Developing Legislative Reforms for Safeguarding Against the Abuse of Older Tasmanians

Insights from a Tasmanian Study

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

Dr Nina Hudson, Senior Research Fellow

Dr Rebecca Bradfield, Principal Research Fellow

Introduction

The Tasmania Law Reform Institute (TLRI)

- Tasmania's peak independent law reform body
- Established 2001 by agreement between Tasmanian Government, University of Tasmania and the Law Society of Tasmania
- Located in the School of Law, University of Tasmania

Functions – to review laws with a view to:

- the modernisation of the law
- the elimination of defects in the law
- the simplification of the law
- the consolidation of any laws
- the repeal of laws that are obsolete or unnecessary
- uniformity between laws of other States and the Commonwealth

TLRI Board members

- Craig Mackie (Chair)
- The Honourable Justice Helen Wood
- Kristy Bourne
- Dr Yvette Maker
- Rohan Foon
- Prof Gino dal Pont
- Kim Baumeler
- Michael O'Farrell
- Alex McKenzie

TLRI staff

- Dr Rebecca Bradfield (co-author)
- Professor Jeremy Prichard (Director of the TLRI)
- Dr Jen Boocock (Executive Officer)

I acknowledge and pay respect to the traditional and original owners of this land on which we gather, the muwinina people. I acknowledge Tasmanian Aboriginal people as the continuing custodians of this land. I pay respect to Elders and those that have passed before us, and all First Nations people.

The TLRI's project

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

- Funded by the *Joy and Don McBurnie Postgraduate Research Fellowship*

- Fellowship aim: 'to generate research that promotes the legal rights and interests of older Tasmanians …'

Aims and approach

- Project aims narrowed by preliminary research and meetings with key stakeholders: focus on safeguarding and help-seeking for abuse

- Overall project objective:
  - Evaluate the current legal landscape for addressing the abuse of older Tasmanians' legal rights and interests
  - Four project aims

- Project approach
  - *Qualitative*: 22 interviews with 34 professional stakeholders
  - *Quantitative*: requests for de-identified data from government departments and (limited) publicly available data

National context

- Ageing population, ageism, intersectional issues

- ‘Overarching’ safeguarding approaches for older adults a key national priority
  - 2017 *Elder Abuse – A National Legal Framework* (ALRC)
  - National Plan: 2019–2023, 2024–2034 draft National Plan

- Other national research / reviews:
  - National consistency supported / substitute decision-making laws
  - Royal Commissions (Aged Care Quality and Safety; People with Disability)
  - 2021 *National Elder Abuse Prevalence Study* (AIFS)

Tasmanian context

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

- Ageing population, prevalence of disability

- Growing policy focus, limited research and law reform specific to abuse of older Tasmanians
  - 2017 inquest into death of Janet Mackozdi (2010)
  - Tasmanian Government Strategies from 2011, Action Plan 2024
  - Safeguarding and reviews of laws priority
  - **Key gap:** central agency reporting, oversight and responding to abuse of older people
  - **Lack of data:** specific to Tasmania on factors that increase risk of abuse and operate as barriers to, or decrease likelihood, of help-seeking

Tasmanian framework

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

- **Current laws – provide some protection but there are gaps**
  - Generalist (criminal, civil restraint orders)
  - ‘Patchwork’ or silos: cover some forms of abuse, some older people, some circumstances (supported decision-making, complaints)
  - Incremental development, not with abuse of older people in mind (nature and dynamics) and not rights/interests-based
  - Barriers to access, low reporting and lack of investigative scope

Tasmanian framework

- **Service response – specialised** but has limitations
  - Advice and referral – **Tasmanian Elder Abuse Helpline**
  - Advocacy and awareness raising
  - Mediation and counselling
  - Specialist legal service (capacity) – **Senior Assist**

- **Other services** interacting with older people lack expertise, specialisation or links with existing responses

Nature of abuse

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

- WHO definition widely adopted: *'A single or repeated act, or lack of appropriate action, occurring within any relationship of trust which causes harm or distress to an older person'*

- Abuse can be physical, sexual, psychological/emotional, financial, neglect, social, spiritual, cultural, and coercive control

- Coercive control is a pervasive dynamic underpinning many abuse types

- Emerging concerns: financial scams, inheritance impatience, and grandparental alienation

National data (2021)

- **Prevalence:**
  - 14.8% of Australians aged 65+ reported abuse in the past year; psychological abuse most common (11.7%), followed by neglect (2.9%), financial (2.1%), physical (1.8%), sexual (1%).

- **Dynamics:**
  - Abuse often involves multiple forms and patterns, not isolated incidents.
  - Perpetrators are usually family members (children most common), followed by partners, friends, and service providers.
  - Institutional settings show higher rates of physical abuse and neglect as abuse types

Tasmanian insights

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

Drawn from current options for help-seeking (limited police and court data)

- **Helpline data (355 calls, 12 months):**
  - Emotional (62%) and financial abuse (54%) most common; perpetrators often adult children (52%) (sons slightly more than daughters)
- **Senior Assist data (95 clients, 6 months):**
  - Similar patterns: psychological (42%); financial (40%); adult child (42%)
  - Psychological and financial abuse frequently co-occur

Tasmanian insights

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

- **Stakeholders**
  - Financial abuse – common, variable, relationships of trust
  - Concern that known cases are ‘tip of the iceberg’
  - Highlighted abuse linked to dementia, family conflict, and carer stress
  - Family dynamics
  - Intersecting forms of abuse experienced
  - Previous abuse experiences (abuse across the lifespan)
  - Significant variation in perpetration behaviour and intentions
  - *Can* be on a continuum – ‘slippery slope’ escalating into abuse

National literature

- Research has examined
  - Risk factors
  - Help-seeking

- Similarities and differences with insights from Tasmanian context

Tasmanian insights

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

Demographic data about older person: Helpline data (355 calls, 12 months) and (95 clients, 6 months)

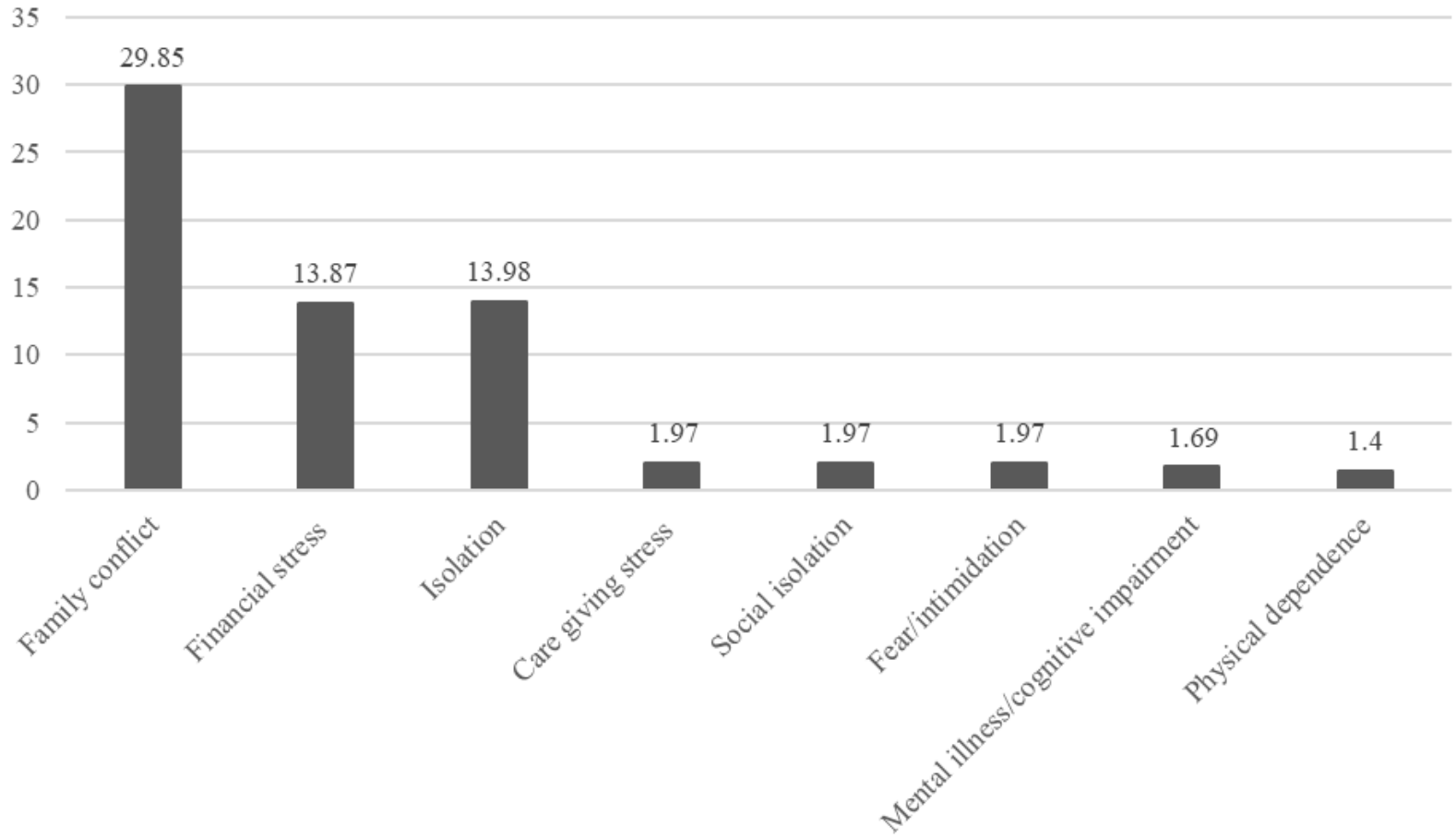
- Age:
  - Most common age range: 70–74 years
  - Second most common: Helpline (80–84 years); Senior Assist 75–79 years)
- Gender:
  - 67% women (Helpline); 60% women (Senior Assist)
- Disability:
  - 2/3 had disability, more prevalent in men (Senior Assist)

Tasmanian insights

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

Risk factors: Helpline data (355 calls, 12 months):



Tasmanian insights

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

Risk factors: stakeholders

- Social isolation
- Carer or support person factors
- Financial pressures
- Low literacy
- Geographical remoteness / rurality
- Cognitive decline / lack of understanding of capacity
- Family relationships, complex dynamics and challenges
- Reliance on others for care

Tasmanian insights

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

Barriers to help-seeking: stakeholders

- Fear of losing relationships, and other consequences
- Carer or support person factors
- Shame
- Geographical remoteness / rurality
- Fear of authority
- Capacity to seek help
- Lack of understanding about abuse
- Response options: consent requirements / lack of knowledge

Tasmanian insights: courts and tribunals cases

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

- Few identifiable cases, limits generalisability
- Cases involving death
  - Facts include financial exploitation, undue influence, and neglect
  - Coroners' findings highlight systemic failures in monitoring and safeguarding
- Cases involving powers of attorney, guardianship, administration
  - Family members (adult children)
  - Behaviours of concern – financial
  - Conflict and complex family dynamics
  - Dynamics of abuse as barriers to help-seeking
  - Taking advantage of declining or lack of decision-making capacity

Overall themes

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

- Abuse of older people is **complex**, often hidden, and shaped by family dynamics, cognitive decline, and socio-economic factors
- Emotional/psychological and financial abuse dominate, frequently intertwined with coercive control
- **Family context**:
  - adult children
  - reliance for care / inter-dependency
  - wide variation in occurrence of abusive situations
  - continuum of behaviours … need for supports, carer-burnout, ‘aggressive help’, slippery slope’, neglect, intentional acts combined with deliberate attempts to hide

Overall themes

- **Risk and experiences are wide-ranging**
  - Ageing population, disability, cognitive decline, social isolation, financial stress, family breakdown, and carer burnout
  - Intersectional factors: gender (women more affected), low socio-economic status, rurality, cultural and linguistic diversity, and LGBTIQA+ identity
  - Ageism contributes to invisibility and under-reporting
- **Help-seeking is low due to relational, cultural, and systemic barriers**
  - Shame, fear of losing relationships, fear of retaliation, lack of knowledge, low literacy, and geographical isolation
  - Most older people manage abuse themselves; few seek formal legal help
  - Stakeholders noted systemic gaps: consent-based services, lack of investigative powers, and need for improved interagency coordination
- **Older Tasmanians 'falling through the cracks' in legal and service gaps**, particularly
  - Those *at heightened risk* due to socio-demographic circumstances
  - Where there are *barriers to help-seeking*

TLRI's recommendations

Reforms to introduce overarching' approach to safeguarding

- Commissioner for Older People
- Receive reports, make inquiries, investigate, referrals to other agencies, other safeguarding actions
- Supported by dedicated legislation reflecting the autonomy, self-determination and rights of older people
- Specialist education and training

Reforms to existing laws

- Specialised approach to restraining orders
- Additional criminal offences relating to the misuse of enduring powers of attorney and guardianship and administration powers
- Creation of specialist policing roles

Questions and feedback

TASMANIA LAW REFORM INSTITUTE

UNIVERSITY of TASMANIA

Contact:

Dr Nina Hudson

nina.hudson@utas.edu.au

Access the research paper:

https://www.utas.edu.au/law-reform

TASMANIA
LAW REFORM
INSTITUTE

UNIVERSITY of TASMANIA

Thank you

Dr Nina Hudson
nina.hudson@utas.edu.au