Fraud and Financial Abuse of Older Persons[*]

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Introduction

At the 42nd Plenary Meeting of the General Assembly of the United Nations (1992), it was decided to observe 1999 as the International Year of Older Persons with the theme 'Towards a Society for All Ages'. Activities have taken place throughout the world to celebrate the achievements of older persons and to demonstrate ways in which they have contributed to the community and how they may continue to do so. One of the principles which the General Assembly identified was that older persons should be able to live in dignity and security and be free from exploitation and physical or mental abuse. In this article, consideration is given to the threats which face older persons in terms of their vulnerability to acts of fraud and financial abuse. Being aware of the risks and informed of ways in which to avoid them are essential for all people, regardless of their age. Alerting older persons to these issues will help to enable them to live free from the potentially disastrous consequences which fraud and financial abuse can entail.

One of the stereotypes which surrounds older people is that they are easy targets for acts of fraud and deception. This stems from a perception that they have declining mental abilities and a dependence on others due to their physical fragility or mental deterioration. They are also seen as being isolated, often having few friends or family upon whom they can rely, making them vulnerable to those who seek to establish relationships merely in order to steal their money.

As with most stereotypes, this view of older people has some basis in reality and some older people are, indeed, victimised through fraud. Generally, however, the extent to which older persons are defrauded is directly proportional to the vulnerabilities which arise out of the circumstances in which they live. Old age, of itself, does not predispose someone to being deceived and defrauded any more than does gender or nationality. Indeed, the experiences of a lifetime may make older persons more able to detect a fraudulent proposal when it is made and to avoid its consequences, than others who are younger and less knowledgeable concerning life's pitfalls.

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It is important to study the victimisation of older persons through fraud as often the impact of financial crimes may be considerable. Unlike younger people who are able to 'start again' after having been defrauded, older people have less time available in which to recoup their losses and often are solely dependent on their savings to finance their future. Loss of these assets therefore, may ruin a person's otherwise well-planned retirement.

It has also been found that the personal, emotional, and psychological consequences of fraud on older persons are much more profound than for younger persons. Older women, in particular, have been found to suffer greatly when victimised through fraud. In one study of the victims of a large-scale telemarketing scheme, for example, the elderly female victims, whose mean age was sixty-six years, expressed feelings of 'sadness' and having been 'crushed' by the experience (Sechrest et al 1998; see also Lester 1981).

Defining Older Persons

In determining whether fraud and financial abuse directed at older persons represent an over-exposed stereotype or a true vulnerability, definitions of age need to be examined carefully. Older persons—the term favoured by the United Nations Division for Social Policy and Development—could be said to refer to all those beyond median ages for people based on predicted life expectancies—forty for men and forty-two for women (AIHW 1999). This seems far too inclusive as most would consider those in their forties not to fall within the category of 'older persons'. Alternatively, older persons could be defined to include those beyond retirement age—which could vary from fifty-five to seventy-two depending on occupation. Gerontologists would define older persons as those with some physical or mental infirmity caused through ageing. Others have defined older persons simply as those who regard themselves as old (Gilbert & Zdenkowski 1997: 15).

In view of the lack of agreement, and taking into account the widely varying abilities of those of different ages, it is perhaps unwise to be too confined by chronological age in defining older persons. For present purposes, older persons will be considered to be those over sixty-five years of age. Many of the issues raised, however, will have equal application to those who are younger or older than this arbitrary age.

Increasing Numbers of Older Persons

The population of Australia, as in many other developed countries, is gradually becoming older and this trend will continue well into the next century. In 1871, for example, less than two per cent of the population were aged sixty-five or more while in 1997 this percentage had increased to twelve per cent. In 1997, the Australian population totalled 18.5 million people with more than two million of them over sixty-five years of age. By 2051, some twenty-four per cent of the Australian population will be aged sixty-five or more.

Table 1: Australian Persons Aged over 65 in 1997

Age	Male	Female	Total	%Population
65 - 74	616 500	679 000	1 295 800	7.0
75 - 84	298 800	434 300	733 200	4.0
85 and over	65 300	150 800	216 100	1.2
Total	980 600	1 264 400	2 245 100	12.2

(Source: Australian Bureau of Statistics 1999: 196).

As a result of this increase alone, it is to be expected that the number of older Australians who will be victimised through fraud as well as other offences, will also increase. The question of importance, however, is whether the rate of increase of fraud victimisation will be greater than the rate of increase in the number of older persons, and whether older persons will be victimised more through acts of fraud than other types of crime.

The Nature and Extent of Fraud and Financial Abuse Against Older Persons

In Australia, fraud is not recognised as a separate legal category of crime (other than conspiracy to defraud). Instead, a variety of property offences may be used to prosecute conduct which involves fraud and deception such as crimes of theft and obtaining a financial advantage by deception.

In recent times, research into so-called 'elder abuse' has identified financial abuse of older persons as one of a range of forms of victimisation to which older persons may be subjected. Other types of elder abuse extend from physical violence to criminal neglect (see Kinnear & Graycar 1999). Financial abuse includes making improper use of an older person's property or money without his or her knowledge or permission, forcing older persons to change their wills to benefit specific individuals such as health care providers or relatives, and denying older persons access to their money or preventing them from controlling their assets (Kurrle et al 1992). It is sometimes difficult to distinguish abusive conduct from well-intentioned but insensitive behaviour. On some occasions, conduct which began as being in the older person's best interests may end by being abusive. For example, family members may initially offer helpful advice regarding financial investments, but as the older person's mental faculties decline, they may take over the entire management of that person's affairs and misappropriate funds for themselves. Determining the exact point at which abuse occurs is a matter of great difficulty and the circumstances may be unclear and evidence impossible to gather.

Some forms of financial abuse may entail criminal conduct, while others may be oppressive, unwanted, and unacceptable forms of manipulation of older persons' finances which fall short of criminal activity, but which may involve breach of civil legal obligations (see Hudson & Carlson 1998). Both, however, are worthy of research—often, financial abuse which entails civil consequences only, may be a precursor to criminal fraud.

There is a lack of reliable data on the nature and extent of fraud generally in Australia (Smith 1997) and the data which do exist rarely include the variable of age. Accordingly, on the basis of official crime statistics, it is not possible to state with any precision the extent to which older persons have been victimised through fraud and whether the rate of victimisation is greater or lesser than for other age groups.

Reliance on official crime statistics relating to fraud and deception is problematic in itself where older persons are concerned as many offences may not be reported to the police, particularly those which have been perpetrated by relatives or carers. This may be due to the close personal involvement of the older person and the offender, or fear of reprisal if the matter is reported to the authorities. There is also the concern that if a carer is convicted and imprisoned there will be no one left to care for the older person. In addition, in some cases, older persons who suffer from dementia and who are unable to communicate effectively may not be aware that they have been defrauded and may die without the crime ever being discovered or investigated.

Some empirical evidence linking fraud victimisation with age has been gathered through the use of self-reported victimisation surveys. The results, however, are conflicting, mainly due to a lack of precise data and the inability to distinguish between specific sub-groups of older persons and different categories of crime and abuse.

The 1975 victimisation survey conducted by the Australian Bureau of Statistics found that as age increases beyond the thirties, the rate of victimisation for offences of fraud, forgery, and false pretences decreases. The reduction in the rate of victimisation was found to be much greater for women than for men. Women over the age of sixty, for example, were found to be victimised for these offences at less than half the rate for men of comparable age (ABS 1975).

Overseas evidence also shows that older persons are less often victimised than younger persons. Titus & Gover (1999), for example, concluded on the basis of evidence from a number of fraud victimisation surveys conducted in the United States, that older individuals are not at greater risk of fraud victimisation. They argue that younger and better educated people may have wider interests, engage in a broader range of activities and have more consumer participation in the marketplace than other demographic groups, thus increasing their exposure to fraud.

Other studies, however, point in the opposite direction. In 1978, the United States House of Representatives Select Committee on Ageing found that although older persons represented only eleven per cent of the population at the time, they accounted for thirty per cent of fraud victims (United States 1984: 1). Another United States survey of police chiefs, district attorneys, state attorneys-general, and consumer protection agencies found that over seventy-seven percent of those who responded indicated the elderly are more often the targets of fraud than the younger population. This targeting was attributed to perceptions of vulnerability, need, and isolation amongst older persons (United States 1983).

In Japan, in 1988, one study found that approximately ten per cent of crimes involving fraud, embezzlement, and forgery were perpetrated against 'elderly' victims, whereas 7.2 per cent of all crimes were perpetrated against elderly persons. The offences in which elderly persons were most often victimised related to unlawful business practices such as the sale of counterfeit goods and investment fraud (Miyazawa 1990).

A number of studies have also sought to determine the incidence of financial and other forms of elder abuse. In 1992, a study was published which had examined the medical records of 1,176 community-based patients over the age of sixty-five who had been referred to a geriatric and rehabilitation centre in New South Wales in the financial year 1990-91. Fifty-four cases (4.6% of referrals) of abuse were discovered, with 13 (1.1%) involving material / financial abuse. Another twenty-one cases involved multiple forms of abuse which could have included financial abuse. In the majority of cases of financial abuse, dependency of the older person was found to be the major causative factor (Kurrle et al 1992).

In 1993, a survey was undertaken by the Commonwealth Office for the Aged of 121 Aged Care Assessment Teams throughout Australia. 105 Teams responded to the survey of which eighty-four reported at least one case of abuse of persons aged sixty-five or more living in the community in the period January to June 1993 (80%). Cases of financial abuse were reported by approximately one half of the Teams which responded (Office for the Aged 1994).

In 1995, another survey was conducted of twenty community nurses and home care workers in rural New South Wales who had regular contact with older persons. Of the 598 clients visited during a one month period, twelve (2.0%) cases of financial abuse were reported. The study also found that as the number of the client's health problems increased, so also did the extent of abuse increase (Cupitt 1997).

Anecdotally, there is evidence that older persons continue to be defrauded and abused financially in a variety of ways. The types of misconduct fall into the following categories which correspond with the activities in which older persons often engage and the products and services of which they frequently make use.

Financial Abuse by Legally-Appointed Agents

An area of increasing concern is financial abuse carried out by those who act in a fiduciary capacity as legally appointed agents for older persons. Anyone is able to execute a document known in some jurisdictions as an Enduring (or Protected) Power of Attorney, which confers authority on someone else to act on that person's behalf in the management of his or her affairs. If the donor of the power later becomes mentally incapable, the attorney will still be able to act for that person unless an application is made to a court or Guardianship Board to revoke the power. Such arrangements are governed by legislation in each state and territory which ensures that the person granting the power understands the nature of the agreement and how the agreement may be varied or revoked.

Legislation in each state and territory also establishes Guardianship and Administration Boards which exist to protect the interests of people who are unable to manage their affairs through various specified forms of disability or mental deterioration. Public Advocates (or Guardians) are also able to be appointed to assist people with disabilities in order to ensure that their interests are protected. Where an older person is unable to manage his or her financial affairs, an Administration Order may be made which enables that person's estate to be managed by an appointed administrator. It has been held, however, that an administrator ought not be appointed simply because mundane decisions having legal consequences have to be made by a relative caring for a senile person (*Ex Parte Liddle* Supreme Court of Victoria, 19 December 1989).

Legally-appointed agents, be they attorneys, guardians, or administrators, are required to act in the best interests of those for whom they act and are not permitted to profit from their agency (*Reckitt* v *Barnett, Pembroke and Slater* [1929] AC 176). Where agents breach such obligations, an action for damages may lie, and in extreme cases, the agent could be prosecuted for theft or obtaining a financial advantage by deception. Although cases are rare, examples occasionally arise (Mathis 1994).

The difficulty exists, however, in discovering abuses of this nature as often the older person is incapable of knowing what is being done on his or her behalf and it is only where a friend or relative believes that something improper has occurred that the matter may be investigated.

Perhaps the most critical step in perpetrating financial abuse through the abuse of agency arises when legal documents are executed which establish the necessary fiduciary relationship. Those who witness such documents should take appropriate steps to ensure that the donor has provided informed consent and that any undue influence has not been brought to bear by the person being appointed. Solicitors and others who prepare such documents and witness their execution should bear primary responsibility for ensuring that they have been properly given, and where any doubt exists, the document should not be executed and the matter referred to the Public Advocate or Guardian.

Health Care Products and Services Fraud

Many older persons remain physically and mentally healthy after they have retired. According to the 1995 national health survey, sixty-four per cent of older Australians living in the community rated their health as good, very good or excellent (ABS 1997). As age increases, however, so does the development of health problems, eventually leading to death. The most common long-term health conditions are arthritis, visual deterioration, deafness, hypertension, heart disease, and varicose veins. Older people use proportionally more medicines than younger people and visit health care providers more frequently. In the year 1993-94, for example, older Australians accounted for thirty-five per cent of the total expenditure on health services ($11 billion out of $31 billion), despite their representing only twelve per cent of the population (AIHW 1999). In the year 1997-98, the average number of Medicare services provided to Australians aged sixty-five years or more was 21.3 while the average for those under sixty five was 8.9. For the same year, the average Medicare benefit paid for those aged sixty-five years or more was $707 while the average for those under sixty-five was $268 (Health Insurance Commission 1998).

One important health condition which may increase vulnerability to fraud is dementia. The number of people with dementia is increasing in Australia as more people live to advanced ages. In 1996, for example, six per cent of the population aged 65 years and over (134,800) had dementia with approximately half of those continuing to live in the community (Gibson, Mathur & Racic 1997). As dementia develops, those who suffer from the condition may be at greater risk of being manipulated and deceived through fraudulent practices, both in relation to the provision of health and medical products and treatments as well as more general consumer transactions.

Those with health problems may also be tricked into purchasing worthless remedies and cures for their conditions or may part with money and receive nothing in return. In the United States in the 1980s, an intensive examination was conducted of health product fraud and its impact on older persons. Quackery, or the promotion and sale of unproven or false remedies, was identified as the single most prevalent and damaging of frauds directed at older persons in the United States at the time. The government inquiry found that the cost of the promotion and sale of useless remedies promising relief from chronic and critical health conditions exceeded US$10 billion a year. Alleged cures for cancer represented the greatest problem, followed by arthritis remedies and anti-ageing products. In human terms, the cost was even more profound as older persons often delayed seeking effective treatment for the conditions in the hope that the unproven remedies would be effective, sometimes with fatal consequences (United States 1984).

Older persons may also be targeted by those seeking to sell health care appliances such as hearing aides or spectacles. Sometimes such appliances may be overpriced or ineffective or they may be prescribed by unlicensed practitioners.

Most fraudulent conduct carried out by health care providers, however, results in government agencies suffering the loss rather than individual patients. In Australia, for example, the Health Insurance Commission is responsible for processing claims and making payments under various government-funded health schemes. Fraud perpetrated against the Commission such as through making claims for Medicare or Pharmaceutical benefits by means of false or misleading statements will result in the government and not the patient sustaining the loss (see Health Insurance Commission 1998).

Occasionally, however, individual patients may be defrauded by health care providers. Medical disciplinary proceedings and sometimes criminal proceedings have, for example, been taken where practitioners have exerted undue influence over patients to leave them bequests in their wills or have sought to borrow money from patients which they are unable or refuse to repay (Smith 1994). One of the most infamous allegations of financial elder abuse were made against a practitioner in England in the 1950s, John Bodkin Adams, who was said to have killed a number of geriatric patients in the nursing home he ran after having arranged for them to leave their money and chattels to him in their wills. The allegations were not proved although the practitioner was later de-registered for other offences including failure to disclose a pecuniary interest in a patient's death (Devlin 1986).

More recently, a general practitioner, Dr Harold Shipman, was convicted on 31 January 2000 at Preston Crown Court in England, of murdering fifteen female elderly patients, and sentenced to life imprisonment in respect of each conviction. Dr Shipman was also convicted of forging the will of one eighty-one year-old victim by making himself the sole beneficiary of her estate, worth some 386 thousand pounds (Carter 2000).

Both these cases may be indicative of the transition from care to abuse. Bodkin Adams said in his defence that he was merely 'easing the passing' of his elderly patients through the administration of drugs and that many patients believed him to be their only friend. It was not unexpected, therefore, that they would remember him in their wills. Determining whether or not a course of conduct was carried out solely for financial gain is clearly difficult where motivations may change over time and only circumstantial evidence exists.

Residential Care Services

In keeping with policy directions set by the Commonwealth government, in recent times there has been a shift away from more intensive types of residential care for older persons to home-based care and the use of hostels (AIHW 1999). Older persons, particularly those of very advanced years, still make considerable use of nursing home and other residential care facilities and financing such services often requires an older person to spend the bulk of their savings.

An investigation into Australia's largest nursing home fraud was concluded in January 1997 when a Sydney nursing home operator and pharmacist was convicted of defrauding the Commonwealth. The defendant had operated five nursing homes and had stolen $1.7 million in Commonwealth government funding through lodging false claims for costs allegedly incurred in respect of the nursing and personal care of frail aged residents in the homes. Claims were made in respect of family members, non existent employees on the nursing payroll and other staff not involved in nursing or personal care of residents such as builders, bricklayers, and contractors (*Comfraud Bulletin* 1998: 3).

Some years earlier, the Australian National Audit Office (1995) had examined the incidence of fraud in the Commonwealth's Aged Care Program and the role of law enforcement agencies in dealing with such crime. Between 1987 and 1995, forty-three nursing home frauds were detected of which nine resulted in prosecutions being undertaken. These cases, however, represented only 1.5 per cent of some 3,000 validations conducted, making the overall incidence considerably higher. It was suggested that nursing home fraud could be reduced by a phased change in the manner of paying benefits by which payments would be made in arrears rather than in advance of the provision of services.

Although many nursing home frauds are directed at Commonwealth revenue, on occasions individual older persons may themselves be defrauded where they pay for services which are not provided or where the terms and conditions of contracts are misleading or deceptive. In such cases, it is their professional advisers who have the primary responsibility for identifying such problems and advising their clients on how to avoid loss. There have also been instances of the staff of residential care facilities stealing property belonging to residents or collaborating with fraudulent schemes carried out by others outside the organisation.

Private Accommodation

Throughout Australia, most older persons now live with families or alone in their own homes as opposed to residential care facilities or retirement homes. In 1996, for example, twenty-eight per cent of people aged over sixty-five years were living alone in a private dwelling with seven per cent living in some non-private accommodation. The remainder lived with their partner or family members while only two per cent lived with someone else. As age increases, however, a larger proportion of older people move to institutions (ABS 1999: 198, Table S2.4). The policy of deinstitutionalisation for those with mental health problems, such as some psycho-geriatric disorders, has meant that considerably larger numbers of older persons continue to live in the community with personal carers.

In terms of vulnerability to financial abuse, this means that fraud by the proprietors of institutions will affect only a relatively small proportion of the elderly, and that the possibility of financial abuse by family members remains an ever-present possibility, particularly where family members are required to manage large financial sums on behalf of their relatives.

For those who continue to live in their own homes, the possibility of home repair fraud and other deceptive practices in relation to household maintenance and care may arise. Although such practices are equally as likely to affect younger home owners, fraudsters who rely on home maintenance schemes often target older persons who appear to be more susceptible to deception. In the early 1990s in New South Wales, for example, a number of pensioners were defrauded by a group of offenders who represented that work was required to repair roofing, install insulation, and repair electric wiring. In each case the work was unnecessary and the offenders demanded and received payment before the fraud was detected (Toemoe 1993).

In the south of England, two brothers recently received terms of imprisonment of twelve and fifteen months respectively, after having carried out almost 100 jobs involving minor building and painting work for elderly people in south coast retirement resorts. The work was often of a poor standard, unnecessary, and over-priced and the offenders gained the trust of their victims by being 'genial and matey' (Johnstone 1999).

Other Products and Services

Older persons, like others in the community, may be victimised through fraud when they purchase goods and services and the nature and extent of their victimisation will depend upon the nature of the goods and services they obtain. Because they spend only a small proportion of their time on income-producing activities but a large proportion of their time on domestic activities and recreational pursuits (ABS 1999: 199, Table S2.5), it is to be expected that they would be vulnerable to fraud carried out by those who sell home maintenance and leisure products and services. Because many older persons spend considerable time at their homes, they rely to a large extent on information provided by broadcasting and telecommunications services, and are accordingly vulnerable to frauds perpetrated using these media (see below).

Older persons, and sometimes their relatives, may also be victimised through the purchase of pre-paid burial and funeral services. Sometimes the deception might never be discovered as relatives of the deceased might not be aware that a pre-paid arrangement had been entered into. In one case investigated by the Victoria Police, Major Fraud Group (1996), a company accountant had misused funds paid to him by the company for taxation liabilities. Instead the accountant used the funds for personal investment purposes relating to pre-paid funerals. Approximately $1.8 million had been defrauded in this and other ways. In Victoria, another company which made improper use of funds paid by people for pre-paid funerals was convicted in July 1999 of failure to invest money in accordance with legislative requirements of the Office of Fair Trading and was fined $25,000 (Farrant 1999).

A wide variety of misleading and deceptive practices occur in the automobile repair industry. They include the carrying out of unnecessary repairs, overcharging, deceptive advertising, and the use of accelerated maintenance schedules. Older persons may be defrauded by such practices in the same way as others, although their unfamiliarity with some of the most recent technological advances in automobile design may make them particularly susceptible to fraud.

Telemarketing fraud has been a considerable problem for older persons for many years and some studies have found that older persons are more often defrauded through telemarketing scams than younger ones. In 1995, for example, the American Association of Retired Persons (1996) conducted interviews with 745 victims of telemarketing fraud and found that older individuals were more likely to be victimised than younger people. Fifty-six percent of the victims were age fifty years or more, while only thirty-six per cent of this age group comprised the general population. The Association (1997) conducted another survey of 865 persons aged 50 and older in 1996 and 882 individuals of the same age group in 1997. Fifty-seven percent of the 1996 sample and fifty-two per cent of the 1997 sample reported that they had received a telemarketing call at least once a week from an unknown organisation asking them to make a donation, investment, requesting them to buy something, or enter a sweepstakes or contest. Fourteen percent of the 1996 sample and twelve per cent of the 1997 sample responded to these telemarketing calls by giving a credit card number, sending in money to make a purchase, investment, donation, or entering a contest.

Another area of increasing vulnerability relates to the risk of fraud arising out of gambling, prizes, and lotteries. These are often examples of advance fee schemes in which victims are required to provide funds in order to receive some benefit. One case involved a seventy-one year old woman in the United States who was told that she had won a US$945,000 jackpot by a fraudster calling from Quebec. She was asked to supply US$19,000 to cover Canadian taxes and customs fees which she did using credit card advances. After not receiving the prize for a month, she was asked to pay a further US$15,000 for more taxes and fees. At the same time she had been defrauded in a separate incident by paying US$4,000 in order to receive a prize of US$128,000. She attributed her victimisation to being too trusting of people (Schneider 1997).

Related to lottery fraud are instances in which victims may be persuaded to donate funds to so-called charitable organisations which are, in fact, illegitimate and non-existent. In such cases, a victim who has failed to verify the authenticity of the organisation with a body such as the National Charities Information Bureau, may never realise that he or she has been defrauded and may never seek official redress.

Capital Investment

Recent government policy has been to encourage those in the workforce to accrue funds throughout their working life in order to provide for their maintenance in retirement, thus avoiding the need for them to draw on state-funded pension funds. As a result, older persons often have substantial assets with which to invest. This may make them attractive targets for investment fraud.

One such fraud which ended in 1991, involved deceptive claims that investors could earn profits of between thirty and forty per cent by investing in an oil and gas partnership in California. Some 8,527 investors were drawn to the scheme with many suffering substantial losses. In a survey of 152 randomly selected victims of the schemes, the majority of those who had lost money were aged between fifty-two and sixty-three years old, were well-educated and male (Shichor et al 1996). Fraudulent oil and gas investment schemes continue to target older persons in the United States. In June 1999, for example, charges were laid against four individuals in California who allegedly defrauded more than 1,500 elderly investors by persuading them to invest US$40 million in ventures which promised ten per cent returns each year on their investments. In fact the investments were insufficient to fund the returns promised and early dividends were taken out of capital—a traditional Ponzi scheme (*Corporate Crime Reporter* 7 June, p 6).

Another scheme in which some 12,000 individuals and 245 banks were defrauded involved victims investing in tax-free office equipment leases which offered returns of up to twelve per cent. The company acquired funds of approximately US$1 billion but when it was wound up only had assets of US$300 million. Creditors included a number of older persons who had invested their life savings as well as various professionals including doctors, lawyers and accountants (Schonfeld 1997).

One of the largest pension fund frauds which occurred in the United States involved a company which misappropriated US$124 million from investors in 1994. The company took US$350 million from approximately 8,000 retirees and other investors but instead of arranging legally approved investments, simply paid dividends to earlier investors out of the capital provided by later investors. The company was eventually wound up and three of its directors prosecuted and sentenced to terms of imprisonment, one receiving the maximum term provided for by the legislation of ten years (Rosoff et al 1998: 194-5).

In arranging investment of their funds, reliance is often placed on professional advisers such as lawyers, accountants, and investment advisers, some of whom may act unprofessionally. In one case investigated by the Victoria Police, Major Fraud Group (1996), two clients, a husband and wife, aged eighty-five and eighty, provided a sole practitioner solicitor with $200,000 to be invested on the basis of security by way of registered second mortgage. The solicitor in question then misappropriated the funds for his own use. The case is one of a number dealt with by police each year in which solicitors misuse client funds.

In Plymouth, England, a legal executive who conducted the wills and trusts department of a legal practice was recently sentenced to four years and six months' imprisonment for stealing more than £650,000 from a number of clients whose average age was eighty-three. Funds were diverted from the estates of both living and deceased clients into accounts controlled by the offender, and were used in part to establish a geriatric nursing home from which he derived income. The fraud was discovered after he took almost all of one client's money leaving insufficient funds with which to pay her nursing home fees (De Bruxelles 1999).

Older people may also be defrauded by the activities of investment brokers, a number of whom are unlicensed and unqualified. In one Australian case, an investment adviser who had defrauded his eighty-three year-old client out of $83,500, which he then used partly for gambling, was convicted and sentenced to eight months' imprisonment (ASIC 1998: 36).

On other occasions, older persons may be defrauded by individuals who pretend to be bank officers or government officials who may persuade them to disclose bank account details or other personal information for illegitimate purposes. In the world of electronic commerce such forms of fraud may be expected to increase considerably in the future (see Smith 1999).

Information Technology

Although the use of information technology products at home has only relatively recently become popular, many older persons are now making use of computers for communications, obtaining information, entertainment, and, most importantly, for shopping. In Australia in the twelve months to February 1996, some 217,000 persons aged fifty-five years and over used computers from home more than once a week. By February 1998, this had increased to 296,000 or 8.3 per cent of all persons aged five years and over—an increase of 36.4 per cent (ABS 1998 No. 8146.0). In the twelve months to February 1998, 111,000 persons aged fifty-five or over made use of the Internet (ABS 1998 No. 8147.0). Over the same period, of the 22,000 persons aged fifty-five or more who had purchased goods or services on-line, ninety-six per cent did so from home (ABS 1998 No. 8146.0). It is reasonable to expect that when on-line gambling becomes more widely available, many older persons will engage in such activities from home making themselves vulnerable to the practices of dishonest on-line gambling service providers.

It appears, therefore, that older Australians are, indeed, making use of the Internet for shopping and accordingly, are vulnerable to the many fraudulent and deceptive practices which exist on-line. These include misleading and deceptive advertising practices as well as various fraudulent activities which enable funds transferred electronically to be stolen (Smith 1999). Older persons are not the only ones who are being defrauded through the use of computers, but they may be particularly vulnerable if they do not have a full understanding of the technologies they are using.

Prevention and Control Strategies

How, then, are older persons able to be protected from acts of fraud and deception? Approaches which have been used in the past extend from the use of the criminal law to fraud prevention initiatives which rely on the provision of information to older persons in order that they might protect themselves from fraud (see James 1993).

Legislation

In order to raise awareness of the problem of fraud directed at older persons and to ensure that cases of deception may effectively be prosecuted, it has been suggested that specific legislation should be enacted to proscribe some of the more egregious deceptive practices which target older persons.

In an attempt to deal with telemarketing fraud in the United States, for example, legislation has been passed which make certain telemarketing practices illegal. The *Telemarketing and Consumer Fraud and Abuse Protection Act* 1994 requires telemarketers to identify themselves, to say whom they represent, and to state the nature of their call. Those who engage in coercive or abusive practices may be prosecuted by the Federal Trade Commission. In Australia, the Australian Competition and Consumer Commission has similar powers to investigate and prosecute misleading and deceptive practices, whether they affect older persons or not, and, accordingly, specific legislation is not warranted.

Every state in the United States also has legislation proscribing various forms of elder abuse, which may or may not involve traditional forms of criminal conduct, with most jurisdictions also having mandatory reporting provisions (Olinger 1991). Although the criminalisation of elder abuse may help to publicise the problem and may enable some cases to be dealt with which might otherwise fall outside the scope of existing criminal laws, the enactment of additional specific legislation is unlikely to achieve a great deal in terms of deterrence, as law enforcement agencies are often reluctant to take action in all but the most serious instances of economic crime. In addition, the role which the criminal law plays in this area is inevitably limited owing to the impediments which victims and others face in detecting and reporting cases.

Law Enforcement

Law enforcement agencies have a central role to play not only in investigating crimes of deception perpetrated against older persons, but also in informing them of the risks and suggesting appropriate fraud prevention measures. Most police services throughout Australia have officers involved in crime prevention who liaise with older persons in the community and which publish a range of fraud prevention materials.

In the United States, so-called law enforcement gerontologists have been used to work with older persons and community groups to prevent fraudulent practices directed at older persons. Such specially trained officers alert potential victims to new schemes and initiate a variety of self-help programs, some of which make use of older persons as volunteers. In order to ensure that such activities do not inadvertently increase levels of fear amongst older persons, these officers are trained in providing information and advice in a constructive way rather than by creating unnecessary alarm which could be counter-productive (Rykert 1994).

In Canada, a special unit to combat telemarketing fraud, 'PhoneBusters', was established in 1993 by a variety of law enforcement and community agencies throughout Canada. It provided advice and information to the public and prosecuted offenders. It also maintained a register of fraudsters which in 1998 had 656 entries relating to individuals and companies. In 1997, a sub-unit was established, 'SeniorBusters' which provided follow-up and support for older persons who had reported fraudulent telemarketing schemes in order to avoid repeat victimisation. The unit was staffed by volunteers over the age of fifty, thus enabling older persons to help other older persons (Rudd 1998).

So as to make crime prevention a collective community response rather than one in which full responsibility for self-help is imposed upon individuals, various cooperative ventures have been developed between police and groups of older persons in the community. This type of initiative has become a central feature of crime prevention in the United States where individual responses and police action carried out in isolation of each other have been found to be ineffective. The use of Community 'Triads', for example, which enable older persons to work with law enforcement officers and other community groups in preventing crime has been effective in reducing the fear which many older persons have about their risk of victimisation. Community councils, known as SALT (Seniors and Lawmen Together), have also proved to be beneficial, such as in Illinios where the SALT Council arranged for the training of employees of financial institutions to prevent older persons being victimised through banking fraud (Cantrell 1994). For such initiatives to be effective in Australia, there would need to be action taken by a committed group of police officers supported by government and community bodies such as the New South Wales Ageing and Disability Department (1998) which has shown a particular interest in this area.

Education and Information

Titus & Gover (1999) concluded their review of fraud victimisation research by commenting that evidence of prior victimisation of fraud is a high indicator of future victimisation. Accordingly, they suggested that information and education on fraud prevention should be specifically targeted at those who have been victimised in the past.

There are a number of Internet sites that provide information on fraud victimisation and how to avoid it. These include the National Fraud Information Centre which was established in 1992 by the National Consumers League, the oldest consumer organisation in the United States which was founded in 1899 <http://www.fraud.org/>. It provides information on various fraudulent schemes and, in particular, those which are directed at older persons in its 'Elder Fraud Project'. The American Association of Retired Persons provides similar information and conducts regular surveys on fraud victimisation of older persons. Although these sites are based in the United States, the information which they provide has universal application and would be as useful for Australian consumers as their American counterparts. Of course, it would be desirable for similar sites to be developed with an Australian focus.

Enhanced Reporting of Fraud

Titus et al (1995) found in their survey of the fraud experiences of 1,246 persons aged eighteen years or older that older persons tended to report their fraud experiences more to the authorities than did younger persons. Although not suggested by these authors, some of the reasons for this could be that the crime had a greater financial impact on them, that it involved a more substantial affront to their perceived personal security and autonomy, and that they had more time available in which to deal with police inquiries.

Nonetheless, changes may be needed to encourage older persons to report their experiences of fraud to the authorities, be they police services, or regulatory agencies such as the Australian Competition and Consumer Commission or the Australian Securities and Investments Commission. Only when individual cases come to light can patterns of victimisation be discerned and appropriate preventive action taken. Greater publicity of the available avenues of consumer redress should be undertaken and some measures taken to coordinate the functions of different agencies in order to make the process of complaining easier. The use of telephone and the Internet could, for example, be more accommodating than having to travel to a city office to lodge a complaint.

In addition, older persons and their families need to be informed of the consequences of reporting experiences of fraud and financial abuse. They need to realise that victimisation should not reflect badly upon the victim's self image and self confidence and that they will not be punished, directly or indirectly, for having been victimised and having reported the fact.

In order to ensure that cases of fraud and financial abuse are brought to the attention of the police, it has been suggested that those who are aware of such illegality should be required by law to report the matter. Already, however, the law in some jurisdictions proscribes failure to report a 'serious offence'. In New South Wales, for example, failure to report an offence punishable by at least five years' imprisonment to the police where the person knows or believes that the offence has been committed and that he or she has information which might be of material assistance to the police is a crime punishable by a maximum penalty of two years' imprisonment. The prosecution of certain professionals such as accountants who fail to report serious offences cannot, however, take place without the approval of the Attorney General in that state. As most offences of deception carry a five year term of imprisonment or more, the existing law in some jurisdictions, therefore, requires such offences to be reported.

Statutory Authorities

In appropriate cases it may be necessary for a frail or infirm older person's financial affairs to be managed by an agency such as an official trustee or guardian. The use of such protective agencies should not, however, prevent capable older persons from controlling their own lives and finances, merely because of their age. Only in appropriate cases would the use of such paternalistic measures be necessary.

Various other statutory complaints authorities also have a role to play in investigating cases of fraud and financial abuse against older persons within their own areas of expertise. Health provider registration authorities, for example, already have jurisdiction over acts of professional misconduct perpetrated against older health care users by professionals such as doctors and nurses and are able to make use of powerful sanctions such as de-registration. Often however, professional disciplinary action will <u>follow</u> a criminal investigation in which a practitioner has been convicted of fraud or deception offences, rather than precede it. Arguably, a need exists for statutory authorities to be aware of the potential for financial abuse of older persons and take necessary investigatory action in appropriate cases.

Statutory authorities also regulate the activities of lawyers, accountants, investment advisers, and those engaged in direct marketing. Some legislation permits disciplinary action to be taken in respect of allegations of professional misconduct, while criminal offences are created in certain circumstances. The effectiveness of such avenues of redress depends, however, on allegations being reported and on the authorities in question being adequately funded in order that detailed investigations can be undertaken.

Private Sector Initiatives

Business and professional organisations within the private sector may also be able to assist in the prevention and detection of fraud. In Canada, for example, older persons have begun authorising their banks to monitor their accounts in order to discover unusually large transactions or pattern of transactions. The bank is then authorised to raise its concerns with the account holder and to warn of the possibility of fraud. Account holders, however, retain full rights over their accounts and may elect to disregard any warnings given. This scheme has already resulted in one older person being prevented from losing Can$20,000 through telemarketing fraud following an earlier incident in which Can$40,000 had been lost (Zanin 1998).

Professionals in private practice may also be able to assist in identifying cases of financial abuse. Those authorised to receive statutory declarations and affidavits, for example, should undertake their obligations responsibly and ensure that older persons who sign financial and legal documents are fully competent to do so and have not been coerced by family members into disposing of their property. Medical practitioners who see their elderly patients regularly may be in the best position to be aware if an older person's mental abilities have declined to such an extent that they are incapable of understanding the effect of documents which they sign. In appropriate cases they should refer the matter to relevant statutory agencies such as Guardianship Boards. Failure to act professionally in this regard would be considered to be a form of misconduct which could result in disciplinary proceedings being undertaken by registration authorities.

Conclusions

Although many surveys have indicated that older persons are not defrauded to a greater extent than other age groups, older people do possess some characteristics which make them more vulnerable than younger people. In terms of personal characteristics, some older persons are less mentally alert and many are more trusting of people, particularly their relatives or those who represent themselves as being trustworthy such as lawyers, accountants, and doctors. Older people may also be more tolerant and have time to devote to a new venture which might make them money.

In terms of their financial circumstances, older people often have savings which they wish to invest thus placing them at risk from fraudulent investment brokers. Older people in straitened circumstances might be willing to take risks in order to advance their financial position which they might otherwise avoid.

Finally, in terms of their activities and needs, older people make greater use of health and medical products and services, thus making them vulnerable to fraud in these areas. Those who engage in recreational pursuits such as gambling, or who make regular use of the telephone or the Internet may also be vulnerable to the many fraudulent schemes which arise out of or utilise these activities and technologies.

It is apparent that a wide range of organisations have an interest in dealing with fraud and financial abuse directed at older persons. In order for their initiatives to be most effective, it is necessary for some degree of coordination to take place. An example of a recent coordinated approach to elder abuse is the work of the New South Wales Advisory Committee on Abuse of Older People (1994)(1997) which has identified ways in which a working relationship can be established between those agencies with an interest in the abuse of older people or which provide services to them. The Committee identified the forms of abuse which older people experience and suggested ways in which they could be dealt with.

In relation to financial abuse, all service providers were identified as being responsible for identification of problems while health service providers and agencies as well as police services were able to provide assessment of cases. Legal interventions included the use of community legal centres, private lawyers and legal aid agencies to refer cases to the courts, the Public Trustee, and Guardianship Board. Community welfare groups, health agencies, and providers were identified as being responsible for case management and support services.

The work of the Advisory Committee led to the creation of a Resource Kit *Dealing with Abuse of Clients and their Carers* and supporting video package *Behind Closed Doors: the Hidden Problem of Abuse of Older People* (New South Wales Ageing and Disability Department 1998) which sought to increase awareness of elder abuse and to help service providers and community members recognise the various forms it may take. The kit comprised a series of research papers and other documents including one which dealt with financial exploitation of older people in their homes. A series of two-day training workshops was also conducted throughout New South Wales for workers dealing with older people living at home, with several thousand people attending (see <http://www.add.nsw.gov.au/ageing.htm> accessed 28 January 2000). The extent to which these initiatives have been effective in identifying and reducing the incidence of financial abuse of older persons remains to be seen. As in other areas of fraud prevention and control, solutions to the problem of fraud and financial abuse of older persons entail a range of strategies which extend from preventive activities based on the provision of information and education, through informal regulatory measures administered by those who work with older people such as medical and legal practitioners, to the use of civil and criminal legal responses. Each has an important role to play in protecting older persons from economic and financial victimisation.

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