**SUBMISSION THE AUSTRALIAN LAW REFORM COMMISSION**

**IN RELATION TO DISCUSSION PAPER 83 (December 2016)**

**ON ELDER ABUSE**

January 3, 2017

This submission has been prepared on behalf of the members of the Elders and the Law Class at Ringwood U3A – with membership of 20 women and men with a wide variety of ‘elder’ lived experience. The recommendations presented in this submission arose out of discussions on issues that confront elderly people still living in the broader community.

This class has met weekly during term through 2016, initiated a U3A Ringwood Open Forum on Elder Abuse in collaboration with Eastern Community Legal Centre on 25th October 2016, and initiated a group discussion on the points to be presented in this submission.

**The ‘elderly’ are not a problem to be solved – but rather a substantial resource to be respected. We are a key sector of the community whose human rights are often ignored and sometimes more deliberately undermined.**

**Our recommendations:**

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| **Reference to Questions in Discussion Paper 83** | **Our Recommendations** |
| **Question 1: What is elder abuse?** | 1. That the definition of ‘elder abuse’ be broadened to not only encompass financial, physical and emotional/psychological abuse but also insist institutions treat the elderly with respect |
| **Question 4: What is elder abuse?** | 1. That government departments re-evaluate their pre-occupation with technology generally, and computers in particular, to transmit information to, and receive input from, elderly clients. |
| **Questions 27/28: Family Agreements** | 1. That the default position in relation to monies provided by the elderly to their offspring should be that they are a loan rather than a gift |
| **Question 35: Health Services** | 1. That ‘Right to Die’ legislation be introduced. |

**Submission from:**

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**In response to Question 1: What is elder abuse?**

**Recommendation No. 1: That the definition of ‘elder abuse’ be broadened to not only encompass financial, physical and emotional/psychological abuse but also insist institutions treat the elderly with respect.**

**Recommendation No. 2: That government departments re-evaluate their pre-occupation with technology generally and computers in particular to transmit information to, and receive input from, elderly clients.**

There is an ethos within government departments whereby ‘on-line’ is frequently the only option provided to clients. This ethos declares that departmental systems and processes are designed for the benefit of the department rather than the needs of the clients they claim to serve.

Not everyone in the community has easy access to a computer, nor are they sufficiently computer confident – or physically able – to take advantage of the computers available in local venues, such as the library or neighbourhood house.

It seems that departmental staff are unable to accept that there are many people who have never used a computer, do not have one, and have no intention of ever acquiring one. Some clients will have limited computer skills only, for example email, there will be those who become stressed at the idea of completing forms on-line, and those reluctant to enter information on-line because they may make a mistake which could have negative consequences down the line.

**Example A:** **Centrelink staff frequently *direct, recommend and encourage* their clients to use on-line services and have steadily down-graded other avenues of communication which the elderly find more comfortable.**

This causes the elderly to often feel besieged, and interpret the above verbs as being “forced” to conform to processes that range from intimidating to downright scary. A visit to a Centrelink office can result, after standing in a queue, in being told to “go on-line” – with no argument being brooked.

**Example B:** **The telephone option has been so degraded as to be regarded by many seniors as a form of elder abuse**.

Are you aware that when a client rings Centrelink, they are more often than not faced with a wait of 1.5 hours? This lack of respect for elderly people is elder abuse.

In addition, many elderly people are substituting their land line for a mobile phone in order to reduce costs. Use of a mobile phone to call Centrelink can have the client lose battery power before they have managed to reach a Customer Service Officer. More staff need to be provided to address this issue.

There was a time when callers could opt to have a staff member return the call, but no indication as to time was given. However, this service has been discontinued. This service should be reinstated with clients advised that a call-back will take place within one hour.

**Example C**: One of our members participated in one of the seminars held in the area which focused on fees and charges for residential and home care. The audience was confronted with a total of 72 overhead slides.

**Technology has overtaken communication. A re-evaluation of this method of educating the general public is overdue.**

Centrelink needs to find ways of communication that are more sympathetic to the needs and capacities of the elderly.

**We recommend that within such seminars there be a variety of presenters with each presenter having a maximum time of 30 minutes to cover their particular issue. It is essential that all presenters have excellent public speaking skills and are not dependant on overhead slides as a means of communication.**

The only time Centrelink appears in the Discussion Paper is in terms of helping to identify where elderly people may be being abused by their family and in institutional care (Section 10).

The Discussion Paper does not explore how Centrelink itself is visiting on its clients processes which are incompatible with the needs and abilities of its clientele.

**In response to Questions 27 and 28: Family Agreements**

**Recommendation 3: That the default position in relation to monies provided by the elderly to their offspring should be that are a loan rather than a gift.**

Whilst a range of financial issues where the elderly may suffer abuse is addressed in Discussion Paper 83, this particular issue receives scant attention (10.37) and refers to a secured loan where the son defaulted and the parents as guarantors responsible for the bank loan. More astute elderly people are very wary of acting as a guarantor. However there are inevitably those who mistakenly trust their offspring, or do not understand their obligations under such a loan agreement.

We note that the Discussion Paper does not cover the broader situation where loans take place outside financial institutions. Examples are requests for money to (a) purchase a new car, (b) pay for house renovations, (c) help settle a credit card debt, (d) start a small business. This is an issue that concerns elderly people still living independently who may be encouraged to lend money to their adult offspring or grandchildren. Pressure, to varying degrees, may be applied to the older person to assist by either lending money or making a gift.

**Current situation:** At present the default position with any money provided by the elderly to their adult children is a gift. The only exception is where there is a signed formal loan agreement, preferably prepared through a solicitor. The problem with the current situation is that the elderly parent/s may be under pressure not to draw up a legal agreement.

**Example D:** “Mum, would you mind lending me some money for a deposit on a unit I want to buy? I just need $50,000, maybe a bit more if you can afford it. I am tired of paying rent and I dread the possibility of never having a home of my own. Please Mum, can you possibly help me out?”

“Of course I’d love to help you to have your own home. But, well, it won’t be easy to get hold of the money for you. It will mean selling some of my shares and taking money out of my term deposit at the bank. And I shall need you to pay me back on a monthly basis because it will mean I will be short of income – like the income from dividends on the shares I would have to sell.”

“Oh, Mum, that’s great. I’ll do everything I can to pay you back out of my salary each month.” *(there is no sign that their offspring has heard the mother’s request, or even taken it seriously)*

“I would like us to get a formal loan agreement drawn up with a solicitor ..”

“Don’t you trust me Mum!”

“Of course I do. But with this amount of money, it is wise to draw up a legal document so we are both covered.”

“But that will cost extra money Mum. You know I’m good for it. You know I’d never let you down. When have I ever let you down before? This is just an unnecessary hassle.”

Example A illustrates that it can be difficult for an articulate and legally aware parent to state a condition for a loan: even more so for a more vulnerable and less confident parent, especially with offspring who are prepared to engage in emotional blackmail.

**Example E:** His parents were not well off. They just had $20,000 in a term deposit fund. But their son wanted to start a lawn-mowing business and had trouble getting bank finance. The son placed a great deal of pressure on his parents to lend him the money to buy a trailer, a lawnmower, a whipper/snipper, and pay for a leaflet drop – asking for $8,000.

The parents were not aware that a loan document was necessary – he was their son and it was their duty to help him out. But things did not turn out well.

When his parents asked for the money to be returned, he said there was no money left. The local Community Legal Service told the parents there was nothing they could do to recover their money because technically it was considered to be a gift. When the parents pleaded with their son, he threatened to deny them access to their young grandchildren if they continued to pressure him.

**Example F:** As it is at present, any verbal agreement between the lender and the borrower is null and void. Should the lender die prior to the return of such monies, they are not included in the estate. Therefore, if there are three children, and one has ‘borrowed’ $100,000, that money will be regarded as a gift and will not be incorporated into the estate – thereby disadvantaging the other beneficiaries of the will.

There is a further issue – if a son or daughter who has received loan money without a formal written agreement decides not to repay that loan, there is no recourse for the parents to recover the money.

If money is meant to be a gift, we maintain that it would be much easier for parents to request their adult children to sign a gift document.

If money is meant to be a loan, a document outlining terms, repayment rates, etc. should be prepared.Parents then have the option to take legal action to recover a loan: where there is no documentation as at present, this is not possible.

The default position in regard to any money being a loan rather than a gift would ensure improved protection to the parent/s and make less susceptible to emotional blackmail, whether wilful or inadvertent.

**In response to Question 35: Health Services**

**Recommendation 4: That ‘Right to Die’ legislation be introduced.**

One of the most stressful issues confronting older people is not death itself – we know by now it is inevitable. The issue is the manner of our dying. We strongly believe that all people should have the right to die with dignity when faced with imminent death. We are not concerned simply with our own pain and the loss of our own selves, but with the burden the current situation places on our loved ones who are forced to witness our last weeks.

**Example G:** We all know people who have endured or are currently experiencing particularly distressing final weeks and months, and we refer in particular to those we care for who are suffering from Motor Neurone Disease, inoperable brain tumours, and Myeloma bone cancer.

We are all too aware that we may be among those who will face the possibility of such a cruel death. We are also aware that there are limits to palliative care services and support. To deny the release into death that Right to Die legislation will give is a form of abuse.

There may be good reasons for this critical issue not being raised in the Discussion Paper, however, denying people facing an imminent and painful death the right to die is a form of abuse, and because this is likely to affect older people more, a form of elder abuse.