7 September 2016



The Executive Director

Australian Law Reform Commission

GPO Box 3708

Sydney NSW 2001

Email: elder\_abuse@alrc.gov.au

**ELDER ABUSE INQUIRY - SUBMISSION FROM THE**

**HUME RIVERINA COMMUNITY LEGAL SERVICE (HRCLS)**

**ABOUT HUME RIVERINA COMMUNITY LEGAL SERVICE (“HUME RIVERINA CLS”)**

Hume Riverina CLS is a regional community legal centre based in Wodonga (Victoria) on the Victorian/New South Wales border. The centre provides generalist legal services to a vast catchment area of 17 Local Government Areas (LGA’s) in North East Victoria and the Southern Riverina of New South Wales, and is a cross border community legal centre.

ABS statistics from 2011 indicate a total population of 292,497 within the 17 Local Government Areas serviced by Hume Riverina CLS. In the 2014/2015 year, 62% of our clients resided in Victoria and 38% in New South Wales.

Services provided include legal advice and casework assistance with family law issues (child contact, property disputes, child support and spousal maintenance), family violence, child protection, credit and debt problems, fines, motor vehicle accidents, criminal law issues, consumer law issues, neighbourhood disputes, wills and estates, employment issues and tenancy issues. Clients often have interrelated Victorian and NSW legal problems.

Hume Riverina CLS focuses on assisting disadvantaged people who are not eligible for legal aid, yet cannot afford to pay for a private lawyer.

In the 2014/2015 year, Hume Riverina CLS provided 1927 advices with a total of 2815 legal problems, provided over 2000 information activities, delivered 29 community legal education sessions, and provided intensive casework to more than 387 people.

During this the 2014/2015 year, Hume Riverina CLS assisted 172 clients aged 60 years and over in relation to a vast range of legal problems. Hume Riverina CLS also provided a number of community legal education activities specifically targeting older people. This is the context in which we make the following submission.

**2: What are the key elements of best practice legal responses to elder abuse?**

1. Early intervention strategies

Raising community awareness of what elder abuse is, can help to minimise the risk of elder abuse occurring in the first place. It can also help people to identify if elder abuse has occurred (and what they can do about it). Raising the awareness of service providers who are likely to be working with older people is important. Service providers need to keep elder abuse in mind when dealing with older people, and should actively screen for elder abuse being a form of family violence when working with older people. If service providers are able to identify elder abuse and support people in this situation to get help at the earliest opportunity, it will help prevent the problems from becoming more serious.

*What works well: Community legal education*

Hume Riverina CLS (“HRCLS”) regularly provides talks in the community and to community groups about “Life Planning” which includes information about wills and powers of attorney. The aim of these presentations is to raise awareness of elder abuse and help people understand what they can do to avoid elder abuse. In the seminars, the presenter raises the issues of elder abuse in the context of an elderly person selling their home and purchasing a granny flat on their child’s property. If their child’s marriage breaks down and the property is sold, the elderly person may find themselves homeless. The issue of elder abuse is also discussed in the presentation in the context of information about powers of attorney, and the ways that life planning documents can prevent abuses of power by family members. These talks are often given in partnership with other service providers or during community events such as Senior’s festivals, to target elderly people.

In the 2014/15 financial year, HRCLS delivered several Life Planning talks in partnership with Older Persons Mental Health Service, Wangaratta as part of the “Healthy and Wise” program run by their Service. This Program is run each year by the Older Persons Mental Health Service in North East Victoria, and targets the elderly and also carers of people with disabilities, in relation to health and mental health issues. In the 2014/15 year, education sessions took place in rural locations in North East Victoria including Bright, Beechworth, Myrtleford, Wodonga and Mount Beauty, with a total of 97 participants. The partnership between HRCLS and the Older Persons Mental Health Service has ensured that many older people in rural communities have been able to participate in the “Life Planning” presentation and therefore be educated about elder abuse. HRCLS received the following feedback from Sue Cowan, coordinator for the Healthy and Wise program: “*The legal content is consistently and overwhelmingly received. Members frequently state it is full of very relevant and salient information that is helpful, and with many, surprisingly, having never heard of HRCLS. The members continue to state that the content addresses what they need and want to hear about to ensure their rights and that of their family/others are protected or asserted”*.

HRCLS has had elderly people (including victims of elder abuse) book appointments for legal advice, as a direct result of the law talks. It is common for people to provide feedback after the talks in relation to elder abuse that ‘I know someone in that situation.’ This shows that the seminars are effective in helping people to recognise if they (or a friend or family member) are being subjected to elder abuse, to recognise that there is a legal remedy available, and to also know where to go to get help.

1. Availability of free legal help for people experiencing elder abuse

If people experiencing elder abuse are unable to seek redress because they do not have access to legal help, then any legal remedies available to them at law may be out of reach.

Community legal centres and other legal service providers such as Legal Aid Commissions should be funded to enable them to provide free legal advice and community legal education seminars for elderly people. Free legal services should be funded to provide services in regional and rural communities in particular where there is a shortage of lawyers that people can access for help if they have experienced elder abuse, or want to put legal frameworks in place (such as life planning documents or property agreements) to protect themselves against elder abuse.

Commonwealth funding cuts are expected for community legal centres from 1 July 2017, and this may reduce the services that are able to be offered to elderly people in rural areas by community legal centres.

1. Lawyers working with elderly clients

Lawyers should be trained to ensure they ask appropriate questions of elderly clients when taking instructions or assisting elderly people. This should include asking simple questions that screen for elder abuse (in the same way that lawyers should screen for other forms of family violence).

Lawyers and other service providers need to be aware that family members often don’t want to take action against their own family, who may be perpetrating the abuse. Sometimes listening to them and trying to get them to see the seriousness of their situation can be helpful (without necessarily suggesting any one way to proceed, but listening to what they want to happen).

The development of best practice guides and screening tools for lawyers would be helpful to ensure that elder abuse is identified by lawyers who are working with older clients, and to ensure that lawyers know how to work with these clients most effectively.

1. Cross border responses

Ideally, a “cross border” response to elder abuse is needed. For residents living on state borders, there are complications in relation to seeking protection through family violence orders and there are also difficulties in relation to putting in place power of attorney and guardianship documents, as different states have different laws and frameworks.

HRCLS provides services to people living on the Victoria/New South Wales border, who frequently travel between the states to access services such as shopping, health care, recreational facilities, to visit family or friends, and for many other reasons. Residents of Wodonga, Victoria frequently travel to Albury, New South Wales (a 6 kilometre distance or 10 minute drive) and vice versa. According to data collected by HRCLS in a 2015 survey, 47% of people living in Albury-Wodonga cross the border more than 7 times per week and over 14% said they did so more than 16 times.

In this geographical context, it is difficult for older people to understand what laws apply to them and this can expose them to greater risk of elder abuse. For example, if an older person would like to arrange power of attorney/guardianship documents, it can be unclear as to whether there are Victorian or New South Wales documents needed, or both. The legislation in each state generally recognises documents created within the other state, however there are different documents that create different results, depending on the state’s legislation, and the powers that may be given in each state (under a power of attorney or guardianship document) are also different. This can create confusion for older people seeking to protect themselves or assert their legal rights, as well as for the service providers who may be seeking to understand the legal status in a particular case.

Issues regarding family violence orders in a cross border environment, which may be needed for the protection of elderly clients, are discussed below under Question 44.

For these reasons, we submit that a national approach is necessary and uniform laws should be created that set out a consistent approach in relation to all laws that affect older people.

**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.**

**Assisting Aboriginal and Torres Strait Islander People**

Aboriginal and Torres Strait Islander people as well as culturally and linguistically diverse communities often have strong family ties. This may mean that an elderly person will commonly lend money to a younger family member, even when they cannot afford it. If the younger person fails to repay them, they may fall into financial hardship.

Another issue to be addressed is that there are low numbers of Aboriginal and Torres Strait Islander people who have wills or powers of attorney in place, which can help protect them against elder abuse.

*What works well: Wills workshop for Aboriginal clients*

Over a two day period in the years 2015 and 2016, Gilbert and Tobin (a private law firm) assisted HRCLS on a pro bono basis with the running of a free Wills, Power of Attorney and Guardianship workshop for Aboriginal people in the Albury Wodonga region. On Day 1, Gilbert and Tobin provided education about legal planning and focused on issues particularly relevant to Aboriginal people. In the afternoon of Day 1, lawyers began taking instructions from people attending the workshop. On Day 2, lawyers drafted wills and power of attorney documents, and returned the completed documents for clients to sign and take home. The workshop in 2015 was held at Albury Wodonga Aboriginal Health Service and the workshop in 2016 was held at the Mungabareena Aboriginal Corporation in Wodonga.

This initiative was taken to address the low numbers of Aboriginal people who have wills or power of attorney documents. By delivering a workshop in partnership with the local Aboriginal Health Service, the workshop was culturally appropriate and also well promoted within the local Aboriginal community. As a result of having wills and power of attorney documents in place, elderly people are less likely to be exposed to elder abuse.

**Assisting people from rural, regional and remote communities**

People from rural, regional and remote communities often struggle to obtain legal advice because they may no longer drive and also because there is a shortage of lawyers in these areas. Legal advice must be accessible both financially and by location.

*Case study A:*

*HRCLS is assisting an elderly grandmother in a rural town who let her granddaughter move into her house. The grandmother has since asked the granddaughter to leave but the granddaughter has refused to leave. Despite the fact that there is no legal arrangement in place (such as a tenancy or occupancy agreement) and that the granddaughter is trespassing on the property, the grandmother has been unsuccessful in getting the local police to assist her to have the granddaughter removed from her property.*

*Case study B:*

*HRCLS assisted a client who lived in a nursing home in a regional community, who had been very sick. She had a husband but someone else in her nursing home got himself listed as her next of kin instead. She was too sick to worry about it. He then created a my.gov account and had all her passwords (the elderly lady did not operate my.gov). He began asking what tablets she was taking and where all her money was going. The lady eventually received advice from HRCLS.*

In both of the above case studies, HRCLS has assisted the older person to assert their legal rights. Without the assistance of a community legal centre, these older persons would have been unable to access a private lawyer to get help to assert their rights, and would have received no help from the Police who tend not to assist in these types of cases of elder abuse.

HRCLS is currently funded to provide rural outreach services to assist such clients, but Commonwealth funding for community legal centres is expected to be reduced by 30% from 1 July 2017. If HRCLS is no longer funded to travel to rural locations, then it may leave elderly people such as those mentioned in the case studies above with no avenues for assistance available to them.

*What works well: Subsidised wills scheme*

HRCLS operates a scheme in conjunction with local law firms within its regional catchment area. Those who have financial difficulties and a particular vulnerability may have a will, power of attorney or enduring guardianship drafted by a private lawyer at a reduced rate pursuant to this scheme. At present, the rate for this service is $55.00. Provided that clients meet the criteria (which is assessed at an interview with HRCLS) they will be given a voucher to use for the drafting of one of the above documents. The scheme is helpful for increasing the numbers of people who have life planning documents in place, which can help prevent elder abuse for these people.

*Case study C:*

*An older woman with serious health issues was seeking to have a will made, power of attorney and enduring guardianship granted. However, she had no-one to appoint as executor, attorney or guardian. She had a telephone appointment with Hume Riverina CLS as she was unable to travel. During this appointment, the woman was asked to consider who she may be able to appoint to these positions. She was required to pay $55 for each document required and it took her some time to save this money. When HRCLS contacted her some time later, she had managed to appoint people as required. She had also found a solicitor to complete the necessary documents at the reduced rate. She reported that she felt relieved and happy with the outcome.*

**29: What evidence is there of elder abuse committed by people acting as appointed decision-makers under instruments such as powers of attorney? How might this type of abuse be prevented and redressed?**

HRCLS has seen examples of elder abuse committed by people appointed as decision-makers under powers of attorney. Often the elder abuse is noticed by a concerned family member, and sometimes it is reported to the police but no action is then taken. Improved mechanisms for concerned family members to seek a review of the use of the power of attorney would help. An investigation into whether the police could play a role in assisting with earlier intervention would also be useful. It is important that action to redress the abuse is taken at the earliest opportunity, to avoid the escalation of the abuse and reduce the potential impacts on the older person.

*Case study D:*

*HRCLS assisted an elderly man who lived in a nursing home as a client. He had given power of attorney to his 3 children jointly and severally. One child emptied his bank account. He didn’t find out until he couldn’t pay his nursing home bill. The police were reluctant to prosecute for fraud as they said it was a civil issue (there is an inconsistency of approach among the police force). Our client was also extremely reluctant to take action against his daughter and at the time that the action was being taken, the daughter declared bankruptcy. Unfortunately this meant that no meaningful redress was then available for this man.*

**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?**

A register of decision making instruments would be ideal, but unfortunately there are many hurdles that would need to be overcome for this to be achieved. In particular, it is noted that given that powers of attorney and decision making instruments are legislated through state-based frameworks, it would potentially create significant issues for people living in border communities if required to have an instrument registered in two different states before it could be recognised. A national scheme for decision making instruments would be needed first. Cross border issues are discussed further above under Question 2.

**35: How can the role that health professionals play in identifying and responding to elder abuse be improved?**

See Question 37.

**37: Are health-justice partnerships a useful model for identifying and responding to elder abuse? What other health service models should be developed to identify and respond to elder abuse?**

Older people frequent medical practices, therefore having a lawyer onsite within health centres increases the accessibility of lawyers for patients. Health professionals are ideally placed to identify elder abuse, but also may need to refer clients to lawyers for there to be an effective response to elder abuse. We submit that health-justice partnerships are an effective model of service delivery to facilitate health and legal professionals working together to identify and respond to elder abuse. Such partnerships allow for collaboration and education between health professionals and lawyers, leading to health professionals being more aware of elder abuse and also encouraging health professionals to refer clients to lawyers.

The LAW Survey found that, when faced with a legal problem:-

* + - 18.3% of people took no action[[1]](#footnote-1);
		- 51.1% sought advice from a professional or formal advisor[[2]](#footnote-2); and
		- In cases where advice was sought from a professional or formal advisor, only 30.3% of individuals sought advice from a legal advisor[[3]](#footnote-3).

Therefore, having a lawyer on-site at a health centre may mean that clients get legal help (as a result of being referred to a lawyer by their doctor or health worker) in cases where they would otherwise take no action to get legal help.

The *“Holistic Outreach and Legal Assistance” (HALO) project* currently being piloted by Hume Riverina CLS is a partnership with Gateway Health in Wodonga and Wangaratta. The partnership enables a lawyer from the Hume Riverina CLS to deliver free legal advice appointments on-site at Gateway Health one day per week. This allows clients to access legal support, family violence specialist agencies and other supports in the one building/location.

Clients in regional areas may feel more comfortable accessing legal advice anonymously at a Health Centre, where they are not seen walking into the community legal centre. Furthermore, being co-located with a health service encourages referrals from health professionals (such as GPs) at the earliest opportunity.

In the Wangaratta partnership, 15 out of 66 clients (or approximately 1 in every 4 clients) seen on-site by the lawyer at the health organisation between February – June 2016 have been over 65 years of age.

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

Victoria has introduced new legislation that makes it easier to penalise or take someone to VCAT for financial abuse for someone under a power of attorney. It would be a positive step if this was developed in other states.

**44**: **Are protection orders being used to protect people from elder abuse? What changes should be made to make them a better safeguard against elder abuse?**

Family violence protection orders are available in certain situations to assist people experiencing elder abuse to seek protection. However, for residents who live on the border, there are often complications in relation to obtaining family violence orders.

Problems include:

1. Incidents of family violence which occurred in New South Wales are not always taken into account when a person seeks an intervention order in Victoria

Magistrates are often unable to take into account incidents occurring in New South Wales when determining whether there is a need to make an intervention order in Victoria. Occasionally, Magistrates will adopt a flexible approach and admit evidence of the incidents that occurred in New South Wales, but only if there is also evidence presented of incidents occurring in Victoria.

1. Registration of interstate orders do not happen automatically

An Intervention Order made by Wodonga Magistrates Court has no effect in New South Wales and an Apprehended Domestic Violence Order made in the Albury Local Court has no relevance in Victoria, unless the order is registered in the other State (which is the responsibility of the protected person). Only final orders (not interim orders) can be registered.

Legal advice is not automatically provided to victims living on the border about the need to have their order registered interstate and the onus is on the victim to know and understand that they are required to take this additional step to get the protection they need within their regional area.

Although there are procedures for registering orders from one court in the other, there is no protocol or understanding between court registries or police that ensures this happens. There is also no requirement that a person who has an intervention order taken out against them in Wodonga be notified if it is registered in New South Wales, leading to further confusion and the potential for breaches to occur accidentally.

Members of the public and even police officers often do not understand this jurisdictional gap and its practical implications.

1. Enforcement of orders is problematic in a cross-border environment

Police are restricted by state boundaries in relation to enforcing orders and taking action regarding breaches of intervention orders that are reported to them. Furthermore, Court proceedings that are brought in Victoria arising from intervention order breaches cannot take into account incidents that occurred in New South Wales, even though that incident may have constituted a breach of the intervention order if it had occurred within Victoria.

As a result we submit that uniform laws are needed to increase the effectiveness of protection orders for elderly people in rural cross border environments.

Additionally, unless the police are called to an incident, many older people are not aware of their rights to obtain a protection order when they are the victim of abuse. Many older people experiencing elder abuse are unaware of the broader definition of family violence and do not realise they are victims. More education of older people is required so that they know when it is possible to seek a protection order, and how to go about doing so.

**46: How should the police and prosecution responses to reports of elder abuse be improved? What are best practice police and prosecution responses to elder abuse?**

We refer to Case Study A and Case Study D above, which highlights the reluctance of Police to get involved in situations of elder abuse involving issues about financial abuse, property or trespass where there are no physical threats of violence as such. In both scenarios, the situation for the clients involved would have been improved if the Police had taken action when they were notified about the elder abuse situation. We submit that there should be clearer policies within the police force to provide guidance about when action should be taken in these types of situations that can have both criminal and civil repercussions.

Given that people in elder abuse situations often turn to the police for assistance, there are opportunities for early intervention in elder abuse cases that are currently being missed. One solution might be to train police to make appropriate referrals of such clients to the appropriate services that can help them.

Careful consideration should also be given as to whether there should be special offences for elder abuse. The Police would be more likely to take action in relation to elder abuse if there were clear criminal offences, and the community awareness of elder abuse would be likely to increase.

Submitted by:

**Hume Riverina Community Legal Service**

*7 September 2016*

Contact person:

Sarah Rodgers

Principal Lawyer

srodgers@umfc.com.au

(02) 6057 5000

1. Coumarelos, C., Macourt, D., People, J., McDonald, H. M., Wei, Z., Iriana, R., & Ramsey, S. (2012). *Legal Australia-wide survey: Legal need in Australia* (Vol. 8). Law and Justice Foundation, 93. [↑](#footnote-ref-1)
2. Ibid, 106. [↑](#footnote-ref-2)
3. Ibid, 111. [↑](#footnote-ref-3)