

**Initial Submission to the Elder Abuse
Issues Paper**

August 2016



NATSILS

**NATIONAL ABORIGINAL & TORRES
STRAIT ISLANDER LEGAL SERVICES**

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1. National Aboriginal and Torres Strait Islander Legal Services

1.1. The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. The ATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples. NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

2. Introduction

2.1. NATSILS initial submission to Issues Paper 47 is in direct response to Question 3 of the Elder Abuse Issues Paper;

“The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning: Aboriginal and Torres Strait Islander people.”¹

To this end, NATSILS requested relevant case studies from its constituent organisations throughout Australia to illustrate the diverse issues facing older Aboriginal and Torres Strait Islander people.

Some issues related in the case studies may be specific too or more commonly experienced in the Aboriginal and Torres Strait Islander community, others may be more widespread and also being experienced by the non-Aboriginal community.

An ‘Elder’ in the Aboriginal and Torres Strait Islander community is, in addition to referring to the age of a person is also a title of respect. No assumptions or conclusions should be made as to the prevalence of events depicted in this case studies.

¹ Pp5 Australian Law Reform Commission *Elder Abuse Issues Paper 47*, June 2016, ALRC Sydney

3. Abuse and older Aboriginal and Torres Strait Islander people

3.1. The following case studies have been collated by NATSILS from some of its constituent organisations. They do not, however, represent the full spectrum of issues being experienced by older people in Aboriginal and Torres Strait Islander communities.

3.2. Further, the case studies provided have been significantly de-identified to protect privacy of individuals and communities.

3.3. Case Study 1

A Victorian community member called Agnes (not her real name) comes to a community legal education day about Wills n Bills and talks to a Victorian Aboriginal Legal Services (VALS) staff member about their worries over their current family situation. Agnes is one of ten children, and Agnes and her siblings, collectively, have 23 children. Agnes' mother is getting older and Agnes thinks her mother is being stood over by some of the younger family members for her mother's pension. She's not quite sure and doesn't want to accuse particular family members. Agnes thinks it would be better if she received her mother's pension and handled all her bills, but she's also worried that will cause conflict in the family and the situation may deteriorate.

Agnes stays for lunch and has a long yarn about her troubles in general, she has some health problems that seem to be getting worse, in particular she says that she has a "heart thing" and is supposed to be "taking it easy". Agnes says that she has recently taken over the care of her two grandchildren because her daughter is "caught up using ice" and the daughter also has an "abusive relationship with her ex-boyfriend". Agnes says that she is worried because her daughter came around the other night and wanted to take the children, and when Agnes said "no", the daughter said she was going to report Agnes to the police for kidnapping. Agnes let the daughter take the children, and is trying to visit them every day to make sure the children have something to eat. Sometimes when Agnes is visiting the children the ex-boyfriend is also present, and Agnes tries to stay as long as she can until the children are asleep. A couple of times lately the ex-boyfriend has yelled abuse at Agnes and she has had to leave, for fear it will make things worse for the children.

Agnes says that "the stress of worrying about the situation" is starting to get to her. Agnes went to the local co-op, and they said because she won't report her daughter to the (Victorian)

Department of Health and Human Services (DHHS) for abuse, she can't access any family counselling for herself and the grandchildren.

3.4. Case Study 2

An elderly woman sought advice from a Brisbane civil lawyer on misuse of funds and abuse. The woman resided with her daughter and her daughter's boyfriend. The woman was made to pay all the groceries and pay rent. Her daughter was given permission of authority to borrow \$30,000 from her mother. When asked for the money back, her daughter claimed it had been a gift. The woman pushed her daughter lightly, however, her daughter claimed that had assaulted her. Police were called and the elderly woman was interviewed, but no charges were laid. The woman's daughter then called mental health workers to assess her mother. A doctor cleared the mother of any dementia but she has other medical issues making her quite unwell. The woman's daughter ostracises, bullies and verbally assaults her. A Brisbane civil lawyer has referred the woman to an appropriate legal service.

3.5. Case Study 3

An elderly woman sought advice from a Brisbane civil lawyer on housing issues. The elderly woman resides with her daughter, who has locked her out of her own house. The daughter continued to claim Centrelink carers' payments, despite her mother no longer residing with her. The elderly woman was effectively homeless and only has the clothes on her back, as all her property is held in the house. She has no way to retrieve the property. A Brisbane civil lawyer referred her to an appropriate legal service.

3.6. Case Study 4

An elderly man applied to court for a domestic violence order against a family member. ATSILS (Qld) acted for the respondent contesting the domestic violence order application. The elderly man was neither legally represented nor supported in his application by police, putting the applicant at a disadvantage. The elderly man withdrew his application before final submissions, as he was confused with the definitions of what was domestic violence and overwhelmed with the court process.

3.7. Case Study 5

An elderly man sought advice from ATSILS (Qld) in relation to his financial affairs. He was convinced that a relative had power of attorney over his financial affairs, as his relative had told him so. The elderly man and the relative visited a solicitor together, and had spoken with the solicitor about making a power of attorney, but nothing had been put in writing or signed by either of the supposed principle or attorney.

3.8. Case Study 6

The next of kin of an elderly person sought advice from ATSILS (Qld) about misuse of funds. A terminally ill elderly person had given their partner access to their ATM card and pin number. On his death, his partner cleaned out his ATM account. Some of the funds withdrawn after next of kin notified the bank of the account holder's death were recovered, but the funds before this notification were not.

3.9. Case Study 7

This case study from the Alice Springs/Tennant Creek based Central Australian Aboriginal Legal Aid Service (CALAAS) demonstrates the long term nature of elder abuse, and the importance of culturally safe and joined up services

CAALAS assisted a vulnerable woman in relation to a range of tenancy legal issues, including eviction proceedings, arrears, and applying for a transfer to another residence. She had endured 25 years of domestic violence perpetrated by her ex-husband, with whom she had a son, now an adult. The woman was also a victim of family violence from her adult son. Our client's adult son regularly intimidated and harassed our client, attending at her Department of Housing property without her permission, on some occasions forcing entry and causing damage to the property. Our client's adult son was one of a number of unwanted visitors at the property, whose behaviour on site led to allegations of anti-social behaviour against our client and subsequent eviction proceedings. The dominant behaviour of our client's adult son and his intimidating manner frequently led to our client choosing to sleep in public places instead of her own home. Our client received assistance from a local domestic violence legal service in relation to the family violence. CAALAS successfully challenged the eviction proceedings, assisted the client to transfer to a smaller dwelling in a secure complex that was less prone to unwanted visitors, and negotiated a reduction and favourable resolution to the outstanding arrears.

- 3.10. Some other issues (not necessarily covered in the case studies provided) include:
- 3.10.1. Misuse of the “opt-in/out” clause in income management for older Aboriginal and Torres Strait Islander people, where family members or friends may pressure the older person (who is not necessarily subject to the income management restrictions) to purchase prohibited items under from income management scheme.
 - 3.10.2. Lower life expectancy, inter-generational trauma associated with Stolen Generations and broader definitions of what constitutes an Elder and family in the Aboriginal and Torres Strait Islander community.
 - 3.10.3. Stolen wages (historically associated with agricultural work, domestic work and the pearling industry but also other types of employment) whereby indentured Aboriginal workers were not paid, not paid enough or paid in goods. As a consequence, access to savings and superannuation is often very limited contributing to inter-generational poverty.

This has flow on impacts on health, housing, education and other contributing factors to poverty.
 - 3.10.4. For many Aboriginal and Torres Strait Islander people, English is not even their second language. Access to interpreters in language has been highlighted as a significant contributing factor to Aboriginal disadvantage.

4. Conclusion

- 4.1 Issues of abuse of older Aboriginal and Torres Strait Islander people are complicated by matters of race, identity, language, poverty, oppression, dispossession and resulting inter-generational trauma.

Aboriginal Controlled Community Organisations (ACCOs) have evolved to provide the full suite of programs – “a one stop shop” - and services to their communities, so that people are not lost in a bewildering array of services.

ACCOs provide culturally competent and safe services to Aboriginal and Torres Strait Islander communities – something that non-Aboriginal organisations, despite the best intentions – cannot achieve. Available research consistently and unanimously highlights the success and effectiveness of Aboriginal specific services.

The ACCOs challenge is to provide these essential services in an era of real decline in funding for community organisations, the growing demand for their services (particularly in rural and remote communities, but also regional and metropolitan) and the ‘mainstreaming’ of Aboriginal and Torres Strait Islander services to non-Aboriginal organisations.

NATSILS and its constituent organisations welcomes this opportunity to have early input into this valuable enquiry into Elder Abuse, and looks forward to engaging further once the Discussion Paper has been produced.