

Australian Institute of Family Studies
Steps Forward for Families: Research, Practice and Policy Conference
Melbourne 12 February 2003

Symposium on Assets, Ageing and Abuse:
Emerging Issues for Families

Dr Russell G. Smith
Deputy Director of Research
Australian Institute of Criminology

“Misuse of Older Persons’ Assets by Professionals”

INTRODUCTION

Older persons, because of their financial position and health, tend to have frequent contact with professional advisers including lawyers, accountants, financial planners, and health care providers. Unfortunately, this makes them vulnerable to dishonest conduct on the part of those who stand in a fiduciary relationship to their clients.

Financial abuse can include 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, and denying older persons access to their money or preventing them from controlling their assets. 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 the management of their assets.

This paper examines the risks faced by older persons who have dealings with professional advisers in connection with their assets. It also reviews the various ways in which older persons can deal with financial abuse and the problems that arise when taking official action to recover stolen property. As in other areas of fraud control, it is invariably the case that prevention is preferable to using the legal process to claim compensation or to achieve deterrence through judicial punishment.

For present purposes, older persons—the term favoured by the United Nations Division for Social Policy and Development—will be defined as 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.

The assets of an older person at risk of misappropriation by professionals include real property such as homes, funds invested such as superannuation, personal property such as motor vehicles or household goods (including computers), and regular sources of income such as pensions or interest payments. Misappropriation of large sums obtained by older persons on their retirement is the greatest area of concern, although misuse of goods or the non-provision of services can also create serious problems for individuals.

RISK FACTORS

There are a number of considerations that will continue to exacerbate the problem of financial abuse of older people. Although we are unable to counteract these trends, being aware of them may help enable individuals to realise their true exposure to risk and thus to avoid victimisation.

Increasing Numbers of Older Persons

The population of Australia, as in many other developed countries, is gradually becoming older and this trend will continue throughout the current century. In 1871, for example, less than two per cent of the population were aged sixty-five or more, while in 2001 this percentage had increased to thirteen per cent. In 2001, the total Australian population totalled 18,972,350 people with more than two million of them over sixty-five years of age (see Table 1).

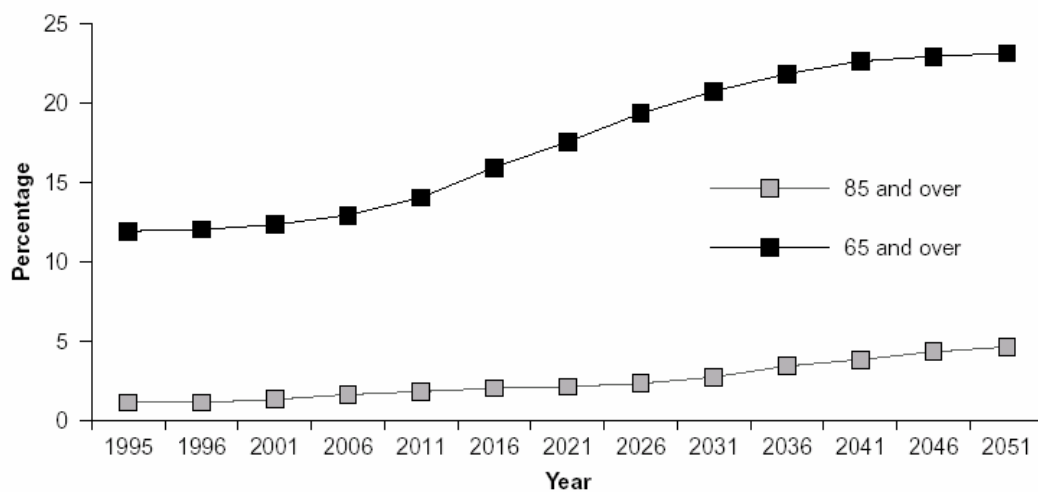
Table 1
Australian Persons Aged over 65 in 2001

Age	Male	Female	Total	% Population ¹
65-74	625 480	664 690	1 290 170	6.8
75-84	345 365	482 654	828 019	4.4
85 and over	81 849	180 840	262 689	1.4
Total	1 052 694	1 328 184	2 380 878	12.6

¹ Total population from 2001 census was 18,972,350

Source: Australian Bureau of Statistics 2002.

Figure 1 shows that between 1997 and 2051, the numbers of those aged 65 and over will rise from 2.3 million (12% of the population) to 6.3 million (23% of the population), whilst those aged 85 and over will increase from 216,100 (1.1% of the population) to 1.1 million (4.8% of the population). Moreover, those aged over 85 years will comprise a far greater proportion of the aged population—rising from 8.8 per cent in 1995 to between 19.5 and 20.1 per cent in 2051, an increase of nearly 4 times in absolute numbers (Australian Bureau of Statistics 1999).



Source: (Australian Bureau of Statistics 1999).

Figure 1 - Projected Australian Population Aged 65+ and 85+, 1995–2051

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 questions of importance, however, are 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.

On the basis of the limited research that has been carried out to date, it appears that older persons less often become the victims of crimes than younger persons. The Australian Crime Victims Survey 2000, for example, found that persons aged 65 years and over were less than half as likely than people aged between 16 and 64 to be victims of consumer fraud (9.3 per 100 persons for people aged between 16 and 64, and 3.9 per 100 persons for people aged over 65 years – Muscat, James and Graycar 2002). It has been argued that this is because younger persons 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 (Titus and Gover 1999). In view of the following trends, however, this view may be changing.

Increasing Numbers of Professionals

In the past, the types of professionals with whom older persons might have had dealings were those in the traditional categories such as doctors and lawyers. In recent times, the definition of professionals has become more inclusive with many more occupations now being described as professional.

Throughout the twentieth century there has been a substantial increase in the percentage of professionals in the labour force as shown in Table 2.

Table 2
Professionals in the Australian Workplace, 1911-2001

Year	Percentage of Professionals out of the Total Employed Labour Force
1911	3.5
1947	5.9
1966	9.6
1976	10.0
1991	22.4
1996	28.4
2001	30.0

Sources: 1911-1976 (professionals) Anderson and Western 1976; 1991-2001 (associate professionals and professionals) Australian Bureau of Statistics 1997, 2002.

The results of the most recent national census in 2001 show that the total number of professionals and associate professionals in Australia was 2,489,753, 1,264,775 (50.8%) of whom were male and 1,224,978 (49.2%) were female. Professionals made up 18.2% of the total labour force (8,298,606) while Associate professionals made up 11.8% of the total labour force. Together Professionals and Associate Professionals made up 30% of the total labour force. The most numerous groups were school teachers, nurses, computing professionals and accountants (Australian Bureau of Statistics 2002).

Accordingly, older persons are much more likely than in the past to have dealings with professionals, including that small proportion who may seek to act dishonestly.

The Effects of Ageing

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.

Increasing health problems invariably lead older persons into more regular contact with health care professionals. Those with health problems may 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 into 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).

In addition to the acts of unqualified health care providers, some registered doctors have been involved in stealing assets of their patients. Medical disciplinary proceedings and sometimes criminal proceedings have 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). In one case, a doctor in New South Wales misappropriated patients' money intended for an investment scheme. He was convicted and later deregistered (NSW Medical Board 1993, p. 34).

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).

This case 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.

Increasing Value of Funds Available for 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.

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 Victorian case, for example, an elderly couple went to their solicitor with their life savings of \$30,000 to invest for 30 days. The solicitor showed the couple an original certificate of title as security, but this was in respect of a property which had, in fact, been already sold by the solicitor some years before. He attached his business card over part of the title which showed that it had already been transferred. The couple handed over their cheque which the solicitor then used to pay off part of his overdraft. The couple were compensated in full from the Legal Practitioners' Fidelity Fund. The solicitor went on to defraud a number of other clients totaling \$673,962. He was convicted and sentenced to 6½ years' imprisonment with a non-parole period of 4 years (*R. v Christodoulou* County Court of Victoria, 12 June 1998, McInerney J.).

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 has then used partly for gambling, was convicted and sentenced to eight months' imprisonment (Australian Securities and Investments Commission 1998, p. 36).

Fraud risks associated with the superannuation are considerable, largely owing to the large sums of money that are at stake. In September 2002, superannuation assets in Australia amounted to \$505.7 billion with 24.8 million member accounts. During the 12 months to September 2002, \$33.7 billion was paid in benefits (Australian Prudential Regulation Authority 2002). Over 200,000 superannuation funds currently exist in Australia and it has been estimated that that the superannuation savings pool may rise to some \$2000 billion by the year 2020. In the period June to September 2002, the Superannuation Complaints Tribunal (2002) received 556 new complaints, an increase of 8% over the preceding quarter. Almost half (48.9%) of these complaints were outside the jurisdiction of the Tribunal. Some of the principal areas of risk, particularly with respect to self-managed funds, relate to negligent or incompetent investment practices, payment of benefits to persons who present false forms of identification, and misappropriation by fund managers (Freiberg 1996). Already cases of this nature are beginning to emerge.

Between 1994 and 1997, a 49 year old man who conducted a superannuation business in which he established schemes, collected and invested funds, and administered the schemes, defrauded various funds of \$1,376,293 which he used for personal investments and gambling. All losses were covered by insurance although the insurance company lost almost all of the funds paid out. Following an investigation by the Australian Securities and Investments Commission, he was charged with 26 counts of fraudulently applying company property in the form of cheques whilst being a director and sentenced to two years' imprisonment (*R. v Houghton* [2000] NSWCCA 62, NSW Court of Criminal Appeal, Herron DCJ, 22 March 1999).

In another case, three Brisbane men received terms of imprisonment in 1997 after pleading guilty to defrauding a small number of superannuation funds of \$750,000. Two of the offenders were investment managers and the other was the firm's accountant. The principal offender who defrauded 11 people between 1991 and 1995 was sentenced to a term of 6½ years' imprisonment with a non-parole period of 2½ years (*R. v Davidson, Robertson and Cockroft* District Court, Brisbane, O'Sullivan J. See Insurance and Superannuation Commission 1998).

Although investors of all ages are at risk from these kinds of activities, older persons have generally more to lose than those at the beginning of their working lives.

Increased Reliance on Professional 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.

Increasing Use of Computers

Although the use of information technology products has only relatively recently become widespread, many older persons are now making use of computers for communications, obtaining information, entertainment, and, most importantly, for shopping. Table 3 shows the increase in the number of adults using computers and the Internet in 1999 and 2000, including those aged 55 years and over.

Table 3
Australian Adults using Computers and the Internet in 1999 and 2000

Computer Usage	1999	2000
% adults using computers	48	66
% adults using the Internet	32	50
% adults 55+ using the Internet	6	19
% adults 55+ on-line shopping	1	4

Source: Australian Bureau of Statistics 1999, 2000.

In Australia, in the twelve months to November 2000, 66% of adults used a computer, 47% using it from home. Only 32% of adults aged 55 years or over used a computer compared to 72% of adults aged between 40 and 54 and 88% of adults aged between 18 and 24. The most popular site of usage for adults aged 55 years or over was the home. Only 19% of adults aged 55 years or more were Internet users and only 4% of adults aged 55 years or more used the Internet to order or purchase goods and services on-line.

These proportions have increased considerably since the twelve months to 31 December 1999 when only 6% of adults aged 55 years or more used the Internet and only 1% used the Internet to order or purchase goods and services (Australian Bureau of Statistics 1999, 2000).

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). To date, however, it seems that older persons have not been subject to high levels of Internet-related fraud, largely due to their limited use of the Internet. The

results of the Australian Crime Victims Survey 2000 found that consumer fraud relating to credit card transactions and Internet sales only occurred amongst those aged between 16 and 64, with no cases involving persons aged 65 years and over (Muscat, James and Graycar 2002).

It is reasonable to expect that when Internet usage increases and activities such as on-line gambling become more widely available, many older persons will engage in such activities from home making themselves vulnerable to dishonesty.

Electronic communications technologies, such as the Internet, are also enabling consumers of professional services to be better informed about matters which previously lay within the province of professional advisers. Members of the public are now able to conduct their own share dealings online and obtain advice about legal matters. This again increases their vulnerability to acts of fraud and deception.

AVENUES OF REDRESS

Having considered some of the factors that may increase risks of professional fraud victimisation for older persons, it remains to examine the various ways in which older persons may deal with the problem. The following discussion is restricted to legally regulated systems which enable people to take positive action. This obviously excludes the various non-legal ways of handling complaints such as adopting what is known as 'exit procedures' or simply not going back to the professional person concerned and taking no further action.

In order to illustrate the range of systems and sanctions (or mechanisms for redress), Figure 2 presents them around a pyramid based on frequency of use and severity of sanctions. This derives from the responsive regulatory model described by Braithwaite (2002). Although this gives an appearance of clarity and simplicity, there are many ways in which these systems and regulatory responses overlap.

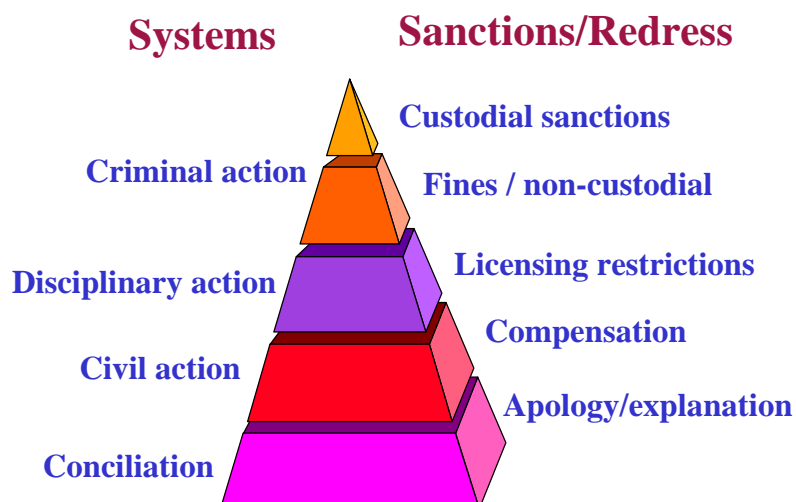


Figure 2 – Regulatory Systems and Sanctions

Conciliation

In recent years many professionals have been made more accountable through the introduction of independent complaint-handling authorities. These bodies operate as a form of coerced self-regulation or what Johnson (1972) has called ‘mediated professionalism’. In Victoria, for example, the legal profession was subject to substantial reform with the introduction of the *Legal Practice Act 1996* (Vic) which ended its monopoly over the regulation of the profession. Amongst other reforms, the legislation introduced a Legal Practice Board, Legal Ombudsman, and Legal Professional Tribunal to regulate the activities of legal practitioners. The legislation made the Law Institute of Victoria a Recognised Professional Association and also made membership voluntary. In New South Wales, the Office of the Legal Services Commissioner also made complaint-handling substantially more consumer-oriented (see Parker 1997, p. 16).

In relation to health care, all jurisdictions in Australia have Health Complaints Commissioners whose functions include the resolution of disputes between health providers and health users arising out of the provision of health services. Commissioners are required to investigate complaints and may resolve them by conciliation which simply means by encouraging a settlement of the complaint by holding informal discussions with the health provider and the health user. Conciliators often do not have training in the profession in question, although they may be professional and legally-qualified conciliators. Where necessary, they will seek expert assistance from relevant trained professionals. Complaints may be resolved by extracting an explanation and apology from the health provider or by the health provider’s defence organisation paying a sum of money to the complainant. If conciliation fails, the Commissioner may refer the complaint to a Registration Board for disciplinary action.

Civil action

Consumers of professional services who have suffered loss as a result of unprofessional conduct may commence civil proceedings for damages in negligence, trespass or breach of contract, although the legal principles which apply in this area are by no means settled. Allen (1996) has recently argued that various doctrinal barriers to recovery remain in the way of responding adequately to the breach of trust inherent in professional exploitation. In certain circumstances, loss which has been caused by a professional person's conduct and which is reasonably foreseeable may be recovered.

Civil action will provide a financial sum to successful claimants which aims to place them in the same position they would have been in had the wrongful act not taken place. Normally, an award of damages is aimed at compensation rather than punishment although in rare instances exemplary or punitive damages may be awarded which aim to make an example of the defendant with a view to deterring similar conduct in the future (Collis 1996). Damages are assessed by a jury which hears evidence presented by medical experts for both the plaintiff and the defendant in an adversarial setting.

Disciplinary action

Each jurisdiction has a body which is responsible for the registration of various kinds of professionals. Although the members of the oldest professions are statutorily recognised and registered, some professionals including accountants are not covered by existing registration authorities and thus are not subject to internal professional disciplinary controls, other than the potential removal of membership of a professional association. Where misconduct occurs in such situations, the client will only have recourse to criminal and civil action or in some cases to conciliation offered by some consumer agencies.

Registration bodies such as professional boards are set up to protect members of the public by providing for the registration of practitioners (see, for example, *Medical Practice Act 1994 (Vic.)* s. 1(a)). Boards are under a legal duty to investigate complaints that are made and where allegations are proved, the registration of the practitioner may be restricted in some way or removed. Disciplinary action is not intended to be punitive in the retributive sense, but rather is designed to ensure that acceptable standards of practice are maintained in the profession (see Smith 1994). The one exception to this is Boards with jurisdiction to impose monetary penalties or fines which are exclusively intended to be punitive and to act as a deterrent (e.g. *Medical Practice Act 1994 (Vic.)* s. 50(2)(f)).

Some Boards may also require practitioners to undergo counselling or further education in order to remedy any deficiencies in their professional skills. The effect of disciplinary action may also be to declare standards of acceptable conduct for the rest of the profession although this is obviously dependent upon the extent to which the decisions in disciplinary cases are widely disseminated to all registered practitioners (Smith 1993).

Registration Boards are predominantly composed of senior, experienced members of the profession in question, although in recent years the proportion of non-medically qualified

lay members is increasing substantially such that most Boards now have twenty-five per cent of their membership non-medically qualified (Smith 1994). Formal proceedings are now usually open to the public and they are conducted adversarially and with legal representation (Smith 1991).

Proportionally, there are few complaints made to disciplinary bodies each year. In Victoria, for example, approximately 2,300 complaints are made each year concerning the conduct of solicitors. These relate to problems of delay, poor attitude, over-charging, and misappropriation of funds. In 1999, twenty-one practitioners were referred to the profession's tribunal for a disciplinary hearing. Of those cases, twelve had their practising certificates cancelled or reduced, and were fined; seven were fined without restrictions being placed on the practising certificate; and two cases were dismissed. On average, six practices a year are taken over by the Law Institute in Victoria because of trust account defalcations, which represents approximately two per cent of the 3,411 solicitors authorised to handle trust funds in that state. Most cases related to misuse of investment funds, although since controls have been placed on solicitors' mortgage practices, these cases have reduced substantially (Neville 2000). In medicine, approximately 1,000 complaints are made to the New South Wales Medical Board each year which regulates the conduct of approximately 22,000 registered medical practitioners in that state (4.5%)(Dix 2002). In nursing, in 1995-96, approximately 600 nurses were reported to regulatory authorities throughout Australia, at a time when there were approximately 265,000 registered nurses, making a proportion of complaints to the total numbers of nurses 0.2 per cent (Fletcher 1998).

Criminal action

The final way in which complaints of dishonesty may be dealt with is through the criminal courts. Criminal proceedings for theft or deception aim at punishing the offender in the retributive sense, denouncing the conduct in question, and preventing further offending by deterring the individual from engaging in similar conduct in the future while deterring others in the community from offending by making an example of the individual in question. Guilt is determined by a jury in serious cases and criminal compensation may be awarded in certain circumstances.

The penalties which are available to a judge in sentencing an offender include imprisonment, fines, community-based orders and various forms of conditional and supervised release. The extent to which such sanctions are appropriate and effective in deterring unprofessional conduct by so-called white collar offenders such as doctors is hotly debated (e.g. Tillman and Pontell 1992) and many have argued that more appropriate sanctions should be used such as adverse publicity, financial penalties, or further compulsory training in ethics and professional conduct. Weisburd and Waring (2001, p. 152), for example, argue that fines are a better sanction for white collar offenders as they permit reintegration to take place.

Problems with the Current Systems

There are a number of problems that arise out of the current regulatory framework for dealing with dishonest professionals, and, indeed, professionals accused of crime or misconduct generally. First, there is a multiplicity of rules that govern professional practice that are to be found in civil and criminal laws, other regulatory statutes and codes of conduct which statutory professional bodies administer.

There is also a proliferation of ways in which professionals are regulated and a duplication of complaint-handling procedures. Professional behaviour may be investigated by the civil and criminal courts, registration authorities and a variety of consumer-oriented statutory bodies such as ASIC, the ACCC, the Superannuation Complaints Tribunal, Departments of Fair Trading, Ombudsmen and Complaints Commissioners within certain professions.

As such, professional conduct may be scrutinised from a plethora of perspectives which are both time consuming and expensive to administer. Each system also has conflicting aims and overlapping sanctions.

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 above legal avenues of redress 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 Illinois 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 and 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.

In Australia, a number of government agencies and professions have taken major steps to educate consumers as to their personal responsibility for protecting themselves in the financial market. One of the most significant industry/government examples of recent times can be seen with the effort by ASIC and the Financial Planners Association to educate investors regarding their choice of professional adviser. Their joint publication *Don't*

Kiss Your Money Goodbye made use of lessons from past instances of misconduct and guided prospective investors through key questions to help them avoid being misadvised or defrauded (Phillipps 2002).

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 defrauded to a much smaller 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 (<http://www.add.nsw.gov.au/ageing.htm>).

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.

REFERENCES

- Allen, T. 1996, 'Civil Liability for Sexual Exploitation in Professional Relationships', *Modern Law Review*, vol. 59, no. 1, pp. 56-77.
- Anderson, D.S. and Western, J. 1976, 'The Professions: Reason and Rhetoric', in Boreham, P., Pemberton, A. and Wilson, P. (eds), *The Professions in Australia: A Critical Appraisal*, University of Queensland Press, St Lucia, pp. 42-55.
- Australian Bureau of Statistics 1997, *1995 National Health Survey: Summary of Results* ABS, Canberra, Cat No 4364.0.
- Australian Bureau of Statistics 1998 *Household Use of Information Technology, Australia*, ABS, Canberra, Cat No 8146.0.
- Australian Bureau of Statistics 1999, *Australian Social Trends*, Cat No 4102.0. Australian Bureau of Statistics, Canberra.
- Australian Bureau of Statistics 2000, *Use of the Internet by Householders Australia*, ABS, Canberra, Cat No 8147.0.
- Australian Bureau of Statistics 2002, *Census of Population and Housing: Selected Social and Housing Characteristics, Australia*. Cat No 2015.0, ABS, Canberra.
- Australian Prudential Regulation Authority 2002, *Superannuation Trends*, September Quarter 2002, <http://www.apra.gov.au/Statistics/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=5455> (visited 29 January 2003).
- Australian Securities and Investments Commission 1998, *Annual Report 1997-98*, ASIC, Sydney.
- Braithwaite, J. 2002, *Restorative Justice and Responsive Regulation*, Oxford University Press, New York.
- Cantrell, B. 1994, 'Triad: Reducing Criminal Victimization of the Elderly', *FBI Law Enforcement Bulletin*, vol. 62, no. 2, pp. 19-23.
- Collis, B. W. 1996, "'Tort and Punishment" - Exemplary Damages: The Australian Experience', *Australian Law Journal*, vol. 70, no. 1, pp. 47-53.
- Devlin, P. 1986, *Easing the Passing: The Trial of Doctor John Bodkin Adams*, Faber and Faber Limited, London.
- Dix, A. 2002, 'Crime and Misconduct in the Medical Profession', in Smith, R. G. (ed.), *Crime in the Professions*, Ashgate Publishing Ltd., Aldershot, pp. 67-78.

- Fletcher, J. 1998, 'National Influences on the Regulation of Professional Conduct', in Smith, R. G. (ed.), *Health Care, Crime and Regulatory Control*, Hawkins Press, Sydney, pp. 72-79.
- Freiberg, A. 1996, 'Superannuation Crime', in *Trends and Issues in Crime and Criminal Justice*, No. 56, Australian Institute of Criminology, Canberra.
- Insurance and Superannuation Commission 1998, 'Fraud Pegged', *Superannuation Trustee Newsletter*, 1998-1, p. 2.
- James, M. P. 1993, *Crime Prevention for Older Australians*, Australian Institute of Criminology, Canberra.
- Johnson, T. J. 1972, *Professions and Power*, Macmillan Press Limited, London.
- Mathis, E. McR. 1994, 'Policing the Guardians', *FBI Law Enforcement Bulletin*, vol. 62, no. 2, pp. 1-4.
- Muscat, G., James, M. and Graycar, A. 2002, 'Older People and Consumer Fraud', in *Trends and Issues in Crime and Criminal Justice*, No. 220, Australian Institute of Criminology, Canberra.
- Neville, L. 2000, 'Crime and Misconduct Amongst Solicitors in Victoria', Paper presented at the Australian Institute of Criminology conference *Crime in the Professions*, Melbourne, 21-22 February.
- New South Wales Advisory Committee on Abuse of Older People 1994, *Abuse of Older People: Draft Inter-agency Protocol*, Ageing and Disability Department, Sydney.
- New South Wales Advisory Committee on Abuse of Older People in their Homes 1997, *Abuse of Older People: The Way Forward*, Final Report, Ageing and Disability Department, Sydney.
- New South Wales Ageing and Disability Department 1998, *Dealing with Abuse of Clients and their Carers: A Resource Kit*, Ageing and Disability Department, Sydney.
- New South Wales Medical Board 1993, *Annual Report for the Period Ended 31 March 1993*, New South Wales Medical Board, Sydney.
- Olinger, J. P. 1991, 'Elder Abuse: The Outlook for Federal Legislation', *Journal of Elder Abuse and Neglect*, vol. 3, pp. 43-52.
- Parker, C. 1997, 'Justifying the New South Wales Legal Profession 1976 to 1997', *Newcastle Law Review*, vol. 2, no. 2, pp. 1-29.

- Phillipps, T. 2002, 'Protecting Consumers of Financial Services, in Smith, R. G. (ed.), *Crime in the Professions*, Ashgate, Aldershot, pp. 115-22.
- Rudd, R. 1998, 'Telephone Fraud Targets Seniors', *RCMP Gazette*, vol. 60, no. 11, pp. 24-5.
- Rykert, W. L. 1994, 'Law Enforcement Gerontology', *FBI Law Enforcement Bulletin*, vol. 62, no. 2, pp. 5-9.
- Smith, R. G. 1991, "'Strangers Withdraw!': The Use of In Camera Hearings by the Professional Conduct Committee of the General Medical Council", *Professional Negligence*, vol. 7, no. 4, pp. 178-83.
- Smith, R. G. 1993, 'The Development of Ethical Guidance for Medical Practitioners by the General Medical Council', *Medical History*, vol. 37, pp. 56-67.
- Smith, R. G. 1994, *Medical Discipline*, Clarendon Press, Oxford.
- Smith, R. G. 1999, 'Internet Payment Systems and their Security Risks', *Journal of Financial Crime*, vol. 7, no. 2, pp. 155-60.
- Superannuation Complaints Tribunal 2002, *Quarterly Bulletin*, No. 29, September 2002. <http://203.147.241.209/bulletins/default.asp?images=d>
- Tillman, R. and Pontell, H. N. 1992, 'Is Justice 'Collar-Blind'?': Punishing Medicaid Provider Fraud', *Criminology*, vol. 30, no. 4, pp. 547-74.
- Titus, R. M. and Gover, A. R. 1999, 'Personal Fraud: The Victims and the Scams', paper presented to the International Society for the Reform of Criminal Law, 13th International Conference *Commercial and Financial Fraud: A Comparative Perspective*, St Julians, Malta, 9 July.
- United States (1984) *Quackery: A \$10 Billion Scandal*, Report of the House of Representatives Select Committee on Ageing, Subcommittee on Health and Long-Term Care, United States Government Printing Office, Washington.
- Weisburd, D. and Waring, E. 2001, *White-Collar Crime and Criminal Careers*, Cambridge University Press, Cambridge.
- Zanin, B. 1998, 'Helping Seniors Help Themselves', *RCMP Gazette*, vol. 60, no. 11, p. 26.