

| Elder financial abuse:
| legal liability

Overview

- + Protecting an older person's rights and interests
- + Claims by older persons for losses as a result of elder financial abuse
- + Liability of third parties for an older person's losses
- + The law in practice
- + Acting for an older person and resolution of disputes
 - + Matters of strategy
 - + Funding solutions
- + Future legal developments and ALRC recommendations

Protecting an older person's rights and interests

Commonly addressed areas

- + Estate planning and wills
- + Powers of attorney
- + Guardianship and administration
- + Aged care facilities and contracts

Other areas that should be considered by older persons and their advisors

- + Contracts: documenting property transactions
- + Gifts and loans
- + Dealing with professionals / family involvement
- + Consumer transactions

Elder financial
abuse claims



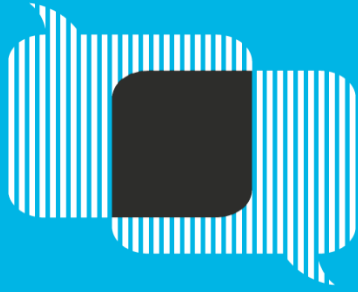
Elder financial abuse claims: when things go wrong

Existing areas of law can be applied to assist older persons who suffer losses:

- + Property law
- + Equity
 - + Unconscionable conduct
 - + Breach of trust
 - + Implied trusts
- + Contract
 - + Verbal or in writing
 - + Familial contract or other eg, banks, professional advisors
- + Professional negligence

Elder financial abuse claims: third party liability

- + Banks
- + Professional advisor involvement
 - + Accountants, lawyers, conveyancers, financial advisors
 - + Property transfers, sale or transfer of shares, investment advice
 - + Powers of attorney documents, family agreements
- + Third parties must exercise caution:
 - + Who is their client, who can give a valid mandate
 - + Obtain independent instructions, assess capacity
 - + Advise in writing on transactions in suspicious circumstances
 - + Investment advice and “best interests” obligation under the Corporations Act



| The law in practice

Barriers to seeking help

- + Older person is unaware that they have legal rights
- + Older person is unaware of what has occurred or what losses have been suffered
- + Older person does not have capacity to retain and instruct a lawyer
- + Shame and embarrassment, family dynamics
- + Uncomfortable or nervous in dealing with professionals
- + Physical access barriers

Matters of legal strategy

Legal advice ought to deal with the following:

- + Prospects of a claim, urgency
- + How the situation impacts the client
- + The defendant/s financial position, likely attitude or response
- + Emotional versus commercial decision making
- + Alternative resolution and lateral thinking

Legal costs and when to retain a lawyer

- + Various options for seeking assistance
- + Managing legal fees: strategy and outcome focus
- + Funding options available

Legal developments

Australian Law Reform Commission – A National Legal Response (ALRC Report 131)

- Published in May 2017
- Review of federal and state laws
- Key recommendations:
 - National regulation of powers of attorney
 - Registration of power of attorney documents
 - Jurisdiction of state and territory tribunals should be expanded
 - The *Code of Banking Practice* should require banks to take reasonable steps to prevent financial abuse of vulnerable customers



Questions

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