

Responding to Elder Abuse in an Integrated Model

Melanie Perkins, Community Lawyer





Who is Seniors Rights Victoria?

We are a free advocacy and legal service established in 2008 to help prevent elder abuse and to safeguard the rights, dignity and independence of older Victorians. We are a statewide service.

We work with people 60 + years who are at risk of or experiencing elder abuse:

- Telephone information and referral service
- Short term individual advocacy and support
- Legal advice and casework
- Community and Professional Education
- Systemic policy and law reform



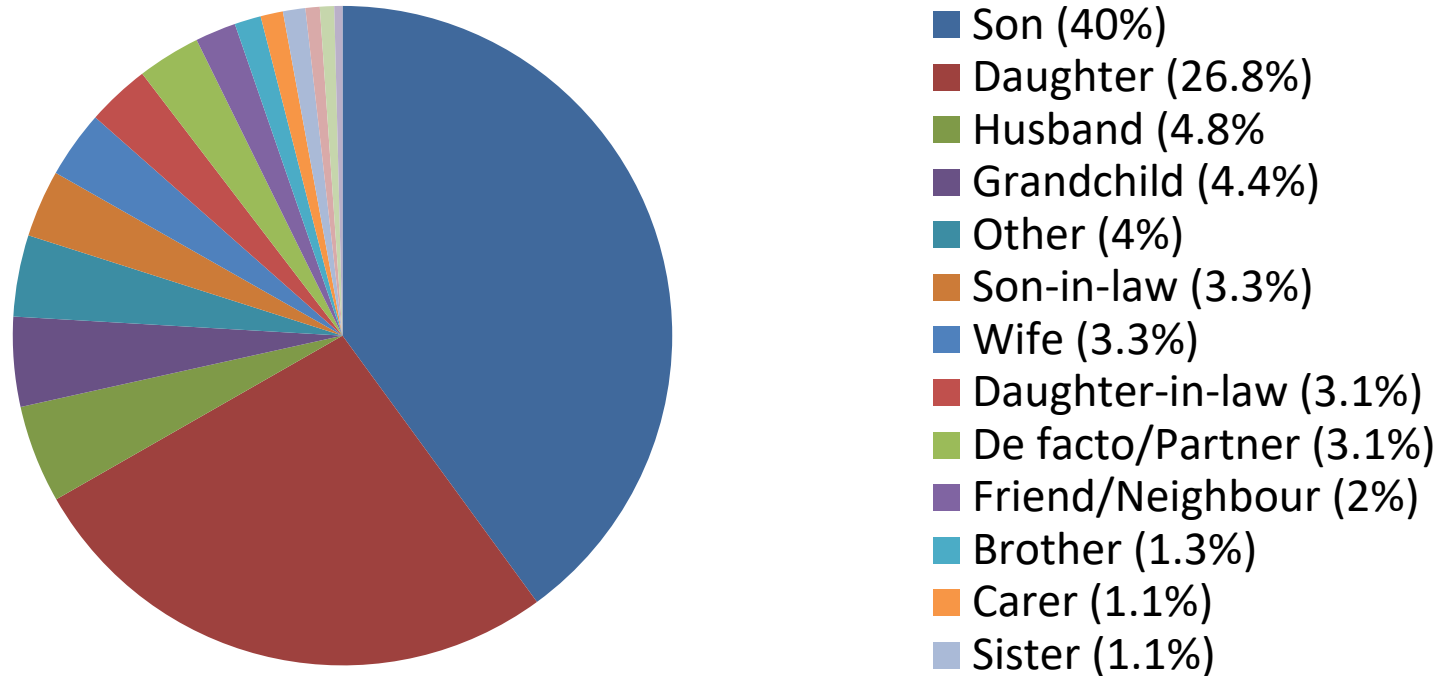
Elder abuse is any act which causes harm to an older person and is carried out by someone they know and trust such as family or friends.



Types of Mistreatment and Abuse

Financial	Property, Assets Money	Not repaying loans; assets for care
Emotional/ Psychological	Mental and emotional	Refusing access to grandchildren; kids returning home
Sexual	Non consensual sexual activity	Offensive sexual materials
Neglect	Necessities of life: food, clothing, accommodation	Not providing suitable care
Physical	Action causing injury or pain	Pushing, shoving, restraints
Social	Forced isolation, stopping contact or connections	Blocking contact with friends and family

Analysis of data about people seeking help from Seniors Rights Victoria: Relationship of perpetrator to the older person



Features of the Model

- Home visits (home, hospital, aged care setting or other “safe” location)
- Client-centred approach
- Risk assessment
- Genuine integration of the two disciplines

Benefits of the Model

- Identify social, health, accommodation, family problems quickly
- Identify legal issues quickly
- Holistic approach to client's problems
- Empowering the older person to take legal action
- Access to justice can be facilitated
- Identification of Law Reform issues
- Development of trust (particularly of lawyer)

Disadvantages/Challenges

- Reticence to contact legal service ??
- Reticence to take legal action
- Individualistic approach v family centred approach
- Competing professional responsibilities of lawyers v social workers
- Capacity
- Confidentiality

Example

- Let me introduce Linda...



Mum, what do you think about this?

Linda is 67 years of age. Linda owned her own home after years of paying off the mortgage. Her house is her only asset and she has access to the Age Pension that covers her food and clothing expenses. She does not have any savings. She lived by herself, her son lived in New Zealand and her daughter lived in Melbourne, about 2 hours drive away from Linda. Her daughter, Gina, suggested that they purchase a property together. This way, if Linda required help with groceries, driving or going to appointments as she aged, she would be supported by Gina, her husband Mike and their two sons.



Linda in the interim could spend more time with her grandchildren, whom she loved dearly. Linda was happy with this arrangement as she also had begun to feel that doing day-to-day tasks such as banking and paying bills was becoming difficult. She agreed to sell her home and provide 50% of the purchase price towards the property (\$500,000), which had a separate “apartment” for her, with a bedroom, a living area and a bathroom. Linda shares the kitchen with the rest of the family. Gina told Linda that she would be on title to the home, but that Gina and Mike would handle signing the agreement of purchase and sale. Linda was left with about \$20,000 after transferring the money to Gina and Mike and purchasing new furniture for the unit.





After the move...

Almost immediately after Linda moved in, Gina and Mike started being verbally and emotionally abusive towards her. They would shout at her, call her crazy and when she yelled back, they would threaten to kick her out of the house. If she put a plate into the dishwasher the wrong way, Mike would tell her that his lawyer would be calling Linda seeking compensation. Unable to stand the abuse, Linda called SRV to ask her daughter to seek an agreement to sell the home or purchase her interest.



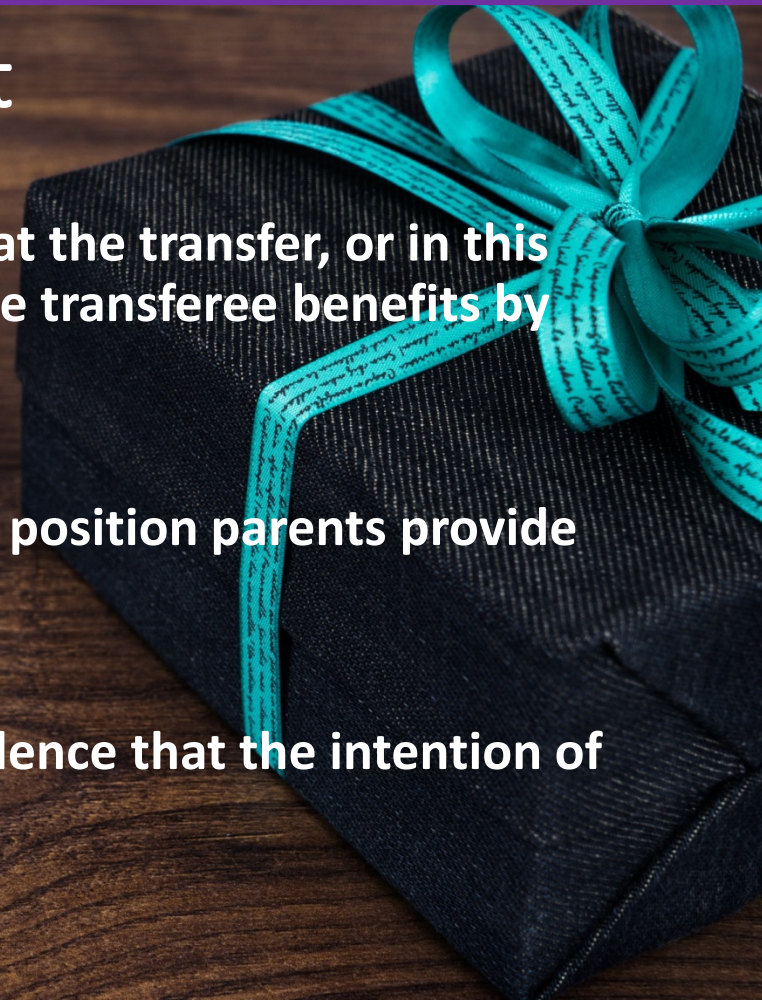


How do you think Linda feels at this stage?

What are some of the issues with this arrangement from a legal perspective?

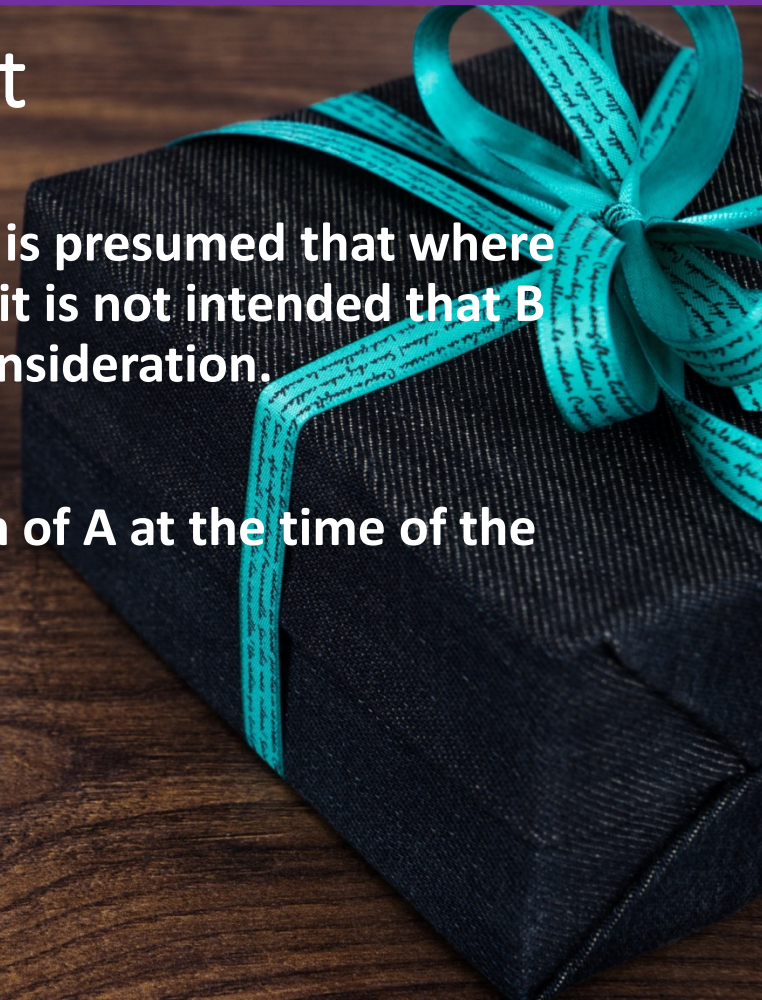
Presumption of advancement

- An equitable principle which presumes that the transfer, or in this case the provider of funds, intends that the transferee benefits by way of gift.
- This presumption arose out of the historic position parents provide for their children
- This presumption may be rebutted by evidence that the intention of the transferor was to the contrary



Presumption of resulting trust

- A presumption exists in equity whereby it is presumed that where A, purchases a property in the name of B, it is not intended that B receives the property as a gift or for no consideration.
- The presumption is based on the intention of A at the time of the purchase.



Intention is key...



SRV's assistance...

SRV helps Linda find rental accommodation by putting her in touch with a housing service. They assist her to obtain an intervention order against Gina and Mike. Gina and Mike would however drop the children off once a week so Linda could spend time with them. She heard that Gina and Mike had rented out her unit. She asked them for some of the rental income so that she could pay her rent, and they refused.



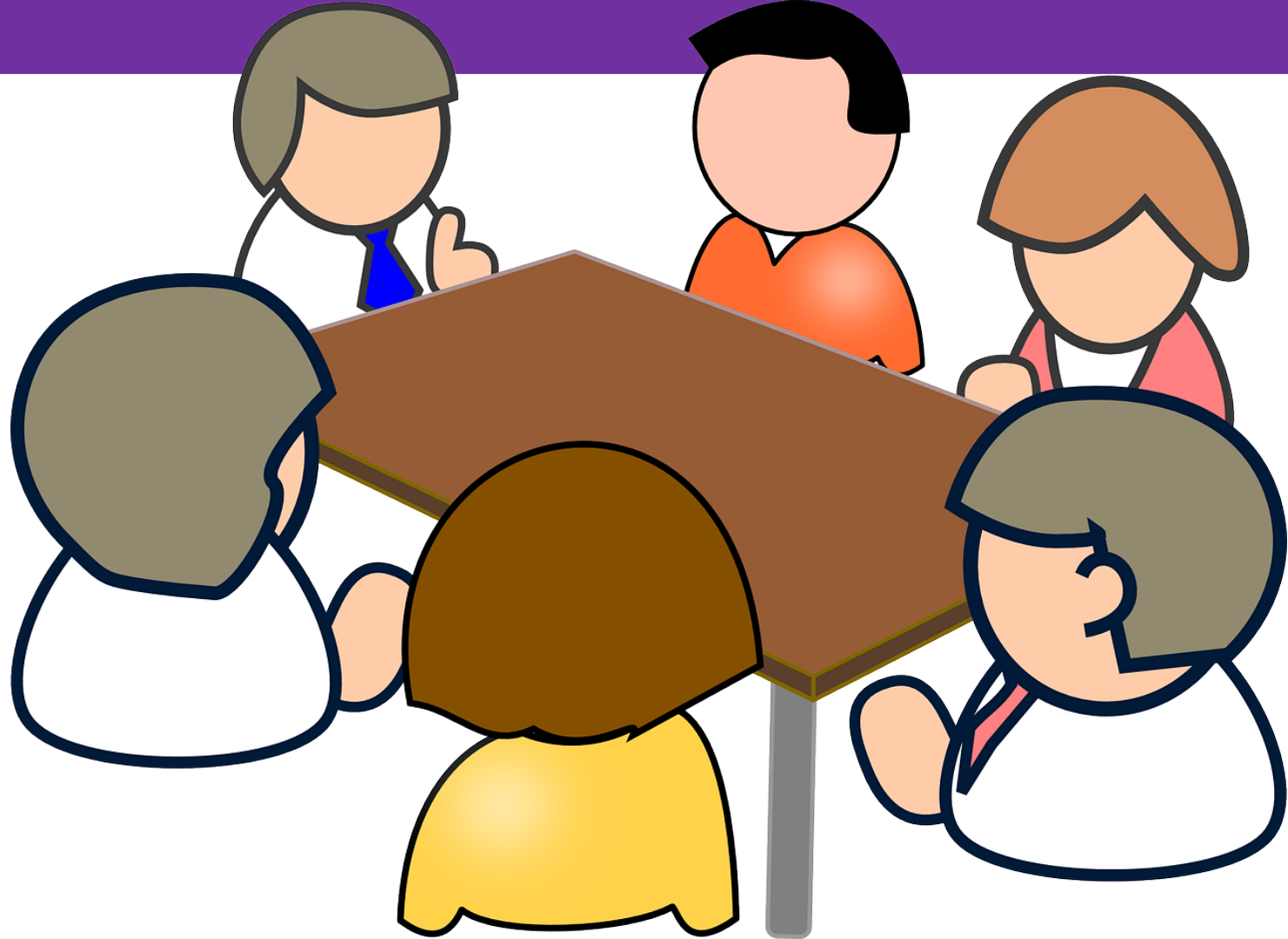
SRV's assistance...

Once Linda's housing is sorted and the IVO is in place, then SRV started looking at the ownership issues and found that Linda was not on title to the home. Linda was understandably distraught at hearing about the ownership issues.



Action taken by SRV

Seniors Rights Victoria writes to Gina who provides no response. We then issue an application in the Building and Property List of VCAT. Gina and Mike are self-represented. Soon after they have to attend a compulsory conference required Linda to be in same room as Gina and Mike. This was very stressful. The matter does not settle at the case conference.



Could we do anything to help Linda cope with this stress?

How did we prepare Linda for a hearing?



Linda...

The case does not go to trial as it settles soon after the case conference. Linda sells the property and buys a small flat on her own. She does not see her daughter and son-in-law any longer.

Getting in Touch with our service

- **Helpline: 1300 368 821 (clients and service providers)**

Update: Royal Commission into Aged Care Quality and Safety



Riaza Rigby

15 March 2019

Elder abuse and the RC



Aged care royal commission hears from victim's family and seniors groups on opening day

The Royal Commission into Aged Care Quality and Safety has opened in Adelaide with a plea for "empathy for the elderly" from a family affected by the Oakden scandal.

Aged care royal commission told of prevalence of assault, malnutrition and dementia

Royal commission into aged care quality and safety

Almost 4,000 assaults reported in Australian nursing homes last year, inquiry told

What is the RC looking at?



> Terms of reference/Letters Patent expressly cover:

“substandard care being provided,
including **mistreatment** and **all forms of
abuse**, the causes of any systemic
failures”



Role of the RC



- > Purpose of the Royal Commission
 - > Investigate the Terms of Reference
 - > Report – findings and recommendations
 - > Interim due October 2019
 - > Final due April 2020
- > Inquisitorial in nature
- > Extensive coercive powers



What has happened to date?



- > Two initial sets of hearings:
 - > Preliminary hearing (18 Jan)
 - > Overview hearing (11-13 Feb)
- > Provider Survey
 - > Required all APs to list any occasions or complaints of substandard care, including mistreatment and all forms of abuse, since 1 July 2013
 - > Top 100 providers reported 7 Jan
 - > Remaining providers reported by 8 Feb



Processes and source of information



- > Information from the regulators
- > Hearings regarding Case Studies
 - > Home Care 18–22 March 2019
 - > Residential Care 6 -13 May 2019
- > Community Forums
- > **Public Submissions**



Key themes



- > Clinical outcomes
- > Staffing
- > Restraint
- > Adequacy of care offered to people living with dementia
- > Person-centred care
- > Role of families in the provision of care
- > Governance and complaints management



How you might be affected by the RC



You may have clients who:

- > Come to you with abuse claims against APs
- > Are young people with disabilities residing in aged care
- > Reside in residential aged care or receive home care who raise issues about:
 - > The care provided by the AP; or
 - > Are concerned others are impacting on their ability to be cared for (eg family)



How you might be involved



Complaints

- > Helping with complaints made to the ACQS Commission about an AP

Public Submissions

- > Assisting with writing or reviewing submissions (online form) or providing advice about the impact of making public submissions
- > Advice should the person be asked to present evidence - the RC may contact some individuals



Resources for you and your clients



Available on the RC website:

- > Guidance on Making a Submission to the Royal Commission
- > List of support organisations
- > Information about hearing dates, locations



QUESTIONS



Disclaimer



The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.

