She can't make herself safe so give *me* that power: statutory powers and Elder Abuse and Neglect Prevention Service Coordinators

by

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A paper submitted to Victoria, University of Wellington, in fulfilment of the requirements of Social Policy Research Essay (SPOL489)

October 2011

Contents

List of tables

Summary

Elder abuse and neglect prevention services are provided by non-government organisations in New Zealand. They support older people who have been abused or neglected to achieve a safer living environment. In some situations, lack of authoritative power prevents achievement of this goal. This research surveys Elder Abuse and Neglect Prevention Service (EANPS) Coordinators, identifying situations where they have previously been unable to achieve safety for a client, and explores whether increased statutory powers would improve ability to achieve safety for these clients. EANPS Coordinators currently have one statutory power: to "at any time apply to a court to review any decision made by an attorney acting under an enduring power of attorney while the donor is or was mentally incapable" (Protection of Personal and Property Rights Act 1988 No.4, s103(1)).

This research focuses on issues EANPS Coordinators face in their day to day work. It recognises their role as the experts in this field by seeking their participation at an early stage in the process – EANPS Coordinators contributed case examples which were used to support a questionnaire that explored the issues concerning lack of statutory power.

Participants described a range of situations where they have been unable to achieve safety for a vulnerable older person.[1] These fall broadly into four categories:

1. neglect;
2. domestic violence;
3. financial abuse;
4. sexual abuse in residential care.

The types of statutory power that respondents identified would assist them fall into five broad categories:

1. power to gain access to a client;
2. power to enforce care arrangements;
3. power to order health assessments;
4. power to act without consent when their client's health is at serious risk;
5. power to make banking transactions upon client instructions.

The advantages and disadvantages of assigning statutory power within the non-government sector are also explored and discussed.

In exploring how increased statutory powers might improve client outcomes, this project also examined weaknesses in the current practice environment. I submit that the call for increased statutory powers for EANP services is, to some extent, a response to operational gaps in their practice environment, gaps which do not all require legislation to fill. A number of these gaps are identified in the report. One issue concerns barriers to accessing provisions of the Protection of Personal and Property Rights Act 1988. Two actions are

1 For the purposes of this research, 'vulnerable older person' is defined as an older person experiencing elder abuse or neglect who is unable to achieve safety of their own volition.

recommended to address this:

1. analysis of the barriers inhibiting health professionals from accessing this legislation and development of options for removing those barriers.
2. examination of the resources needed to enable more effective use of this law (and provision of those resources). This would likely be of benefit to EANP Services and health professionals.

Other operational gaps identified include:

- A need for increased understanding of the role of EANP services and recognition of staff's expertise by health professionals, Police, banks and other agencies with whom they interact. This would be further supported by increased awareness by these agencies of elder abuse and implementation of policies and procedures to identify and intervene appropriately.
- More consistent training and practice support for EANP Coordinators, including information of options available for resolving the range of situations encountered.
- Increased availability of safe accommodation for older people in abusive living situations.
- More effective monitoring of residential care facilities and more transparent complaints systems which residents feel safe to use.
- Development of a universal culture of respect and dignity in residential care facilities.

Work known to the author that is planned or underway relevant to these operational gaps is noted.

There are two types of situations respondents identified where legislative change may be required:

1. when an older person is taken out of a residential care facility by a family member (or similar person) and prevented from returning;
2. monitoring care arrangements for older persons and ensuring compliance with these (assuming non-compliance is occurring without the older person's consent).

Further work is needed to ascertain what the decision to return a person taken from a residential care facility without their informed consent could or should be based on, and what agency is the most appropriate to take this action. Work is also needed in relation to monitoring care arrangements:- Does any agency currently have this authority? What stops monitoring from occurring? This information will then help determine what changes are needed (in legislation, policy or operations) to deliver the outcome sought.

Introduction

Elder abuse is a global social and political issue. It was first described in British journals in the mid 1970s. Interest in the issue grew throughout the developed world during the 1980s and 1990s. Worldwide attention now reflects growing "concern about human rights and gender equality, as well as about domestic violence and population ageing" (Wolf, Daichman & Bennett, 2002, p. 125).

A national workshop held in 1989 was the catalyst for development of specialist services to assist older people who are abused or neglected in New Zealand. There are now twenty-four community based elder abuse and neglect prevention services operating throughout the country (Age Concern New Zealand, 2007).

New Zealand's Elder Abuse and Neglect Prevention Services (EANPS) provide assessment and intervention to support older people who have been abused or neglected achieve a safer living environment (Age Concern New Zealand, 2007).[2] EANPS Coordinators currently have one statutory power: to "at any time apply to a court to review any decision made by an attorney acting under an enduring power of attorney while the donor is or was mentally incapable" (Protection of Personal and Property Rights Act 1988 No.4, s103(1)).[3] [4] In 2010, it was suggested that EANPS Coordinators could be more effective with broader legal powers; for example, the power to enter a dwelling where elder abuse is suspected and where other means have been unsuccessful in accessing the older person.

I have been professionally engaged in the prevention of elder abuse and neglect for the past fourteen years. Mandatory reporting, legislative protection and statutory power are related issues which have arisen intermittently during this time. The latest suggestion, made against this backdrop, is the inspiration for this research project: should elder abuse and neglect prevention services have greater statutory powers to facilitate safety of an older person experiencing elder abuse or neglect who is unable to achieve safety of their own volition?

2 Other services are provided but these are not relevant to this report.
3 This Act describes an EANPS Coordinator as "a person authorised by a body or organisation contracted by the Government to provide elder abuse and neglect prevention services" (s103(1)(h)).
4 Statutory power is generally taken to mean power provided by legislation for specified persons to take specific actions (Judicature Amendment Act 1972, clause 3).

The aim of this research is to explore whether increased statutory powers would improve the safety outcomes EANPS Coordinators are able to facilitate for vulnerable older people.[5]

The research objectives are:

1. To identify situations where EANPS Coordinators have been unable to achieve safety for vulnerable older people.
2. To identify how increased statutory powers could have improved the outcome achieved in these situations.
3. To identify the types of statutory power needed.
4. To explore the advantages and disadvantages of assigning statutory powers to EANPS Coordinators.
5. To make recommendations to service providers and other relevant stakeholders in light of the findings of this research.

5 For the purposes of this research, vulnerable older people are defined as people aged over 65 who are being abused or neglected and who are unable to achieve safety of their own volition.

Literature Review

Defining elder abuse and neglect

There is no international agreement on a definition of elder abuse and neglect (Dixon, Manthorpe, Biggs, Mowlam, Tennant, Tinker & McCreadie, 2010; Killick & Taylor, 2009; Fallon, 2006; Schofield, 2004). Two characteristics are common among definitions reviewed: old age, and behaviour (omissions included) which causes harm to the older person. Variation occurs in the age delineated as 'old', the range of behaviours which are deemed to cause harm, and the relationship between the perpetrator and victim (Dixon et al., 2010; Peri, Fanslow, Hand and Parsons, 2008; Schofield, 2004). It is noted that the cultural context in which abuse occurs, and the frequency, duration, severity and consequences of abuse, all have an influence on whether or not the behaviour is regarded as 'elder abuse' (Wolf et al., 2002).

The World Health Organisation (WHO) has adopted a definition commonly used in Canada, the United Kingdom, Australia and New Zealand:

> *"Elder Abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person"* (WHO, 2002, p. 3).[6] [7]

In their research with older people who had been abused in the United Kingdom, Mowlam, Tennant, Dixon and McCreadie (2007) found difficulties with this definition however, arguing that it does not adequately "draw[s] together experiences that are in some way similar and distinguish[es] them from other types of experience in a way that is meaningful and useful" (p.17). Killick and Taylor (2009), quoting Lithwick, concur, asking:

> "If the mistreatment of older adults is multidimensional and heterogeneous, why have such diverse situations been grouped together under the single rubric of elder abuse in the literature?" (p. 222).

Elder abuse and statutory powers

Response to elder abuse varies around the world. This review focuses on America, Canada,

6 Consistent with this definition, the term 'elder abuse' is hereafter used to refer to both abuse and neglect.

7 Refer Appendix five for additional information about different types of elder abuse, victim and perpetrator profiles, and prevalence estimates.

the United Kingdom and Australia, being the countries New Zealanders generally turn to for practice information (Maher, 2005) and policy inspiration.

American response to elder abuse has been shaped by legislature since the early 1970s (Bergeron, 1999), with all states now employing some form of adult protection legislation. While the legislation varies from state to state, all vest statutory power in Adult Protective Services (Bergeron, 1999; Poirier 1992). Bergeron (1999) describes the major functions of these state agencies:

> "(1) to receive and investigate reports of abuse, neglect, and exploitation and assess clients' service needs; (2) to provide intervention casework and referral services to protect the elder from further harm; and (3) to work with law enforcement authorities and the courts in certain types of cases" (p. 91).

She notes, however, that the variation in legislation across states creates differences in the way each Adult Protective Service undertakes their work.

Four of the ten provinces in Canada have followed America's practice. A key issue with the Canadian legislation is that it "is based on the child welfare model and provides extensive investigatory and intervention powers" (Poirier, 1992, p. 114). This approach may have been acceptable when knowledge about elder abuse was in its infancy but literature from both within Canada (Canadian Network for the Prevention of Elder Abuse and Department of Justice, 2010; Harbison, 1999) and elsewhere suggests it is no longer so. The remaining provinces employ a similar range of legislation as available in New Zealand and Australia (discussed later in this chapter).

Call for legislative protection of older people has been evident in the United Kingdom (UK) since at least the early 1990s (McDonald, 1993). In 2007, Scotland became the first country to enact adult protective legislation. The primary body assigned duties and powers by this legislation are local authorities with other public sector agencies included in some aspects. Voluntary and private sector organisations are recognised as important contributors to the multi-disciplinary approach employed; they "have a responsibility to involve themselves with the Act where appropriate by contributing to investigations" and can be "a source of advice and expertise for statutory agencies" (The Scottish Government, 2009, p. 17).

The Adult Support and Protection (Scotland) Act 2007 is explicit that intervention should "provide benefit to the adult" and, of the intervention options available, be "the least restrictive to the adult's freedom" (Part 1, s1). The need to balance risk of harm against the right of self determination is evident throughout the Code of Practice developed to support implementation of this legislation (The Scottish Government, 2009).

In May this year, the UK Law Commission released their report about the provision of social care services for vulnerable adults in England and Wales. The report includes recommendations about the statutory powers and duties of local authorities relevant to adult protection, but excludes review of the wide range of other legal provisions for safeguarding adults from abuse and neglect in those countries (The Law Commission, 2011, p. 109). While the language employed by the Law Commission focuses on 'care', as opposed to the Scottish 'protection', many of the same principles and processes are applied, including comparable definitions of an "adult at risk". The Law Commission came to this terminology after consultation on the use of 'vulnerable adult' confirmed its inappropriateness (ibid.).[8]

In both New Zealand and Australia a range of legislation may be employed in situations of elder abuse. Both countries have taken an empowerment approach, using health and social services alongside domestic violence legislation, criminal law, adult guardianship (known as power of attorney in New Zealand), and a variety of complaint and compliance mechanisms to support and promote the wellbeing of older people (examples include the Health and Disability Commission in New Zealand and the Aged Care Commission in Australia). Both countries rely "on older people being entitled to the same protection under law as any other citizen" (Maher, 2005, p. 34).

Recent amendments to the Crimes Act in New Zealand suggest a shift in this policy. The Crimes Amendment Act (No 3) 2011 (CAA) has created two new offences which provide 'vulnerable adults' the same protections from ill-treatment and neglect as are afforded to children in this law. The CAA defines vulnerable adult as "a person unable, by reason of

8 Those consulted argued 'vulnerable adult' is "stigmatising, dated, negative and disempowering". The Law Commission argued "the term 'vulnerable adult' appears to locate the cause of abuse with the victim, rather than placing responsibility with the actions or omissions of others. It can also suggest that vulnerability is an inherent characteristic of a person and does not recognise that it might be the context, the setting or the place which makes a person vulnerable" (The Law Commission 2011, p. 114).

detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person" (s4(1)).

The policy rationale for including 'vulnerable adults' in this law is stated in the explanatory note to the Bill which preceded enactment of the CAA: "There is no valid reason to differentiate between these equally vulnerable victim classes and the Bill gives effect to that policy position" (Parliamentary Counsel Office, 2011a, p. 2). This suggests, as occurred in Canada, that our legislators are conceiving 'vulnerable adults' as akin to children. The policy thinking behind the CAA appears dated both in this respect, and in use of the term 'vulnerable adult' (refer discussion on the previous page). As if anticipating this criticism, the Law Commission notes that the new 'failure to protect' law "has been closely modelled on section 5 of the Domestic Violence, Crime and Victims Act 2004 (UK)" (Law Commission, 2009, p. 8), legislation that was not included in the UK Law Commission's review and which does use the term 'vulnerable adult'.

Alongside varying legislative frameworks for responding to elder abuse is equally variable service provision. In America and the United Kingdom, public service agencies provide key services in response to elder abuse. In Canada, there is a mix of government and non-profit service provision, although the provinces with adult protection legislation also tend to have greater public service provision (Canadian Centre for Elder Law, 2011; Poirier, 1992). In both New Zealand and Australia, services provided to older people who have been abused are primarily of health or community social service origin.

What do older people want? Harbison (1999) argues: "The values of most older people, of privacy, autonomy, and independence, run counter to the idea of professional intervention in personal matters" (p. 12). Elder abuse is often perpetrated by family members (refer supplementary information about elder abuse in Appendix five) thus falls within the realm of 'personal matters'. Yet older people who have been abused do seek assistance from helping agencies. Mowlam et al. (2007) identified four specific reasons why the older people in their study had sought assistance related to elder abuse:

> "seeking to change the perpetrator's behaviour; placing distance between the respondent and the perpetrator; seeking legal or formal redress; and seeking emotional support" (p. 39).

In light of these findings, coupled with Harbison's argument, perhaps the answer lies in

personal agency and empowerment, rather than imposed intervention.

Relationship between the State and Civil Society

The changing relationship between the state and civil society has been the subject of much scholarship (Haddad, 2011; O'Brien, Sanders & Tennant, 2009; Morison, 2000). One focus of attention has been the impact government contracting for social service provision has on the non-profit sector,[9] a sector that has historically been viewed as the autonomous essence of civil society. Reliance on government funding and the resultant provision of services derived from a political agenda, alongside increased regulation and accountability mechanisms, has blurred the boundary between the state and civil society (Rodriguez, 2007 citing Wolch, 1990).

The debate regarding the separation of state and civil society is directly relevant to this research project given that it explores whether or not the non-profit EANP services should be assigned powers which have been historically, and are internationally, the purview of the state. Such a suggestion appears to challenge the historical state-civil society divide: "Giddens maintains that the state should reserve to itself the role of 'protect(ing) individuals from the conflicts of interest always present in civil society'" (Morison, 2000, p. 105, quoting Giddens 1998).

In reviewing the policy relationship between government and the non-profit sector in New Zealand, O'Brien et al. (2009) note that:

> "Two primary orientations to the state's relationship with the sector can now be detected in government documents:
>
> - recognition that non-profit organisations play an important role in civil society and need to be supported and encouraged. The state has a role to play here supporting and resourcing the sector's independent operation
> - a pragmatic interest in the sector because it has potential to further the Government's own policy agendas and interests" (p. 15).

In the current economic climate, this 'pragmatic interest' could extend to enabling statutory

9 Non-profit sector is used to refer to organisations collectively referred to in New Zealand by a range of terms including: non-profit sector, charitable sector, non-government sector, voluntary sector.

powers for the non-profit sector instead of directing or establishing a government agency to take on protective roles. Or perhaps the debate from which this project has arisen is simply civil society doing what it does best: “campaigning and advocating change on behalf of particular interests (Morison, 2000, p. 108).

Epistemology and Theoretical Perspective

I have approached this research from the theoretical perspective of critical enquiry underpinned by social constructionist epistemology.

Weinberg explains that constructionist research is not concerned with establishing objective truths but in asking "questions of human benefit" (Weinberg, 2008, p. 15). The social constructionist theory of knowledge is congruent with my thinking: we 'construct' our social reality from knowledge acquired through life experiences, the social, cultural, political and historical context in which we live and through our interactions with each other (Turner, 2008; Weinberg 2008; Crotty, 1998). Furthermore, social constructionism posits that people have the ability to change their society: "...constructionism is about the recognition that things could be otherwise and that we might make them so..." (Weinberg, 2008 p. 35).

Critical enquiry focuses on power relationships in society and the systems that maintain them. Kincheloe and McLaren (2005) detail seven basic assumptions accepted by those they define as criticalist researchers or theorists. The first is "that all thought is fundamentally mediated by power relations that are social and historically constituted" (p. 304). Challenging inappropriate use of interpersonal power is often central to resolution of elder abuse. The power wielded by EANPS coordinators and the way this is exercised is also significant. I believe a critical approach to the call for increasing EANPS Coordinators' powers of intervention through statute is necessary to ensure the rights of the victim are paramount; they are a party with little ability or opportunity to influence the outcome of this debate.

There are a number of perspectives to balance: on one side are EANPS Coordinators eager to redress injustices they find in the field (common motivation for critical researchers); on another side is myself as researcher, keen to "expose the forces that prevent individuals and groups from shaping the decisions that crucially affect their lives" (Kincheloe & McLaren, 2005, p. 308); and underpinning those perspectives, the fair question – Is it not arrogant to try to emancipate "others"? (ibid.).

Research Design and Method

The exploratory nature of my research necessitates qualitative methodology. A two stage design was created, employing survey methodology at each stage. Stage one collected case examples which were used to inform a survey of issues (stage two).

In-depth, semi-structured interviews were initially proposed for this project. However, this method would probably have produced more data than is practicable for the context of this project. The change to self-administered surveys followed discussion with my supervisor and reflection on the issues she raised. Consistent with qualitative methodology, predominantly open-ended questions were used, to enable respondents to offer as much or as little information as they wished and to contribute with as little restriction as possible.

Influenced by literature about research in cross-cultural contexts (Cornell, 2009; Ball, 2005; Smith, 2005) and about participatory action research (Wadsworth, 1998), I regard the respondents as field experts. This research focuses on issues they face in their everyday work, so I considered it essential to include them as much as possible within the confines of survey methodology. Inviting respondents to contribute case examples for use in the survey of issues demonstrated from the outset that their expertise and insights were essential in the research process.

A wide range of literature is available providing guidance on survey methodology. Much of this focuses on quantitative data collection. This project employed self-administered survey using a 'Word' format questionnaire for stage one (collection of case examples) and Qualtrics online survey software for stage two (survey of issues). In their discussion of online surveys, Sue and Ritter (2007) note that open-ended questions are "particularly useful when investigating new topics and offer an opportunity to learn unexpected information" (p. 43). However, they advise against this form of questioning in self administered surveys because "respondents are turned off by the difficulty of being forced to recall and articulate information and will usually skip open-ended items when they can" (ibid.).

I presumed respondents would choose to participate in this research project through professional interest in the subject matter. I assumed, therefore, that they would be more highly motivated to think about the questions posed than is usual. I further assumed that many, if not all, would already have opinions on the subject and would be keen to contribute their views to the research. In highlighting the advantages of postal surveys over interviews, Neale (2009) notes they are "good for questions demanding a considered rather than an immediate answer" (p. 102). Furthermore, Sue and Ritter (2007) acknowledge that, despite reduced response rate, "[o]pen-ended questions tend to result in more valid responses than closed-ended questions because respondents are not forced to select from a list of response options created by the researcher" (p. 44). This advice affirmed my methodological choice.

Key to the success of any survey is construction of the survey questions. Attention was paid to the abundant advice available in the literature on this subject. Particular consideration was given to ensuring that: each question was directly related to the research objectives; questions were self explanatory and non ambiguous; sources of instrumentation or response bias were avoided – for example, emotive language, leading or loaded questions, double-barreled questions, social desirability bias and prestige bias[10] (Neale, 2009; Sue & Ritter, 2007; Alreck and Settle, 2004; Burton, 2000).

Ethical considerations

A number of ethical issues were identified and managed in completion of this research.

1. Clients' Stories

In collecting information about the range of situations where EANP Services have been unable to achieve safety for a vulnerable older person there was potential for receiving personal information about that person and their family or significant others. Consent for this information was not sought as the people concerned were not directly involved in this research. To mitigate any breach of privacy and possible harm from such a breach, this type of information is reported generically.

10 Alreck and Settle (2004) define 'social desirability bias' as "Response based on what's perceived as being socially acceptable or respectable" and 'prestige bias' as "Response intended to enhance the image of the respondent in the eyes of others" (p. 102).

2. EANPS Coordinators expectations

In my professional role, I contribute to the development of policy and practice for EANP Services and provide advice to government on these matters. It is possible that EANPS Coordinators see no distinction between that professional role and my personal undertaking of this research. To some extent they are correct; my intention is to share the findings with my employer, with the EANP Services, and other stakeholders. Some EANPS Coordinators are also aware that I am inclined against statutory powers, thus may question my ability to be objective in conducting this research. To address these issues, the information for participants provided clarity about: the purpose of the research in regard to my studies and the attendant supervisory oversight; the proposed and potential use of findings. Refer to Appendix one for the information for participants.

3. Anonymity and Confidentiality of Participants

The population from which the participant sample was selected is relatively small (currently 33 people). All members know each other, at least by name and location, sharing practice advice and engaging in professional debate within this group. It is therefore possible that participants' views on statutory powers will be known by other members of the sample population. These circumstances preclude ability to guarantee confidentiality of participants identity within the sample population and potentially within the communities in which they work. Participants were made aware of this issue in the information provided to them, and their understanding of the implications of this included in the consent form (refer Appendix one for both these documents).

Data Collection

Following approval by the Social and Cultural Studies Human Ethics Sub-Committee (ref. 18569 – Appendix two), twenty-nine EANPS Coordinators who work with older people[11] were invited (by email) to participate in this research project. Of those invited, a total of fourteen people consented to participate: ten for stage one (collection of case examples) and fourteen for stage two (survey of issues). Participant involvement is summarised in table 1 (next page).

11 The EANP Services included in this project are those contracted by the Ministry of Social Development. Some employ staff who provide education services only. These staff were excluded from this project as they do not have the appropriate experience.

Table 1: Summary of Participants and Data Provision

Number invited to participate	29	
	Number of participants who gave consent	Number of participants who completed
Stage one: Case examples	10	6
Stage two: Survey	14	8*

* One survey was only partially completed.

EANPS Coordinators who consented to participate in stage one were asked for examples of referrals they have received where lack of statutory power to take action had prevented or inhibited their ability to facilitate safety for the older person - refer Appendix three. Case examples were received from six of the ten participants who consented to this stage of the project. These were collated into two generic vignettes for use in the survey of issues. To ensure the survey was of reasonable length, some case examples were not used.

Stage two: Survey of issues

A questionnaire was designed to enable exploration of EANPS Coordinators' opinions, knowledge and experiences relevant to the research objectives. This questionnaire was tested by a potential participant who was not otherwise able to contribute. Feedback from the testing and from supervisory review resulted in additional demographic type questions at the beginning of the survey, some minor wording changes, and additional questions for clarity in the section exploring the advantages and disadvantages of EANPS Coordinators holding statutory powers. As the meaning of the questions in the research survey are little changed from the test survey, information provided by the test survey respondent is included in data analysis.

Qualtrics online survey software was used to publish and distribute the research survey to participants. Refer Appendix 4 for a 'Word' version of this questionnaire.

Data Analysis

Each completed survey was downloaded from the Qualtrics website and a copy provided to the participant. Responses were transferred onto a spreadsheet for content analysis. Transferred information was checked for accuracy and completeness against

reports of collated responses provided by Qualtrics. Themes were identified in the text data then categorised.[12]

12 In larger studies, reliability of this process is strengthened by employing an independent researcher to re-code the data to ensure consistency.

Survey Results

The survey of issues was completed by eight people.[13] Participants' experience working as EANPS Coordinators is summarised in Table 2.

Table 2: Years employed as an EANPS Coordinator

Length of time employed as an EANPS Coordinator	Number of participants
Less than 3 years	1
3 to 5 years	2
6 to 8 years	3
More than 8 years	2

Two participants have previously worked in roles holding statutory powers. Of those who hold professional qualifications, three are social workers and two are nurses.

Of the fourteen people who consented to participation in this stage of the research, twelve began the questionnaire but only seven completed it; an eighth person provided a partially completed questionnaire. Personal communication with two of the participants who did not complete indicated that other commitments prevented their full engagement with the project; another person experienced ill-health which prevented completion within the required timeframe. One participant chose not to complete as she considered she did not have sufficient experience to contribute.

Range of situations where EANPS Coordinators have been unable to achieve safety for vulnerable older people

The situations respondents described where they have been unable to achieve safety for a vulnerable older person fall broadly into four categories: neglect; domestic violence; financial abuse; sexual abuse in residential care. The types of statutory power EANPS Coordinators consider are needed and how these would improve client[14] outcomes are identified for each category.

13 This includes the person who tested an earlier version of the questionnaire – refer section entitled 'Data collection'.

14 In the context of this report, 'client' means an older person referred to an EANP Service because of suspected or actual elder abuse.

1. Neglect

Table 3: Summary of situations respondents reported where neglect is occurring and impediments to achieving safety for the older person encountered

Scenario identifier	Scenario
A	Older person is removed from a residential care facility by an adult child.[15] The son/daughter assumes the role of carer (whether or not they have the ability to provide the required care), isolates the older person by refusing all external contact and refuses health or social support including assessments.
B	Older person being cared for by a family member who is unable (or unwilling) to meet the older person's needs. Such situations of neglect may also feature other forms of elder abuse such as financial abuse (sometimes to cater for addictions) and psychological abuse.[16] Additional challenges arise in this kind of scenario when the older person has lost mental capability (or has intellectual disability), the carer holds enduring power of attorney and asserts that the decisions they are making on behalf of the donor (older person) are what the donor would have wanted.
C	Older person with early dementia and other mental and physical health conditions cared for by a family member. Co-dependent, mutually abusive relationship, historically and currently. Intent is to provide care but current circumstances and historical relationship preclude this. Older person is able to present well so assessed by health professionals as at low risk. Each seeks help (from multiple agencies) regarding the problems they have with the other, but neither are able to accept the available options. Quality of life and well-being for both decline and abuse continues.
D	Older person living in a retirement village. Health declines such that the person becomes increasingly more dependent on assistance for daily living. Advancing dementia is causing concern about night-time safety so she is locked into her unit each night. Her family are supportive of this 'safety measure' but other residents believe it is inappropriate and that she needs a higher level of care than the retirement village can provide.[17]

While the common element in these scenarios is that the older person is not receiving the care they need, each presents a different barrier to addressing this issue.

To improve the outcome for the older person in scenario A, respondents identified the

15 An older person is generally free to choose to leave a residential care facility if they so wish. This scenario assumes the older person has not made an informed decision to leave and is being prevented from returning.

16 Refer Appendix five for definitions of these types of abuse.

17 Retirement villages are housing providers, not health service providers, therefore any improper behaviour by the owner(s) or operator(s) which negatively impacts on the health and well-being of residents is not covered by health and disability service legislation.

need for: ability, where necessary, to seek Police assistance to locate persons removed from a residential care facility; right of access to the older person (to ensure they are safe and their care needs met); ability to have the older person returned to the residential care facility (assuming their care needs are not being met). Respondents consider that such powers would improve outcomes for the client by providing a mechanism to ensure their physical and emotional safety. One respondent noted that the adult child (who took the older person out of residential care) may also need support services; to enable them to provide the necessary care, for example, or to accept that their parent needs more help than is able to be provided at home.

In scenario B, access to the older person is not an issue, but ensuring adequate care is. One respondent seeks the power *"to have the caregiver monitored and [have] the ability to enforce care arrangements that have been arranged by health professionals"*.[18] Such power would ensure the older person receives the care they need thus enhancing their safety and quality of life. When the carer holds enduring power of attorney – personal care and welfare (EPA)[19] and is not meeting the older person's care needs, an application can be made under provisions of the Protection of Personal and Property Rights Act 1988 No. 4 (PPPR Act) for review of the attorney's decisions, and / or to revoke the EPA. A number of barriers to taking this action exist, including difficulty identifying a suitable person to take on the EPA role. Other barriers and issues are identified and discussed later in this chapter (refer page 33).

In scenario D, power is sought to move the older person into a rest home so care can be provided within a safer environment. However, assuming the older person is mentally capable, little can be done unless she chooses to move. If there are concerns about her ability to make and understand decisions, an assessment of mental capability can be sought. If it is determined that she has lost mental capability, then provisions of the PPPR Act can be used to secure appropriate care for her. As identified in the preceding paragraph, barriers to accessing provisions of this law are identified and discussed on page 33.

Exploring issues identified in scenario C raised some interesting complications. The

18 Italicised quotations throughout this chapter are from research respondents.
19 There are two types of EPA: personal care and welfare, and property.

respondent initially sought power to enter the house (without the client's consent) in the company of a member of the Mental Health Team so as to expose the client's true level of functioning and thus initiate services to enable better care. However, the respondent subsequently advised that, upon reflection, she didn't think this was appropriate action:

> "*My thinking was that the Mental Health Team who visited would see a different picture of [client name] if she was pushed to allow people into her home. However, upon reflection, this could be very distressing to the client so I've changed my mind with this. Yes, that would give me better evidence for an assessment but I would be very reluctant to be involved with this*".

Scenarios C and D both reflect the ethical challenges identified in the Literature Review: how to balance risk of harm and freedom of choice.

Self neglect

Two other scenarios were offered by respondents which raise similar issues in relation to self neglect.[20]

Table 4: Summary of self neglect situations where respondents have been unable to achieve safety with the older person

Scenario identifier	Scenario
E	Mentally capable older person living alone in a rural setting with little (or no) external contact beyond a neighbour. Not known to local GP or other agencies. Physical health at crisis point but refusing any help.
F	Older person with dementia living in the community, failing to self-care and being repeatedly admitted to hospital. Always discharged home due to apparent unwillingness of health professionals to take required legal action (application under s7 of the PPPR Act 1988 for a personal order (s10)).[21]

While recognising the older person's right to deny support and services, the respondent who contributed scenario E seeks power to arrange crisis medical treatment without the client's consent because there is limited other support that can be offered in rural communities:

20 Self-neglect does not fit within the definition of elder abuse used in New Zealand as the 'abuse' is not occurring within a relationship of trust. However, EANP Services often receive and respond to referrals of this nature.

21 Personal orders include "e) an order that the person be provided with living arrangements of a kind specified in the order: f) an order that the person be provided with medical advice or treatment of a kind specified in the order" (PPPR Act 1988, s10(1))

"*GPs do not wish to take new patients or state they are busy. Police stations may be understaffed at the time i have called for support."*

The difficulty in resolving situations as described in scenario F is not lack of legal power, but lack of resources and support to execute these. These issues are discussed further on page 33.

2. Domestic violence

Table 5: Summary of situations respondents reported where domestic violence is occurring and impediments to achieving safety for the older person encountered

Scenario identifier	Scenario
G	Older people unable (unwilling?) to take action against the abusive behaviour of family members negatively affected by drug or alcohol use.
H	Older person, vulnerable due to sensory disabilities and poor physical health, lives with a flatmate / boarder who behaves in a controlling and manipulative manner: isolates the older person by monitoring mail and phone calls, prevents visitors (including health services) from seeing the older person, makes fraudulent complaints which cause support agencies to cease contact yet ingratiates himself to the older person so that dependency is created. This enables financial abuse through free accommodation and benefitting from the older person's will.

Vignette one, created from case examples received, also describes domestic violence.

Vignette one

Elsie and Frank married late in life. Frank was quite particular about clothes, and would give advice to Elsie about what she should wear whenever they went out together, so she would 'look her best' with him. After a while, he began to denigrate her whenever she wore things he didn't particularly like. So Elsie started only wearing the clothes that pleased him. Then he started on her friends, making rude comments about the people he thought 'were beneath' her, and questioning why she spent time with them when she could be spending time with him.

When Elsie realised that life with Frank wasn't what she wanted, she left him and settled herself into a flat. Within a few months she got a call from Frank. He told her he had an incurable illness and wanted to spend the last months of his life with her. Elsie moved back. After that, whenever her family visited, Frank would get grumpy "Can't you at least give her some peace with me? I'll be dead soon enough and you'll have her all to

yourselves then." So Elsie's family gradually stopped visiting, keeping in touch by phone instead. Elsie stopped going out with her friends and gradually her life became Frank.

Five years later Elsie was hospitalised following a fall at home. Staff noticed genital trauma, and what looked like grip mark bruises on her arms. Elsie couldn't remember how the bruises got on her arms and explained the genital trauma as the result of falling onto the arm of a chair she was standing on when cleaning windows recently. Although Elsie showed some signs of cognitive decline, she was able to communicate her wishes and discuss the consequences of various options put to her for care upon discharge from hospital. Elsie was adamant she wanted to go home to be with Frank before he died.

Over the next two years, Elsie was hospitalised 5 times. Each time she gave believable explanations for her injuries and each time she was discharged home at her request. The referral to the EANP service came from the home support agency who had three carers refuse to go back to Elsie because Frank 'gave them the creeps' and they didn't feel safe. When the EANP Coordinator went to visit Elsie, Frank refused to let her in. The home support agency withdrew from providing services to Elsie. Whenever Elsie's family phoned her, they were told she was busy and unable to come to the phone. The EANP service received a second referral, this time from one of Elsie's children. Again Frank refused to let the Coordinator in. When she was leaving, a neighbour stopped her in the street expressing concern because she hadn't seen Elsie in months, not even to go to the letterbox, and she's heard Frank yelling at her and saying "really horrible things".

All respondents desire power to gain access to Elsie (although only two state this explicitly). Options suggested to achieve this were: right of entry; authority to remove Elsie to a safe house if this is in her best interests; authority to hospitalise Frank for an assessment (with the suggestion that "*This would give Elsie time out, to make decisions, with support, and may show a clearer picture of what is happening at home*") or to otherwise remove Frank without Elsie's consent (including through use of Police Safety Orders)[22]; authority to hospitalise Elsie -

> "*I have found this really works to give the person like Elsie a break from Frank to give her time to think things through, speak a number of times to the coordinator and any others re abusive situations. Can move her from victim to vulnerable. Once she views herself as vulnerable rather than as a victim she can identify what needs to happen for her to be safe from future abuse."*

22 However, as noted by one respondent, Police Safety Orders can only be issued if there has been a call to the house due to a family violence incident.

One respondent wanted the ability to order a medical and nursing assessment. Ability to ensure appropriate medical support is provided was also sought for situations like scenario H.

Table 6: Respondents' views on how the described statutory powers would improve client outcomes

Power	How this might improve outcomes for Elsie / clients in scenarios G and H (Table 5)
Right of entry	Providing Frank with a third party to blame for any changes that occurred as a result of the intervention. Potentially reduce abuse as Frank "*would know that the EANP coordinator could visit his wife without permission*". Scenario H - Ensure medical care was provided and the older person (and the flatmate / boarder) is aware of her rights and options.
Authority to remove Elsie to a safe house	"*Provide her with safe accommodation, keep her free from harm.*" Give Elsie an opportunity to be fully informed of her options, to discuss these freely, and for her family to visit.
Authority to hospitalise Elsie	"*Providing she is competent, Elsie gets to say what she needs to happen and what supports she needs. A good way of bringing the family in as per how Elsie would like support from them."* Make her safe.
Authority to hospitalise Frank, or to otherwise remove him.	"*Elsie needs to know that she has choices. This isn't going to happen while Frank is there, making all the decisions. An assessment would give a clear picture of Franks [sic] health needs, and this would also enable Elsie space to see her situation clearer.*" "*It would allow for safe and independent assessment of the situation. It would allow Elsie to consider her options and to discuss freely what she would want. It would allow family to reunite with her and to show her that support is there for her in making the difficult decisions to make change.*" Note: This comment also applies to power to remove Elsie to a safe house.
Ability to order a medical and nursing assessment.	Enable provision of "*health and personal care she might require.*"

Working with similar situations in the current legislative environment

All respondents described strategies they currently use to gain access when this is denied in situations similar to those described in this section. These include: collaborating with Elsie's GP -

"Take the opportunity while Elsie was at a medical to talk with her in a safe environment on a one to one about what she wants to happen and ensure that she has a safety plan for herself";

visiting Elsie / the older person with a Police escort, or *"request a police welfare visit";*[23] attending a home visit with the gerontological nursing service or a Needs Assessment and Service Coordination Agency (NASC)[24] who is known to the couple; meeting with other service providers involved with the couple -

"I would look to see if we could establish any patterns regarding Frank leaving the house e.g. for shopping etc where Elsie may be left alone and I would try to visit at this time. It would be important to try and meet with Elsie on her own without her feeling threatened";

ascertaining if the Family Safety team are aware of the couple, have advice to offer or are able to make a home visit with Police; advising the neighbour to phone the Police next time she is concerned by what she is hearing, so that a family violence incident can be noted and a Police Safety Order or other remedies available through the Domestic Violence Act used (this also applies to scenario G, where the older person is being abused by other family members due to drug or alcohol abuse); cold call -

"Firstly with the exception of one case, I have always managed to get over the threshold in cases like these. I cold call and initially introduce myself as a coordinator from [EANP service provider name] checking that older persons are fully aware of all the services we offer. It is once I am in the house and talking with the individuals that we discuss the recent concerns and role of elder abuse."

While reporting these various strategies, derived from different experiences, knowledge and access to service support, a number of respondents noted Elsie's right to autonomous decision making. The following comments, by two different respondents, reflect this:

"*At the end of all of this there is the fact, that Elsie … may not wish to make changes in her life.*"

23 Family violence Police will visit at the request (non-urgent) of the EANP Coordinator when family violence has occurred historically and the Coordinator is unable to gain access to ascertain if the victim is wanting any support.

24 The NASC is likely to be known to Elsie and Frank as a NASC assessment is a prerequisite for home support, which they have previously been in receipt of.

"This case may have to go to crisis as Elsie remains competent, but making bad decisions and maybe unable to speak out due to loss of confidence."

Respondents noted limited options to achieve safety for Elsie if she is unable to withdraw herself from Frank (similarly for scenarios G and H). Three respondents reported that they would support her to develop a safety plan for use when she chooses (with one respondent offering that medical alarms have been used for such purposes in the past).[25] Four respondents suggested Police intervention assuming evidence of family violence, and a Protection Order if Elsie consented to this.

A number of inadequacies with currently available options in situations like that described in vignette one were identified by respondents. The key issues are a lack of accessible support services, and a lack of understanding by family violence support services (including Police) of older women's needs, especially when poor health is apparent:

"*Police I have dealt with seem to be reluctant to instigate the powers of authority they have with older persons often who are clearly unwell themselves.*"

One support service lacking is appropriate safe housing:

"*A refuge may not be appropriate when there are children or young women there and a rest home may not look at the persons emotional health. Counseling [sic] is not so readily available because of cost, mobility etc."*

Use of residential care facilities for safe housing raises the question of responsibility for fees. Few District Health Boards are prepared to fund this resulting in the older person or their family being liable for costs incurred.

Access to competency assessment services varies between District Health Boards. When there is doubt about the mental capability of a victim in the situations described in this section, achievement of safety can be unnecessarily compromised if a competency assessment cannot be accessed in a timely manner.

25 A safety plan as referred to here details steps the person can take to leave the relationship with as little risk as possible in their circumstances. Use of a medical alarm in this context requires agreement by the alarm provider, and understanding of the actions they should take when the alarm is raised.

3. Financial abuse

Table 7: Summary of situations respondents reported where financial abuse is occurring and impediments to achieving safety for the older person encountered

Scenario identifier	Scenario
I	Older person seeks assistance with bill paying or shopping, providing their eftpos card and 'pin' for this purpose. The card is then used by the assistant for their own purposes.
J	Older person takes out a bank loan to supply funds to another person, under pressure from that other person.
K	Older person's income (National Superannuation) accessed by family members without their consent, leaving them impoverished.

Vignette two, created from case examples received, also describes financial abuse.

Vignette two

Mrs P. is 76 and lives alone in her own house. While she manages fine, she has become physically frail and is very hard of hearing. About 5 years ago, she loaned her son a considerable sum of money as he was going through a 'messy' divorce and needed help with legal fees. To fund this loan, Mrs P. took a small mortgage on her home. Her son promised he would make the mortgage repayments. He arranged an automatic payment from his account to his mother's for this purpose.

Mrs P. recently received a letter from her bank advising that she is in default of the mortgage as she has insufficient funds in her account to cover the payment owing. Although Mrs P. hasn't seen or heard from her son in 3 years, she was shocked by the letter as she believed he was still putting money in her account to cover the mortgage payments.

Mrs P. wasn't able to locate her bank statements to identify when her son had stopped his AP. She didn't feel strong enough to go to the bank for information so she gave the EANP Coordinator written permission to seek information on her behalf. She needed to know when her son had stopped his payments into her account and how much she owed. She also needed to know what options there were to enable her to keep her house given her only income was national superannuation.

Despite having signed authority from Mrs P., the bank would not provide any information to the EANP Coordinator without Mrs P. also being present.

Four respondents have experienced similar situations as described in vignette two. [26] To gain the necessary information for the client, respondents have: taken their client into the bank (causing considerable stress and discomfort or pain for the client); requested a home visit by the appropriate bank personnel; reached agreement with the bank manager to work together on the issues; followed bank requirements to become an authorised authority on the client's bank accounts.[27] [28]

Respondents seek "*some sort of power with banks for them to understand our [EANPS Coordinators] role and intentions*". Table 8 shows ideas offered to achieve this, and how each would improve outcomes for clients.

Table 8: Working with banks to improve client outcomes in situations of financial abuse

Means for increasing bank understanding of EANPS Coordinators roles	**How this would improve client outcomes**
Continuing education of bank personnel about financial abuse	"*Staff in the financial institution would be more aware of signs of financial abuse and may be more willing to engage our services when they are concerned about a client. It should also make it easier to obtain information about a client from the bank when we need to*" through established working relationships.
Bank acceptance of written authority given by an account holder to an EANPS Coordinator	*"It would mean a clients funds could be protected from further abuse, it means the client would have a more favourable outcome and that they wouldnt [sic] be "put through the ringer" by their banks!*" "*Would definitely save time for the client as Police would not prioritise this."*
"*Memorandums of understanding...with sign off by the banking ombudsman then moving downwards.*"	"*It would strengthen the investigation linkage to gain access to information which enables the client to think through the next step.*"

An agreed identification method to authenticate EANPS staff would aid interaction with bank staff:

"*We have a special ID/Title we can use. At present in smaller towns the banks*

26 One of the remaining four respondents did not complete this part of the questionnaire.
27 This authority can only be achieved with consent of the client / account owner.
28 Use of internet banking with the older person could also address some of these issues.

often know the coordinator and allow them in. In a city we would need some sort of ID/Title."

Respondents were not unanimous in their desire to have banks accept their authority on behalf of clients. One respondent suggested limits on EANPS Coordinators' power:

"*We should be given the power to access information in person with the bank to obtain statements, and to request a freeze on a clients accounts and perhaps stop APs and DDs. Clearly we don't want the authority to be able to make withdrawals - not our role."*

Another respondent disagreed entirely with the notion of this kind of power:

"*I don't think we should have powers with banks - I wouldn't want private information regarding client's money, bank accounts etc - with powers come responsibilities. I would have access to info others wanted and find myself having to be careful about what I said or being accused of divulging info when I hadn't just because I could have had it!*"

Power needed to resolve financial abuse scenarios

Few suggestions of powers that would assist in the situations described in Table 7 were offered. One respondent identified a need for increased knowledge of ways to get funds returned / repaid, so they could support the older person (or family member or other advocate) to take this action. Another respondent noted that improper use of another person's eftpos card is theft (scenario I), therefore a criminal offence. Improving outcomes through increased education about elder financial abuse for bank staff also applies in situations where undue pressure is applied on an older person to take out a bank loan for third party use (scenario J).

In situations where older people are not able to access their national superannuation due to financial abuse (scenario K), one respondent noted that Work and Income has power to investigate fraudulent activity. Work and Income have advised[29] they would only investigate such fraudulent activity if the alleged abuser was also receiving a benefit. Older people living in residential care who are being financially abused in this way may be able to protect themselves by choosing to have the personal allowance from their National

29 Personal communication, Income Integrity Service, Work and Income, 12 September 2011.

Superannuation[30] paid into the residential care facility's trust account.[31]

Although little detail was provided about powers needed to resolve situations of financial abuse, respondents did note that if they were better able to attain accountability of family members perpetrating financial abuse and / or to intervene to prevent further abuse then outcomes for older people would be improved by ensuring they have access to and full control over their own financial resources.

4. Abuse in residential care facilities

One respondent described a situation of abuse within a residential care facility where lack of client consent impeded action to ensure safety. A similar situation was described by another respondent in the first stage of this project.

> *Sexual abuse by residential care staff denied by management. Police investigation does not proceed to prosecution due to lack of evidence. Family downplay the seriousness of the abuse and encourage their relative living in the residential care facility to 'forget about it'. Information is reported to the EANP service by a third party with the older person's consent, provided no direct action is taken by the EANP Service with the rest home. Older person is traumatised, their physical and mental health declines.*

As with previously described examples, lack of client consent to intervene in any way frustrates ability to address the issues for the victim(s), and for this scenario, to take action to prevent similar abuse for other residents of the facility.

> "[I] *would have wanted the power to speak to RH management and insist that the women get counselling and be believed at the very least. Would have also written to the parent company to complain about the way the management had handled things.*"

Such action would improve outcomes for the older people concerned by enabling services (counselling) to be provided, and quality and safety improvements required of the

30 Residents in receipt of the residential care subsidy contribute nearly all of their national superannuation towards residential care fees. A small amount from their entitlement is allocated by Work and Income to the resident for personal costs.

31 This is a managed account, separate from the facility's business accounts, offered by some facilities for residents with limited funds and limited ability to manage or access these.

residential care facility, if not by the company, then by authorities responsible for service audits. The family's reaction in this scenario highlights taboos about sexual abuse, lack of awareness and understanding about it, and possibly, ageist attitudes; would the older person have been told to 'forget about it' if they were in their 30s?

Use of available statutory power

Only one respondent has made use of the statutory power given in the PPPR Act. Reasons given by other respondents for not accessing this provision are varied. Several prefer to support or encourage others to take the required legal action (for one respondent this preference derives from lack of training):

> "*I've not yet had a case where there isn't someone else, better resourced, like a DHB social worker or family member who could do this*" (research respondent)

One respondent considers the disadvantages of legal intervention out-weigh the advantages and consequently prefers to pursue other options whenever possible:

> "*in my experience I find that going through the court system can a) take too long and cause the person a lot of trauma, b) It can be expensive, c) Family relationships can be damaged and not repaired, d) Can make things worse not better*".

Another has found that the process of investigating allegations has resulted in solutions negotiated without the need for Court intervention; a third has been given an agency directive not to undertake legal action - "*it is not my job*".

A number of impediments to taking legal action were identified. Inadequate funding makes the EANP service dependent on pro bono legal support, therefore development of effective working relationships with lawyers, and their commitment to providing ongoing legal support in protracted and antagonistic situations, is confined by the extent of this goodwill. This contributes to inadequate provision of personal and professional protection of staff compared with that available to staff of large government agencies. Several other respondents noted that larger and better resourced agencies also named in the PPPR Act are increasingly reluctant to make use of these provisions, thereby exacerbating EANPS Coordinators' sense of exposure.

A range of other practical considerations were raised, including: issues accessing

competency assessments (discussed earlier) and the consequences if the older person is assessed as mentally capable;[32] cost issues arising from personal orders;[33] issues with identifying appropriate and / or willing persons to administer property orders, act as welfare guardians or replace the existing enduring power of attorney when this is needed.

Risks and Benefits of having Statutory Power

Seven respondents completed this section of the questionnaire. Risks and benefits are closely linked. The complexity of elder abuse is such that a risk from one perspective may be a benefit from another. It is not surprising then, that four respondents identified older people / clients as the key beneficiary of EANP Services gaining statutory powers, but also as the individuals who would bear risks associated with this. One person envisaged statutory powers enabling "*Holistic service easy communication people working together every one should benefit [sic]*" and another that "*Justice could be served on an abuser"*. However, a further respondent identified that statutory powers could pose a risk to some perpetrators of abuse as "*Not every abuser deliberately abuses*".

Three themes are evident in responses on this subject: organisational structure and accountability; staffing issues; and impact on service philosophy and delivery.

1. Organisational structure and accountability

EANP Services are currently provided by independently incorporated NGOs, with a range of governance and management structures. While each is required to meet service standards set by Child, Youth and Family (a funding requirement), the manner in which these are demonstrated varies greatly. Processes and resources are being developed which promote consistent quality of service delivery but there is no mandatory framework.

> "*If there were statutory responsibilities there would be a need for more uniformity and coordinators having less room to do things their way."*

Uniformity is needed throughout the whole service, not only with Coordinators' actions:

> "*With any form of statutory power there would have to be a legal infrastructure that surrounded the power so that some managers didn't interfere, add their own*

32 The application to Court would be denied. This then raises questions about the EANPS Coordinator's judgement and so may inhibit lawyers' and Court staff willingness to assist in future applications. It also means other solutions to the problem instigating the Court application are required.

33 Refer footnote 20. An older person may not have the financial means to meet the costs of a personal order made for their benefit.

process rules etc."

Working with victims and perpetrators of abuse often places EANPS staff in situations of conflict and subject to opprobrium. One respondent explicitly expressed a need others had intimated:

"*I am always worried about the hostility and accusations that I get exposed to now I would want my vulnerability looked at and a greater protection from potential conflict, harrassment etc before I used any Statutory powers[sic].*"

While several respondents noted the increased responsibility that statutory powers would bring, two questioned the appropriateness of these being vested in the NGO sector:

"*NGO's may be seen as less threatening. I believe we can work alongside Govt. departments with each of us having our specialty talents and powers to work for the good of the client. If the non profit sector is closely monitored under the standards and guidelines of EANP services then it could work.*"

"My concerns are that we can not be everything to everyone. Maybe it needs a protection team of multi discipline workers [sic]. I question if this team should be for vulnerable adults as i am concerned that people with disabilities and the older adults do not receive a good enough service. I can not see this team sitting under the [NGO] umbrella but maybe in the health and a [NGO name] worker being part of that team."

Respondents identified that the current services could cease to exist in their current form if statutory powers were considered necessary:

"*The biggest risk i see is that the NGOs could lose the EANP services contract. It would then sit in a Govt MSD department becoming the new CYPS (EANPS).*"

2. Staffing issues

EANP Services, like other NGOs, are dependent on funding grants to cover operational expenses. Consequently lower salaries are offered than in other sectors, and often, less qualified people secured for positions - "*to get good people their remuneration would have to be increased or people wouldn't be so keen to take on the responsibilities involved*".

There is currently little academic and / or professional teaching to support the specialism of elder abuse and neglect prevention. Practitioners come from a range of backgrounds with nursing and social work being the two professions from which most staff are drawn. Consistent with the increased responsibilities noted earlier, one respondent identified a need for higher qualification requirements: "*I see the need for a post graduate diploma or degree in order to practise [sic]".* Such a requirement would have benefits for staff too: "*Then professional bodies can also set up guidelines and appropriate [ongoing] education to support the practitioner".* A need for accreditation of EANP Coordinators was also identified, presumably for quality assurance reasons.

3. Impact on service philosophy and delivery

Respondents expressed concern that if EANP Services had statutory powers they would then be required to use them. One noted that this could potentially be at the expense of the older person's right to self determination; another their privacy. As discussed in the Literature Review, exercise of these rights "run counter to the idea of professional intervention" (Harbison, 1999, p. 12). A third respondent observed "*with Statutory powers I would be expected to use them with the present situation it is my choice [sic]*". Two respondents expressed concern that statutory powers could be misused, a third identified a risk of "[o]*ver legislation*". On a positive note, it was acknowledged that statutory powers have potential to *"improve older persons living environments".*

Several respondents commented on the impact statutory powers would have on their workload and the nature of their job. Two examples represent these comments:

> *"It also has to be remembered that EANP service is not a crisis response service but with such powers might have to be."*

> *"Expectations that come with statutory powers that all referrals of EAN will be solved."*

Two respondents predict there would be an increase in workload so increased funding would be required to employ additional staff to cater for this.

Discussion

This research set out to address a specific policy issue: whether or not EANPS Coordinators should have greater statutory powers to facilitate safety of older people who are abused or neglected and unable to achieve safety of their own volition. The types of statutory power that respondents identified would assist them fall into five broad categories: power to gain access to a client; power to enforce care arrangements; power to order health assessments; power to act without consent when their client's health is at serious risk; power to make banking transactions upon client instructions. That only one of the eight respondents has made use of the statutory power they currently hold does not imply a lack of need for, or interest in, legal responses to elder abuse. As identified in the preceding chapter, there are many reasons EANPS Coordinators do not make use of this power.

It is clear that increased resourcing and strengthened infrastructure is required to enable EANP services to make effective use of provisions within current law, let alone any new legislation that may increase their investigative or interventional powers. It is also clear there are ethical and moral dilemmas about the impact legal action has on the older person's well-being, their right to self-determination, and respondents' desire to improve older persons' lives; dilemmas also apparent when considering the prospect of intervention imposed by law:

> "*I have been concerned on occasions that i have not been able to protect people enough because i have not had power but then i have seen and been concerned when for example a son was arrested and the case went to court the damage and impact that had on the lady that i had hoped to try and protect i question if i made the quality of her life better or worse [sic]" (research respondent).*

Dilemmas over right to self-determination and others' need to ensure protection appear resolved when working with older people who have lost mental capability. Exploration of issues concerning such older people was limited in this project to surveying respondents about their use of the PPPR Act. In their study of public opinion about mandatory reporting of elder abuse in Canada, Roger and Ursel (2009) found unequivocal support for legislation which protects older people "where a diagnosis of incompetence had occurred

for an older adult, and that older adult was known to be at risk" (p. 128). In New Zealand, the PPPR Act goes some way to achieving this end, although as previously discussed, resourcing and support issues inhibit effective access by EANP services.

New Zealand EANP services operate within civil society, with (contributory) state funding. Every other country that has legislation enabling investigation and intervention specific to elder abuse vests those powers in state agencies. Some respondents have noted that increased statutory power would have a major impact on the nature of their work, the infrastructure needed to support this work, and the responsibilities entailed within. There was little room in this project to explore respondents' views on the impact such a change could have on their employing organisation's ability "to articulate the interests of their constituents" (Laforest & Orsini, 2005, p. 482), or more broadly, on the notion of civil society and its independent operation in this country.

In exploring how increased statutory powers might improve client outcomes, this project also examined weaknesses in the current practice environment. The range of options respondents identified as currently available to, for example, gain access to a client where this is being prevented by a third party, suggests that Coordinators' knowledge, experience, skills, ethical viewpoint, interagency relationships and organisational context are key factors in determining outcomes achieved. This conclusion is supported in the following comment from one of the respondents:

> "*at an individual level I believe it comes down to the experience, networks and organisational support that enables me to achieve positive outcomes for older people.*"

I submit that the call for increased statutory powers for EANP services is, to some extent, a response to operational gaps in their practice environment, gaps which do not all require legislation to fill – refer Table 9. As one respondent opined: "*I don't think they [current provisions] are inadequate although they may occasionally need pushing to act"*. My contention is not intended to diminish debate about mechanisms, legal or otherwise, to protect older people unable to safeguard themselves from abuse. This project did not set out to explore that issue, and it is important not to conflate legislative protection with statutory powers for EANP Services, although there may be commonalities between the two.

Table 9: Non-legislative means to fill operational gaps identified in EANPS Coordinators' practice environment

Identifier	Means to fill an operational gap
1	Improved working relationships with Police, including prioritisation by Police of issues related to elder abuse (an issue in some locations only).
2	Increased knowledge by Police about elder abuse and about older persons needs.
3	More consistent training and practice support for EANP Coordinators, including information of options available for resolving the range of situations encountered.
4	Increased understanding of the role of EANP services and recognition of staff's expertise by health professionals, Police, banks and others in a position to act upon a request, from an EANPS Coordinator, for assistance for a client.
5	Resourcing health professionals and EANP services to enable timely and effective use of the provisions of the PPPR Act, including prompt access to competency assessments (an issue in some locations only).
6	Increased availability of safe accommodation for older people in abusive living situations.
7	Increased knowledge by banking personnel about elder financial abuse and development of processes which enable early identification of possible abuse.
8	Development of a culture of respect and dignity in residential care facilities. More effective monitoring of residential care facilities and more transparent complaints systems which residents feel safe to use.

There are two types of situations respondents identified where legislative change may be required. The first is when an older person is taken out of a residential care facility by a family member (or similar person) and prevented from returning. Respondents seek the right to: have Police locate the older person (if their location is not otherwise known); require an assessment be made to ensure that the older person's care needs are being met and require they be enabled to return to the residential care facility if this is not occurring.

The primary difficulty in this kind of situation is getting cooperation from the person who removed the older person from the residential care facility. Respondents' experiences suggest that in many such situations, a legal requirement to return the older person to residential care could be the only way to achieve their safety. Such a legal requirement would likely engender hostility from the family member, reinforcing a need for the previously discussed strengthened organisational structure and enhanced staffing support

should EANP services be assigned the power to enforce such a requirement.

The second situation where legislative change may be required is in monitoring care arrangements for older persons and ensuring compliance with these (assuming non-compliance is occurring without the older person's consent). It is possible this goal could be achieved through District Health Board (DHB) operational policy rather than through legislation. DHBs could require that when a person has completed a needs assessment which results in identification of specific care requirements, and that care is to be provided by a family member or similar informal arrangement, then the assessment service must undertake regular monitoring visits. If care is found to be inadequate, remedial action in consultation with the older person and their carer, could be required. This could range from providing additional support or training to the carer through to requiring alternative care arrangements if the appointed person is unable or unwilling to meet the older person's needs. This option is not without issue, availability of alternative appropriate care providers which suit the older person being but one.

Although an example of intimate partner violence (vignette one) was included in the survey of issues, there was no opportunity in this project to explore the impact that subsuming intimate partner violence between older people into elder abuse has on service response and outcome for the victim. Linda McKie (2005) maintains that in the context of elder abuse, women are often regarded as vulnerable and in need of care and protection, a view taken by at least one respondent. McKie argues:

> "Access to health and social care services, with a focus upon health and well-being, can promote an agenda of risk management, emphasizing the attainment of safety, over and above any reflections upon relationships, gender and age" (p. 102).

Yet it is evident that some respondents did identify relevant issues of gendered power and proposed actions consistent with this analysis. Comparison of these different approaches and the place of statutory power in each would be an interesting supplement to this project.

Limitations of this research

This is a small project attempting to traverse a complex, multi-faceted subject. Findings are limited by the small number of respondents, seeking participation from only one group of professionals involved with elder abuse, and the limitations inherent in survey methodology (for example, a need to restrict the number of questions in order to encourage

completion, and reduced ability to explore participant responses). Information is also restricted to the range of issues and situations identified by respondents.

Recommendations

Policy

Two authoritative powers have been identified that may require legislative change to establish: (1) the authority and means to locate an older person who has been removed from a residential care facility, enable completion of an assessment to ensure that person's care needs are being met, and require return of the person to the residential care facility if this is not occurring; (2) the authority and means to monitor care arrangements for older persons and ensure compliance with these (assuming non-compliance is occurring without the older person's consent).

Further deliberation is required to ascertain the basis upon which return of a person taken from a residential care facility without their informed consent, could or should be required, and the most appropriate means and agency to achieve this. Work is also required in relation to monitoring care arrangements, to ascertain whether or not any agency currently has the necessary authority and means to undertake these actions, and then to determine what changes are needed (in legislation, policy or operations) to deliver the outcome sought.

Practice

A number of operational policy and practice issues have been identified in this research. The first concerns use of the provisions of the PPPR Act. Analysis of the barriers inhibiting health professionals from accessing provisions of this legislation is recommended, along with development of options for removing those barriers. Examination of the resources needed to enable more effective use of this law (and provision of those resources) would be of benefit to EANP Services and, it is suspected, health professionals.

The author is aware through her employment of a number of initiatives underway or planned which will address some of the operational gaps identified in this report – refer Table 9. Resource material to assist EANP Services provide education about elder

financial abuse to banking and other financial service personnel is planned for development during 2011/12. Development of this material will necessitate improved awareness of banking regulations and opportunities within these for early identification by bank personnel of potential financial abuse (items 4 and 7 in Table 9). Opportunity to develop interagency service protocols may also arise from this work.

Other operational issues identified in Table 9 are generally known to relevant staff at Age Concern New Zealand. Capacity (financial and human) to address these are the key reasons most continue to exist. Although much has been done by the Ministry of Health to strengthen monitoring in residential care facilities, the need to develop a culture of respect and dignity in **all** residential care facilities (item 8 in Table 9) reflects a larger issue; ageist social attitudes. This is included in the research recommendations below.

Research

Research at the level of this project necessarily precludes methodology involving victims of elder abuse. It is imperative that this group be included in future research to ensure policy and service development reflects their perspective:

> "Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations" (United Nations Principles for Older Persons, principle 7).

Research is recommended in two areas identified by this report: (1) to identify the impact subsuming intimate partner violence between older people into 'elder abuse' has on service response and outcome for the victim; (2) to identify the most effective means to change ageist social attitudes and how this can be resourced.

Conclusion

This research has ascertained that situations do arise where greater authority is needed to effect a positive outcome than EANPS Coordinators currently have. A number of issues have been raised which suggest it would not be appropriate to assign the authoritative powers identified to EANP services within the current organisational structure,

accountability, staffing and funding circumstances. Although the limitations of this study prevent a definitive conclusion, findings do contribute useful information to ongoing consideration of this issue.

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Appendix one

From: Jayne McKendry <jayne.mckendry@gmail.com>
Date: 29 Jun 11 7:08:57 PM NZST
To: Jayne McKendry <jayne.mckendry@gmail.com>
Subject: **Invitation to participate in my research**

Hello [Invitee name],

You have received this message because I have identified you as a person who works with older people referred to your service due to possible elder abuse or neglect.

You may be surprised to be receiving this message from me personally. I am doing some study at Victoria University in my spare time (!!) and this year am doing a small research project, which while work related, is not part of the my job at Age Concern New Zealand. I have however, discussed this project with Ann Martin, Chief Executive, who is supportive of what I am doing, and you will see in the attached information sheet that findings of the research will be shared with Age Concern New Zealand.

The aim of my research project is to explore whether increased statutory powers would improve the safety outcomes Elder Abuse and Neglect Prevention Service (EANPS) Coordinators are able to facilitate for older people who are being abused or neglected and are unable to achieve safety of their own volition.

I am inviting you to participate in this project.

Attached is some information for participants. If, after reading this, you are interested in being part of the project, please complete the consent form (also attached) and email back to me at this address. Insertion of your name and date on the form, and your sending it to me by email will be taken as consent even though you won't have signed it. However, if you prefer to print and sign in hard copy, it can be posted to me at 30 Garfield Street, Brooklyn, Wellington 6021.

If you have any questions, do get in touch, either by email or phone (you can phone me at work also if that is more convenient for you).

Do not feel obligated to reply if this is not something you wish to participate in, or if the timing is wrong for you. Not a problem!

Kind regards,

Jayne

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
VICTORIA
UNIVERSITY OF WELLINGTON

She can't make herself safe so give *me* that power: statutory powers and Elder Abuse and Neglect Prevention Service Coordinators

Information Sheet for Research Participants

Researcher: Jayne McKendry
School of Social and Cultural Studies, Victoria University of Wellington.
Phone: 04 934 6767. Email: jayne.mckendry@gmail.com

Supervisor: Dr Allison Kirkman, Head of School,
School of Social and Cultural Studies, Victoria University of Wellington.
Phone: 04 463 5676. Email: allison.kirkman@vuw.ac.nz

I am a postgraduate student of Social Science Research at Victoria University of Wellington. To complete requirements for a postgraduate diploma, I am undertaking a supervised research project.

This research project has received ethical approval from the School of Social and Cultural Studies Human Ethics Committee.

Project Aims
Statutory power is generally taken to mean power provided by legislation for specified persons to take specific actions (Judicature Amendment Act 1972, clause 3). Elder Abuse and Neglect Prevention Service (EANPS) Coordinators currently have statutory power in the Protection of Personal and Property Rights Act 1988 to "at any time apply to a court to review any decision made by an attorney acting under an enduring power of attorney while the donor is or was mentally incapable" (s103 (1)).

The aim of my research is to explore whether increased statutory powers would improve the safety outcomes Elder Abuse and Neglect Prevention Service (EANPS) Coordinators are able to facilitate for older people who are being abused or neglected and are unable to achieve safety of their own volition.

What does the research involve?
There are two stages to this research:

1. collection of case examples
2. questionnaire to explore issues.

Collection of case examples
The first stage of this project is to collect examples of referrals received by EANP Services where lack of statutory power to take action has prevented or inhibited ability to facilitate safety of the older person. Case examples will be sought from EANPS Coordinators up to 15 July.

The examples collected will be collated into generic vignettes, using as little situation specific information as possible so that the source of the information is not identifiable or attributable to any client(s) or EANP Service.

Questionnaire
The second stage of this project is to survey EANPS Coordinators using a questionnaire that explores whether increased statutory powers would improve the safety outcomes they are able to facilitate for vulnerable older people. The vignettes created in stage one (refer above) will be used as part of this questionnaire.

The questionnaire will be sent to project participants for completion between 21 July and 4 August. It will take up to 60 minutes to complete. Follow up interviews may be undertaken if necessary to clarify or further explore responses given in questionnaires.

Your participation in this project is entirely voluntary. You may choose to participate in both stages of the project, or only one. You may also withdraw yourself and any information you have provided at any time up to 19 August 2011 without giving a reason. If you choose to withdraw from the project, all information you have provided will be removed from the research and deleted.

What will happen with the information I provide?
All EANPS Coordinators employed in Ministry of Social Development contracted EANP Services and who work with older people who are abused and/or neglected are being invited to participate in this research project. You will be aware this is a small group of people who all know each other to some extent. It is likely you will know other participants, and they will know you.

Any information you provide will be kept confidential to me and my supervisor. My research report:

1. will not use your name, and
2. will not attribute information to you in any way that will identify you.

However, it is possible other participants in this project, and other members of the EANP Service community, will be aware of your views about statutory powers for EANP staff. Therefore it is possible that your participation will be identifiable in my research report, by people within the EANP Service community.

The case examples, questionnaires, and notes taken of any interviews with me will be destroyed two years after the end of the project.

What will happen to the findings of this research?
A research report will be written and submitted to the School of Social and Cultural Studies for examination. Participants may view a draft of my research report between 23 and 30 September 2011. This will enable you to ensure your views have been understood and presented accurately, and provide an opportunity for you to discuss with me anything that may concern you about how I have interpreted or presented your information. There is space on the consent form for you to request a copy of the draft report.

Findings of this research will also be shared with Age Concern New Zealand and may be used in submissions to government, presentations at conferences or workshops on elder abuse and neglect prevention and development of support resources for EANP Services. Articles may also be submitted for publication in scholarly journals, professional magazines and service newsletters.

There is still much to be learned about elder abuse and neglect in New Zealand, how best to support older people and their families/whānau, and how best to approach the social and human rights injustices evident in this field. EANPS Coordinators 'lack of teeth' is an issue that has arisen frequently during the past 14 years. This research project is an opportunity to give thorough consideration to that issue. It is hoped that the findings will inform policy about elder abuse and neglect in New Zealand.

If you have any questions or would like to receive further information about the project, please contact me at jayne.mckendry@gmail.com or phone 04 934 6767.

You can contact my supervisor, Dr Allison Kirkman, at the School of Social and Cultural Studies, Victoria University of Wellington, P O Box 600, Wellington, phone 04 463 5676, or email allison.kirkman@vuw.ac.nz

Jayne McKendry
30 May 2011

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
VICTORIA
UNIVERSITY OF WELLINGTON

She can't make herself safe so give *me* that power: statutory powers and Elder Abuse and Neglect Prevention Service Coordinators

CONSENT TO PARTICIPATION IN RESEARCH

- I have read and I understand the information sheet for participants in this research project. I know that the project will explore whether increased statutory powers would enable Elder Abuse and Neglect Prevention (EANP) Services to facilitate safety for older people experiencing elder abuse and/or neglect and who are not able to achieve safety of their own volition.
- I have had the opportunity to discuss this study. I am satisfied with the answers I have been given.
- I understand that taking part in this study is voluntary and that I may withdraw myself or any information I have provided at any time up to 19 August 2011 without giving a reason. If I choose to withdraw from this research project, I understand that all information I have provided will be removed from the study and deleted.
- I understand that any information I provide will be kept confidential to the researcher and her supervisor, that the published results will not use my name, and that no information will be attributed to me in any way that will identify me.
- I recognise that other participants in this project will be people that I know, and who know me. I acknowledge that my views about statutory powers for EANP staff may be known by other participants, and by other people in the EANP Service community who are not participants in this project. I accept that my participation in this research project may be identifiable by people in the EANP Service community.
- I understand that any case examples, questionnaires, and notes taken of interviews with me will be destroyed two years after the end of the project.
- I understand that the information I provide will be used only for this research project and that any further use will require my written consent.
- I have had time to consider whether to take part.

- I know whom to contact if I have any questions about the study.
- I agree to take part in stage one of this research.

  Yes ☐ No ☐

- I agree to take part in stage two of this research.

  Yes ☐ No ☐

- I understand that I may view a draft copy of the research report to ensure my views have been understood and presented accurately, and to provide an opportunity to discuss with the researcher anything that may concern me about how my information has been interpreted or presented.

  I would like to receive a draft copy of the research report.

  Yes ☐ No ☐

  I would like to receive a copy of the research report when it is completed.

  Yes ☐ No ☐

Signed:_____ Date:_____

Name:_____

This research project has received ethical approval from the School of Social and Cultural Studies Human Ethics Committee.

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
VICTORIA
UNIVERSITY OF WELLINGTON

MEMORANDUM

TO	Jayne McKendry
COPY TO	
FROM	Dr. Venezia Kingi

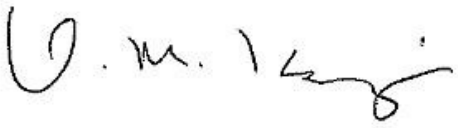
DATE	29 June 2011
PAGES	1

SUBJECT	**Ethics Approval: No. 18569** **She can't make herself safe so give *me* that power: statutory powers and Elder Abuse and Neglect Prevention Service Coordinators**

Thank you for your request for ethical approval, which has been considered by the Social and Cultural Studies Human Ethics Sub-Committee.

Your application has been approved and this approval continues until the end of December 2011. If your data collection is not completed by this date you should apply to the Human Ethics Committee for an extension to this approval.

Best wishes with the research.



Dr Venezia Kingi
Convener, SACS Human Ethics Committee

Appendix three

She can't make herself safe so give *me* that power: statutory powers and Elder Abuse and Neglect Prevention Service Coordinators

The aim of this research project is to explore whether increased statutory powers would improve the safety outcomes Elder Abuse and Neglect Prevention Service (EANPS) Coordinators are able to facilitate for older people who are being abused and/or neglected and are unable to achieve safety of their own volition.

The first stage of this project is to collect examples of referrals received by EANP Services where lack of statutory power to take action has prevented or inhibited ability to facilitate safety of the older person.

The examples collected will be collated into generic vignettes, using as little situation specific information as possible so that the source of the information is not identifiable or attributable to any client(s) or EANP Service. Vignettes will be used in a questionnaire that explores whether increased statutory powers would improve the safety outcomes EANPS Coordinators are able to facilitate for vulnerable older people.

Please provide your example using the framework on the following page. If you have more than one example, please duplicate the framework for each example you wish to provide.

Thank you for contributing to this research project. I sincerely appreciate the time and thought you are giving me.

Jayne McKendry

Please describe a situation you have encountered where you think lack of statutory power to take action prevented or inhibited your ability to facilitate safety of the older person (client).

Client age (approx.) and gender:

Client's living situation:

Living alone	
Living with partner	
Living with family/whanau	
Living in residential care	

If none of the above, please describe the client's living situation:

If living with family/whanau, please describe the people in the household. For example: 5 people: client, her son and his wife, their daughter and a male boarder.

Describe the situation for the older person.
(*What was happening for the older person? What action did you take? Specifically what prevented or inhibited your being able to assist the older person achieve a safer living situation?*)

Appendix four

She can't make herself safe so give *me* that power: statutory powers and Elder Abuse and Neglect Prevention Service Coordinators

Thank you for agreeing to participate in this research project. The information you provide by answering this survey will contribute to the collective knowledge base about elder abuse and neglect in New Zealand, increasing understanding about some of the difficulties faced in achieving safety with older people who are abused or neglected.

This survey will take about an hour and a half to complete, depending on how much you have to say. You don't have to do it all at once - if you want to stop part way through the survey and come back to it another time, simply exit out of your internet browser. What you have done so far will be automatically saved. To finish it later, just click on the link you got emailed and you will taken to where you left off.

Some of the questions ask about your experiences as an EANP Coordinator. If your responses include any client specific detail and this information is included in the research findings, it will be reported in an anonymous manner.

Your participation in this survey is entirely voluntary. If you do not wish to continue, simply exit out of the survey. You may also withdraw yourself and any information you have provided in this survey at any time up to 19 August 2011 without giving a reason. If you choose to withdraw from the project, all information you have provided will be removed from the research and deleted.

This survey is managed by me, using a password protected survey tool. The responses you provide can not be accessed by anyone except myself, and you (up to the point when you have finished the survey).

Any information you provide will be kept confidential to me and my supervisor. My research report will not use your name, and will not attribute information to you in any way that will identify you. However, it is possible other participants in this project, and other members of the EANP Service community, will be aware of your views about statutory powers for EANP staff. Therefore it is possible that your participation will be identifiable in my research report, by people within the EANP Service community.

Clicking the forward button below indicates your consent to continue participation in this research project.

Thank you.

Kind regards,

Jayne McKendry.

[next page]

1. How many years have you worked as an EANP Coordinator?

2. Have you previously worked in an organisation where you (or other staff) had statutory powers?

If yes, please describe these powers.

[next page]

3. EANP Coordinators have often commented that 'they have no teeth', expressing a sense of powerlessness to, at times, make an older person safe or to make a person accountable for their abuse or neglect of an older person. Describe any circumstances in which you have felt like this. Please write about as many different issues as you can. [Note: there is no space limit for responses to this question.]

4. Statutory power is generally taken to mean power provided by legislation for specified persons to take specific actions (Judicature Amendment Act 1972, clause 3). If there was legislation giving you power to take action in the situations you have described above, specifically what action would you have wanted the legal power to take? How do you think that would have improved the outcomes for the client?

Action you want the power to take	How that would improve outcomes for clients.	Which other agency(s) have this power currently?

5. What means, if any, are currently available to achieve the same result?

6. If there are means currently available, why are these inadequate?

[next page]

7. The Protection of Personal and Property Rights Act 1988 gives “a person authorised by a body or organisation contracted by the Government to provide elder abuse and neglect prevention services” (s103(1)(h)) the power to “at any time apply to a court to review any decision made by an attorney acting under an enduring power of attorney while the donor is or was mentally incapable” (s103(1)).
Have you ever used this provision?

   If not, why not?

[next page]

Please read the following case example....

Elsie and Frank married late in life. Frank was quite particular about clothes, and would give advice to Elsie about what she should wear whenever they went out together, so she would 'look her best' with him. After a while, he began to denigrate her whenever she wore things he didn't particularly like. So Elsie started only wearing the clothes that pleased him. Then he started on her friends, making rude comments about the people he thought 'were beneath' her, and questioning why she spent time with them when she could be spending time with him.

When Elsie realised that life with Frank wasn't what she wanted, she left him and settled herself into a flat. Within a few months she got a call from Frank. He told her he had an incurable illness and wanted to spend the last months of his life with her. Elsie moved back. After that, whenever her family visited, Frank would get grumpy "Can't you at least give her some peace with me? I'll be dead soon enough and you'll have her all to yourselves then." So Elsie's family gradually stopped visiting, keeping in touch by phone instead. Elsie stopped going out with her friends and gradually her life became Frank.

Five years later Elsie was hospitalised following a fall at home. Staff noticed genital trauma, and what looked like grip mark bruises on her arms. Elsie couldn't remember how the bruises got on her arms and explained the genital trauma as the result of falling onto the arm of a chair she was standing on when cleaning windows recently. Although Elsie showed some signs of cognitive decline, she was able to communicate her wishes and discuss the consequences of various options put to her for care upon discharge from hospital. Elsie was adamant she wanted to go home to be with Frank before he died.

Over the next two years, Elsie was hospitalised 5 times. Each time she gave believable explanations for her injuries and each time she was discharged home at her request. The referral to the EANP service came from the home support agency who had three carers refuse to go back to Elsie because Frank 'gave them the creeps' and they didn't feel safe. When the EANP Coordinator went to visit Elsie, Frank refused to let her in. The home support agency withdrew from providing services to Elsie. Whenever Elsie's family phoned her, they were told she was busy and unable to come to the phone. The EANP service received a second referral, this time from one of Elsie's children. Again Frank refused to let the Coordinator in. When she was leaving, a neighbour stopped her in the street expressing concern because she hadn't seen Elsie in months, not even to go to the letterbox, and she's heard Frank yelling at her and saying "really horrible things".

8. If you were the EANP Coordinator in this situation, what would you do next? How could you gain access to talk with Elsie?

9. If there was legislation giving you power to take action in this situation, specifically what action would you have wanted the legal power to take?

10. How might that power improve the outcomes for Elsie?

11. Assuming Elsie is unsafe, and unable to withdraw herself from Frank, what means, if any, are currently available to achieve safety for her?

12. If there are means currently available, why are these inadequate?

[next page]

Please read the following case example....

Mrs P. is 76 and lives alone in her own house. While she manages fine, she has become physically frail and is very hard of hearing. About 5 years ago, she loaned her son a considerable sum of money as he was going through a 'messy' divorce and needed help with legal fees. To fund this loan, Mrs P. took a small mortgage on her home. Her son promised he would make the mortgage repayments. He arranged an automatic payment from his account to his mother's for this purpose.

Mrs P. recently received a letter from her bank advising that she is in default of the mortgage as she has insufficient funds in her account to cover the payment owing. Although Mrs P. hasn't seen or heard from her son in 3 years, she was shocked by the letter as she believed he was still putting money in her account to cover the mortgage payments.

Mrs P. wasn't able to locate her bank statements to identify when her son had stopped his AP. She didn't feel strong enough to go to the bank for information so she gave the EANP Coordinator written permission to seek information on her behalf. She needed to know when her son had stopped his payments into her account and how much she owed. She also needed to know what options there were to enable her to keep her house given her only income was national superannuation.

Despite having signed authority from Mrs P., the bank would not provide any information to the EANP Coordinator without Mrs P. also being present.

13. As an EANP Coordinator, have you experienced similar difficulties when advocating for an older person?

    [yes, no, never had a case like this]

    If yes, what have you done to gain the necessary information for the client?

14. An EANP Coordinator has suggested that “it would be so much easier if we had some sort of power with banks for them to understand our role and intentions”. How do you think this could happen?

15. How would that improve the outcomes for the client?

[next page]

16. A range of statutory powers related to investigating reports of elder abuse and neglect operate in America, parts of Canada, and in Scotland. In each of these countries, statutory responsibilities lie with government agencies. The non-profit sector has historically been viewed as autonomous and independent of government, although reliance on government funding and the regulation that goes with that has blurred the line between state and civil society in most western nations. Given this situation, in your opinion what benefits might there be if non-government EANP Services were given statutory powers?

17. Who would benefit?

18. In your opinion, what risks might there be?

19. Who would bear these risks?

20. What could be done to mitigate against any of these risks?

[next page]

21. Please use the space below to add any other comments or thoughts you have about the role of EANP Coordinators and whether or not statutory powers could assist in achieving positive outcomes for older people who are abused or neglected.

22. What is your occupational or professional background?

This is the end of the survey. If you want to go back and review your responses, do so now. Once you click the forward button below, the survey ends and you will not be able to re-enter.

If you do go back to review, don't forget to come back here and click forward to end the survey so I get your responses!

[end of survey]

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Appendix five

Supplementary information about elder abuse

Types of abuse

> *"Elder Abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person"* (Wolf, Daichman & Bennett, 2002, p. 126).

Five different types of elder abuse are generally referred to under this definition:

- "Physical abuse – the infliction of pain or injury, physical coercion, or physical or drug- induced restraint.
- Psychological or emotional abuse – the infliction of mental anguish.
- Financial or material abuse – the illegal or improper exploitation or use of funds or resources of the older person.
- Sexual abuse – non-consensual sexual contact of any kind with the older person.
- Neglect – the refusal or failure to fulfil a caregiving obligation. This may or may not involve a conscious and intentional attempt to inflict physical or emotional distress on the older person" (ibid., p. 127).

Data available from New Zealand services indicates that psychological abuse is the most frequently reported type of abuse, followed by financial abuse (Age Concern New Zealand, 2007).

Impact of elder abuse on older people

Elder abuse can have a detrimental impact on the victim's physical and mental health, their self esteem and confidence, and on their family relationships. It can result in loss of financial security and reduced ability to live independently (Mowlam et al., 2007).

Older people most at risk of elder abuse

Older people most at risk of abuse are those who live with family members[34], have poor health, and who are dependent on others for care. Risk is exacerbated when there is a history of conflict within the family and when there is substance abuse, mental health issues or other stressors[35] which make the perpetrator dependent on the older person in some way (Peri, et al., 2008; Lachs & Pillemer, 2004).

Available data from New Zealand suggests that people aged between 70 and 84 are more commonly victims of elder abuse. Victims are disproportionately female (relative to the total older population) although this over-representation decreases with advanced old age (Age Concern New Zealand, 2007).

34 This is true for all types of abuse except financial abuse.
35 For example financial stress, unemployment, inadequate housing.

Perpetrators of elder abuse

Available New Zealand data identifies family members as the most common perpetrators of elder abuse. Perpetrators aged under 65 are usually adult sons and daughters; over 65 are husbands. Slightly more men than women perpetrate elder abuse. About one quarter of perpetrators are identified as the victim's primary carer (Age Concern New Zealand, 2007).

Prevalence of elder abuse

Lack of internationally agreed definition hinders accurate comparison of prevalence studies. Recent studies in the UK (O'Keefe et al., 2007) and in Ireland (Naughton et al., 2010) found prevalence rates of 4% and 2.2% respectively.[36] Earlier estimates from the United Nations produced figures of between 3% and 10% (United Nations Economic and Social Council, 2002). No population based studies of elder abuse have been completed in New Zealand.

36 People aged over 65 who had experienced elder abuse in the past year.