

can we do better?

the law and elder financial
abuse

Megan King

Health Justice Partnership Lawyer,

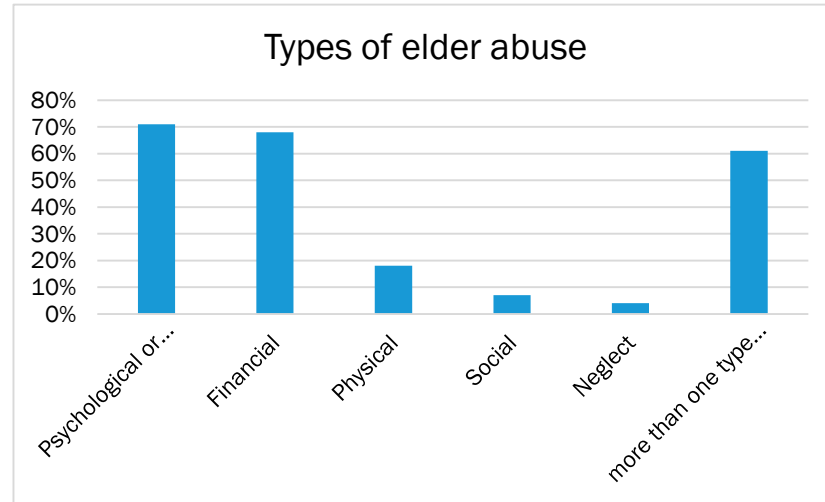
St Vincent's Hospital, Melbourne



1. The Justice Connect/St Vincent's Hospital health justice partnership
2. Types of financial abuse we are seeing
3. The Victorian law for:
 - Failed assets for care arrangements
 - Abuse of enduring appointments
4. Access to justice for victims of financial elder abuse and more effective prevention.



- **68%** of referrals involve financial abuse
- 60% more than one type of abuse
- Majority of these cases involve **adult children**
- In almost all cases, the older person **doesn't want to take legal action** against the perpetrator
- We frequently assist in revoking EPOAs, drafting EPOAs, arranging for wills to be drafted free of interference and advice on legal issues associated with elder abuse





What do we see?

- **Palliative patients being pressured into signing wills by family or friends that don't agree with.**
- **Enduring appointments being misused by adult children by preventing their parent from accessing their money despite them still having decision making capacity.**
- **'Friendly' neighbours being appointed attorney and then misappropriating funds for their own benefit.**

access to justice when assets for care agreements fail



pursuing a legal remedy in assets for care cases

In all states and territories there are a range of potential legal actions available through the courts, e.g. **resulting/constructive trust, equitable estoppel.**

BUT their success will depend on the extent to which the facts of the particular situation meet the required tests in law and equity. Financial loss may not be sufficient.

You usually you need lots of **money** and **time** to reach a resolution.



the Victorian law and assets for care arrangements



VCAT has jurisdiction to resolve disputes between co-owners of land:

- *Property Law Act*, Part IV.
- Older people can now institute proceedings in a less expensive and onerous forum than the Supreme Court.
- VCAT has the power to make orders with respect to equitable, as well as legal, co-owners (*Garnett v Jessop*)

Giving all state and territory tribunals similar powers to resolve assets for care disputes would provide better access to justice for victims of EA.

seeking compensation for misuse of a enduring power of attorney in Victoria



case story



Terry* was devastated to have discovered that the daughter he trusted enough to give his power of attorney to had abused that trust. She told him that she had purchased a home on his behalf but instead registered the property in her own name. She also used the power to misappropriate funds in excess of \$50,000. After a lifetime of hard work, Terry was left with nothing except terrible grief at the loss of his relationship with his daughter. He couldn't believe that his daughter could do this to him.

*name has been changed

the Victorian law and compensation for misuse of a EPOA



Compensation for abuse of an EPOA through VCAT (s77 *Powers of Attorney Act 2014*):

- VCAT can order compensation for a loss caused by an attorney; and
- Offences for dishonestly obtaining or using an enduring power. Punishable by a fine, up to five years imprisonment, or both.

Vesting state and territory tribunals with similar powers to order compensation could provide an more accessible **path to redress** and **deter financial abuse**.

are the new Victorian laws enough?



- Significant progress has been made - the accountability of attorneys has increased.
- BUT systemic oversight still lacking. To reduce the incidence of abuse without being overly onerous we need:
 - a single **national enduring document**
 - a **national register** of POAs
 - **annual declarations** of compliance and **random audits**



- Greater awareness by the attorney of their responsibilities may be a deterrent to misusing funds.
- National standard EPOA form could be used to act as a deterrent:
 - By outlining criminal sanctions for misuse; and
 - Making clear that the attorney may be forced to repay misappropriated funds.

take aways...

- Greater availability of **advice/legal services** to older people at risk of financial abuse
- Create practical ways to seek **redress** through tribunals nationwide
- National register and enduring document to build **protections** against financial abuse.



thank you



megan.king@justiceconnect.org.au