National Elder Abuse Conference

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ROCK THE BOAT

Discussion Paper # 4

Financial safeguarding—
refining the suite of options

caxton
legal centre inc

Caxton Legal Center and our panel acknowledge
the Jagera and Turrbal people as the first nations and custodians
of the land on which we work.
We remember their ancestors with respect and strive to achieve justice
for Aboriginal and Torres Strait Islander people.

Chair:

Bill Mitchell – lawyer, Townsville Community Law Inc.

Panellists:

Diana Ennis – Australian Financial Complaints Authority

Carolyn Bond – Economic Abuse Reference Group

Christine Cupitt – Australian Banking Association

Matthew Leslie – Suncorp

Melody Valentine – Caxton Legal Centre

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ROCK THE BOAT

FINANCIAL SAFEGUARDING—REFINING THE SUITE OF OPTIONS

Session outline:

Mandatory reporting of elder abuse and the introduction of other protective legislation to address financial abuse of older people has been met with strong opposition from governments and community groups, who advocate for older people's ability to be self-determining and autonomous.

An alternative model has appeared called 'safeguarding'. Safeguarding is a generic term for interventions that prevent harm and reduce risk of abuse and neglect to adults. The safeguarding model, however, also invites complex challenges. Some criticise the model as discriminatory, patriarchal, paternalistic and out of step with human rights norms. Others suggest it is revelatory, overdue and essential. Increasingly commentators note a human rights approach requires systems to ensure a proper balance between rights.

We want to tease out that fine balance of how to promote and protect autonomy, independence, equality and non-discrimination when faced with abuse and exploitation.

Introductory remarks

Yesterday's session looked closely at a Human rights framework around older people's assets. Who has rights to those assets and decision making around them? Key questions asked by that panel were: Whose assets are they? What are the obligations (legal, cultural, familial, and social) to share assets with family before or after they die? What do we know about current attitudes and practices and their interaction at a micro and macro level?

In asking these questions we are looking to strengthen the human rights of older persons. We seek an understanding of relevant patterns and trends, risk profiles and protective factors, and the dynamics of older person's networks. We seek this knowledge to design methods to prevent and intervene in elder abuse. To make matters more complex, within the debate around elder abuse, there exist various definitions and typologies of financial abuse.

Today we will draw on the work of yesterday's panel and move from looking into the private domain of the family and trusted networks and turn our attention to institutional and environmental aspects—the bigger picture. We move from the individual and the family to the community and broader society.

Human rights norms such as the Disability Convention warn us that to promote dignity and equality we must avoid conflating diversity and vulnerability. We also know the critical importance of recognising intersections and interrelationships in order to know when and how to intervene. This tension is perhaps the greatest challenge we face in preventing and responding to financial abuse.

On one hand, older persons must be able to make their own financial decisions and act on them. Autonomy means to self-govern, to be a law to one's own self, to be a free agent. On the other hand, older person's interactions with others (family, friends, carers, advisers) brings risks that those 'others' will deny or restrict an older person's autonomy for financial gain. This is the classic case of abuse within a relationship of trust. To make things more complicated, a common response has been to pre-emptively remove autonomy before or when those risks arise, just in case, or supposedly in, an older person's best interests. Our urge to protect older persons from the risk of lost autonomy often leads to actions that have the effect of denying their autonomy. We regularly face this paradox in the area of elder abuse.

In their paper Financial Abuse of Older People by a Family Member: A Difficult Terrain for Service Providers in Australia, Adams et al. (2014) suggest that '… the high value placed on older people's ability to be self-determining and the reluctance to view older people as a vulnerable group who are excessively needy has led to strong opposition by Australian Governments and community groups to the development of mandatory reporting and/or other protective legislation to address financial abuse of older people.'

Despite this, an alternative model has appeared called 'safeguarding'. Safeguarding is a generic term for interventions that prevent harm and reduce risk of abuse and neglect to adults. In our discussion today, the focus is on safeguarding against financial abuse. In just a few years, the debate around safeguarding has heated up. Safeguarding legislation has been passed in South Australia, is proposed for New South Wales and being investigated in other jurisdictions. The Australian Law Reform Commission called for safeguarding laws in its report on elder abuse.

The safeguarding model invites complex challenges. Some criticise the model as discriminatory, patriarchal, paternalistic and out of step with human rights norms. Others suggest it is revelatory, overdue and essential. Important questions arise around how appropriate it is to have safeguarding modelled around constructions of risk or vulnerability? Industry safeguarding models are an exemplar. Constructions of risk or vulnerability appear in a range of industry and regulatory guidelines but this is now shifting. Increasingly commentators note a human rights approach requires systems to ensure a proper balance between rights.

Today, we ask what is financial safeguarding, how are we doing it now and importantly, how might we refine the options in a way that properly balances competing interests? We want to tease out that fine balance in this session. How to promote and protect autonomy, independence, equality and non-discrimination when faced with abuse and exploitation. How institutions view and handle these dynamics. How should those at the coal face—bank tellers, advisers—respond?

We invite discussion about practical application of rights' protections, best practice lessons from other places, effective understanding of intersectionality and future proofing any protective approach.

Opening comments from the panellists

Diana Ennis: On 1 November 2018, the Australian Financial Complaints Authority came into operation. So, we are a free, independent, external dispute resolution scheme, and we look at individual complaints. We have about 37 000 members, and anyone who holds a financial services licence in Australia and provides a financial service to a consumer or small business can lodge a complaint with us. We are about delivering fairer outcomes and making sure there is accountability in the financial services sector.

How does that fit into safeguarding and financial abuse or elder abuse? We are looking at how people can be held accountable when things go wrong. So, it is really about reinstating trust and also delivering outcomes for consumers where there has been elder abuse. How do we contribute to a broader framework about safeguarding? For us, that is about our role in systemic issues investigation. Where we see an individual complaint, for example a financial services provider, whether it is a general insurer, whether it is a bank, whether it is a superannuation trustee or a life insurer, may not have followed a policy or procedure that might set out the way a financial firm should deal with elder abuse, or protocols they should have in place to actually safeguard people, we can then raise that complaint as a possible systemic issue and look at what steps need to be taken more broadly within that organisation to remedy the issue.

Bill Mitchell: Thanks Di. Carolyn? An opening statement?

Carolyn Bond: The project that I am working on really focuses on intimate partner and family violence, and the financial impacts of that. It is very focused and we are working with a number of community organisations, family violence services, legal services and financial counselors, and trying to influence what is happening in both, the legal sector and also businesses such as banks. But it can be quite broad. We are engaging with motor registration, energy companies, water companies, insurers and training of estate agents. And then there are also the state resolution bodies that are relevant and also the regulators. And I have a confession to make, that when I was asked to be on a panel about safeguarding, I had to look up what safeguarding was. And while I think there are quite a few crossovers and a lot of intersections between the work that I am doing and the work that you are doing, the issue of a conflict between the human rights and the individual's agency can be an issue, but it is much less of an issue. But I do think that there are some intersections between the sort of work we are doing and the kind of businesses and government departments, who come across these issues. And we have to look at who can do something to address them. And then we should not just be working and encouraging, but perhaps applying a bit of pressure through regulations or through the regulators to get change.

Bill Mitchell: Thanks Carolyn, Christine?

Christine Cupitt: I think the first thing I would really want to point out is that the banking industry believes very strongly that the whole community has an obligation to respond to and tackle elder abuse. We recognise that elder abuse and other kinds of vulnerability can happen to anybody. And on that basis, we feel that it is very important that the banking industry and the community responds to tackle these issues. We have a pretty big program of work happening within our organisation, and we have actually got two very talented people that work almost full time on vulnerability and the financial abuse issues. But our priority program at the moment is our campaign that focuses on supporting the recommendations of the law reform commission to introduce nationally consistent power of attorney arrangements, to introduce a national register of power of attorneys and to ensure that there are good-faith reporting mechanisms available in each state.

Bill Mitchell: Thanks. Matt? Any opening remarks?

Matt Leslie: Hi everyone, I am Matt Leslie from Suncorp. I have the complete honour and privilege of being Suncorp's customer advocate. My team and I actually strive to be the voice of the customer and drive the voice of the customer within our organisation and across all of our wonderful banking and insurance teams. We have a particular focus on customers who are experiencing vulnerability, be it elder abuse, severe financial hardship or domestic violence. So, we look at the training provided to our frontline team members, and how we can better resource, equip and empower our frontline team members. That is our key internal focus as well as making sure we have the right support mechanisms in place.

From an external lens, I work really closely with a lot of the other advocates in my banking peer organisations to work out what we can do as an industry. Christine just mentioned that we need industry-wide action and I wholeheartedly agree with that. We all heard from Natalie Siegel-Brown, the Office of Public Guardian in Queensland, and we have a really strong relationship with that organisation. Once our frontline staff have identified or suspect something may be wrong, we have a fast-line referral mechanism to the OPG as well as other organisations.

Bill Mitchell: Well, hold that thought because we will probably talk a bit about that later. Melody?

Melody Valentine: I am Melody Valentine from Caxton Legal Centre. Caxton Legal Centre has a long and rich history of working in the elder abuse sphere. We have pioneered a social worker –lawyer co-response model to elder abuse, and we have been employing that model for 15 years. In 2018, we applied that knowledge to a project called the Financial Protections Service, which we co-developed with Townsville Community Law Inc. and the Queensland Government. The service is aimed at retirement-age Queenslanders making financial decisions for later life. And really, the aim is to bring information into communities on decisions that we, at the other end of the spectrum as lawyers and social workers, see as being key areas where elder abuse may occur. The service is being delivered to communities across Queensland, and it is offering information, informal screening for elder abuse and referral. We worked closely with the Financial Counsellor's Association of Queensland and with the National Seniors' Financial Information Desk to provide referral pathways and input into the program.

Question 1

Are constructions of vulnerability in current models appropriate and effective, and what are the alternatives?

The Australian Banking Association's Industry Guidelines *Protecting Vulnerable Customers from Potential Financial Abuse* are under review. The ABA's discussion document *Every Customer Counts: Better Banking for Vulnerable Customers* moves to a 'facially neutral' approach. It recognises that there are many ways to be vulnerable that do not rely on inherent characteristics such as age, disability.

The term 'vulnerable customers' has been used, and for the purpose of consistency, we propose retaining this term in the guidelines. In using this definition, the industry notes that:

- anyone can be vulnerable, and vulnerability can be temporary, permanent or situational
- banks should be careful not to assume that just because a customer is, for example, elderly, they are vulnerable
- it is not the role of the bank to solve a customer's underlying problem, however, banks acknowledge our actions can contribute to customer circumstances
- banks want to use the concept of vulnerability to ensure they are helping their customers.

Vulnerability is more than inherent or of the person, or situational to circumstances. For example, where social workers might look at family dynamics, health workers might look at cognitive impairment, lawyers look for undue influence and bankers look for unconscionable conduct. So, if we are going to think about how we use our safeguarding regime, what are we talking about when we talk about vulnerability? What is the ABA doing about the issue of vulnerability and how it is approaching it.

Response

Christine Cupitt: I think one of the most important things that the industry is doing is moving away from the idea of looking after vulnerable customers to responding to vulnerability. I think, historically, when we have talked about vulnerable customers, we apply a sense of permanence around vulnerability for a start and we kind of put people in boxes. Whereas what we are trying to do now is move to an approach where we recognise that anyone can become vulnerable; that it may last a long time or a short time, and that our banks need to build frameworks that are flexible enough to allow for any customer to become vulnerable, and make sure that they are supported and move on in terms of getting customers back on their feet.

Bill Mitchell: Di, do you want to comment on this one?

Diana Ennis: Yes, look, we do see complaints about vulnerability and about elder abuse. We have an approach document on our website that talks about the type of approach we take to these matters when something comes to our office. One of those things we look to is red flags, so things that perhaps should have been picked up at the time the transaction occurred or when something went wrong. For example, a lot of the matters that we would see generally do occur in the banking space. I am not saying they are exclusively in that space, because we do sometimes see elder abuse issues when it comes to general insurance and a payout under a policy to an elderly person. And then there are these complex issues, as we have heard in other sessions about whether the person actually has capacity or not. But at the end of the day, the types of matters that we will look at are for example: did the elderly person actually present in a branch; did they actually understand the transaction; were they accompanied by someone; did somebody take them aside and have a private conversation with them about whether they really understood what they were doing; is it an unusual nature of transaction that the person is doing? The key areas where issues arise are related to credit card use, unauthorised transactions coming through the card. For example, an 89-year-old gentleman who has a membership subscription to a gym—things like that will alert our financial services providers.
The other one you see is about home loans, where perhaps the home has always been unencumbered and then a mortgage has been taken out, usually in the elderly person's name as a co-borrower or, alternatively, as a guarantor, and the funds for the loan were paid to a daughter, grandson or granddaughter. So, they are the sorts of practical issues that we see at AFCA. The types of outcomes we can deliver are waiver of the debt, setting aside the guarantee and refunding the fees on the credit card. These are really practical things that can assist the person at a difficult time, because often they are in a situation of financial hardship as a result of the abuse.

Is it easier and equally important to focus on the transaction and the behaviour than on traditional notions of vulnerability?

Bill Mitchell: So, notwithstanding that the royal commission will probably hand out findings that say these people are the types of vulnerable people that we have seen and these are the stories we have heard, are we saying then that it is easier to focus on the transaction and the behaviors than it is on traditional notions of vulnerability. Melody or Matt, do you or Carolyn want to comment on that.

Matt Leslie: I think that the financial transaction is often an easier thing to identify because it is data driven, and you can see that no more than a hundred dollars has been spent in any transaction, then all of a sudden it spikes to five hundred or five hundred thousand. And so, I think yes, we can run the data algorithms and we can look at that as a frontline team member. The inherent challenge with vulnerability is that it is not always easy to identify or understand and, while I love the cultural diversity, the flipside of that diversity is that it is not easy to distinguish between vulnerability and cultural norms. So, I agree with you, Bill—yes, transactions are somewhat easier in certain instances.

Bill Mitchell: What about behaviors? What do we think about certain behaviors as something that gives us an idea of vulnerability, or is that again falling into the trap of traditional notions of vulnerability?

Melody Valentine: I think part of the problem is that we—in terms of culturally diverse communities in particular—are not really consulting enough. We do not know enough. So, there has been a lack of research, and the research that has been done has been relatively limited. In our work, what we tend to focus more on are red flags as opposed to risk factors, because people are diverse. They do not conform to categories. Someone might turn up showing all of the symptoms in the world and still not be experiencing elder abuse. When we train people to recognise elder abuse, there is more of a focus on observable behavior and red flags for abuse, and I think that transaction is another great way to build on that.

Bill Mitchell: So, is there room for gut instinct in a bank teller's response to an abusive transaction?

Christine Cupitt: Look, there definitely is. I think one of the key things we see, and it is of course always easier with the benefit of hindsight, is that somewhere someone knew that something was not quite right. Yet, it did not necessarily escalate. At the time you can just say, '… can you leave that with me for a minute? Let me go away and I will come back to you in a second.' The key challenge is, however, in the online environment. With internet banking, as Matt said, you can see unusual transactions that are out of the norm, but face-to-face banking gives you a bit more to go on with behavioral issues. If a carer is wheeling in someone in a wheelchair, who does not really understand, who appears to be very confused and looks really worried, they are the really obvious cases. The not so obvious ones, and we still get complaints about those, are where the daughter comes in getting dad to co-sign on a loan or a guarantee, and they are tricky to work out. Does he really understand that he is not receiving the benefit of these funds? Is this really what he wants to do?

Bill Mitchell: Is this why that ABA is moving towards a new code of practice that says if you are going to be a co-borrower, we need to see a benefit for you. And if there is no benefit, then the transaction is or may be problematic.

Diana Ennis: Yes, it is a red flag. If there is a co-borrower arrangement where one of those borrowers is not receiving a substantial benefit, then there is a red flag there, and one of the requirements of the code is that the bank needs to be satisfied there is no financial abuse. We have also introduced some provisions around guarantors and giving guarantors three days before they can sign the guarantee to make sure that they have enough time to decide whether it is right for them. And then there are other existing obligations around making sure that people are aware of the kind of advice they can receive from lawyers or financial planners and take steps to get that advice.

Bill Mitchell: How do they pay for those lawyers and financial planners is one of the problems we face with the clients we see. Are we taking away older people's rights to autonomy by saying, your gifting and your guaranteeing is problematic because we are scared of those actions; someday down the track you might say '… in fact, does there have to be a benefit?' That is a question that seems to be without an answer in this space in some ways.

Carolyn Bond: I am going to step in there because I do not think the banking code is strong enough. We are talking about vulnerability, but when you are looking at co-borrowers who do not get a benefit or get a small benefit, or even when you are looking at guarantors, it does not have to be a classic case of vulnerability. Look at parents of young adult children. 'I've lost my job, Mum.' or 'I'm trying to start a business.' or 'My family's in financial trouble. If you sign this guarantee for the bank, all you have to do is sign it, and I'm okay.' or 'I'm in financial trouble, Mum and Dad. Can you help me out?'

Those people signing as guarantors are not what you would regard as vulnerable. A number of us would argue, and my background is in consumer advocacy, taking a consumer rights perspective, that there is still too much pressure on banks and other lenders to identify abuse where there is a family relationship and where people are actually signing on. And I will go further and say, no, we are not taking autonomy away from the older person. I am saying we should be giving even more protection to anybody who is not getting a benefit for a loan that they are signing.

Does there have to be a financial benefit to the older person? Family and community education about financial abuse is key.

Bill Mitchell: But, is there not a benefit to an older person giving their child a guarantee in a time of trouble? Are we looking at this from an objective point of view? There are different views that we can have on this, what about the issue of family though? What are the family's responsibilities in all of this? Do we need to educate families about older people's money and their property?

Matt Leslie: Yes, I think community awareness is a massive issue. It was touched on earlier today. But I genuinely do not know whether Australian communities really understand what financial abuse is. For example, you take $100 out of your mum and dad's account to do their grocery shopping. And then you decided, in your wisdom, that you are going to take another $50 for yourself because you have taken the time to do their shopping. I do not know whether the message has got through that this is not acceptable and that it is actually stealing. I think $50 becomes $500 becomes $1000 becomes $10 000. Community awareness is something that we all need to lean into, be it the industry, everyone in this room and the media, because it is a sleeping dog and we have to do something about it.

Bill Mitchell: I am not suggesting that there is not necessarily benefit in gifting, and I take your point as well. My personal view is that there has to be a tangible financial benefit for the older person to make it worthwhile. How can we possibly make all of the people who work in banks and other financial agencies aware of this issue, and have them be able to react to these issues? What do we need?

Question 2

What lessons can we learn from the global financial sector's best practice on safeguarding?

Phelan et al.'s recent work *Experience of Bank Staff of the Financial Abuse of Vulnerable Adults* relied on a similar approach, noting '… the term "vulnerability" relates to a social vulnerability rather than any inherent individual quality'.
Phelan et al. found that '… in reviewing the context of similar regulatory authorities in other countries, such guidance needs further development of bespoke policy in line with legislative reform which can tangibly impact front line practice in financial institutions'.

It is a nice segue into the international picture. What have we learnt from the global models or other international models? We looked at Phelan et al.'s work and the experience of bank tellers in Ireland around financial abuse. And what she said in a nutshell is that whilst there have to be systemic policies that control these, there is also the need for a bespoke response. What is the bespoke response that we need to ensure that every agency can deal with the issue?

Response

Melody Valentine: The banks internationally are leaning into this issue through age-friendly banking, which is a concept that came out of America about five years ago and is being really extensively adopted in America and the UK. And, just turning to the idea of informing people about financial decision making, one of the initiatives that has come out of England is 'carer information days', where representatives from banks and public guardian bodies and other organisations come together specifically for the purpose of educating carers on their role of supporting other people to make financial decisions. That is one of the initiatives that we are seeing in that space.

Matt Leslie: Yes, I must admit I read Phelan et al.'s work as well and I sometimes find it hard to grapple with the bespoke response. I think that every organisation has slight nuances depending on its customer base and the types of products and services that it offers. But, I think at an Australia level, the two kind of key things in my mind are consistency or harmonisation. We cannot have each different state doing something differently. The last thing you want is the first question your bank or your insurer asks when faced with a customer matter, to be 'What state is the customer based in?' You want a consistent, harmonised approach that we all agree is best practice, and it is the way we are going. And the second piece would be collaboration. My personal view is there is absolutely no intellectual property in doing the right thing. We should be proudly sharing our knowledge across banks for example Suncorp has the best data algorithm and CBA has the most amazing training suite or whatever.

Bill Mitchell: I think Facebook has the best data algorithm.

Matt Leslie: We need to share it. Sorry?

Bill Mitchell: Does not Facebook have the best data algorithm?

Matt Leslie: Yes. Exactly, well that is true. But I think honestly, harmonisation and collaboration is the way we are going to tackle this issue because if we all go off in our own little way and run a state-based kind of regime, there is a big risk there in my mind.

Bill Mitchell: Carolyn, tell us how the issue of economic abuse has been dealt with by agencies in a bespoke way, let us say.

Carolyn Bond: I agree. I think if you go into one bank, you should get a similar response than if you go into another bank. However, because we are dealing with a lot of different agencies, the issues and the risks in relation to family violence would clearly be different for a water or energy company and banks. In Victoria, we actually have legally enforceable rules for energy and water companies to respond to family violence, which are being audited by their regulator. But it is a pity that that is all state based. You would want to think that people everywhere would receive the same understanding from a water company or an energy company. But I think we can have different levels of expectations from different types of businesses. For example, we have been looking at the family violence training that estate agents do who are involved in renting. I am focused mainly on intimate partner abuse, but I think some of these are relevant to all sorts of abuse. You have a think about the training for estate agents, they used to just have to deal with damaged dogs and domestics etc. Pretty basic, horrible stuff.

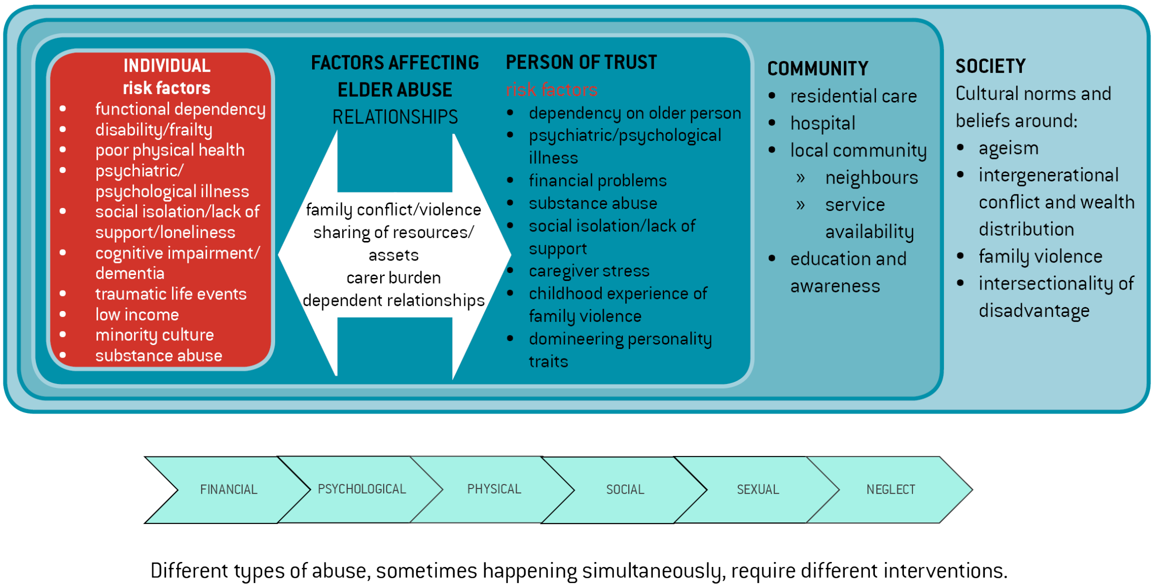
Bill Mitchell: Some of these estate agents are pretty horrible and basic in my experience.

Carolyn Bond: The laws have changed in Victoria, so there are more family violence protections, which links into something someone talked about yesterday. Under our tenancy laws now, if a tenant says 'I have experienced family violence and I need to install locks or safety grills or deadlocks', the landlord cannot object to a reasonable request from you to do that. But who is handling tenancies? Usually young people in their 20s who want to get into the industry. They are very young and they have no life experience. They do need to be trained. And we need to agree on the expectations across sectors and different industries, whether it is financial planners, whether it is banks, whether it is utilities, and work out at what level to pitch the training and what to expect realistically.

Bill Mitchell: Did you want to comment, Di?

Diana Ennis: I just think what Matt mentioned before about community awareness is really key to this. And I think that families are such complex entities that there is no one-size-fits-all answer to this. You can have as many policies and procedures in place, you can do as much training as you like, but in the end, particularly with frontline staff or with people who are reviewing transactions on the internet, you have to listen and observe. Does it look different? Does it smell different? Is this what should be happening? And I think that is really challenging for society, because people do have a right to make decisions about where they want to put their finances and how they want to do that. God help me, when I am in my 80s, if I have my brain, I want to be able to make my own decision. How do you get the balance right? Financial institutions are in really difficult situations. They also have confidentiality obligations. There are privacy laws. This is not an easy area to navigate and probably reform in that confidentiality/privacy area needs to come along on the path with everything else.

Bill Mitchell: Melody, I want to ask you a question about all of these complexities and vulnerabilities. How can we expect people to be able to respond or understand and respond? And in a bank situation perhaps, even intuitively, quickly. Are there approaches like the one that we have put up here, which is the applied ecological approach. We have taken this diagram from work done by the National Ageing Research Institute (NARI) and Seniors Rights Victoria (Figure 1). Can you talk to us a bit about that?



Source: diagram adapted from Joosten, M., Vrantsidis, F. and B. Dow (2017). *Understanding Elder Abuse: A Scoping Study*, Melbourne: University of Melbourne and the National Ageing Research Institute.

Figure 1: Applied ecological model

Melody Valentine: Yes, so the applied ecological approach on the screen is an approach to viewing people as embedded in social situations, and it reminds us that people exist in the context of family, community and wider society. It is being used as a framework for understanding elder abuse and there is a really excellent report by NARI. It shows how elder abuse can arise out of risk factors in that relationship between the older person and the perpetrator. But it also arises in context, for example, the impact of an ageist attitude in society and how that impacts on the experience of elder abuse.

It is a really excellent framework for getting our heads around how elder abuse arises in a context, but I will also add that it has its limitations. There has been really not enough study done in Australia about what risk factors contribute to elder abuse. It is a good starting point for sure. Sometimes, all of these risk factors might be present and a person may not be experiencing elder abuse. Where do we go from there? As I said, what we tend to work towards is the development of observational or gut instinct, okay? It is something that a social worker at Caxton described to me as practised wisdom. And people who work in the field have it. But how do we develop that in people who have a short amount of time, for example bank employees? My thinking is, putting it in context, learning about it, information and training, red flags. There are screening tools that are used by ambulance officers where you do not ask a question, you just start to develop a knowledge of what elder abuse could look like. But I really think what would be fantastic is to have some work between financial institutions and lawyers and social workers who are doing this work to develop something for banks.

Bill Mitchell: Because this is one of the problems. We see these people at different stages of the continuum. Financial providers might see them in the foyer of the bank, they might not see them at all, it might be a virtual online banking transaction. Di sees them after the fact when they have already a complaint. We see them in that process probably. Are there different lessons for different stages of this game? Does anyone want to comment on that? Or are they all the same lessons? They are all the same things we need to look at?

Matt Leslie: There are different lessons depending on where you interact with the customer and what relationship you have with them, absolutely. But to Melody's point, these multidisciplinary teams is the way that you can understand the different paths, the different stages the customers are at. Then you can tackle the issue holistically and understand when to do it. But I do not think you can achieve that if you are only solving one slice of the pie.

Bill Mitchell: How do we pay for those teams, is the question I have. How are we going to pay for these wonderful teams? Is there an opportunity for industry to be looking at how it supports community in these endeavors? Is that a possibility?

Matt Leslie: Yes, I think the funding actually is a live issue. When Mr and Mrs Sheehan gave their example at the start of today, and they mentioned they went to the Hervey Bay Legal Community Centre and that that advice changed their life, I realised that we need everyone to have access to their relevant local community sector to get the same advice. We cannot expect everyone to be paying for lawyers, and I think that is a live issue that needs to be solved. Absolutely.

Diana Ennis: I suppose the other thing is AFCA is free. At any stage, if something goes wrong, we can consider it generally, if a financial service is being provided. But I think that is unwinding transactions that have happened, the challenge is to prevent transactions from happening in the first place that should not have. This is a societal issue with an aging population where people often have misunderstanding about what is appropriate. And that does come down to community awareness as well.

Bill Mitchell: Christine, are the banks working on this issue? Community awareness about what transactions are okay and what are not?

Christine Cupitt: Banks have taken a number of different steps. The first one is that they are rolling out quite substantial training programs, based on our red flags type of methodology; both for frontline staff, for people in branches and for people in call centers. They are looking at a range of ways how to consider what is unusual in terms of transaction behaviour. But one of the things that I think is more important is that they are looking at ways that people can take control of their own finances. One of the things that I think is been missing so far in our discussion is what is available today for people who still have capacity or still have full function to put in place arrangements to protect themselves. Obviously, we have talked about the power of attorney work which is significant, but there is also a range of things that banks have put in place. Probably not directly for this issue, but things that people can take hold of to protect themselves. Things like cleaning up all their direct debits, making sure that they have direct debit arrangements in place so that payments are made on a periodic basis. Some banks are looking at different functionality in apps, so that people can switch off certain types of transactions. There are credit cards that are available that you cannot gamble with for instance. So, there are things on the ground today that banks have thought about in terms of this issue and helping people protect themselves.

Do policies and practices look different in the online and virtual world?

The digital disruption is here and it is happening, and we are working in a world that is online and virtual in many ways. Banking is at the full front of this. What does the future hold for financial abuse in terms of what we can do to future-proof our systems?

Christine Cupitt: I think there is a huge opportunity with technology. I think that one of the traps that we can fall into is assuming that everything has to be branch based and that the best way to manage this risk is through personal interactions through branches. We know that less and less people want to use branches, and that they want more digital channels. Here is the opportunity to look at the data and also look at some of the emerging technologies I was talking before about switching on and off certain types of transactions. People can use technology that they are comfortable with to protect themselves and manage their affairs. I think that technology presents more opportunities rather than diminishes the ability for people to protect themselves.

Bill Mitchell: Melody?

Melody Valentine: Yes. I just jump in there and say that there is plenty of research to suggest that actual relationship between an individual and bank staff member is a really important protective factor in preventing elder abuse. That may be less and less the case as time goes on, and I totally agree that there are some really great innovations in protection that are technology based, but we need to be cautious about leaving people behind. Some of the other innovations to fill that gap include things like the Bank of Scotland, which has these really kitted-out trucks that drive around the Scottish Highlands, meeting up with people who are unable to make it into a bank, and that is a model that they have been using for 60 years. I think we need to go slowly and consult with people, whilst looking to the future.

Matt Leslie: I think the key point there is that banks will be digital led but certainly not digital only, and accessibility must remain key.

Bill Mitchell: The people who bank with banks are still people, pretty sure.

Question 3

What service responses and staff training should frame our future model of safeguarding?

Not all local branches have an elder abuse expert on tap. They have to rely on some other mechanism. And what about training? What training is needed?

Response

Matt Leslie: Yes, the approach we have taken is a tier training approach. We have three tiers of training, there are two tiers that are rolled out to everyone basically, which are all around awareness and some key skills you will need to ensure that we are treating our customers with the utmost care, respect and looking after their needs. Then there is the third tier that is very, very deep. Multiple days in a training room with technical experts for those people who are internal specialists. That is the way that we approach it. And we certainly do not create the training in a little hub, just in our organisation. It is an industry-wide approach to make sure we are getting the best of the best.

Diana Ennis: If I can just add to that, AFCA staff need to be really aware of elder abuse as well because sometimes we get complaints lodged by a family member where the customer is not aware that there is a complaint, and may not be—they may be disputing the very transactions that they did on behalf of their parent at AFCA, hoping that there would be an award of compensation to then get it refunded into their account so that they can break even. That is something that we also have to do— similar training as Matthew mentioned in terms of making sure staff are aware. Staff are aware of potential conflicts of interest.

We allow consumers to have authorised representatives, but if there is a conflict or potential conflict with that authorised representative, we will ask them to step aside and we will do the similar thing where we will refer them to a community legal centre, to a financial counsellor and to other organisations. It is something that our staff themselves have to be aware of, and I think the most powerful thing is when staff have that gut instinct, and if there is a strong escalation protocol within the organisation. These are not straightforward things, and the more people you have discussing and trying to work out how to solve the problem, the better.

Questions from the audience

Audience member: Linking to this morning's session, do we need a new criminal offence for these types of cases.

Matt Leslie: I have been thinking the exact same question when I heard that presentation. I am in two minds, obviously there are criminal provisions now. Do we need something above that? Potentially. But I think we probably need to explore this topic a little bit more. I want harmonisation across all of Australia, but there is a recognition that we probably need to trial a couple of them and road test a couple of things before we go further. I think that it probably has potential, but let us be a little bit cautious before we jump into it.

Bill Mitchell: Di, did you want have some input?

Diana Ennis: I think it depends on the severity of the abuse. And it depends on the likelihood of recurrence. I think it is difficult to differentiate, at the end of the day, between civil and criminal. At least through outcomes that we deliver, we can restore someone back to a position they would have been in had the abuse not occurred. If it is likely to reoccur, then that is probably the different issue whether there should be other sanctions such as criminal sanctions on the perpetrator. It is challenging because often when we are dealing with a particular elderly person where this has occurred, they know that the financial firm is potentially going to take action against their family member to recover the funds. There may not be that much of a chance to recover the funds because they are potentially unsecured, and they are now vehemently against it. Because they still want to see the grandparents at Christmas. They still want to have contact with their family. So, it is such a vexed issue. I do not think there is a straightforward answer to it.

Audience member: Please discuss: having an enacted enduring power of attorney does not actually stop the adult from accessing or using their own account. Here is an anonymous question: Is there too much emphasis placed on the role of powers of attorney in this debate, do you think?

Diana Ennis: I think we got to be careful with powers of attorney, we have had complaints lodged with us where there were three daughters, all with powers of attorney. One took her parents into a branch to get a loan to guarantee her business. The other two daughters had no idea. What came out of this was that at the time the parents needed to go into care, they put the house on the market, and it was only then that the two other daughters realised that there was a mortgage on the property, which never should have been there, and they did not have enough funds to put their parents into care. Powers of attorney I think, Christine, you will have comments about this more broadly, but it is not a tick—yes, there is a power of attorney so everything is okay. And it does no stop you looking at the transaction and working out whether there is something awry.

Bill Mitchell: People do not need powers of attorney to simply steal someone else's money, or do they? It is just one method.

Christine Cupitt: Well, absolutely. I think that one of the things that is missing from an awareness point is people who are granted enduring powers of attorney. Understanding what the best interest obligations are, understanding what kinds of decisions they can make and really getting a grip on what their obligations are. We would not propose that an enduring power of attorney is something that everyone should put in place. You have to think about the person's particular circumstances. They have to be a trusted person. But they also have to be educated about what their obligations are, if they are granted an enduring power of attorney.

Matt Leslie: And across Australia, we need a power-of-attorney register. So that frontline staff or organisations can actually work out whether it is the current power of attorney. Are there multiple powers of attorney in place? Because at the moment, we just have people rocking up to branches with a power of attorney and a judgment call needs to be made. I think there is certainly something we can do across Australia to help out.

Jacqueline (audience member): Does financial literacy have a role to play in safeguarding consumers?

Melody Valentine: Yes. Financial literacy is something that we looked into quite a bit with our Financial Protections Service. And the concept that we lean more towards is financial resilience. Financial literacy is a very important part of the framework around making sure that people can understand financial decisions. But the concept of financial resilience is somewhat broader. Rather than just looking at whether the person can understand the financial transaction that is occurring, it is looking more broadly at their ability to make decisions in the framework that they live in which is familial, community, and society.

And I think that would loop back into what I wanted to say that we also need to be putting a bit more emphasis on support for decision making before capacity is lost and financial resilience as a key idea in that. So, Ireland is taking a whole-of-country approach to supported decision making, instead of just relying on the enduring power of attorney, which kicks in when you lose financial decision-making capacity. They have support agreements where you can have someone working with you to make decisions as a co-decision maker or a supporter.

Matt Leslie: Regarding financial literacy, there is kind of joint blood on the game. As an industry, the material about products, the contracts and all the other documents you get with your everyday banking and insurance needs need to be written in a way that is simple enough for the average person to understand. It is certainly a very regular conversation that we have at the ABA and what we are looking at as an industry.

Bill Mitchell: Carolyn, do you want to respond?

Carolyn Bond: Yes, look, I am pretty skeptical about financial literacy overall. And I think it is right that we have to simplify documents and teach people to read contracts or understand complex things. But in the space I work in, anecdotally, when you are looking at women experiencing economic abuse, you realise you have accountants, you have people who have a lot of financial acumen, you have professional women as well as women who perhaps do not have that sort of level of education, and it does not seem to have much impact as far as we know on whether that person is vulnerable to abuse or not.

Audience member: There is definitely vulnerability for elders in being guarantors. It is interesting that elders are not borrowing from young family members. Elders are often considered cash cows.

Matt Leslie: Fair comment and you look at the transfer of wealth that has happened and is happening, it is a real-live issue.

Bill Mitchell: It is an area of competing interest, is it not?

Matt Leslie: Yes.

Valerie (audience member): Is there a difference in red flags in the online environment from the physical environment?

Christine Cupitt: I think red flags in the online environment are probably more challenging because you do not have that face-to-face personal contact. Having someone come in to a branch who looks disheveled, who has someone standing next to them who is talking for them, who is not letting them answer questions—that is all what you see visually. If you are online, you are not seeing that at all. There are other indicators about whether or not the transaction is really out of step with previous transactions. If the accounts are closed down or transferred to another account, who is the recipient of the funds that are transferred. Do you think it is a little bit more limited in the online environment?

Matt Leslie: Yes. Ideally you want both sets of red flags, there are the physical indicators you can see and then there are the indicators you see in the data when you run the algorithm.

Christine Cupitt: But I would say that using data gives you a different kind of insight you will not get in a branch or in a face-to-face context, and it is things like someone, who you know resides in the nursing home, but is using an ATM that is 200 kilometers from their home.

Matt Leslie: Correct.

Christine Cupitt: Those are the kinds of insights that you will not get. So, I think it is both. But I would not underplay the kind of insights you can get from the data-driven approach.

Jeff (audience member): Flagging can identify vulnerable clients. So, how does that actually happen behind the scenes? Can you give us an insight into actually, is there a flagging process?

Matt Lesley: Yes, I could probably give you an insight how it works in our organisation. We have a really strong focus on the fact that we want our frontline staff to be alert and aware. We give them training, obviously, in vulnerability including elder abuse. But we certainly do not expect our 6000 frontline staff members to be experts in the field of every type of potential vulnerability there is.

Basically, if there is a reason to flag or something does not feel right, they flag the customer. And then we have a centralised specialist hub of teams that basically sit there and case-manage individual matters and be that point of contact for the customer. We do everything we can to solve the issue within our organisation, but, most importantly, we have direct referral pathways, facilitated through those centralised hubs, to key community organisations where we have specific needs that can be dealt with by these organisations. So, we basically flag, centralise and treat with extreme care and specialist advice.

Audience member: Do customers know if they have been flagged? How would I know if I was flagged? I am certain I am flagged somewhere, but …

Matt Leslie: Transparency is king. We try and get customers to obviously identify and then we will let them know that we are going to flag them in our system and take extra care with them. I suppose every case is different, and in circumstances where there is physical violence by a spouse or something like that, you have to be really, really careful. That is why in some instances it is not appropriate. So, it is a case-by-case basis.

Christine Cupitt: That is different from the work we do. It is important that the institutions ask, do you want us to flag you. Especially if there is physical violence involved, having a flag on the account, if the perpetrator finds out, could cause more harm.

Audience member: Can a person be restored to their previous financial situation if a perpetrator was a family member? Or only if it is deemed that a financial institution has been negligent?

Diana Ennis: The financial institution must have done something wrong. It does not matter who perpetrated or who the perpetrator was. Was it a family member or non-family member. At the end of the day, we do ask for all the relevant information, look at the merits of the complaint and work out whether the financial services provider met their obligations, whether it falls under the Code of Banking Practice, whether it is under the contract, whether it has met the industry guidelines and also whether they did what was fair in all the circumstances. If we do not think they did any or all of that, then the consumer will be restored to the position they were in before, irrespective of who the perpetrator was.

Carolyn Bond: I would encourage the use of AFCA. You might come across cases where you think, that the financial institution did the right thing. I cannot say that they did the wrong thing in relation to elder abuse, scams and other things. But sometimes you actually have a look at the determinations, and many of the decisions of AFCA are on their website. I think they make exciting reading. Sometimes, I will read one and I think, oh well, that consumer would not have had any hope. And then I think, oh wow, I have actually found that the bank did this wrong and should have been aware of that Ɛ I know there was a case where an older person was scammed and he asked for money to be transferred. But because he had said he wanted to borrow the money for a kitchen renovation and because the money was transferred to the UK, AFCA actually found that the institution should have had some awareness, and noticed the flag there. I would say it is a free service, sorry I am not trying to give you hundreds of complaints. But it is worth going to the institution first thing if you can actually get a resolution but if you cannot, it is still free. Go along, because sometimes you might be surprised.

Bill Mitchell: Thank you. Christine, a quick reply.

Christine Cupitt: To echo Carolyn's last point. Go to the institution first, and it does not have to be on the footing of a complaint. It can be a way of explaining to the bank, 'Look, something has gone wrong here. What we intended to happen has not happened', or 'we did not anticipate these consequences'. Talk to the institution because they will, and they are getting better at it, respond in a way that looks at how to help the customer to get back on their feet.

Matt Leslie: Yes, absolutely. Come to us and most importantly, the impetus is on us to review and remedy the issue. So, yes, please come to us and obviously, AFCA and all financial services providers work really closely on individual disputes to make sure we have a clear understanding as to what needs to change moving forward.

Audience member: Have you thought about community-based responses? We have a lot of really interesting things happening in organisations. One of the things we have done in the past is work with the local community and said, let's bring the public trustee, the local bank managers, community health and some GPs together. That is how you get your multidisciplinary team and do not pay for it. So, I think that sometimes it is useful to think outside the individual organisational response and say, what is the referral network? How do we bring people together in this local community?

Melody Valentine: That is exactly what we do with the Financial Protections Service, that has been rolled out in 10 communities across Queensland. Brisbane is one of the communities, so the areas are quite large. And the whole idea of that service is to go into the community and work out what other referral networks and contacts there are in that local community, and you are hundred percent correct. There is evidence across the board in lots of different social issues that show that locally based community-developed responses are key. I think that sort of knowledge can really feed into all of our response and should be feeding into all our responses.

Audience member: Are financial counsellors for instance or social workers able to go into the branch to red flag straight away?

Melody Valentine: I think financial counsellors and social workers are absolutely key in any multidisciplinary team that you are talking about in this area. We worked with financial counsellors developing the Financial Protections Service. They know this area. They know how to work with clients, so we should definitely be working with them.

Bill Mitchell: The sign in front of us is looking radioactive, like it could explode at any moment. It is saying we have exceeded our time but we have made up the time we lost. So, can we please thank the panel for their contributions. Thank you so much.