ELDER MEDIATION: CONTEXT, OPPORTUNITIES AND CHALLENGES

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1. AGEING & ASSOCIATED ISSUES
WHAT AGE DETERMINES WHEN ONE IS ‘OLD’?

The United Nations defines an ‘older person’ as anyone who is 60 years and older, and then further categorises older people as:

- ‘oldest-old’ (persons aged 80–99); and
- centenarians (persons aged 100 years or more)

However, a number is not necessarily indicative of the physical, mental and spiritual attributes of each unique individual.
• Between 2015 and 2050, the proportion of the world's population over 60 years will nearly double from 12% to 22% (900 million to 2 billion).

• By 2020, the number of people aged 60 years and older will outnumber children younger than 5 years.

• In 2050, 80% of older people will be living in low- and middle-income countries.

• The pace of population ageing is much faster than in the past. In Japan 30% of the population are already over 60 years old

• All countries face major challenges to ensure that their health and social systems are ready to make the most of this demographic shift.

• Today’s generations are more likely than in the past to live separately and to live longer.

https://www.who.int/news-room/fact-sheets/detail/ageing-and-health
The rapid aging of East Asia—which includes China, Hong Kong, Japan, North and South Korea, Mongolia, Macao, and Taiwan—is one of the most important demographic trends of the past half-century.

While just about every region in the world, outside of Africa, is also growing older, the shift in East Asia has been far faster than anywhere else.
• Dependencies increase with age
• Increased risk of dementia
• In Australia, rates of institutionalisation double above the age of 75
AGEING HAS BEEN DEFINED AS ......

- being alive for so many years since birth,
- the process of growing old or in terms of the changes and/or
- experiences adults may face as they grow
Its meaning and definition may differ markedly for:

- individuals and cohorts
- communities and societies
- cultures
- disciplines and professions
• Concepts or constructs of ‘ageing’, ‘abuse’ and ‘rights’ may vary across generations.
• Each successive generation has differing attitudes, values and beliefs than the preceding generation(s).
• Each generation learns from, and is influenced by, previous generations.
AGEISM

The term was coined in 1969 by Robert Butler who described ageism as a combination of three connected elements –

• prejudicial attitudes towards elders, old age, and the aging process;
• discriminatory practices against elders; and
• institutional practices and policies that perpetuate stereotypes about elderly people

(Wilkinson & Ferraro, 2002).
AGEISM

- is prevalent in Australia and other Western societies
- systematically disadvantages older people.
- involves cultural and structural discrimination
- is often associated with dependency
- is often indirect
- exploits older people on an emotional, mental and psychological level
- perpetuates stereotyping
- restricts older people’s ability to exercise control over their own lives, including access to and control of their own decisions and resources
- reflects power relationships within groups and communities.
Older people celebrated

Older people respected

Diversity valued

To enjoy life

To be valued

To be acknowledged as important

To be empowered and have positive self esteem

To be independent

To be treated with dignity and respect

To be free from harm and mistreatment

Autonomy to choose and make decisions

Opportunities for participation, volunteering, lifelong learning

Adapted from the Strategy to Safeguard the Rights of Older South Australians, 2014-2021

2. What is elder mediation and how does it differ from other forms of mediation?
2.1. ELDER MEDIATION INTERNATIONAL NETWORK

Elder mediation is a focused, preventative, respectful process – usually multi-party, multi-issue and intergenerational.

The mediator facilitates discussions focusing on present strengths and assists participants in addressing their stated wishes or concerns.

Elder mediation can include many people related to the issues.

- the older person and/or
- a support person or advocate for the older person,
- members of their immediate and/or extended family,
- friends, neighbours and/or
- significant others who are involved with the care of an older person such as paid or unpaid carers, nursing home or hospital staff, general practitioners, social workers, psychologists and other professionals.
ELDER MEDIATION IS ................

• Voluntary
• Confidential (within defined limits)
• Person-centred
• Strengths oriented

The mediator is impartial, controls the context and facilitates the process.
The mediator does not make decisions or give advice.
2.2 SPECIALISED KNOWLEDGE & UNDERSTANDING?

- The nature and effects of ageism on the mediator, the older person and others in their social support network
- Normal ageing and the life cycle
- Family dynamics and intergenerational relationships
- Diversity, including the impact of rurality, culture, ethnicity, gender and disability
- Grief and loss, anticipatory grief
- Misuse and abuse of power in families and institutions
- Mistreatment, neglect and abuse of older people
- Decision-making capacity +
- Legal and ethical considerations

- Dementia, progressive diseases and chronic illness on older people and their carers
- Human rights, adult guardianship laws and other relevant legislation
- End of life decision-making
- Financial and estate planning and management
- Relevant community systems, services and resources
- Living arrangements e.g. aged care
- Culture, gender, rurality and ageing
- Evidence-based and peer reviewed research
- Codes of ethics and ethical issues
KNOWLEDGE OF BEST PRACTICE AND PROTOCOLS IN RELATION TO:

• strengths and relationship oriented, facilitative (sometimes therapeutic) forms of mediation
• co-mediation in large groups
• pre-mediation meetings to prepare older people
• screening for elder abuse prior to and during mediation
• determining when mediation is or is not appropriate
• determining who should participate, how and when
• how to involve support persons/advocates for the older person
• facilitating the involvement of the older person (with and without capacity), directly or indirectly
• multi-party mediation
• referral to other professionals/services
Elder mediators

• promote positive images of ageing
• focus on older persons’ strengths, potential and desires as well as needs, concerns and risk factors
• draw from strengths-oriented theoretical frameworks (e.g. Saleeby 2001) – focus on empowerment, resilience, healing and wholeness, dialogue and collaboration
3. OPPORTUNITIES FOR ELDER MEDIATORS
TYPICAL AGEING-RELATED ISSUES FOR MEDIATION

- Health and medical care (at home, in the community, in hospital, continuing care and long-term care communities)
- Progressive dementias and other memory impairments.
- Caregiving
- Financial planning and management
- Guardianship issues
- Housing or residential care
- Living arrangements
- Employment issues (e.g., ageism)

- Intergenerational relationship and communication issues
- New marriages and step-relative issues
- Religious issues
- Family business issues
- Driving issues
- Safety issues
- Elder abuse and self-neglect
- Legal issues (estate, inheritance, living will, enduring powers)
- End of life planning and decision-making
4. CHALLENGES FOR ELDER MEDIATORS
4.1 HEARING THE VOICE OF THE OLDER PERSON

- Elder mediation is conducted within a framework that protects the rights, safety and interests of older people.

- The mediator ensures that the voice of the older person is heard, directly or indirectly, and respected.

- This applies to older people with and without capacity.
4.2 THE ISSUE OF CAPACITY: LEGAL AND ETHICAL CONSIDERATIONS

• One goal of elder mediation is to support self-determination by persons who may have diminished capacity.

• Decisional Capacity is task-specific and may fluctuate from one day or even one hour to the next.

• Mediators should not evaluate which decisions an older person is capable of making, as this is the role of a judge or medical professional.

• Mediators should find ways to maximise the older person’s ability to participate.

Foxman et al (2009: 5)
Broadly speaking, when a person has capacity to make a particular decision, they are able to do all of the following:

• understand the facts involved
• understand the main choices
• weigh up the consequences of the choices
• understand how the consequences affect them
• communicate their decision.

THE ISSUE OF CAPACITY IN ELDER MEDIATION

• Capacity to participate in mediation is different to capacity to sign an agreement – it is decision-specific

• Older people have the right to exercise their legal capacity to the fullest extent

• There is no single assessment tool for capacity – e.g. legal tests, medical models, neuropsychological assessments, functional assessments, competency guidelines and competency scales

• Even experienced assessors are inconsistent in assessments of the same individual – question motives/goals

• Need to assess capacity prior to a mediation and/or stop a mediation if capacity is in question

• May need accommodations for an older person to participate and arrive at decisions

Lise Barry 2013
4.3 MAKING ACCOMMODATIONS

To enhance the older adult’s participation the mediator should consider

• seeing the older person separately prior to mediation
• having a longer intake session
• having shorter mediation sessions
• using shuttle mediation or separate meetings as required
• involving advocates or support persons
• slowing down communication
• reflecting verbal and non-verbal communication
• organising regular breaks
• factors such as the time of day, effect of medication, noise level, temperature of the day/room
• making accommodations for any disability – e.g. using an interpreter if language, speech or hearing is an issue
• using a familiar setting
• providing access to the location, to food and to comfort facilities
4.4 THE ABUSE OF OLDER PEOPLE

Elder abuse

• is an under-researched and hidden problem
• occurs across the spectrum of all societies
• is often unrecognised, unreported, and hard to detect
• some families, cultures do not recognise that their behaviour is abusive
Abuse of older people is a single, or repeated action 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.

It is a violation of human rights and includes physical, sexual, psychological and emotional abuse; financial and material abuse; abandonment; neglect; and serious loss of dignity and respect.  

WHO 2018
ABUSE IS MORE THAN PHYSICAL

• It is likely that many members of the community may not have heard the term ‘elder abuse’ and/or may only believe that behaviour is abusive if it is physical.

• Non-physical forms of abuse may be subtle and hard to detect.

• The older person may be subjected to several different kinds of abuse at the same time to a lesser or stronger degree.

• The ‘silent’ generation and CALD elders may not tell anyone what is happening.
‘MISTREATMENT’ – A TERM SOMETIMES USED INSTEAD OF ‘ABUSE’

Can involve an act of **commission** (abuse) or **omission** (neglect) which can be

- intentional, wilful, deliberate or malicious,
- unintentional, benign, passive or reckless.

ELDER ABUSE

In Australia, and similarly in many other countries

- elder abuse is under-reported
- up to 5 per cent of persons over 65 experienced abuse
- the most vulnerable age for abuse occurring appears to be between 75 and 85 years
- up to 80% of abuse is perpetrated by family members and more than half by the children (sons and daughters) of the abused
- financial and psychological abuse are the most commonly reported forms of abuse
- older women are twice as likely to be abused as older men
MISUSE/ABUSE OF POWER AND CONTROL IS CENTRAL TO MOST FORMS OF ABUSE
FINANCIAL ABUSE

Involves the illegal or improper use and/or mismanagement of an older person’s money, property or resources without his or her knowledge or permission.

Can include:
- forgery
- stealing
- forced changes to a will
- involuntary or unusual transfer of money or property to another person
- incurring debts for which the older person is responsible
- withholding funds from the older person
- failure to repay loans
- lack of financial information provided to an older person by their Power of Attorney.
## RISK FACTORS FOR ABUSE

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<thead>
<tr>
<th>Ageism</th>
<th>Social Isolation</th>
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<tbody>
<tr>
<td>Dependency</td>
<td>Substance abuse</td>
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<tr>
<td>Family dynamics and living arrangements</td>
<td>Dementia or cognitive impairment</td>
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<td>Gender</td>
<td>Mental health and psychological conditions</td>
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<tr>
<td>Financial/economic hardship</td>
<td>Cultural and Linguistically Diverse (CALD) older people</td>
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<tr>
<td>Carer stress</td>
<td>Indigenous elders</td>
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<td>Caring for a person with dementia</td>
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Strategy to Safeguard the Rights of Older South Australians, 2014-2021

BARRIERS TO OLDER PEOPLE REPORTING ABUSE?

- diminished cognitive capacity
- mental or physical disability
- poor or restricted mobility
- lack of awareness of what constitutes abuse
- lack of knowledge of their rights or resources
- social isolation
- fear of alienation from family or community

- the need to preserve a family relationship
- dependency on others in the family
- the stigma and shame associated with abuse
- literacy and language barriers
- religious, generational and cultural barriers
- fear of reprisal from the perpetrator and/or
- a perceived or actual lack of options or access to services.
FINALLY...

- Strengths-oriented and empowerment models of elder mediation are preferred, especially when directly involving older people.
- No two cases of abuse involving older adults or age-related issues are alike and a variety of assessment tools and approaches are needed.
- Elder mediators need to develop models and responses that are specific to each individual, family and community (including Indigenous, CaLD and rural communities).
- The rights, safety and empowerment of older adults should be given the highest priority when selecting an approach.
- Mediators can promote positive, respectful language and communication and emphasise older people's contributions and worth.
- Elder mediation should be offered as one of the coordinated, multiple service system responses to the prevention of elder abuse, in particular the financial abuse of older people by their family members.
Elder mediators can ..........

• address the ageist, gendered and cultural contexts in which abuse occurs and uphold the rights and safety of older people
• provide opportunities for older people to take ownership of and be empowered by the process of elder mediation
• develop interdisciplinary understanding and collaborations
• involve the social network surrounding a vulnerable older adult.
OUR RESEARCH PUBLICATIONS TO DATE


• Bagshaw, Dale, Wendt, Sarah & Zannettino, Lana 2007, Our actions to prevent the abuse of older South Australians, Office for the Ageing, Department of Families and Communities, Government of South Australia, Adelaide

FOR MORE INFORMATION

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Elder Mediation Australasian Website (EMAN)
http://elder-mediation.com.au

Elder Mediation International Network (EMIN)
http://elder-mediation-international.net/