

# Restorative Practices in Familial Elder Abuse

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The logo for ACT HUMAN RIGHTS COMMISSION is displayed on a black rectangular background with a teal border. The word "ACT" is written vertically in teal on the left side. To its right, the words "HUMAN RIGHTS" are stacked in large, bold, white capital letters. Below "HUMAN RIGHTS", the word "COMMISSION" is written in teal capital letters.

**ACT HUMAN  
RIGHTS  
COMMISSION**

# Acknowledgement

We acknowledge the traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

*Artwork by Lynnice Church*





# Overview

- § ACT HRC complaints team and functions.
- § Background to vulnerable person's jurisdiction.
- § How the Commission considers complaints about the abuse, neglect or exploitation of vulnerable adults.
- § Applying restorative practices principles to vulnerable person complaints.
- § Some case scenarios.

# ACT HRC Complaint Jurisdictions

Abuse, neglect  
and exploitation

Discrimination

Retirement  
Villages

Services for Older  
People

Disability Services

Occupancy  
disputes

Vilification

Health Services &  
Practitioners

Veterinary  
Services &  
Practitioners

Charter of Victims'  
Rights

Sexuality  
conversion  
practices

Human Rights

Privacy

Code of Conduct:  
Unregistered  
health  
practitioners

# ACT HRC Complaint Team

- § Handles complaints across all jurisdictions.
- § Raises awareness of rights and responsibilities of service users and encourages systemic improvements.
- § Focus on informal resolution of complaints where possible & appropriate.
- § Own motion investigations & reports.
- § Conciliation of complaints.

# Background to Vulnerable People Jurisdiction

- § Proposal in 2020 to introduce a criminal offence for the abuse of older people and vulnerable adults in the ACT.
- § ACT Human Rights Commission did not support criminalisation of vulnerable people offences without other civil options including a civil complaints process as per NSW model.

# Elder Abuse

- § Any act of harm caused to an older person.
- § One in six older Australians (15%) reported experiencing abuse in the 12 months prior to being surveyed between February and May 2020. \*
- § Elder abuse can take the form of neglect, psychological abuse, financial abuse, physical abuse and sexual abuse.

\*National Elder Abuse Prevalence Study Summary Report – AIFS 2021

# Elder Abuse

John was appointed Edna's financial manager by a Tribunal after it was decided that Edna no longer had decision-making capacity with regards to her finances.

John was Edna's son, and felt it was okay to withdraw money from Edna's account to the amount of \$30,000 for his own benefit and the benefit of his children.

The Commission was notified of this after it became apparent by an auditor.



# Elder Abuse

- § Almost two thirds of older people don't seek help when they are abused (61%).
- § Elder abuse often remains hidden, with multiple barriers to reporting.
- § Perpetrators of elder abuse are often family members, mostly adult children, but they can also be friends, neighbours and acquaintances.
- § Many older people who reported experiencing abuse in the survey also indicated they were aware the perpetrator had problems themselves. The most commonly reported problems included mental health issues (32%), financial problems (21%), and physical health problems (20%).

# Vulnerable Person Complaints

- § A complaint to the ACT Human Rights Commission can be made where a vulnerable person is subject to or at risk of abuse, neglect or exploitation: Section 41B (1) of the *Human Rights Commission Act 2005*
- § Vulnerable person (s41B(2))
  - over 60
  - person with a disability

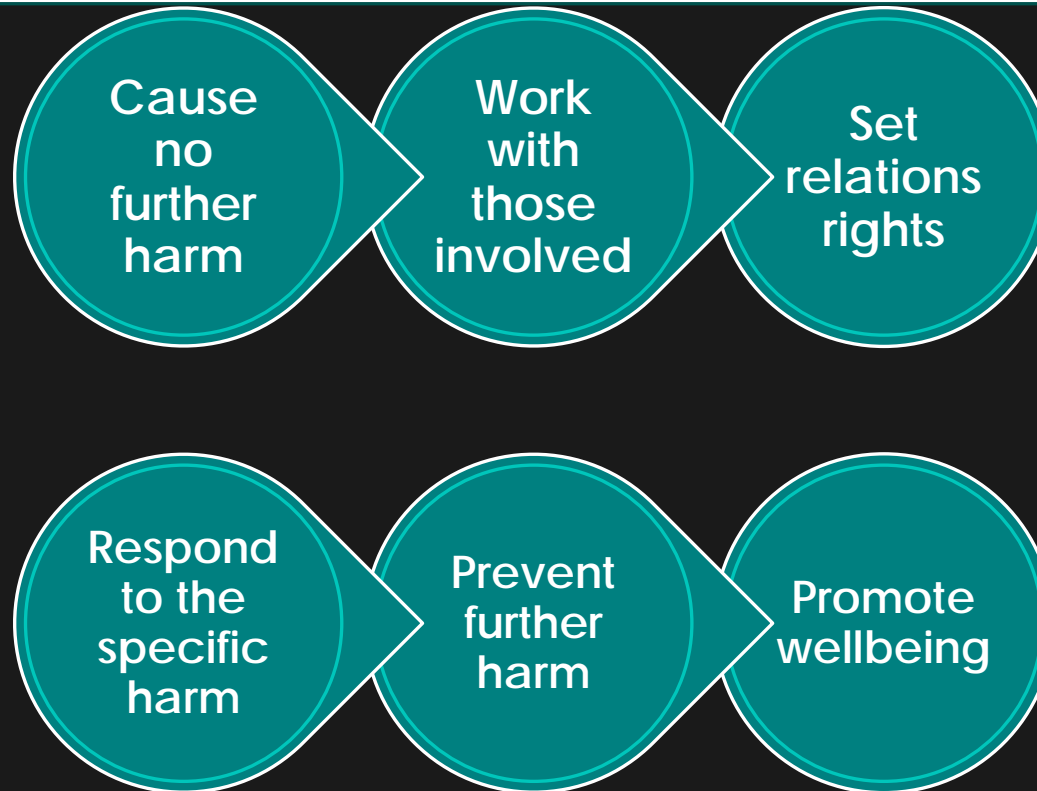
(Criminal provisions commenced April 2021 and HRC in May 2020)

# Vulnerable Person Complaints

- § Consent of vulnerable person usually required, unless unsafe or unable to obtain consent (with support).
- § Complaints or concerns can be anonymous and people who complain to the Commission have protections under the law.

# Restorative Practice Considerations in Vulnerable Person Complaints

## RESTORATIVE PRACTICE PRINCIPLES



## RESTORATIVE PRACTICE PROCESS CONSIDERATIONS



# Why the HRC offers a restorative practice approach in response to elder abuse?

**Facilitates a more nuanced and sensitive approach, recognising that:**

- § Elder abuse frequently occurs in familial settings where there are complex relationship dynamics.
- § Older people often indicate desire/ need to maintain relationship with family member perpetrating abuse.
- § Some perpetrators do not recognise their behaviour as abusive, or appreciate how it impacts the older person.
- § Less adversarial/ more conciliatory approaches can decrease concerns associated with reporting abuse.

# What the HRC considers before taking a restorative approach?

- § **Wishes of the older person**; does the person want an ongoing relationship with the perpetrator, or would they like more assertive action to be taken to remove them from their life?
- § **Risks of a restorative approach**; may rule out this approach where abuse appears deliberate and calculated, the perpetrator appears to be manipulative or to have excessive control of the older person, or there are extremely entrenched patterns of behaviour or mental health issues that would prevent a perpetrator recognising the issues and making changes.

# Integrating restorative principles in response to elder abuse

## Seek to cause no further harm

- § Safety and wellbeing of the older person prioritised.
- § Risks associated with proposed actions are considered.
- § Trauma informed process.

## Seek to work with those involved

- § Older person is engaged and information provided to allow them to make informed decisions.
- § Family member/s offered opportunity to consider impact of their behaviour, and make changes where possible.

## Seek to set relations right

- § Importance of familial relationships recognised.
- § Restorative/ resolution focused approach.

# Restorative process considerations in elder abuse

## Processes need to respond to specific harm

- § Investigation staff meet with the older person to obtain consent, and obtain/ provide information.
- § Enquiries are made to understand the risks, and the intent and impact of any behaviours of concern.
- § Where safe to do so, staff seek to engage with the perpetrator to discuss the behaviours of concern and their impact.
- § As appropriate, conciliation is offered to discuss the risks and whether any agreements can be reached to resolve concerns. Commission also provides an advisory role (eg on applicable laws and rights).
- § Older person and perpetrator are provided with information on alternative courses of action if conciliation unsuccessful and referrals offered.



# Restorative process considerations in elder abuse

Processes focus on preventing further harm and promote wellbeing by:

- § Encouraging the perpetrator to understand the impact of their behaviour on the older person, and seek to make changes to address concerns raised, or to avoid other consequences.
- § Increasing visibility of the risks and the older persons ability to access supports to monitor/ mitigate these.
- § Providing information to the older person on their rights, supports available and other pathways to address continued abuse.
- § Promoting repair of desired/ needed relationships that have been affected by the abuse.

# Other considerations in a restorative approach to responding to elder abuse

## In most instances, seek to:

- § Avoid victim/ perpetrator language when speaking directly with the older person or the family member causing harm.
- § Discuss individual behaviours of concern.
- § Explain how the behaviours could be viewed in the categories of abuse, neglect and exploitation, rather than describing their actions as abusive, neglectful or exploitative.
- § Provide advisory role before and during conciliation on applicable laws and practices.
- § Assist facilitate an often articulate desired outcome by the older person, being the relationship to continue and the abuse to stop.
- § Decision-making capacity

# Scenario 1

## Misuse of funds by an attorney under EPOA

Concerns were raised with the Commission that an attorney had misappropriated approximately \$30,000 from the principal's bank account. The Commission contacted the attorney and requested they attend the Commission to discuss the concerns raised. Conciliation occurred and an acknowledgement was made that the money had been taken and used for their benefit, and an agreement for the repayment of funds misappropriated was drafted by the Commission and signed by the parties. The attorney elected to resume a relationship with the principal after this point.



## Scenario 2

### Perspectives

Mary has recently been diagnosed with dementia, but lives in her own home and remains fiercely independent, completing all daily tasks and continuing to drive without incident. Mary has a supportive group of friends who she meets twice a week for a coffee, but has recently stopped attending the group, prompting a friend to check on her. Mary informed her friend her daughter Isabel had moved from interstate to support Mary after the dementia diagnosis, and whilst she has always been supportive, Isabel has now moved into her home, taken over the management of all domestic tasks and has stopped Mary from driving to see her friends for safety reasons. She also arranged for Mary to sign an EPOA appointing Isabel as the attorney to assist her. Since this occurred, Isabel has sought to operate all of Mary's accounts and taken possession of all of her debit/ credit cards. Mary has advised she is upset about her increasing loss of autonomy, and not being able to see her friends, but is worried about discussing this with Isabel. Mary's friend contacts the Commission to report concerns.



# Want to find out more?

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# QUESTIONS

