STAND UP SPEAK OUT
27-29 JULY 2026

2026 AUSTRALIAN ELDER ABUSE CONFERENCE

Can Elder Abuse Be Mediated?

Brian Herd

Elder Mediation and Facilitation
AMDRAS Accredited

EAAA Elder Abuse Action Australia
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Agenda

- The Landscape
- Elder Mediation
- Elder Abuse Mediation
- Financial Elder Abuse
- Barriers and Incentives to Elder Abuse Mediation
- Ethics of Mediation
- The Answer(s) to the Question

The Elder Landscape

- The Ageing Cauldron
- The Mafia Syndrome
- Filial Responsibility
- Health span/Life span
- Inter and Intra Family Dynamics
- Dispute Gestation Cycle
- Crisis Management

What is Mediation?

- A voluntary process (usually)
- Confidential
- Involving all relevant parties (usually)
- Each party contributes to cost
- Capacity to engage and resolve dispute
- Reaching and making their own decisions
- With the assistance of a neutral facilitator (mediator)

PS - 88% success rate

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Elder Mediation

and

Elder Abuse Mediation

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Elder Mediation

- A battle over beliefs (‘beneficence’)
- Genuine disagreements (but can be abuse)
- ‘Best interests’, ‘wishes’, ‘happiness’
- Multitude of issues and parties (incl third parties)
- Usually voluntary
- Can be successful and restorative of relationships

Common Elder Mediation Issues

- Housing and living arrangements
- Health care
- Cognitive decline
- Enduring Powers of Attorney
- Management of money
- Disputes with third parties eg ACF’s
- Blended families

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Elder *Abuse* Mediation

- A battle over behaviour (‘maleficence’)
- Self interest, bad behaviour, entitlement & denial
- Legal recourse options – civil, criminal and statutory
- Bolstered by legal empowerment eg EPOA
- Not usually voluntary
- Reluctance to engage by victim and perpetrator

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The Difference?

Beliefs –v- Behaviour

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Example - Elder Financial Abuse

Statistics*

- 51% of all types of elder abuse
- 75% family/parent relationship
- 39% involved parent cognitive impairment
- 26% undue influence most common form
- Equally male and females

BUT only 4.8% of reports were referred to mediation

*2024-2025 Annual Report of Qld Elder Abuse Prevention Unit

Elder Financial Abuse

- ‘Buccaneers engaged in parental plunder and pillaging’
- Can be ignorant, negligent or criminal (including coercive control)

Examples

- Gifting
- Online financial control
- Failing to pay bills
- Transferring property
- ‘Granny Flats’

Elder *Abuse* Mediation - Barriers

- Not mandatory
- Cost – who pays?
- Capacity to participate
- Reluctance or refusal
- Co-dependency
- Conflicts of interest - perpetrator is EPOA or Administrator
- Confidentiality –v- reporting abuse
- Legal presumptions
- Practicality of resolution (eg resigning as EPOA)

Elder *Abuse* Mediation - Incentives

- The theme of compromise not win/lose
- Advantages for perpetrator, victim and family
- Keeps it ‘in house’
- Threat of legal process
- Third parties can loom large for the perpetrator
- Examples - Health professionals, banks and ACF’s

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Two Critical Ethical Issues

- Capacity
- Confidentiality

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Ethics – The Role of a Mediator

Capacity

- Definition
- Capacity to engage and resolve
- To what extent should mediator pursue
- Pre-mediation assessment
- When is it appropriate to proceed or not
- Cleavage - referral or confidentiality

Ethics – The Role of a Mediator (cont)

Capacity and Mediation – EMIN Code*

- Described as ‘Ability to Participate’
- Explore whether a party is cognitively capable of engaging or an advocate can intercede or substitute decision maker can act –hmm
- Issues!
- If capacity in doubt either before mediation or during – don’t

*EMIN – Elder Mediation International Network and Code of Ethics

Alternative Approaches where capacity in doubt

- Elder ‘present’ at mediation but not participating
- Use of advocate with elder
- All parties (except the elder) are present

But what if capacity is not the issue but…

- Other barriers are
- Such as trauma, neurodivergence, disability, financial or caring dependence, coercive control
- Matching the matter to the method
- Supports required for elder to participate safely, voluntarily and meaningfully?
- Example

Ethics – The Role of a Mediator (cont)

Confidentiality & Reporting Abuse* – EMIN Code

- Mediator has a ‘duty to report’ past or present abuse
- Report to an appropriate authority
- Terminate or decline to mediate
- Qualification to duty of confidentiality

<u>But</u> in Australia there is no ‘duty to rescue’ or statutory duty to do so i.e., report, except in the Northern Territory (‘Good Samaritan Law’)

If EMIN Code is accepted would need to be disclosed to perpetrator before mediation – a major disincentive to participate

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So, Can Elder Abuse be Mediated?

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It Depends!

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Choice

Exclusion

or

Supported Participation

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Summary

Can Elder Abuse be Mediated?

- High risks/benefits
- Ethical & skill challenges
- Higher personal exposure of mediator to risk
- Significant preparatory time
- Can exacerbate conflict
- BUT - It’s possible if not aspirational

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Go Forth and Mediate (Perhaps)!

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The End

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