



# No Longer Behind Closed Doors

Submission by Eastern Community Legal Centre  
to the Australian Law Reform Commission  
Elder Abuse Inquiry

*September 2, 2016*

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## BACKGROUND

Eastern Community Legal Centre (ECLC) is located in the eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Shire of Yarra Ranges. ECLC offers free legal advice from its offices in Box Hill, Boronia and Healesville during the day, at night and also through various outreach locations across the East, with a priority being given to those who are disadvantaged. Having operated for over 40 years, the ECLC is one of Australia’s most established community legal centres.

The Eastern Region has a number of areas of significant disadvantage. Healesville, in the Shire of Yarra Ranges, is home to the second most populous indigenous population in Victoria. The cities of Whitehorse, Maroondah and Knox host large communities of migrants to Australia, particularly from the Horn of Africa and Burma. The Eastern Region houses over 850,000 people from a diverse range of backgrounds.

In addition to direct legal services, ECLC also focuses on community development and education activities that empower clients, workers and the general community. It raises awareness of its service, new legal developments and human rights through various projects.

ECLC has been active in addressing elder abuse for many years and was a foundation partner in the establishment of Seniors Rights Victoria in 2008 (and continues to work in partnership). ECLC has led a successful elder abuse program since 2010, including establishing and leading the successful Eastern Elder Abuse Network (EEAN), the largest elder abuse network in Australia comprising approximately 100 organisational members representing over 60 organisations in the eastern metropolitan region of Melbourne, all of whom provide services and support to older people. The Centre also produces a large number of training and support tools as well as undertaking extensive prevention work. Despite no specific funding, ECLC currently receives considerable elder abuse client contacts.

The program has strong links to local and state government bodies and has established itself as a well-respected and effective program both regionally and interstate. Both ECLC and EEAN were extensively referenced in the recent Victorian Royal Commission into Family Violence Report.

ECLC welcomes the opportunity to be able to provide its views on this area of the law that directly impacts upon communities in this region and will address a number of the questions raised in the Issues Paper.

## WHAT IS ELDER ABUSE?

### 1. *How should elder abuse be defined or described?*

It is ECLC's experience that elder abuse is essentially *Intergenerational Abuse* which involves a significant breach of trust. This experience is also reflected in the World Health Organisation's definition of elder abuse as

*a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person (own emphasis).*

ECLC's submits that elder abuse also takes the form of Family Violence as comprehensively defined under section 5 (1) of the Victorian *Family Violence Protection Act 2008*.<sup>1</sup> It is noted that elder abuse often takes the form of misuse of Enduring Powers of Authority or Guardianship and causing an older person to under/overuse medication (chemical abuse).

### 2. *Key elements of best practice legal responses*

It is ECLC's experience that the majority of elder abuse is perpetrated by adult children or other close family members. It is submitted that there be a whole of system response to elder abuse across the justice, health and community service systems. The legal response should be included in this whole of system response. The response should ensure that as much as possible:

- The older person's autonomy and decision-making rights are paramount and substitute decision-making should be a last resort (even if the older person has some loss of capacity); and
- The older person's family relationships should be protected and maintained.

A key element of the best practice legal responses would also include legislative standards to ensure that:

- a) all Enduring Powers of Attorneys (EPAs)/ guardianship be verified with the older person or other family members; and
- b) evidence is provided from a recognised health professional that the older person has loss of capacity to the extent that they can no longer make their own decisions before the EPA can be enacted.

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<sup>1</sup> (1) For the purposes of this Act, **family violence** is—

- (a) behaviour by a person towards a family member of that person if that behaviour—
  - (i) is physically or sexually abusive; or
  - (ii) is emotionally or psychologically abusive; or
  - (iii) is economically abusive; or
  - (iv) is threatening; or
  - (v) is coercive; or
  - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person;

It is ECLC's experience that a wide range of professionals, (including lawyers, bank staff, GP's and allied health professionals, carers and other community/government service providers) come into regular contact with victims of elder abuse. It is therefore imperative that these professionals have the knowledge and understanding of the likely signs and potential preventative measures that can assist in keeping older community members safe from these harms. ECLC recommends that elder abuse training be an essential component of a wide range of academic qualifications and ongoing professional development.

In addition, professionals responding to elder abuse should utilise family mediation approaches wherever possible and interpreters more extensively when required.

- **Elder abuse legal services**

It is difficult to discuss "best practice legal responses" while (Commonwealth and State) government resourcing of legal and support services for older people can be at best described as piecemeal but is clearly woefully inadequate.

In 2007, the landmark *Older people and the law* report by the House of Representatives Standing Committee on Legal and Constitutional Affairs made a large series of recommendations particularly in relation to resources for legal services for older people, in the context of significant concern regarding elder abuse as follows:

**Recommendation 38**

*The Committee recommends that the Australian Government increase funding to the Community Legal Services Program specifically for the expansion of services, including outreach services, to older people by Community Legal Centres.*

**Recommendation 39**

*The Committee recommends that the Australian Government provide funding to Community Legal Centres to expand their community education role, with a specific focus upon older people.*

**Recommendation 40**

*The Committee recommends that the Australian Government establish a resource service for older people, accessible through a single contact point, such as an 1800 telephone number, that can provide assistance to older people in identifying the legal services that are available to them.*

*The Committee recommends that this be supported by a media education campaign to alert older people to their legal rights and to advertise the availability of legal assistance.<sup>2</sup>*

Almost ten years on, these recommendations remain largely ignored, with the very limited resources provided to address elder abuse within legal assistance services provided by state governments.

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<sup>2</sup> Older people and the law, House of Representatives Standing Committee on Legal and Constitutional Affairs, Canberra, 2007.

In 2006, the Seniors Legal and Support Service (SLASS) was established in Queensland, that provides free legal advice, information and social work services for people over 60. SLASS uses a clear multidisciplinary team approach with teams based within community legal centres in Brisbane and four key regional centres.<sup>3</sup>

In Victoria, Seniors Rights Victoria was established in 2008 as a new community legal centre focused on elder abuse by four agency partners, again building on the multidisciplinary team approach where lawyers and non-lawyer advocates (social workers or other relevant professionals) work together to assist the older person in the context of often complex family and financial dynamics.

While this service has done excellent work and ECLC is proud to be both a foundation and continuing partner, the funding levels in Victoria and indeed across Australia and clearly minimal when compared to the clear demand and need for these services.

Like other forms of family violence, is it patently insufficient to merely increase community awareness and educate health professionals without providing the necessary levels of resources to direct service responses. It is imperative that the ALRC inquiry closely examine both service models and an appropriate level of resourcing to meet this need.

### **3. Examples of elder abuse**

- **Case study: CALD communities**

*'Effie', a widow aged 81 of Greek background (and with limited understanding of written English) sold her home on trust to finance an extension to her son and daughter-in-law's home, in which she intended to live. She also appointed her son and daughter-in-law as joint EPAs. Effie intended to amend her will to reflect the financial advantage that her son had received. However, 18 months after moving in, Effie had developed some health issues and memory loss and was constantly being told that she was a burden to the family.*

*During what she thought was a visit to a friend in an aged care facility, Effie discovered that she had in fact been admitted to the facility and would not be returning home. The aged care facility had accepted her son and daughter-in-law's authority to organise the transfer, based on the EPA that they presented. No evidence of loss of capacity was asked for.*

*It was later determined that her capacity loss was only mild at this stage and should not have allowed the EPA to be enacted against her wishes. Her daughter (who lived interstate) was astonished to learn what had taken place and shocked and angry that the majority of her mother's house sale had been invested into her brother's home against her mother's wishes.*

*By now her mother's dementia did not allow for the drafting of a new will.*

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<sup>3</sup> <https://www.qld.gov.au/seniors/legal-finance-concessions/legal-services/>

- **Case Study: Matter of Trust**

*Matter of Trust is a partnership project led by ECLC in collaboration with EMR Communities' Council on Ethnic Issues, Victoria Police, the Sheriff's Office, Centrelink, EACH, the Migrant Settlement Committee and local community organisations, funded by the Victoria Law Foundation.*

*The original project was in response to the increase by the Sherriff's office in attending the homes of older people from CaLD backgrounds repossess their property for failure to make loan repayments after being guarantor for an adult child and not being aware of what they were signing and the implications.*

*A Community Advisory group was established with leaders from the Chinese, Greek and Indian communities to inform the content of three separate workshops planned and completed through 2015-16 for these communities. An Agency Reference group presented relevant information to each workshop to highlight possible supports available to families often experiencing these overwhelming and complex issues.*

*The workshops were led by these community leaders supported by ECLC staff and the content built around a 'narrative' - a community story created in the workshop as an effective way of raising issues in a non-confrontational manner and allowing space for a culturally sensitive conversation that will assist by providing information and hopefully break some barriers in access to services.*

*The project is preventative in approach but also provided an opportunity to connect with services if the issues are identified as a real problem for their family situation.*

*The key outcomes of this project were the:*

- *development of an education toolkit for bilingual facilitators to continue community conversations on financial elder abuse in CaLD communities beyond the scope of the project;*
- *raise awareness of financial elder abuse, and where to get help in CaLD communities*

*ECLC is working with its partners to expand this work in 2016-2018.*





#### 4. *What further research is needed?*

ECLC notes that there is an urgent need for a prevalence study across Australia. In the absence of such research, presently the police, local governments, hospitals, aged care and health services either fail to record elder abuse or record it as family violence, so that the data is skewed or not recognised as elder abuse. This prevents elder abuse from being recognised as a serious community issue. In 2011, the University of Western Australia conducted a qualitative and quantitative study of existing agency policy, service responses and recorded data into the extent of elder abuse in Western Australia and found.

*There does not seem to be a cohesive approach to elder abuse across government and non-government organisations. A strong government department is required to take leadership of this issue and to develop a broad and articulate multi-level elder abuse strategy. There is also a need to develop a better first-level response to elder abuse, perhaps involving a multi-agency team approach.*

*It has been noted that elder abuse research, policy and practice is about thirty years behind research, policy and practice in child abuse and domestic violence. Due to this fact, it tends to lack conceptual clarity and be poorly defined and measured. While a problematic concept, elder abuse is an issue of deepening concern in our ageing society and the challenge for government and welfare agencies is to ensure that there are adequate resources available to respond to it effectively.<sup>4</sup>*

Global research on the prevalence and incidence studies of elder abuse should also be considered in considering best practice strategies and approaches to the Australian context.

Standardised data collection and uniform standards, protocols and frameworks should be drafted across the whole service system that includes the mandatory data collection of incidents of elder abuse as a separate form of family violence. It is noted that there already exists a mandatory collection of similar data under family violence frameworks and protocols for instances of child abuse.

It is noted that similar data collection processes have been undertaken by the Division 2 Family Violence Police Unit together with the Knox City Council in Outer East Melbourne. It is understood that these are the first government bodies to pilot the specific and separate data collection of elder abuse. This is largely the result of their membership of and engagement with the Eastern Elder Abuse Network.

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<sup>4</sup> Crime Research Centre- the University of Western Australia: Clare, M, Blunder, B, Clare, J., Examination of the Extent of Elder Abuse in Western Australia- a qualitative and quantitative investigation of existing agency policy, service responses and recorded data. (April 2011), p 2.

## SOCIAL SECURITY

### 5. *How does Centrelink identify and respond to elder abuse?*

It is ECLC's experience that the identification of and response to elder abuse by Centrelink is either ad hoc or non-existent. ECLC understands that this is due to a lack of elder abuse training and lack of mandated requirements, including a lack of standardised data collection.

Centrelink should revise its awareness training, develop tools and prompts to staff to enable them to identify signs and conduct regular reviews to ensure that their elder abuse identification and support practices are current and effective. As already identified in this submission, the mandatory collection of data related to incidents of elder abuse should apply to the whole service sector and Centrelink plays a key role in collecting such data.

### 6. *Improving safeguards for Payment Nominees*

Centrelink should be required to check all applications for Payment Nominees to ensure that:

- a) they do not have a current criminal history,
- b) are not a bankrupt, and
- c) have proof that the older person knows of, and has approved the authorisation (proof can be provided by the older person, their lawyer or EPA).

These checks should be applied on a regular, annual basis.

In parallel with these checks, education campaigns should be devised to raise awareness of and target respectful relationships with older community members.

It is ECLC's experience that older people frequently state they are overwhelmed or bewildered by Centrelink processes and it is all too easy for adult children to usurp the payments and processes on their behalf - all too often at the cost of the older person's financial security. Centrelink should play a proactive role in providing suitably trained and qualified staff to clients with independent social workers to review cases.

### 7. *Changes to legal frameworks to improve safeguards*

Exemptions for access to Centrelink benefits should be extended to include parents who have migrated under a Parent Visa and are experiencing elder abuse. At present these exemptions are limited to spouse visas.

#### • *Case Study: Lin*

*"Lin" an elderly Chinese woman was left abandoned at a local church early one morning in an outer Melbourne. She only had a suitcase containing some personal belongings and no identifying information.*

*Lin had advanced dementia, incontinence and evidence of physical abuse. She did not speak English.*

*Local aged care providers and accommodation facilities could not assist as Lin was not in receipt of Centrelink benefits. A local charity eventually paid for the cost of her accommodation and care as there was no other option available to Lin.*

Settlement education is required for newly arrived migrants so that people are aware of the laws and systems in Australia regarding financial matters and the legal system. As the above case study illustrates, there should be consideration of the necessity of mandating migrant parents to leave an allocated percentage of funds in their own name as a potential safety net to guard against situations of financial elder abuse.

ECLC also notes that neglect, together with financial abuse is a common abuse that is perpetrated by payment nominees.

In relation to recipients of carers' benefits, there should also be a robust monitoring procedure to ensure that the appropriate level of care is provided to the older person including (but not limited to) requirements to have:

- an agreed care plan drawn up at the beginning of the care arrangement (which is regularly reviewed)
- bi-annual confirmation from the older person's general practitioner (GP) that appropriate care is being provided. (This would necessitate the GP seeing the older person for an assessment); and
- random audits of the older person and carers' finances conducted by Centrelink.

## **8. Safeguarding income management**

Centrelink's Billpay service could be extended to include payments to chemists, supermarkets, taxi companies or other likely expenditures by an older person to minimise the extent to which other family members can commandeer their pension or other benefits.

## **10. Other protections and safeguards**

In cases where alternative accommodation is required due to elder abuse, government bodies should reserve the right to charge the costs of this accommodation to the perpetrators of elder abuse.

All granny flat arrangements which involve the older person financing the cost (all or part) should require a detailed Family Agreement to be in place before the arrangement can be finalised. This could be overseen either by Centrelink or by a solicitor. These agreements would clearly outline the financial obligations and future plans should the older person need to move to an aged care facility.

The government should give long-term consideration to establishing a form of 'refuge' or 'safe place' for victims of elder abuse staffed by suitably trained personnel so that victims of elder abuse are kept safe from ongoing harassment, coercion and abuse by their perpetrators (who are generally family members).

## AGED CARE

### ***11. What evidence exists that elder abuse occurs in aged care facilities?***

ECLC notes that some aged care providers appear to ‘hold back’ on spending money that would improve an individual’s quality of life within their residential care facilities. For example, a reclining chair for an individual may not be a crucial health need, however it would vastly improve an aged care resident’s quality of life.

Apart from data collected by a small amount of elder abuse services, evidence that elder abuse is occurring is largely anecdotal. ECLC strongly recommends that an Australian-wide prevalence study include the elder abuse that occurs in aged care facilities.

### ***13. What changes are needed to aged care laws and legal frameworks to improve safeguards against elder abuse arising from decisions made on behalf of a care recipient?***

It should be mandated that all Enduring Powers of Attorney documents which have been enacted by an attorney, *particularly with regard to admissions to aged care facilities*, be thoroughly checked for validity and for evidence of the older person's loss of capacity to be provided. It should be further mandated that a capacity assessment should be undertaken by a neuro-psychologist or gerontologist and not merely a letter from a GP. A capacity assessment should be reviewed regularly ensuring that there is no change in circumstances for the older person.

### ***17. What changes to reporting assaults in aged care settings is needed?***

Reporting of elder abuse in aged care facilities is only mandatory when it involves staff. As a consequence, resident-to-resident abuse generally goes unreported and is treated as an in-house matter so that the facility’s reputation is not damaged. These practices serve to fuel further abuse against vulnerable older people.

As police cannot take statements from someone with dementia, this adds to the lack of reporting of abuse. This is further complicated by the fact that aged care facilities are seen primarily as “workplaces” for staff, rather than homes for older people.

Strategies which would help alleviate this form of abuse (and staff-related abuse) could include:

- Mandatory reporting of all forms of elder abuse, including resident-to-resident
- Surveillance equipment to be installed in all bedrooms and social areas as a minimum standard
- Conducting a prevalence study of all aged care residential facilities
- Elder abuse training for all staff and management of these facilities

## FINANCIAL INSTITUTIONS

### 25. What evidence is there of elder abuse in banking or financial institutions?

As far as ECLC is aware, there exists no formal reports or studies evidencing the extent of elder abuse involving banking and financial institutions. However, research by the Loddon Campaspe Community Legal Centre in 2008, [\*Responding to the financial abuse of older people Understanding the challenges faced by the banking and financial services sector\*](#)<sup>5</sup> outlined a broad range of concerns, challenges and opportunities for improvement in this sector.

ECLC points to the many cases that are heard before the Civil & Administrative Tribunals (and interstate equivalent jurisdictional forums) which indicate a high level of financial abuse that occurs by family members of older people, either via a Power of Attorney document, by deception (ie. forgery) or as a result of the older person's memory loss which is then exploited.

- **Case Study: Anne**

*'Anne' nominated her daughter as her Enduring Power of Attorney and a copy was given to her bank, which was put on file with the bank.*

*Soon after, Anne's daughter began to withdraw money from Anne's account on regular occasions (usually \$500 per time). The teller's only requirement was to check that the daughter was indeed the EPA and the money was withdrawn each time as a result.*

*No proof of identity or of Anne's loss of capacity was asked for. Over \$13,000 was withdrawn in this manner before other family members discovered what was happening.*

Banking codes of practice should be expanded to include:

- Proof of authority to enact an EPA (medical assessment indicating loss of capacity)
- A system whereby 'red flags' can be placed on all bank accounts which are being accessed by other family members
- Requirements to report all suspected or known financial abuse to the police or (if perpetrated by an EPA) to the Public Advocate
- Checks of Third Party Nominees to be tightened and made more robust
- Staff to undergo regular training in financial elder abuse.

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<sup>5</sup> J. Edmonds and P. Noble, *Responding to the financial abuse of older people Understanding the challenges faced by the banking and financial services sector*, Advocacy & Rights Centre Bendigo Victoria, 2008.

## FAMILY AGREEMENTS

### **27. Do older people face difficulties when family agreements break down?**

ECLC notes that the biggest issue with Family Agreements is that unfortunately, they seldom exist at all.

Most older people do not seek to have a Family Agreement or contract drawn when selling and moving into their adult child(ren)'s property. Many older people finance a granny flat or extension with little thought about how they will fund access to an aged care facility if this is required in the future. Nor will the older person consider what happens if their adult child divorces, decides to sell/move or dies.

When Family Agreements are drafted but break down, a requirement should be that the matter should be resolved by using a dispute resolution centre.

Family Agreements should be promoted and encouraged by aged care workers, banks and lawyers when older people are considering exchanging assets for care. If and when these break down, there should be a requirement that all parties undergo mediation. Abuse perpetrated through EPAs is one of the main areas of complaints that ECLC has experience of through its elder abuse prevention program.

Early intervention strategies should be put into place in order to prevent abuse perpetrated through EPAs. The government should consider the option of older persons being mandated to be counselled by a legal expert prior to being able to draft any agreements in order for them to be binding, and for the older person to understand their rights and risks in investing in their children's property. The government should bear the cost for funding legal assistance for older people in these circumstances.

## APPOINTED DECISION MAKERS

### **29. Is there evidence of abuse by appointed decision makers?**

Elder Abuse perpetrated through EPAs is one of the main areas of complaints that ECLC has receives. However, most cases go unreported due to lack of appropriate services equipped to deal with this issue. Private lawyers are expensive, VCAT applications are stressful and daunting, and police generally see matters relating to EPAs as civil matters.

- **Case Study: Sam**

*'Sam's second wife has been appointed as his EPA, unbeknown to his three children with his first wife. As Sam's dementia began to become evident, his wife enacted her authority and set about transferring large amounts of Sam's money from his bank accounts to either her own or her children's from her own first marriage. She bought a new car for her son and funded a trip overseas for her daughter.'*

*Sam indicated to his children that he was unhappy with what was happening but was fearful about complaining as she had threatened many times to place him in a nursing home. His children attempted twice to seek guardianship of their father via VCAT but were unsuccessful both times, mainly due to Sam's reluctance to speak out.*

*After his death, his children discovered there was almost no assets remaining in their father's name but were unable to seek retrospective accountability of the misuse of their father's EPA through the VCAT system.*

### **30. Should EPAs be required to be registered?**

Public Advocate bodies in each state should establish a register for all Power of Attorneys and Guardians which can be accessed by all states. This reform will help minimise the extent to which these documents are misused, forged or amended without consent or knowledge of the older person and their families. It will also be helpful in cases where the original document has been lost or destroyed.

Registration would allow authorities such as hospitals, banks, lawyers and aged care facilities to verify documents that are presented to them.

In the meantime, all Enduring Powers of Attorney (EPAs) / Guardian documents should be verified with the older person or other family members and should, by law, require evidence from a recognised health professional that the older person has loss of capacity to the extent that they can no longer make their own decisions before the EPA can be enacted.

### **31. Should duties of Powers of Attorneys be expanded?**

It is ECLC's experience that so much abuse is currently perpetrated by the EPAs themselves. The expansion of EPAs would require a robust and vigilant monitoring system. There is no monitoring system for current EPAs alone.

All EPAs should therefore be required to supply a written account of all financial transactions that they have been responsible for on a quarterly basis. This could be to Office of Public Advocate or to an appointed lawyer.

Penalties for abuse of a person by their EPA, guardian or administrator should be legislated and rigorously applied. This would also allow police to refer to criminal codes that would enable them to respond to this form of abuse a crime and not as a civil matter.

A caution here is that expansion of duties may cause some people to be reluctant to take on the role.

- 32. How can abuse by EPA's and Guardians be prevented?**
- 33. What role should Public Advocates play in responding to elder abuse?**
- 34. Should tribunals have greater jurisdiction to hear elder abuse matters?**

Public Advocates and Civil & Administrative Tribunals should:

- have their powers to investigate increased
- increase and rigorously apply penalties for abuse
- report all proven abuse matters to the police
- require all EPAs and guardians to supply a written quarterly account of all financial transactions that they have been responsible for
- ensure additional regular training is developed and applied across the whole service system
- create education campaigns about respect for older people and awareness of elder abuse.

## HEALTH SERVICES

### **35. How can health professionals help identify and respond to elder abuse?**

Health professionals play a key role preventing and acting upon suspicions of elder abuse. Therefore it is imperative that all health professionals are trained to be aware of and identify elder abuse.

Due to the significant role of health professionals coming into contact with victims and perpetrators of elder abuse, ECLC suggests that a clearing house be created with tools and e-learning training modules to equip health professionals with the knowledge they require.

Furthermore, this information and training should be conducted on a regular basis, providing the health professionals opportunities to engage in monitoring and evaluation, data analysis and cultural awareness and competency training.

- **Case Study: Behind the Curtain**

*In 2015, ECLC developed Behind The Curtain – a 2 minute video and posters aimed at GP's and health professionals. The rationale for the video was that a significant majority of older people experiencing elder abuse are most likely to confide in their GP or health professional.*

*The production of the Behind The Curtain video for GPs was funded by Eastern Melbourne Medicare Local and was distributed electronically to all GPs in the eastern metro*





region and posters distributed to regional hospitals EEAN members and medical clinics throughout the Eastern Metropolitan Region (EMR) through the EMPHN and other networks. ECLC also has also developed professional development training for health professionals to accompany the video.

It is hoped that with further funding, the video can be adapted to become a national TV commercial. The video can be viewed at <http://eclc.org.au/elderabuse>

## CRIMINAL LAW

### **42. In what ways should criminal laws be improved to respond to elder abuse/For example: should there be offences specifically concerning elder abuse?**

The hidden nature of elder abuse has caused a vulnerable cohort to be at best exploited and at worst, neglected and abused resulting in death. If criminal laws are created to recognise the significance of the harms caused by elder abuse, this could create societal conversations about elder abuse resulting in more awareness and knowledge about the issue.

Criminal laws specifically recognising the harms caused by elder abuse would also equip the police to investigate suspected cases of their own accord. Furthermore, police and the courts would be then required to address elder abuse (and therefore show that it is a very serious issue).

### **43. Do criminal laws regarding neglect offer appropriate responses to elder abuse?**

Laws should recognise the harms caused by the neglect of any person who is dependent on others for care, regardless of age.

Neglect offences currently exist only in limited jurisdictions. Other states have offences which relate to ‘failure to provide basic necessities’, but these are relevant to minors only.

The definition of neglect should be reviewed and expanded to allow for neglect as it applies to elder abuse and also should be included in the definition of family violence across jurisdictions.

### **44. Are protection orders being used to protect people from elder abuse?**

Only a small percentage of elder abuse cases result in protection orders, predominantly because the perpetrators are adult children for whom the older person feels responsible.

ECLC operates a family violence duty lawyer service four days a week at the Ringwood Magistrates’ Court. Victims and perpetrators of elder abuse frequently appear as clients in the ECLC duty lawyer list. However, it is ECLC’s experience that victims of elder abuse are extremely reluctant to proceed with the applications (which are often instigated by the police) and as a result, either only orders with limited protections are made, or applications are withdrawn.

- **Case study: Larry**

*'Larry' was a client in the ECLC family violence duty lawyer list. He told the police that he didn't want to proceed with the intervention order application that the police had initiated on his behalf. The police referred Larry to the ECLC duty lawyer to talk about his rights.*

*Larry told the ECLC duty lawyer that this was the third time that the police had attended at his home in the last six months due to his being subjected to assaults by his adult son (aged 30). The assault that precipitated the recent police attendance had rendered Larry unconscious. Larry refused to admit that his son had assaulted him and claimed that he fell down the stairs.*

*Larry said that the second time that the police attended, they had warned him that they would make an intervention order application on his behalf if they were called out to his home again. He was immensely embarrassed and feared that his son would be rendered homeless if he agreed to exclude him from the home (as recommended by the police).*

*Larry indicated that he understood that the police and ECLC were very concerned about his safety, but said that he loved his son too much to agree to exclude him from the home.*

*When he appeared before the Magistrate, the Magistrate questioned Larry closely on his safety. In the questioning, the Magistrate deduced that even if Larry were to have a full intervention order excluding the son from the home, that Larry would still allow him to stay (hence rendering the intervention order pointless).*

*A very limited order was made for Larry.*

Protection orders need to be more flexible to allow for (and to help maintain) close family relationships and/or and family care arrangements.

- **Case Study: Bob**

*'Bob', aged 69, is wheelchair bound from a degenerative disease. Bob and his daughter have a mutually dependent relationship as the daughter is unable to work or live elsewhere due to her drug addiction and he is reliant on her daily care so that he can avoid going into institutional care.*

*However, Bob is often neglected (not showered or given adequate food) and neighbours frequently ring police to complain about the daughter's yelling and abusive language late at night. The police have reported that they often feel powerless to respond due to Bob's reluctance to make a statement and a lack of criminal laws that allow them to press charges.*

*A protection order that could take into account the daughter's need to have treatment for drug addiction as well as some training in care of the elderly would have been beneficial in mitigating the abuse and ensuring that the appropriate support was put in place for both family members.*

#### ***45. Who should be required to report suspected elder abuse?***

Maintaining the rights of adults with legal capacity to have autonomy of their decision-making should be paramount when deciding on the reporting mechanisms for elder abuse. For that reason, mandatory reporting should not be applied to elder abuse.

Other than when serious physical or sexual abuse is evident or loss of capacity can be proven, the rights, autonomy and wishes of older people to have control of their decision making should be protected by law, even when those decisions are deemed not to be in their best interest by others.

A mandatory reporting regime would, by necessity, allow intervention and action to be taken on behalf of an older person without their consent or consideration of their wishes or circumstances.

Age should not be a factor for enabling intervention or bias any more than it would for a younger adult. Ageism has too often robbed an older person of their voice and their autonomy.

A more holistic approach is preferable which allows for education of staff who provide care or services for older people, and for greater levels of support to be put in place which mitigate the abuse while at the same time help maintain vital family relationships.

It is ECLC's experience that very few older victims will choose to resort to intervention orders, prosecutions or police involvement and fear of these actions only deters disclosure in the first place.

A 'whole of system' approach to the protection of vulnerable older people from elder abuse should look at systems and protocols to internally record instances of suspected elder abuse and to have policies and practices which thereafter support the older person in reporting (should they consent to this). Agencies should prioritise developing a relationship of trust with their clients to assist them to feel comfortable in providing consent to make reports to the police or other services.

As with all direct service provision work, there may be rare instances where an organisation or agency feels compelled to make a report to the police if they believe that someone's life is at risk. This should be recorded in internal policies, and used as a last resort as the relationship of trust with the client must be maintained. The client should be informed of such internal policies at the outset.

#### ***46. How should police respond to reports of elder abuse?***

Due to the absence of specific elder abuse criminal laws, police look to family violence codes, which relate primarily to intimate partner abuse and are inadequate in explicitly recognising the relationship between adult children and more complex care arrangements.

As most elder abuse occurs by adult children on whom the older person is reliant or is unwilling to see punished in any way, ECLC notes that it is very difficult for the police to respond appropriately.

Elder abuse training for police will therefore help to ensure that responses to abuse are more appropriate and aimed at preserving family relationships which are vital to the wellbeing of the older person. In addition, it is recommended that at least one officer with expertise in elder abuse needs to be appointed in each Family Violence Unit. This officer could then be responsible for

overseeing training and responses. This officer could also be responsible for overseeing regular “Operation Elder” exercises which target homes where elder abuse is known or suspected.

As previously referred to in this submission, police data and recording systems need to be expanded to include elder abuse as a specific form of abuse within the family violence frameworks.

ECLC again notes that similar data collection processes have been undertaken by the Division 2 Family Violence Police Unit together with the Knox City Council in Outer East Melbourne. It is understood that these are the first government bodies to pilot the specific and separate data collection of elder abuse. This is largely the result of their membership of and engagement with the Eastern Elder Abuse Network.

Criminal codes and family violence data collection systems need to also be more explicit in referring to the impact of elder abuse as a significant harm recognising that neglect is a key form of elder abuse.

## CONCLUSION

Elder Abuse is a complex issue that requires a whole of system response in order to achieve effective prevention and early intervention to protect older people within our communities. As detailed in this submission, ECLC has been involved in a range of prevention, early intervention and responsive approaches to elder abuse, however elder abuse still remains an unacknowledged or misunderstood harm in most aspects of social service provision.

Older people continue to be at significant risk of harm until there are public campaigns, awareness raising and accountability measures with full service responses in place. ECLC urges government to invest in future programs and public campaigns in a comprehensive strategy to prevent the further abuse of older people.

## CONTACT

ECLC appreciates the opportunity to be able to provide feedback to this Inquiry and welcome any additional feedback or questions to any issues raised in this submission.

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