

How can we prevent financial abuse of the elderly?

Written by Eileen Webb, Associate Professor, Curtin Law School, Curtin University

Throughout Australia older people are losing their savings, property and homes through financial abuse, usually at the hands of persons close to them such as an adult child or grandchild.

A sense of entitlement, ‘ [Inheritance impatience](#) ’ or opportunism can encourage people to ‘help themselves’ to an older person’s assets.

Elder abuse is not a new problem. It has been occurring in Australia and elsewhere for generations - but its only now that serious steps are being taken to address it.

While the extent of elder abuse in Australia is unknown, conservative estimates suggest at least 9% of older Australians suffer from financial abuse. However, we know that because of the hidden nature of the problem, the majority of cases go unreported.

Sadly, a majority of elder financial abuse occurs within families, and is [defined](#) as the illegal or improper use of a person’s finances or property by another person with whom they have a relationship implying trust.

Government taking long overdue action

On October 1 this year the Commonwealth Attorney General announced a suite of measures to address elder abuse. These will include initiating a new peak body focused on elder abuse, an online knowledge hub, and education materials to better support older Australians.

But, as Michael Riley, CEO of the elder advocacy group Greysafe, [notes](#) : “We know the problems, we now need an action plan and timelines put in place to come up with solutions.”

Financial elder abuse can take [many forms](#) but common examples include misappropriation of the older person’s money; misuse of enduring powers of attorney; inappropriate dealing with an older persons property through a guarantee or an unauthorised mortgage; and failed assets for

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care arrangements.

The opportunities for elder financial abuse are exacerbated by the de-personalisation of banking services. An increase in electronic services means that older people are more vulnerable to such exploitation than in the past.

Although criminal law addresses matters such as theft and fraud, low conviction rates indicate the difficulty of bringing an elder abuse matter before a court. Furthermore, many older people do not want to pursue relatives in criminal proceedings – despite the experience they wish to maintain family relationships.

How banks can help

Part of the solution may rest with banks and financial institutions which are often at the front line when instances of elder financial abuse arise.

There has been some [reluctance](#) on the part of banks and financial institutions to address elder abuse citing concerns regarding inter alia privacy obligations, legal liability, and the absence of a consistent reporting framework.

To date, some bank staff receive training to deal with elder abuse detection and banks follow the industry guideline, [Protecting Vulnerable Customers from Potential Financial Abuse](#). Banks have the capacity to identify suspect in-bank and electronic transactions.

While there is limited material publicly available regarding instances where banks have uncovered abuse, in the few reported [cases](#) where significant physical abuse and neglect have been the subject of legal consideration, misappropriation of the older person's funds has been a common factor.

In the absence of a broad national reporting framework, at present there is no cohesive strategy as to how to deal with the elder financial abuse. Furthermore, there are no whistleblower protections for bank employees who may be exposed to legal action from families in the event

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that financial abuse is not proven. This can make bank employees reluctant to report suspected abuse.

To address this, the Australian Law Reform Commission (ALRC) recommended that the [Code of Banking Practice](#) should ensure that banks be obliged to take 'reasonable steps' to prevent the financial abuse of vulnerable customers.

Such steps include training staff to detect (through software or other means) and appropriately respond to abuse; ensuring 'Authority to Operate' forms are not obtained fraudulently and providing a framework for reporting abuse.

Federal Government must work with banks

Addressing elder financial abuse must be a centrepiece of the federal government's overall elder abuse strategy. The test will be how, and to what extent, the banks will collaborate with government, relevant agencies, and each other.

As it stands, the requirement to take 'reasonable steps' lacks definition; it could encompass significant reform or the bare minimum. Furthermore, a comprehensive internal reporting framework within the banks is essential. If this national initiative is to succeed - mandatory reporting by banks of suspected abuse should be seriously considered.

Finally, public education campaigns targeting older people themselves, persons entering into power of attorney arrangements, and bank staff is the key to preventing such conduct in the first place.

Elder financial abuse has the potential to devastate individuals at the most vulnerable point in their lives - as well as have a detrimental impact on society as a whole.

While the federal government efforts to address elder abuse are to be applauded - we must ensure the opportunity is fully utilized and includes proper regulations within the banking sector.

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