



Port Macquarie
30 Murray Street
Port Macquarie NSW 2444
T: 02 6580 2111
F: 02 6583 4847
info@mncclc.org.au

Prof. Rosalind Croucher

Australian Law Reform Commission

GPO Box 3708

Sydney NSW 2001

Dear Professor Croucher,

Thank you for the opportunity to make a submission to the Australian Law Reform Commission's Inquiry into Elder Abuse. This matter is an important one, with a significant impact on older people in our community and we welcome the opportunity to offer comment.

About Mid North Coast Community Legal Centre

Mid North Coast CLC is a community legal centre funded by the NSW and Federal governments. We provide free legal assistance to disadvantaged residents of the Kempsey, Port Macquarie and Greater Taree Local Government Areas.

Clients in receipt of advice and casework include; people with disabilities, those in financial hardship, people at risk of homelessness, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, youth, people living with family violence and elderly people.

Demographics of the Mid North Coast Region

The Mid North Coast of NSW has a significant proportion of elderly residents (aged over 65 years). The 2011 Census shows that 21% of the Mid North Coast Region¹ is aged over 65, with that proportion set to increase to 31% of the population by 2031.²

Based on the local demographic, Mid North Coast CLC has developed an interest in issues of Elder Abuse and elder exploitation. In the 5 years Mid North Coast CLC has operated, 16% of our clients have been aged 65yrs or over. Our centre provides free Powers of Attorney and Enduring Guardianship advice and documents for local clients who are on the full aged pension. We also provide regular community education sessions on the nature and effect of the documents to help people understand their options when planning for their future.

This region is one which experiences high rates of socioeconomic disadvantage, as detailed in the “Dropping off the Edge” Report³. A 2016 report ‘Households in the Dark: Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland’ produced by the St Vincent de Paul Society and Alviss Consulting, identified two of Mid North Coast Community Legal Centre’s catchment areas, South Kempsey and Taree, as being regions with high levels of small households with low-median income.⁴ This is of concern to those working to reduce the financial vulnerability of elder people, as the report generally found that the highest rates of electricity disconnection were found among two person families where both members are not working and are likely to rely on social security or the aged pension.⁵ The elderly comprised 36% of this statistic.

Mid North Coast Community Legal Centre has partnered with the Port Macquarie Hastings Domestic and Family Violence Specialist Service (PMHDFVSS) on a number of projects. Their connection with clients whose matters have not progressed to getting legal help will also provide insights for the Commission. Together, we would like to address the following questions:

¹ “Mid North Coast” is defined in the NSW Government’s Ageing Strategy as the Local Government Areas of Bellingen, Coffs Harbour, Nambucca, Kempsey, Port Macquarie-Hastings and Greater Taree. Although Mid North Coast CLC only provides direct assistance to residents of the lower LGAs of this region this snapshot area will be used for the sake of consistency.

² NSW North Coast Ageing Strategy – NSW Government 2014 Appendix B at 33

³ “Dropping off the Edge” Report 2015 accessed 16/8/16 at <http://dote.org.au/findings/state-chapters/>

⁴ St Vincent de Paul Society and Alviss Consulting, ‘Households in the Dark: Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland’ (Report, St Vincent de Paul Society, May 2016) 102.

⁵ Ibid 51.

Question 3 The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning: · Aboriginal and Torres Strait Islander people; · people from culturally and linguistically diverse communities; · lesbian, gay, bisexual, transgender or intersex people; · people with disability; or · people from rural, regional and remote communities

Regional communities

Mid North Coast CLC provides assistance to elderly people within our regional, rural and remote communities. The 'Households in the Dark; Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland' report identified this region as having high transportation costs in that it requires significant funds, resources or organisation of services for community members, especially the elderly, to access health, financial, social, legal or other service providers.⁶ This physical isolation can increase vulnerability of older people by amplifying their social isolation and dependence on family.

PMHDFVSS offer the following case study:

"63yo Annie lives in a rural village with her abusive husband of 35 years. On one occasion Annie was hospitalized after falling ill but she chose not to remain in hospital as recommended, stating "if I do it will only make things worse when I get home." Annie became increasingly unwell and believed that this was as a result of living with an abusive husband. On another occasion again feeling unwell Annie told her husband he would have to cook his own dinner and as a result was verbally abused and intimidated. Annie was subjected to years of being isolated from family and friends.

Annie tried to reach out for support/accommodation from her adult children but this was not forthcoming with them minimizing the abuse and stating "Dad needs you to look after him"."

Annie's situation of pre-existing domestic violence has been exacerbated by age, frailty and isolation. Her family's unwillingness to intervene has left her without support other than that offered by PMHDFVSS. The ability to access help from family she could trust has been denied to her by their attitudes.

Aboriginal Communities

It can be harder to perceive or more complex in understanding whether and how elder abuse is occurring in Aboriginal and Torres Strait Islander communities and families because of Aboriginal norms regarding reciprocity, the expectation of shared resources and kinship.⁷ Mid North Coast Community Legal Centre does not consider itself to be an expert in abuse in Indigenous

⁶ Ibid 100-1.

⁷ R Kaspiew, R Carsons and H Rhoades, 'Elder Abuse: Understanding Issues, Frameworks and Responses' (Research Paper No 35 Australian Attorney General Department, 2016).

Mid North Coast Community Legal Centre is a service provided by Advocacy Law Alliance Inc.
The office location for legal services is in Port Macquarie. ABN: 93 984 383 421

The Credit Law Toolkit is jointly produced by the Consumer Credit Legal Centre (NSW) and Legal Aid NSW.



communities. We offer this case study as an example of our experience and trust it is of use for the Commission.

Mid North Coast CLC assisted an Aboriginal client who was faced with what appeared to be financial exploitation. Our client was a grandmother attempting to support several grandchildren. All were facing financial hardship. Whilst living with our client, the grandchildren had accrued a large internet and phone debt in our client's name and made no measures to repay or assist in repaying the debt.

It is the belief of Mid North Coast CLC that to address the increased vulnerability of socially and physically isolated elder people and elderly people of Aboriginal and Torres Strait Islander descent, a collaborative approach to elder abuse is required. The Mid North Coast CLC is a founding member of the Hastings Elder Abuse Prevention Network (HEAPN) which is a local working group comprised of various community support providers including Disability Advocacy, Alzheimers Australia (NSW), Uniting Care Ageing and NSW Health (Age Care Assessment Team). Each agency has its own priorities and protocols but the mutual understanding and goals of HEAPN members in addressing elder abuse creates a pool of social, health, legal, financial and counselling resources. By creating a holistic shroud around the vulnerable person or person suffering abuse or exploitation a collaborative approach can assist with not only the abuse occurring but empowering the elderly to reduce their susceptibility and safeguard their emotional, physical and financial wellbeing.

This is an area where Mid North Coast CLC strongly encourages that funding be directed or initiatives developed. There currently is no single funding source for a cooperative network such as HEAPN. In addition to providing undoubted benefits in improving action against elder abuse in local communities, a network would simultaneously provide assistance to the Commission in its objective of identifying elder abuse in Australia and areas where research is lacking or evidentiary gaps exist. Elderly people may contact or pass through several services or agencies before the extent of the elder abuse or their vulnerability is fully realised and even begun to be addressed. At present without any formalised cohesion in service providers addressing elder abuse there is very limited information and/or evidence of how elder abuse is mediated, prosecuted or otherwise resolved. HEAPN relies on the will, drive and initiative of the agencies involved to provide targeted referrals and assist elderly people access all the support services they require. However if the Federal Government were to assist in the development of framework for elder abuse networks then this could potentially increase the frequency of agencies collaborating and ease the process of this collaboration thus creating a means of mapping data.

Question 25 What evidence is there of elder abuse in banking or financial systems?

Financial abuse or exploitation is the most prevalent form of elder abuse encountered by Mid North Coast CLC. This is reciprocated in the findings of the Australian Institute of Family Studies report

'Elder Abuse: Understanding Issues, Frameworks and Responses'.⁸ Examples of financial abuse experienced by Mid North Coast CLC clients include; being pressured to take on reverse mortgages to financially support family members, providing loans to family which are never repaid, and being pressured to act as guarantors for family members.

One elderly client of Mid North Coast CLC was persuaded by an immediate family member to take out a reverse mortgage over his home. The funds of our client's loan were paid directly to the family member. The family member after a period of time ceased making any payments and the relationship between our client and the family member disintegrated entirely. Our client is an aged pensioner and unable to contribute loan payments, the loan continues to increase and interest capitalise.

This is not an uncommon situation, and in our experience the incidences of elderly people being financially abused involved family members and relatives taking advantage of the relationship between elderly people and their family. This relationship is often accompanied by a level of social or physical dependence by the elderly person on their family and an expectation that family should support each other. In this client example, there are questions about the extent of awareness our client had of financial obligations the loan imposed and the role and responsibility of his family member in the loan. Again, it is not unusual for elderly clients to have an agreement of faith or verbal understanding with their family member rather than a documented or formal agreement.

Mid North Coast CLC believed the Commission would be assisted in this area by looking overseas for examples of protective measures for elderly and other vulnerable persons. In particular provisions introduced under Canadian personal information and digital privacy laws which allow banking and other financial institutions to use their initiative to notify government institutions, parts of government institutions, next of kin or authorised representatives if they suspect an elderly client is the victim of financial abuse.⁹ The provision does not require or establish mandatory reporting, but does permit breaches of confidence in circumstances where the bank or financial institution believes financial abuse is occurring. This is a progressive measure and one Mid North Coast Community Legal Centre believes the Commission should consider as a reporting is more likely to occur where there are superficial connections, such a professional relationship rather than familial.¹⁰

Question 30 Should powers of attorney and other decision-making instruments be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?

Mid North Coast CLC would like to echo earlier submissions made to the Inquiry of the General Purpose Standing Committee (No 2) NSW into Elder Abuse that the Committee refers the possibility

⁸ R Kaspiew, R Carsons and H Rhoades, 'Elder Abuse: Understanding Issues, Frameworks and Responses' (Research Paper No 35 Australian Attorney General Department, 2016).

⁹ *Personal Information Protection and Electronic Documents Act 2000 s 7(3); Digital Privacy Act 2015 s7(10).*

¹⁰ R Kaspiew, R Carsons and H Rhoades, 'Elder Abuse: Understanding Issues, Frameworks and Responses' (Research Paper No 35 Australian Attorney General Department, 2016), 14.



of a register of Powers of Attorney to the Australian Law Reform Commission. This is not a new call and has been raised repeatedly.¹¹

Mid North Coast CLC solicitors are frequently called on to clarify for clients the powers of different documents that are available to people to plan ahead for their futures, and from this experience sees considerable confusion in the community and among community workers about the nature and effect of documents such as power of attorney. This confusion could be ameliorated for community workers at least by the introduction of a register, which might centralise or update the status of power of attorney documents in a similar fashion to land title registration.

We acknowledge that there may be issues of privacy, cost and compliance that should be investigated further by the Commission prior to the implementation of any register for powers of attorney.

Question 39 Should civil and administrative tribunals have greater jurisdiction to hear and determine matters related to elder abuse?

Mid North Coast CLC recommends that the Commission consider whether Civil and Administrative Tribunals be able to order an attorney who has misused their powers and caused loss to a principal, to pay compensation to the principal or their estate. This has occurred in Victoria under the *Powers of Attorney Act 2014* (Vic). A unified national approach following the example created in Victoria would place a greater onus on legal practitioners to fulfil their own obligations when making an enduring power of attorney.

Mid North Coast CLC has assisted one elderly client who supported her only child to buy a property and now lives in a granny flat attached to the dwelling. Her son holds Power of Attorney and exercises financial control of all her affairs. Our client is not living with impaired capacity, but feels a strong familial loyalty to her son despite her recognition that she is being prevented from using her money the way she would like to. Her son has also actively prevented community and health workers from visiting her.

If there was a low cost, informal tribunal option nationally established or supported to hear matters of financial exploitation it would be a preferable pathway for our client to use as the client does not want to alienate her son and cannot afford to move out.

This is an area in which Mid North Coast CLC would very much like to see progress, as the current result obtained for many of our clients is to develop payment plans with banks after being the victim of financial abuse at the hands of family. If progress were to be made in establishing such an

¹¹ <http://sydney.edu.au/medicine/cdpc/documents/about/final-report-policies-practices-of-financial-institutions.pdf>; and R Kaspiew, R Carsons and H Rhoades, 'Elder Abuse: Understanding Issues, Frameworks and Responses' (Research Paper No 35 Australian Attorney General Department, 2016).

authority, our clients' liability to the banks could be removed and the debt to the bank restored by the attorney who was found to have misused their power.

There should also be rectification of the fact that older persons have very limited ability to seek from their attorneys any monies stolen through misuse of the power. A straightforward process for an errant attorney to be ordered to pay compensation to the principal would be of great assistance to legal centres such as ours who work with victims of financial elder abuse. In this regard the remainder Australian jurisdictions should come in line with the *Powers of Attorney Act 2014 (Vic)*.

Equally, if there was a Public Advocate with power to investigate and refer matters to Police or bring matters to a Tribunal, it would be preferable to our client rather than the risk of escalating conflict by using the AVO process to protect her access to and egress from the property.

The NSW Legislative Council General Purpose Standing Committee released a report on June 24, 2016 on Elder Abuse in NSW. The report states that the participants in its research consistently found that police powers, the Helpline, the Guardianship Division of NCAT and the Public Guardian are all circumscribed and that the gap between them leaves people unprotected when they are very much at risk. The report strongly supports a call for the establishment of a Public Advocate in New South Wales along the lines of Victoria, with the power to investigate complaints about abuse and also to initiate its own investigations to deliver much greater protection for vulnerable older people than is currently available. All elderly Australians should have the security of this Public Advocate and the office established across all states and territories.

Mid North Coast CLC welcomes the opportunity to make this submission to the Australian Law Reform Commission and is available to answer further questions should the Commission see fit.

Yours Sincerely,



Mid North Coast Community Legal Centre

Jane Titterington

Principal Solicitor

Mid North Coast Community Legal Centre is a service provided by Advocacy Law Alliance Inc.
The office location for legal services is in Port Macquarie. ABN: 93 984 383 421

The Credit Law Toolkit is jointly produced by the Consumer Credit Legal Centre (NSW) and Legal Aid NSW.



