



# Respect your elders

Submission by Eastern Community Legal Centre with  
the Eastern Elder Abuse Network  
to the **Australian Law Reform Commission**  
**Elder Abuse Discussion Paper**

*March 6, 2017*

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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 operating an Elder Abuse Prevention Program for the last eight years. In that program, the Elder Abuse Prevention Co-ordinator provides education and community development to the Eastern community in issues related to Elder Abuse. ECLC also convenes the **Eastern Elder Abuse Network (EEAN)** which is comprised of 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.

ECLC acknowledges the significant contribution of members of the EEAN provided at consultation workshops with ECLC to guide and inform this submission.

ECLC and EEAN welcome the opportunity to be able to provide our views on this area of the law that directly impacts upon our communities and will address a number of the questions raised in the Discussion Paper.

## 1. Introduction: What is elder abuse?

It is ECLC and EEAN'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).*

It is noted that the term 'elder abuse' is beginning to gain broad recognition as a serious issue. This understanding has, to a large extent, come about by a preparedness to name the abuse, in the same way that 'family violence' has been identified. Attempts to water down the term in order to remove the confronting nature of the abuse may seriously delay the law reforms that are needed and will help to maintain the general lack of public awareness that currently exists about this issue.

It is submitted 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. National Plan

### 2-1 *A national plan to address elder abuse should be developed.*

ECLC and EEAN endorse this proposal.

The importance of addressing ageism as a key priority under the national plan must be acknowledged.

It is further submitted that the implementation of a national plan and the strategies proposed in the Discussion Paper to "combat elder abuse beyond the extent of legal reforms" could be implemented and overseen by an independent elder abuse national peak body. Such a body could be established under

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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;

the guidance of the COAG steering committee proposed under section 2.9 of the Elder Abuse Discussion Paper.

## **2-2 A national prevalence study of elder abuse should be commissioned.**

ECLC and EEAN endorse this proposal and note this is consistent with ECLC's original submission to the ALRC Elder Abuse Inquiry.<sup>2</sup>

ECLC confirms its previous recommendation that where data is already being collected in relation to family violence by relevant agencies including the police, local governments, hospitals, aged care and health services, incidents of elder abuse should be clearly and separately collected as a distinct subset of this data.<sup>3</sup>

## **3. Powers of Investigation**

### **3-1 Additional powers of investigation for State & Territory public advocates and guardians**

ECLC endorses the proposal to give consent based "support and assist" investigative powers to public advocates and guardians. ECLC also wishes to emphasise the need to respect the rights of older people to self-determination.

With reference to 3.34 of the Elder Abuse Discussion Paper, ECLC agrees that it should be **recommended** that state and territory governments apply the powers of investigation for all adults with care and support needs.

### **3-2 Guiding principles for investigation by public advocates and guardians**

ECLC and EEAN endorse the proposal to implement guiding principles as outlined in the discussion paper.

### **3-3 Powers of investigation**

ECLC and EEAN endorse the proposal to give all public advocates and guardians in each state and territory the power to require that a person, other than the older person, should furnish information, produce documents or participate in an interview relating to an investigation of elder abuse.

### **3-4 Outcomes of an investigation**

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<sup>2</sup> *No Longer Behind Closed Doors* Submission by Eastern Community Legal Centre to the Australian Law Reform Commission Elder Abuse Inquiry, September 2, 2016, p 9

<sup>3</sup> *Ibid* p9

ECLC and EEAN endorse the proposal to allow public advocates and guardians to provide a holistic response to suspected abuse or neglect.

### 3-5 Third party disclosures of elder abuse

ECLC and EEAN endorse the proposal to protect any person who reports elder abuse to the public advocate or guardian in good faith.

## 4. Criminal Justice Responses

ECLC and EEAN **recommend** that there be some amendments to the current criminal justice system.

Whilst there are difficulties associated with establishing laws that relate solely to specific groups of people i.e. older persons, this should not preclude much needed laws from being enacted. Indeed, laws are routinely made which target particular classes of victims, such as laws relating to children, emergency service workers etc., some of which duplicate other laws which criminalise the same type of behaviour in different ways (i.e. assault charges, drink-driving offences, sex offences etc.).

As with other laws, such as family violence legislation, elder abuse offences will require a range of protections to be in place to ensure that family relationships are preserved as far as possible. These protections can be utilised by victims if they wish but the primary focus will be on criminalising the elder abuse behaviour and creating a deterrent for others.

While new offences created in the *Powers of Attorney Act (Vic) 2014* may address elder abuse circumstances to some extent, the following situations remain largely unregulated and consequently unrecognised as harms within the criminal justice system:

- **Financial abuse in the absence of powers of attorney documents.** Civil proceedings in the absence of any valid Powers of Attorney will fall within a court rather than a tribunal jurisdiction. As a result, they can be lengthy, costly and result in public exposure. This is a strong deterrent for victims resulting in significant under-reporting of elder abuse.
- **“Theft” and “obtaining property by deception” in elder abuse matters.** Under Victoria’s Crimes Act, the basic definition of theft is defined under section 72 as:
  - (1) A person steals if he dishonestly appropriates property belonging to another *with the intention of permanently depriving the other of it.*<sup>4</sup>
  - (2) A person who steals is guilty of theft; and "thief" shall be construed accordingly.

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<sup>4</sup> Own emphasis

For the purposes of this submission, further explanation of the offence of theft is elucidated in section 73(2)(a) and (b), namely:

- (2) A person's appropriation of property belonging to another is not to be regarded as dishonest—
  - a. if he appropriates the property in the belief that he has in law<sup>5</sup> the right to deprive the other of it, on behalf of himself or of a third person; or
  - b. if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it;...

In addition, section 81 of the Crimes Act 1958 defines "obtaining property as deception" as follows:

- (1) A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
- (2) For purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and "obtain" includes obtaining for another or enabling another to obtain or to retain.

...

- (4) For the purposes of this section, "deception"—
  - a. means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person; and
  - b. includes an act or thing done or omitted to be done with the intention of causing—
    - i. a computer system; or
    - ii. a machine that is designed to operate by means of payment or identification—

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

It is arguable that the criminal offences as outlined above could and should apply in current elder abuse matters, particularly in circumstances of financial abuse. However, in reality, the application (and enforcement) of the law creates a false distinction between theft in familial circumstances and theft in non-familial relationships. This is not more apparent than in elder abuse matters. Financial abuse in elder abuse matters is often categorised by law enforcers as "family disputes" and this is made more

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<sup>5</sup> Own emphasis

difficult with elder abuse not being widely recognised as a significant harm occurring in society.

Reasons for lack of prosecution include lack of evidence or, in cases where the victim does not have legal capacity, a 'lack of credible witnesses'.

There is also the added dilemma that victims are reluctant to engage with the criminal justice system in relation to their family members. As such, financial elder abuse is not prosecuted under the above existing criminal laws. Regrettably, it is therefore arguable that as a result of elder abuse not being prosecuted, elder abuse is not recognised as a significant harm warranting criminal justice interventions. ECLC and EEAN have encountered examples of vulnerable older victims of financial abuse at a considerable disadvantage for opportunities for redress. Current norms in relation to lack of prosecution also fail to hold perpetrators of financial elder abuse accountable for the harms they have caused, hence, perpetuating the ability to continue the behaviour.

Whilst over-criminalisation of members of society is not endorsed by the submission writers, it is **recommended** that the ALRC should consider amendments be made to State and Territory criminal codes that clearly define elder abuse in all its forms. The definition of elder abuse (as recommended earlier in this submission) should be included in the 'definitions' section of all State and Territory criminal codes.

In the offences of theft and obtaining property by deception for example, it is recommended that the ALRC should consider including a clear definition of financial elder abuse and how it can be proved under these offences. When elder abuse is clearly defined in all relevant legislation, including all State and territory criminal codes, it enables judicial decision makers and law enforcers to be able to clearly rely on the offences for prosecution. Furthermore, it makes it very clear within the law that elder abuse is a recognised harm that requires State protection. Finally, the inclusion of elder abuse within relevant criminal codes will act as a legislated deterrent.

## **Neglect**

Police currently conduct welfare checks in relation to older people who are reported to be experiencing neglect but are hampered through lack of specific neglect offences that allow charges to be made.

Neglect, as it manifests in elder abuse matters, is immensely distressing to not only the victim, but also to bystanders who are extremely concerned about how to intervene and care for the victim of elder abuse. Currently under section 24 of the Victorian Crimes Act, the offence of 'negligently causing serious injury' exists. Serious injury *inter alia* is defined as:

- 15 (a) an injury (including the cumulative effect of more than one injury) that—
  - (i) endangers life; or
  - (ii) is substantial and protracted...



One of the elements of the offence of *negligently causing serious injury* is establishing if the person has a duty of care.

Criminal offences also exist such as “recklessly causing injury”<sup>6</sup> or “intentionally causing injury.”<sup>7</sup>

“Injury” as defined under the Crimes Act includes physical injury or harm to mental health. Physical injury includes unconsciousness, disfigurement, substantial pain, infection with a disease and an impairment of bodily function. Harm to mental health includes psychological harm but does not include an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm.

Elder abuse can occur across the whole spectrum of what may fall within current legal definitions of ‘injury’ or ‘serious injury.’ However, in cases of what is commonly known as adult ‘neglect’ - it is often the omission of actions that cause the harm. The omissions are caused by someone who generally has a duty of care for the older person. The harms that are suffered often cannot constitute ‘serious injury’ under the law as it is difficult to prove that there has been behaviour that has endangered a life (pursuant to case law and other standards of life endangerment as accepted under this definition). Furthermore, it often cannot be proven that the injury is ‘substantial’ or ‘protracted’ (by the same standards required to be proven under offence related to ‘serious injury’). Elder abuse prevention workers and even the police have reported frustrations with the inadequacy of the laws as they pertain to this particular issue as there are regular examples of justified suspicions of ‘neglect’ occurring within communities with little if no possibility of being addressed by the justice system.

It is **recommended** therefore that consideration should be given to the creation of an offence of negligently causing injury, whereby the injuries are not significant enough to amount to ‘serious injury’ under the law but are physical and mental harms nonetheless caused by the act or omission of someone against another.

If elder abuse was clearly defined and recognised in criminal legislation as recommended, an older person who is displaying bruising, scratches, cigarette burns and general poor physical condition could come to the attention of law enforcers who are then empowered to investigate and potentially charge carers/family members with negligently causing injury.

When dealing with assault related matters it is often common for an accused to be charged with alternative offences. For instance, an accused charged with *intentionally causing serious injury*, may also be charged with the alternatives under the Crimes Act; *recklessly cause serious injury*, *intentionally cause injury*, *recklessly causing serious injury*. They may also be charged with unlawful assault under the

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<sup>6</sup> Crimes Act 1958 (Vic) s 17

<sup>7</sup> Crimes Act 1958 (Vic) s 16

Summary Offences Act and Common Law Assault. These latter offences are often used when the evidence demonstrates a lower level assault where injuries are minor, for example causing pain.

The creation of the offence of ‘negligently causing injury’ (together with elder abuse being recognised clearly within criminal legislation) hence provides the opportunity for the justice system to intervene where perpetrators of elder abuse are held accountable for their acts or omissions that contribute towards an older person’s presentation of what is commonly known as ‘neglect.’ The creation of this offence also acts as a deterrent.

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### **Case Study**

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*Margaret is a frail aged pensioner in her late 80's with full cognitive capacity. She has her son and grandson and his girlfriend living with her in her home, all of whom are unemployed and have drug and alcohol addictions. In addition, her son has a serious hoarding issue. Service providers no longer allow workers onto the property due to the hoarding and verbal abusiveness of the son. Neighbours frequently call police about loud arguments, cars arriving and leaving at all hours of the night and the state of the property. They also report seeing Margaret with bruising and in a general poor physical state. Police strongly suspect that Margaret's welfare in the home is at risk and that she is fearful of her son and grandson which prevents her from disclosing any abuse. As no crimes have can be shown to have occurred, police say that they are limited to warnings and orders to clean up the house and take better care of their elderly mother. If elder abuse was clearly defined and recognised within the Crimes Act, it is possible that the police could charge Margaret's son with "negligently causing injury" to Margaret. This in turn could lead to a better outcome for Margaret in that she would have State protection and also it being clearly recognised within the law that the perpetration of elder abuse is a criminal offence.*

### **Offences for misusing powers of attorney**

ECLC and EEAN also welcome the indictable offences created under the *Powers of Attorney Act (Vic)* 2014 and supports the amendment of other state and territory laws to be consistent with this legislation.

It has been difficult for the misuse of a power of attorney to be categorised as a criminal act due to the implied authority granted under the power. The creation of these specific offences has served to

impress the responsibility undertaken by attorneys and to act as a deterrent for the breaching of that responsibility.

### **Police training**

ECLC and EEAN support enhanced police training in relation to elder abuse.

Training should include:

- distinctions between elder abuse and other forms of family violence including the complexities involved in disclosure and response
- specific information about referral and response options
- substitute decision making including powers of attorney and guardianship, as well as tribunal appointments
- cultural awareness of experience of elder abuse of older Aboriginal people including culturally specific family structures and definition of “family member”
- cultural awareness of the experience of elder abuse of older people from Culturally and Linguistically Diverse backgrounds
- the experience of older people from lesbian, gay, bisexual, transgender and intersex communities, who live in regional and remote areas and who are living with a disability
- ways in which older people with cognitive impairment can provide information to police and an understanding that a diagnosis of cognitive impairment does not automatically mean loss of legal capacity

The submission writers note the valuable community policing function of the Victoria Police Community and Seniors Registers. The Registers play an important role in connecting vulnerable and isolated community members with their local police, building trust and rapport and providing an opportunity for elder abuse early intervention and access to services for older people and people living with a disability. Ensuring the future of these Registers is paramount to preventing further incidents of elder abuse from occurring.

### **Police Family Violence Units**

On page 19 of ECLC’s submission to the Elder Abuse Inquiry<sup>8</sup>, ECLC **recommended** that “at least one officer with expertise in elder abuse needs to be appointed in each Family Violence Unit. This officer

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<sup>8</sup> *No Longer Behind Closed Doors* Submission by Eastern Community Legal Centre to the Australian Law Reform Commission Elder Abuse Inquiry, September 2, 2016, p 19

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."

## 5. Enduring Powers of Attorney & Enduring Guardianship

### 5-1 - 5-13

ECLC and EEAN endorse all proposals under this section.

In relation to proposal 5-7, ECLC and EEAN **recommend** that persons who are acting under an enduring power of attorney document should be required to report any of the ineligibility criteria listed therein which arise after the document has been signed. Where power has not yet been activated, the report should be made to the donor who may then amend or revoke the document. Where the power has been activated and the donor no longer has capacity to make or revoke an enduring power of attorney, the report should be made to the tribunal with appropriate jurisdiction.

It is noted that the complex nature and serious implications of powers of attorney, particularly in light of the risk of abuse, mean that such documents would ideally be drafted by or with the assistance of a lawyer with relevant expertise. However, the limited resources of community legal centres mean that the majority of community members who seek legal assistance are referred to private lawyers who charge a wide range of fees.

A priority area of most community legal centres in Australia is addressing family violence. A power of attorney document that has been properly drafted by a lawyer with relevant expertise who is able to assist the donor to conduct a risk assessment for elder abuse is arguably a mechanism to assist in the prevention of family violence. In the alternative, power of attorney documents improperly drafted or made in the absence of appropriate advice have been shown to be used as tools of elder abuse. ECLC **recommends** that funding be provided to community legal centres on that basis to assist older people experiencing vulnerability who do not have the means to access a private lawyer.

ECLC also **recommends** that the relevant professional bodies in each state and territory produce a standard fee structure which has means tested options and publish a directory of those lawyers who have agreed to adopt the fee structure.

### **Question 5.1**

#### **Who should be permitted to search the national online register without restriction?**

It is submitted that authorised bank, hospital, health, legal and aged care personnel should have access to the national online register, as these people are routinely presented with power of attorney documents that affects their service provision to the older person. In order to preserve agency of the represented person, there should be the option for them to elect whether there are certain organisations that the represented person *does not* want to have access to their power of attorney.

### **Question 5.2**

#### **Should public advocates and public guardians have the power to conduct random checks of enduring attorneys' management of principals' financial affairs?**

ECLC and EEAN support the random checks as detailed due to the deterrent and early intervention benefits. Often, financial abuse is not discovered until funds have been dissipated and unrecoverable.

## **6. Guardianship & Financial Administration Orders**

### **6-1 - 6-2    *Enhanced knowledge of roles and responsibilities***

ECLC and EEAN endorse non-professional guardians and financial administrators being informed of the scope of their roles, responsibilities and obligations and to the signing of undertakings of these roles.

### **Question 6-1**

#### **Should information for newly appointed guardians and financial administrators be provided in the form of:**

- **Compulsory training**
- **Training ordered at the discretion of the tribunal**
- **Information given by the tribunal to satisfy itself that the person has the competency required**
- **Other ways?**

ECLC and EEAN support the use of an optional online training program that both private and tribunal appointed guardians and administrators are recommended complete when they accept their appointment. The tribunal could then have the option of ordering completion of this training program at its discretion.

ECLC notes the importance of ensuring that resources are allocated to the development of such information in community languages that is culturally appropriate.

### Question 6-3

**What is the best way to ensure that a person who is subject to a guardianship or financial administration application is included in this process?**

It is noted that the approach taken by the Victorian Civil and Administrative Tribunal in guardianship and administration matters is to make best efforts to ensure the inclusion of the proposed represented person in the process. This includes conducting hearings at more accessible locations for the proposed represented person, such as in the board room of their aged care facility, or conducting hearings by telephone.

## 7. Banks & Superannuation

### 7-1 Banks responding to elder abuse

ECLC and EEAN endorse the proposal to strengthen the *Code of Banking Practice* so that reasonable steps to prevent financial abuse can be taken.

ECLC and EEAN support the recommendation under 7.9 of the Elder Abuse Discussion Paper that 'red flag' systems be complemented by resources provided by banks and government agencies to improve people's financial literacy, particularly around online banking, credit and debit cards and other banking methods that are difficult to monitor.

Further to the guidelines discussed under 7.21 around banks providing access to guardians and administrators, ECLC also recommends that in the case of privately appointed representatives the bank also require evidence of the activation of that power, such as detailed medical assessment of the donor's loss of capacity to make or revoke an enduring power of attorney.

### 7-2 Authorising third parties to operate bank accounts

ECLC and EEAN endorse the proposal that two witnesses including at least one qualified witness are required to sign the authorisation for third party access to a customer's account and that the customer be required to sign a declaration to demonstrate their understanding of the access provided to the third party and risk of abuse.

ECLC also **recommends** that a system be developed by banks to provide close monitoring of all transactions made by authorised third parties.

## 8. Family Agreements

### 8-1 Low cost options to resolve disputes

ECLC and EEAN endorse the proposal that state & territory tribunals have jurisdiction to resolve family disputes involving residential property under an ‘assets for care’ arrangement.

The following additional **recommendations** are made:

- ECLC and EEAN endorse the recommendations discussed under 8.44 and 8.45 of the Discussion Paper that compulsory conferences facilitated by the tribunal should be a required pre-action procedure for the hearing of family agreement disputes. However, exceptions should be allowable for special circumstances where mediation is not appropriate including elder abuse.
- Specific funding should also be provided for existing community based alternative dispute resolution services such as the Family Relationship Centre, Family Mediation Centre and Relationships Australia to conduct mediation where the parties do not wish to take the matter to the tribunal.

#### Question 8-1

##### How should ‘family’ be defined for the purposes ‘assets for care’ matters?

ECLC and EEAN submits that “family” should be defined in the same way that it is defined under the Family Violence Protection Act (Vic) 2008.

## 9. Wills

### 9-1 Guidelines for legal practitioners

ECLC and EEAN endorse the proposal for the Law Council of Australia, together with state and territory law societies, to review the guidelines for legal practitioners in relation to the preparation and execution of wills and other advance planning documents. It is **recommended** that the guidelines include information on obtaining medical assessments of capacity where the legal practitioner is alerted to any doubts around testamentary capacity.

ECLC also **recommends** that the witnessing requirements for wills be brought into line with the Victorian requirements for powers of attorney under the *Powers of Attorney Act 2014*. This would mean that:

- that at least one of the witnesses to a will be a witness authorised to witness affidavits or a medical practitioner; and

- that witnesses must know that they are witnessing a will and certify that the will-maker appeared to have testamentary capacity and to be signing the document freely and voluntarily.

### **9-2 - 9-3      *Witnessing Death Benefit nominations & power of substitute decision makers***

ECLC and EEAN endorse both proposals under this section, and support the recommendation under 9.37 that the same guidelines proposed under 9-1 for wills also apply to binding death benefit nominations.

## **10. Social Security**

### **10-1 - 10-4      *DHS Elder Abuse Strategy, direct contact with age pensioners, roles & responsibilities and training***

ECLC and EEAN endorse the proposals under this section.

The following additional **recommendations** are made:

- People receiving carers' benefits should be required to sign an agreement with respect to the care to be provided, similar to Family Agreements. These agreements should be reviewed annually by Centrelink in consultation with the older person.
- A Family Agreement should be required by Centrelink where a transfer of assets for care impacts on Centrelink entitlements.
- Contributions to assets for care should not be seen as 'gifts' (which affect the older person's aged pension eligibility), but as an 'asset for care' arrangement which is subject to different assets testing. Assets tests need to be mindful that the loss of an older person's home increases their vulnerability to abuse or neglect.
- Greater questioning by Centrelink should take place when an older person changes their care or financial arrangements to enhance monitoring of possible abuse. This should involve face-face interviews and a review of any Family Agreement or paid care arrangement that may be in place.
- Tighter restrictions should be applied to third party nominees, including:
  - the removal of online registration to increase the oversight of who is nominated as a third party and/or requirement to have certified approval of third party nominee an authorised person such as medical practitioner or lawyer; and
  - the removal of allowance to have benefit payments made to third party nominees bank accounts.



- Information about Centrelink and other pension-related issues should be provided in a wide range of community languages to assist people with CaLD backgrounds to better understand their rights and obligations.
- Centrelink should be required to assist the older person to report any misuse of a power of attorney or guardianship to the public advocate to investigate under their proposed powers of investigation.

## 11. Aged Care

### *11-1 - 11-6 Compulsory reporting & complaint handling and employment of aged care staff*

ECLC and EEAN endorse the proposals under this section.

ECLC and EEAN support the recommendation that all aged care workers be subject to the national database process as outlined under 11.139 of the Discussion Paper.

However, ECLC and EEAN support the importance of guiding principles that emphasise the individual rights of older people to self-determination particularly with regards to their family connectedness, personal care and residential options. Older people should be consulted and included in the reporting process where possible.

#### **Question 11-2**

##### **How long should an employment clearance remain valid?**

ECLC and EEAN consider that the aged care standard which requires checks to be performed at least every 3 years is appropriate.

#### **Question 11-3**

##### **Are there further offences which should preclude a person from employment in aged care?**

Anyone with a criminal record relating to assault, theft, fraud, family violence or elder abuse should be precluded from employment in aged care. In the case of spent convictions, the prospective employer should assess the timeframes, type of offence and likelihood of re-offending with due diligence.

### *11-7 Restrictive Practices*

ECLC and EEAN endorse the proposals under this section.

### **11-8 Requirement of appointed decision makers for aged care agreements**

ECLC and EEAN endorse the proposal under this section.

### **11-9 - 11-11 Community and official visitors**

With the exception of 11-9 (b)<sup>9</sup>, ECLC and EEAN endorses the proposals under this section.

The following additional **recommendations** are made:

- Visits by Official visitors should be random and unannounced (similar to health inspectors).
- Older people should be consulted in any reporting processes.

## **12. Other Issues**

### **Professional development training**

- As proposed under the new *National Plan*, elder abuse training should be required for all aged care providers, police, the judiciary, court staff, bankers, health workers, law students, lawyers and any other service providers who work with or provide a service for vulnerable older people. This will require government support for resources and amendments to educational curriculum.

### **Enhanced information for CaLD families aimed at preventing elder abuse**

ECLC refers to our previous submission<sup>10</sup> and make the following **recommendations**:

- In cases involving Parent Visa applications, the Australian Government should provide the following information in (community language) to the migrating parent/s:
  - the rights of the older person in Australia
  - the expectations in regard to the provision of care and transfers of assets for care
  - details about the financial bond that the sponsoring child/children have paid to the Australian Government for their future needs and welfare
  - support that is available to them should they require it
- Sponsoring child or children should be required to sign Family Agreements before finalisation of Parent Visa applications are completed.
- The Australian Government should require that a percentage of the migrating parents' assets be set aside for exclusive access by the parent/s should they need it.

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<sup>9</sup> Regarding 11-9 (b) which states that community visitors would be responsible for referring care recipients to complaints mechanisms, we consider that this should be the role of the agency who oversees the community visitor scheme.

<sup>10</sup> *No Longer Behind Closed Doors* Submission by Eastern Community Legal Centre to the Australian Law Reform Commission Elder Abuse Inquiry, September 2, 2016, p 10-11

## **Case Study: Matter of Trust**

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*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 to 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 its 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;*
- raising of awareness of financial elder abuse, and where to get help in CaLD communities*

*ECLC is working with its partners to expand this work.*

## **Support for prevention and intervention services**

ECLC strongly **recommends** that as part of the national plan, state and federal governments recognise the valuable resources provided by existing services and the need to develop those services and fund new services where necessary.

ECLC reiterates its earlier submission<sup>11</sup>, that “(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>12</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>11</sup> *ibid*, p 6

<sup>12</sup> *Older people and the law*, House of Representatives Standing Committee on Legal and Constitutional Affairs, Canberra, 2007.

## Resources at courts and tribunals

ECLC **recommends** that funding be allocated for support services for older people at magistrates' courts dealing with family violence and related criminal matters, and tribunals dealing with substitute decision making matters. Specialist counsellors and social workers could support older people to engage with the legal processes as well as providing advice, information and referrals specific to elder abuse.

## Conclusion

ECLC and EEAN welcome the recognition this inquiry has brought to the challenges of addressing and preventing elder abuse and ageism, and, in particular, the need for investment in the proposed National Plan. The funding of an independent national peak body is crucial to the development and implementation of the National Plan.

We note the importance of ensuring that the empowerment of older people and the right to self-determination is paramount to every recommendation.

Significant commitments to resourcing existing and new initiatives will be required from all levels of government. The importance of training of all those whose work brings them into contact with older people is a key theme of this submission.

This submission also highlights the need to ensure that all forms of elder abuse across all sectors of our society are identified and that our responses recognise how the experience of elder abuse can vary significantly. Particular resources need to be dedicated towards those older people in our society who are experiencing a greater level of vulnerability, including older people from Aboriginal and Torres Strait Islander communities, CaLD background, LGBTQIA communities, isolated older people and those living with disabilities.

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