Services Commission - provides an initial legal information service about rights and protections
- Aged Care Quality and Safety Commission - under the Serious Incident Response Scheme involves mandatory reporting within a specified timeframe, of alleged or suspected abuse or the use of unreasonable force for older people who are receiving a Commonwealth subsidised aged care service
- Office for the Public Advocate - SACAT appointed Guardians of Last Resort. OPA provides information and individual advocacy to people with impaired decision-making capabilities who have no other appropriate person to be their guardian. OPA has a Dispute Resolution Service and offers a mediation service to assist in the resolution of disputes about Advance Care Directives and health consent issues
- Uniting Communities Elder Abuse Unit - provides information, support and legal advice to older people affected by abuse
- Public Trustee - appointed by SACAT or by a Court Protection Order to manage and administer a person's estate
- Consumer and Business Services - provides information and services to assist older people to understand their consumer rights and investigates complaints made about a service
- Aged Rights Advocacy Service Abuse Prevention Program - provides information about rights and safeguards and individual advocacy support and education in prevention of abuse or mistreatment of older people.

## 6. Access to information and good practices

ARAS utilises the following principles, frameworks and evidenced based best practices when working with older people who are experiencing or are at risk of abuse:

- Advocates are guided by rights-based principles and legislation, for example United Nations Principles for Older Persons (1991) and the *Aged Care Act 1997* (Cth)
- Advocates assist individuals to access information about their rights and entitlements and to develop an awareness and understanding of their options and strategies to prevent further incidences of abuse
- Advocates are guided by the work around supported decision making model



- Advocates refer clients to key protective agencies that can offer assistance and further support services, for example the ASU or the Uniting Communities Elder Abuse Unit
- ARAS delivers workforce education and training programs targeted at healthcare professionals, medical students, accountants, SA police and aged care service providers to enable them to be able to recognise and respond to signs of elder abuse
- ARAS delivers community education sessions across specific groups, for example CALD and First Nations people
- ARAS delivers an Aboriginal advocacy service to address barriers for First Nations Elders so they are able to access culturally sensitive advocacy support services in preservation of cultural identity and values
- Consumer information is uncomplicated, easy to understand and readily available in all languages
- ARAS hosts an annual World Elder Abuse Awareness Day event to raise community awareness of violence, abuse and neglect of older persons and best practices
- ARAS regularly collaborates with key protective services and statutory agencies, eg Alliance for the Prevention of Elder Abuse and the Aged Care Quality and Safety Commission

ARAS would welcome further consultation on this very important work.

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