**North Australian Aboriginal Legal Service**

**Review of the Australian Law Reform Commission Issue Paper 47 in relation to Elder Abuse**

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**SUBMISSION**

**18 August 2016**

1. **­­ Introduction**

This submission is provided by the North Australian Aboriginal Family Legal Service (“NAAFLS”) regarding its review of the Australian Law Reform Commission’s Issue Paper 47 (“the Issues Paper”) in relation to Elder Abuse.

1. **Our Organisation**

NAAFLS is a government funded Aboriginal organisation and NACLC accredited community legal service. As a Family Violence Preventative Legal Service, NAAFLS provides professional, comprehensive and culturally safe assistance and advice to Aboriginal and Torres Strait Islander victims of domestic and family violence and sexual assault in remote Top End communities.

NAAFLS provides the following services:

* Legal advice and assistance in areas of Family Violence, Care and Protection of Children, Victims of Crime Compensation, Family Law, Wills, Superannuation, Housing and Debt Management;
* Information, support and referral services;
* Community legal education and domestic and family violence prevention initiatives; and
* Law reform activities.

NAAFLS currently services 44 communities in the Top End, including Katherine.

Although our legal service is not a senior or elder focused service, we have had some experience in assisting clients who fall within the subject matter of the Issue Paper. It is in this context that we provide the below comments and responses to some of the questions posed by the Issues Paper.

1. **Comments, Responses and Recommendations**

**Question 1 - Definition of elder abuse**

It is noted the definition of elder abuse set out in the Issue Paper states that elder abuse can occur in 'any relationship where there is an expectation of trust'. We submit that this includes relationships between older persons and public and private bodies, in addition to private and family relationships as referred to in the Issue Paper.

We urge the ALRC to specifically consider and include the relationship between older persons and public bodies such as government departments, as relationships where elder abuse may occur.

**Question 3 - Examples of elder abuse - Aboriginal and Torres Strait Islander people, specifically in remote communities**

NAAFLS agrees with the Australian Institute of Family Studies' conclusion quoted in the Issue Paper, that substantially more work is required to understand elder abuse in the Aboriginal context. We also note the complexities regarding culture including: understanding the role of family and older persons in family; language and tradition; and the impact that both historical and current events can have on remote indigenous Australians and Torres Straight Islanders, and how these factors may affect the way “financial abuse” is viewed in such communities.

**Examples of elder abuse**

Some examples that our legal service have experienced with elderly abuse in remote Top End Aboriginal communities of the Northern Territory include:

* An older Aboriginal man who had accessed his superannuation, had his bank card stolen by his daughter who went on to withdraw a substantial amount of money from his account;
* An older Aboriginal man who held two bank cards, one in secret, in order to avoid family members harassing (known as 'humbugging') him for money and on occasions this man losing his secret bank card; and
* Physical assault with a weapon of an older Aboriginal woman by her daughter that resulted in a broken limb.
* Various instances where NAAFLS has been advised of people (often relatives) who have received Centrelink carer payments to care for elderly people and then failed to care for them. This includes not providing them with proper and adequate food.

Generally, the most common examples of elder abuse that NAAFLS is referred to and assists with are financial abuse, physical abuse and instances of neglect.

**Question 5 - Referrals from Centrelink Social Workers**

NAAFLS has received, and is grateful for, referrals from Centrelink Social Workers who attend remote Aboriginal communities in the Top End of the Northern Territory. We have on occasions received such referrals in relation to domestic violence concerns. However, we have not received any specific elder abuse referrals from Centrelink. It is submitted Centrelink Social Workers are well placed to make such referrals.

**Questions 7 - Carers**

As noted above, we are aware of non-specific allegations about carers, often family members, who are receiving Centrelink carer payments and not providing proper care to older persons (including not providing proper or full meals and not assisting with the cleaning of households). In these situations, the local community or aged care service (if available or in existence) often fills this gap, despite funds being allocated to the individual carer for this purpose.

NAAFLS does not have any firm position at this stage in relation to any change of laws or legal frameworks to improve safeguards against elder abuse by carers, but notes that this is an important issue that requires further consideration.

**Question 8 - Income management**

As noted in the Issues Paper, many Aboriginal people, including our client base of indigenous people living in remote Top End communities, are already subject to income management. It is submitted any further income management has the propensity to be overly interventionist. Further education as to money management is desirable.

**Question 24 - Superannuation**

In our response to question 3 above, we provided an example of elder abuse in the form of financial abuse following an older Aboriginal man accessing his superannuation. It is noted however, that in this and in other matters, we do not have any specific knowledge (nor suggestion) that elderly people have been coerced to withdraw their superannuation or to nominate specific beneficiaries in respect to superannuation accounts.

NAAFLS works to educate and empower older indigenous people in assisting them to understand the unacceptability of coercion and to report such events to our service or other stakeholders. We note however there are limited services, such as money management or financial well-being services, that are available and culturally appropriate in remote communities. We submit the introduction and expansion of such services, coupled with appropriately trained and culturally aware staff, is very much needed to assist older indigenous people living in remote communities in this area.

**Question 25 - Banking**

We point to the example, as set out in our response to question 3, of an older Aboriginal man keeping two bank cards, one in secret, in order to avoid financial abuse by his family.

As a provider of community legal education, NAAFLS strives to assist in the education of community members, clients and stakeholders as to the issues that can arise in the ‘financial abuse’ area. Preventative education strategies that can be delivered in language and in a culturally appropriate manner are highly recommended.

**Question 30 – Powers of attorney and other decision making Instruments**

By way of general observation it is noted that many remote indigenous people require interpreters to understand legal documents and make decision about such documents in their own language. In many Aboriginal languages it is difficult to explain such concepts as “consent” for example, as there are no equivalent words to explain this. Interpretation of such concepts can therefore require the providing of a story or example to explain what the concept means, in language. Although it is acknowledged it can often be difficult to access interpreters, this should not be a barrier to having more stringent requirements to do so when an individual’s first language is not English.

With documents such as Powers of Attorney or Advanced Care Plans, for example, there could also be audio presentations in language made available to provide information on the nature of such documents, together with an overall recommendation to seek independent legal advice where possible.

**Question 37 - Health justice partnership**

NAAFLS agrees that a health justice partnership may be a useful and innovative approach to addressing elder abuse, particularly in the context of remote communities where the local health service or clinic is often the only permanent and continuing service provider. It is noted that often legal services attend remote communities on a periodic basis but are not present in community full time. For example, NAAFLS attends most of its serviced communities either once or twice per month. A more permanent service within a clinic or health service would assist in alleviating this gap.

**Question 44 - Protection orders**

The Northern Territory has a protection order system of Domestic Violence Orders ('DVOs') and Personal Violence Restraining orders. It is agreed that consideration as to how such orders can be better utilised to assist in safeguarding elderly people against a wider range of issues relevant to ‘elder abuse’ is required.

It is NAAFLS’ experience that older clients are often reluctant to pursue personal DVO applications (or applications where police are not involved), against their family members for a number of complex and related reasons. These reasons include: familial and/or cultural connections and not wanting to disrupt these; a distrust or misunderstanding of domestic violence law and the formal legal system more broadly; and a lack of knowledge as to what constitutes “abuse”.

As a matter of practice, DVO applications for emotional, psychological and financial abuse are not initiated by police in the Top End of the Territory. The relevant legislative requirement for an immediate police DVO (according to section 41 of the *Domestic and Family Violence Act 2007 NT)* for instance is that there is urgency and it is impractical to wait for the next sitting of the Local Court (often only once a month in remote communities). That means that it is difficult for police to effectively address and prevent financial elder abuse, or even any non-physical elder abuse, as it may not be considered to be urgent.

Greater education for stakeholders and community members in remote indigenous communities as well as in the community at large, would assist in recognising and understanding that such abuse can be addressed at law and that legal assistance can be accessed through various legal services.

**Question 45 - Reporting of elder abuse**

As noted in the Issues Paper, the Northern Territory has a system of mandatory reporting in relation to domestic violence and additionally in respect to harm to children. The Issues Paper also acknowledges there are many inadvertent and adverse consequences of the mandatory reporting system. NAAFLS acknowledges the limitations of mandatory reporting but also the exposure to problems that it brings. A greater awareness through culturally appropriate education to stakeholders and community members would assist in this area.

**Question 46 - Police response**

NAAFLS is interested in the Victorian trial noted in the Issues Paper, particularly the investigation of financial abuse.

Generally, NAAFLS supports increased police resources to properly investigate and appropriately prosecute elder abuse. We note the difficulties that Northern Territory police often face in engaging with Aboriginal people in remote communities, particularly in relation to matters involving family life. We suggest further cultural training and sensitivity to address this difficult area, which is particularly relevant in areas where police are often rotated every few months.

**Question 49 - Restorative justice**

We note that an informal form of restorative justice may already be occurring in response to elder abuse in Aboriginal communities according to cultural practice. Any form of restorative justice needs to be aware of this and real input from the community must be sought and listened to, in order to ensure the appropriateness and usefulness of any such proposed process.

**In Closing**

NAAFLS appreciates the opportunity to respond to the ALRC's Issues Paper. Please feel free to contact our service should any clarification or further detail regarding this Submission be required. It is noted our service would also be interested in participating in any future consultation that the ALRC conducts in relation to this inquiry.

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**North Australian Aboriginal Legal Service**

**18 August 2016**