

DISCUSSION RESOURCE

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PROJECT OF
5TH NATIONAL ELDER
ABUSE CONFERENCE

HOSTED BY SENIORS
RIGHTS SERVICE



**AUSTRALIAN LAW
REFORM COMMISSION
REPORT, ELDER ABUSE
– A NATIONAL LEGAL
RESPONSE (REPORT 131)**

**HON. JUSTICE SARAH
DERRINGTON
MATT CORRIGAN**





ABOUT THIS PROJECT

In February 2018, Seniors Rights Service hosted the 5th National Elder Abuse Conference, which brought together more than 500 delegates from a broad range of backgrounds. The conference culminated in an announcement by the Commonwealth Attorney-General, Hon Christian Porter MP, that a “National Plan” would be developed to ensure the protection of older people in Australian society.

To further the conversations generated by the conference, Seniors Rights Service engaged Ellen Fanning to conduct a series of interviews with experts who attended the conference. These videos, along with a discussion sheet for each video, are freely available to community members, professionals and students of all sectors, to enable engagement with the content using suggested discussion questions and to follow up with further reading.

IMPORTANT! READ THIS BEFORE HOLDING A DISCUSSION GROUP

Many people will share and benefit from participating in study and discussion on the topics.

Due to the sensitive nature of the topics, however, group leaders should ensure they are prepared to support individuals to find qualified assistance in a timely manner, should a topic generate personal concerns or issues for individuals.

As a minimum, group leaders should have available information sheets and phone numbers from the relevant seniors' legal rights service and/or elder abuse prevention service in your state or territory (on page 5 and current as of 2018).

ABOUT THIS RESOURCE

SHORT DESCRIPTION

Justice Derrington and Mr Corrigan discuss the Australian Law Reform Commission (ALRC) Report, Elder Abuse – A National Legal Response (Report 131), which includes 43 recommendations for law reform to address elder abuse. Justice Derrington and Mr Corrigan discuss the task of the ALRC to consider the legal framework currently in place to address elder abuse, and to ask if existing laws are enough to address elder abuse, or if the issues relate to better applying the law. In some areas, the question relates to whether laws are the best solution to identified problems.

FOCUS AREA

Australian Law Reform Commission Report, Elder Abuse – A National Legal Response (Report 131)

RELATED TOPICS

Elder abuse prevention, elder abuse intervention, legal responses, law, social work, protection, autonomy, safeguarding, Australian Law Reform Commission

AUDIENCES

Legal professionals, police officers, community members, health workers, aged-care workers, community workers, researchers, students, advocates, policy officers

MATERIALS FOR FURTHER READING

Australia Law Reform Commission (2017), Elder Abuse – A National Legal Response: Final Report; Australian Law Reform Commission, www.alrc.gov.au/publications/elder-abuse-report



HON. JUSTICE SARAH DERRINGTON

PRESIDENT, AUSTRALIAN LAW REFORM COMMISSION (ALRC)

BIOGRAPHY

Prior to her appointment to the ALRC and as a judge of the Federal Court of Australia in January 2018, Justice Derrington was the Dean of Law at the University of Queensland and a barrister specialising in maritime and shipping law, general commercial law and arbitration. Justice Derrington has published in leading international journals in the field of marine insurance and carriage of goods by sea and, with James M Turner QC of the English Bar, co-authored *The Law & Practice of Admiralty Matters*, now in its second edition (OUP, 2016). She was the co-editor of the *Queensland Reports* from July 2011 until May 2015.

MATT CORRIGAN

PRINCIPAL LEGAL OFFICER, AUSTRALIAN LAW REFORM COMMISSION

BIOGRAPHY

Matt Corrigan is a principal legal officer at the Australian Law Reform Commission. Matt worked on the elder abuse inquiry, which the commission completed in June 2017. Mr Corrigan led the commission's work on enduring powers of attorney, family agreements and superannuation. Before joining the commission in July 2016, Matt had a diverse legal career, which began as a solicitor in corporate law. Matt has worked as a legal advisor to the United Nations, Australian Government and the Australian Parliament, principally in the areas of human rights and law reform.

AUSTRALIAN LAW REFORM COMMISSION REPORT, ELDER ABUSE – A NATIONAL LEGAL RESPONSE (REPORT 131)

DISCUSSION QUESTIONS

In broad terms, what was the role of the Australian Law Reform Commission (ALRC) when looking into elder abuse and what, according to the speakers, were the commission's broad conclusions?

The role of the Australian Law Reform Commission (ALRC) was to receive many submissions from a variety of stakeholders, and then to ask the questions: What is the role of law? What can the law do to respond to elder abuse? What can the law do to prevent elder abuse? What things is the law good at? What things is it not good at? The commission concluded that, in part, existing laws can deal with elder abuse but there is also a need for better community awareness and a better community response to provide the protection of existing laws. However, in other areas, such as in aged care and laws relating to enduring documents, the commission concluded there is a need for law reform.

In broad terms, what did the ALRC conclude were inadequacies relating to enduring documents? What kinds of recommendations did the ALRC make to address these?

Mr Corrigan explains that one issue relating to enduring documents is that some people see them as "a blank cheque", where the person operating the enduring document makes all the decisions. And, he adds, society at large has "a lot of reticence around challenging the authority of someone with an enduring power of attorney (EPOA)" as to whether they are acting in the best interests of the person or acting in accordance with the person's wishes. Another problem Mr Corrigan describes is how there is no way of checking that an EPOA is current, or whether there is an existing EPOA in place, or whether the document comes into existence if this person has lost capacity etc. The recommendations the ALRC gave to address these issues include: to ensure that enduring documents can contain exclusions so that, for example, the house can't be sold; or so the son or daughter are instructed to help only with day-to-day finances and not large financial decisions. Secondly, the ALRC recommended a register for EPOA so banks and other financial institutions can have confidence the documents are being used correctly and in accordance with their intended terms.

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Why was mandatory reporting recommended in relation to aged-care settings?

Mr Corrigan explains that the aged-care sector has a “particular set of circumstances” where there is significantly increased vulnerability. For example, he explains that “over half of those in residential aged care have some form of cognitive impairment” and are therefore “some of the most vulnerable people living in institutions” where there are greater challenges for them to seek redress under the current legal system. Mr Corrigan also says with the ageing population, the number of very vulnerable people with significant impairments in aged care will grow and, in that context, the ALRC sees a greater argument for safeguarding by way of mandatory reporting.



STATE/TERRITORY	AGENCY CONTACT	CONTACT
AUSTRALIA-WIDE	Older Persons Advocacy Network (OPAN)	1800 700 600 Connects you with aged-care advocacy services in your state or territory
NEW SOUTH WALES	Seniors Rights Service	1800 424 079
	NSW Elder Abuse Helpline	1800 628 221
AUSTRALIAN CAPITAL TERRITORY	Older Persons Abuse Prevention Referral and Information Line (APRIL)	(02) 6205 3535
	A.C.T. Disability, Aged and Carer Advocacy Service (ADACAS)	02 6242 5060
NORTHERN TERRITORY	Elder Abuse Information Line	1800 037 072
	Seniors and Disability Rights Service of Darwin Community Legal Service	1800 812 953
QUEENSLAND	Elder Abuse Prevention Unit	1300 651 192
	Aged and Disability Advocacy Australia (ADA Australia)	1800 818 338
	Caxton Legal Centre	(07) 3214 6333
SOUTH AUSTRALIA	Aged Rights Advocacy Service	(08) 8232 5377 (Adelaide)
	Alliance for the Prevention of Elder Abuse	1800 700 600 (rural)
	Legal Services Commission of South Australia	1300 366 424 (08) 8111 5555
TASMANIA	Tasmanian Elder Abuse Helpline	1800 441 169
	Advocacy Tasmania Inc. (ATI)	(03) 6224 2240
	Legal Aid Commission of Tasmania	1300 366 611 (03) 6236 3800
VICTORIA	Seniors Rights, Victoria	1300 368 821
	Elder Rights Advocacy (ERA)	(03) 9602 3066 1800 700 600 (rural)
WESTERN AUSTRALIA	Advocare Inc.	1300 724 679 (Perth) 1800 655 566 (rural)
	Older Persons Rights Service, Northern Suburbs Community Legal Centre	(08) 9440 1663 (Mirrabooka) (08) 9301 4413 (Joondalup)

DISCLAIMER

This is information only, not legal advice. If you have a legal problem, call our service directly or see your lawyer. The views expressed in the video are the views of the individual making them, not those of Seniors Rights Service Inc.