110. Macarthur Legal Centre

Name of organisation: Macarthur Legal Centre

Question 1

Harm and distress caused to the individual, are probably the key elements that should be considered.

Question 2

Best practice legal responses, should entail holistic service delivery, which is evidence-based and well-resourced.

Question 3

Macarthur Legal Centre (MLC) is a community legal centre, which provides free legal advice, referrals and assistance to residents of the Macarthur region of NSW.  MLC frequently provides advice, referrals and case assistance to older people, their children and carers, with issues around elder abuse, guardianship, financial management and wills.  We service some of the most disadvantaged client groups in NSW, and our clients are often face multiple barriers to accessing justice (disability, mental health problems, substance abuse issues, social isolation, financial hardship, language and cultural barriers etc.).  Our submission is based primarily on the experiences of our Centre and is focused on issues which appear to be most pertinent to the community we service.

As a Community Legal Centre we are at the coal face of this issue.  We not only see elderly clients at our office, but also at aged care facilities, private homes and outreaches.

Current systems do not adequately protect the anonymity of family members and/or service providers, who may want to take action to prevent or report elder abuse.  For example, seeking instigation or review of a financial management/guardianship matter in the NSW Civil and Administrative Tribunal, requires an identified person to lodge an application.  In cases of physical abuse, fraud, severe neglect etc. reports to police may lead to disclosure of the reporter’s identity.  These issues are a concern, because of the close familial ties, which may pose a barrier to reporting and also because of the personal safety risks that might be posed to service providers who want to report/assist.  MLC staff have experienced serious safety threats, from family members perpetrating elder abuse.  We provide a case study, on point:

**Case Study 1**

Mrs. A, was an elderly woman, who had suffered a stroke and was confined to a wheelchair.  She was being abused by her husband and children (eg. If she fell out of her wheelchair they would leave her there and she would remain there until someone visited her and picked her up).  MLC, and another community organisation, organised respite for her.  After 6 weeks we helped arrange for a private solicitor to assist her in effecting a property settlement with her husband. When her husband was served with documents, family members immediately surfaced.  They had no issue with her being in respite care, and off their hands, but they did have an issue with her taking her share of her own property.

Her son eventually located facility that Mrs. A was living at and told her he loved her and wanted to take care of her.  He said that he would build a granny flat, especially for her.  He took her down to a different private solicitor where Mrs. A signed Power of Attorney and Guardianship papers, appointing her son as attorney and guardian. He then took her back to the nursing home and left her there.  He changed her phone number, so none of her friends could contact her.  He gave her no phone credit so she couldn’t contact anyone and also had no money for personal use (e.g. for hair cuts etc.). MLC went to visit Mrs A. at her nursing home, and she wanted to know where all her money had gone.  We explained that she had signed a Power of Attorney and given control over her money to her son.  Mrs. A said “That is not what I thought I signed”.

MLC contacted the young solicitor, who had drafted the documents.  He said he had shown Mrs. A the papers, and asked her whether she understood the papers, and that she said “Yes”.  We explained that it was very common for an elderly person with a disability and/or English as a second language, to just ‘agree’, instead of appearing foolish.

Staff at the same nursing home begged us to intervene and have the son’s powers removed, but this would have required a review application to NCAT.  We chose not to intervene for the safety of our staff, as this same son was a very large individual, with many convictions of violent crimes.  On one occasion, the police had to be called for staff safety, when he came to our office and demanded a copy of his mother’s file.

We believe that there should be mechanisms in place that allow for complaints to be dealt with anonymously.  Or at least provide for non-release of reporter details.  Furthermore, it is our belief that an independent adult protection agency, akin to child protection bodies, should be established.  Ideally, this body would have power to (a) investigate reports of ‘risk of harm’, and (b) take effective, state-based, action where safety concerns are substantiated.

**Case Study 2**

Mrs. B, was a very ill lady with physical disabilities who was placed in a good nursing home.  Grandchildren with whom she had very little contact discovered where she was and told the staff they were taking her.  In hindsight, it is clear that this step was taken to help them acquire Mrs. B’s assets.

After several visits and after the nursing home not allowing Mrs. B to be taken by the grandchildren, the grandchildren asked why.  The nursing home advised that they would need a Power of Attorney and Guardianship papers to take Mrs. B home.  A few days later they visited again with these papers and removed Mrs. B from the facility and took her several hundreds of kilometres away and proceeded to spend all of her money.

This was despite the fact that there had been a financial management order in place which unfortunately had not been renewed between hearings.  This was a flaw in the guardianship process.  During a phone hearing, the Member, while adjourning the hearing did not say the words “Order will remain until the next hearing”.  So they used this one month to take everything.

Also, no solicitor ever visited Mrs. B, and she never left the aged care facility.  Yet the papers appeared and the facility did not question this.

It has been our experience that elder abuse is often driven by financial greed and more often than not the perpetrator of this abuse are members of the family.  This case is a clear example of fraudulent generation and use of Enduring Power of Attorney documents, to enable misuse of an older person’s assets.  Again, anonymous reporting mechanisms, and a specialist protection body, charged with the power to investigate and respond to elder abuse issues may be the best way to protect elders from abuse.

Question 4

Because of the familial nature of much of this abuse there are likely to be signiciant gaps in reporting, across the board.  However, reporting, or lack thereore, in CALD and/or other marginalised communities, is probably a signiciant 'gap' area.   Many people may simply not be aware of the support services available, which makes it even more important for safe and confidential reporting by services providers such as GPs etc.

Question 5

Question 6

Question 7

Question 8

Question 9

Question 10

Question 11

We often attend clients at nursing homes and aged care facilities, for the purpose of assisting them with wills, enduring powers of attorney and/or guardianship matters.  Anecdotally, the state of these facilities is mostly good, or at least adequate.  However the state of some facilities is, to put it mildly, **atrocious**.  I once visited an elderly women in a local nurising home.  Her room was all of 2mx2m; the airconditioner/heater had been ripped out and not replaced for some time; the walls were in dire need of painting; the corridors leading to her room seemed akin to a prison; the door to her room was so heavy to open that I even had difficulty (i.e. I have no idea how residents opened their own doors to get out of their rooms); and the 'communial' areas were poorly lit, cold and uninviting.  In summar, there are correctional facilities in NSW that have better standards of care for their inmates.

It is re-assuring that the Aged Care Complaints Commission, does allow for anonymous reporting in regards to conditions/treatment in these facilities.  It would, however, seem sensible to critically review the effectiveness of their investigation/intervention mechanisms.

Question 12

Aged care assessment teams are excellently placed to identify elder abuse issues.  However, without a central agency to investiage/monitor and track complaints/concerns (from across agencies and services providers) individual attempts to assist/refer may be twarted and diverted by family/friends/carers who have vested interests in perpetuating the abuse.

Question 13

Ideally, we believe that a centralised 'adult protection' agency with the capacity to track, investigate and act on reports of risk of harm, should be establised.

At very least having easier to access mechanisms to review guardianship/financial management arragements, via NCAT, would be beneficial.

Question 14

Question 15

Question 16

Question 17

Question 18

Question 19

Question 20

Provide adequate, long-term funding to independent advocacy services, including specialised legal services.

Question 21

Question 22

Question 23

Question 24

Question 25

Anecdocatally, we have seen many clients who have had their money fraudulently taken by children/family/friends, without their knowledge or consent.   Police/banks are often not able to gather enough evidence to take action or rectify matters.

Question 26

Question 27

We have seen many clients who have experienced significant financial loss, following the breakdown and family agreements.  An example was an elderly women whose son had convinced her to sell her home, so she could live with him.  He then convinced her to give her the money from the sale of her home, so he could build a new home which could accomodate her and his own family.  A few months after the new home was built he told her she was no longer welcome and had to find her own place to rent.  The agreement had not been documented, and there was little that could be done without spending significant time, and money on complex legal action.   Because she had another son who was willing to help her with rent and care needs, she chose not to take any action, against the son who had defrauded her of her entire asset pool.

Question 28

Question 29

Ideas to better safeguard against elder abuse might include:

1. Requirement for qualified witness to explain obligations to appointment attorneys

2. Requirement for more than one person to attest to the capacity of the person making appointments

3. Formal registration requirements - ideally registration while the person making the appointment still has capacity, so that there is a second opportunity to verifiy capacity etc.

Question 30

Yes, registration may be helpful, and could also provide for a centralised register of any complaints/concerns that may be made in relation to the use or misuse of the registered document.

Question 31

Yes, it would be helpful if the practitioners preparing these documents had stricter parameters around the appropriate preparation and use of the documents.

Specliased training for young practitioners, facing these matters for the first time, might also be helpful.

Question 32

We refer to our earlier submissions advocating for a centralised reporting, investigation and intervention body.

Question 33

Question 34

Yes - we believe that a adult protection agency, akin to child protection agencies, is the only way to ensure consistent, reliable and effective investigation and response to elder abuse in the community.

Without a centralised agency, charged with specific responsibility to deal with these issues, individuals will continue to fall through the cracks.  Current protections offered by police, NCAT, Aged Care Complaints Commission etc. offer only patch-like assistance.

Question 35

Mandatory reporting requirements (as in the child protection field), may be a sensible way to help the government identify and respond to elder abuse concerns.

Question 36

Question 37

Yes, I stronglky believe that health justice partnerships have an important role to play in identifying and responding to elder abuse issues.  Oftentimes legal issues/problems will impact on health outcomes for clients.  Well funded and effectively planned HJP could potentially have an important role to play in this field.

Question 38

Question 39

Question 40

Question 41

Question 42

I have no view on whether new offence categories are necessary or desirable.  However, raising community awareness of these issues and providing police with training to help them ACCURATELY identify and APPROPRIATELY respond to elder abuse reports is probably more important than 'improving' laws.

The use of ADVOs in this field should be encouraged and well-policed.

Question 43

It might be more accurate to say that the policing of these matters is probably the key problem.  That is, the use of police discretion to dismiss these matters are personal and civil, as distinct from criminal, allows perpetrators of violence to go unpunished.

I can give an example of a great response by police - we recently helped an elderly man, whose adult son was essentially taking his money and also seriously assaulting him.  On one occassion his brother came with him and showed us all the bruising our client had sustained as a result of assaults by his son.  Our client was a proud man and too ashamed to make a report.

Given the seriousness of the injuries we encouraged him to make a report to police, with the support of his brother, for the purpose of obtaining an ADVO, which would excluse his son from his home (he owned his home and had asked his son to leave, but his son refused).  They eventually reported the matter to police, and police obtained an ADVO which provided for the son to be excluded from the home etc.  Our client was thereafter able to regain his independence, safety and peace of mind.

In other cases, where the physical signs of abuse are not as evident, we believe it would be much more difficult to convince police to persist with obtaining ADVOs or laying charges.  With victims, instead, being referred to the Local Court to make their own private applications.

Ideally, what we'd like to see is a response to elder abuse which is akin to the current trends in responses to domestic violence against women.

Question 44

Things that mght help in this area, include:

1. Raising public awareness.

2. Better training of police, to help them appropriately identify and respond to elder abuse

3. Funding of specialised support/legal services to assist victims of elder abuse navigate the legal system (For example, funding and developing programs similar to the women's domestic violence court advocacy services).

Question 45

Workers who are most likely to identify elder abuse are medical practitioners, and other workers proving support services to older people.  Accordingly, it would make sense for these workers to be mandatory reporters.

Again, I would advocate for a system which is similar to the child protection system, where reports by certain classes of workers are mandatorily made to a central adult protection agency, with the power to investigate and act of complaints.

Question 46

See our submissions above.

Question 47

As noted above, the government should fund specialised support services to help address the social and legal needs of victims.  It is important to recognise that victims of elder abuse may often have other significant stressors to deal with - for example: homelessness, severe financial hardship, family pressure/coercion, language barriers, cognitive/physical impairment, mental health problems, cultural barriers, trauma symptoms etc.  While Victims' Services offers some limitied form of counselling and financial redress (where there has been adeqaute reporting) it can be difficult for vulnerable clients to access this support, without the help of a knowledgeable support worker who is able to give **face-to-face asssitance on the ground**.  You can't expect these peolple to simply log onto a computer,  and fill in an application for victims support etc.

Question 48

Abuse of vulnerable/older persons should be seen as an aggravating factor, in given offence categories, with the consequence of mor severe punishments.

Question 49

Question 50

Other comments?