14 August 2016

Haya Snobar

The Executive Director

Australian Law Reform Commission

GPO Box 3708

SYDNEY NSW 2001

Dear Ms Wynn

**Re: Elder Abuse (IP: 47) Submission on Question 2**

**Best Practice Guidelines for lawyers and advocates assisting elderly persons suffering from financial abuse with specific emphasis on Culturally and Linguistically Diverse (CALD) elderlies**

I am currently in my final semester of a Bachelor of Laws at Murdoch University. Throughout my degree I have completed various research tasks to a high standard. In addition, I have volunteered at SCALES Community Legal Centre (Human Rights Clinic) (“SCALES”) and The Humanitarian Group (“THG”) for over two years as a legal clerk and Arabic interpreter. At both SCALES and THG I dealt extensively with vulnerable clients including those who are from a CALD background, homeless, Indigenous and LGBT. During my time at SCALES and THG I was greatly aided by best practice guidelines for lawyers dealing with specific client groups.

**CURRENT BEST PRACTICE GUIDELINES**

At present, there is no uniform best practice guideline that aides lawyers assisting elderly clients. Seniors Rights Victoria has published a best practice guideline for lawyers assisting elderly clients at risk of financial abuse (“the SRV Guideline”).[[1]](#footnote-1) This guideline sets out:

* the legal practitioner’s role;
* tests in assessing the capacity of an elderly person;
* education materials on preventative measures;
* relevant law;
* notes on issues with substituted decision-making; and
* referrals and resources.

The SRV Guideline briefly mentions specific considerations regarding CALD clients. A lawyer who wishes to assist these types of clients will require much more detailed and specialized information.

**EMPHASIS ON BEST PRACTICES FOR ASSISTING CALD ELDERLIES**

“Australia is a culturally diverse society.”[[2]](#footnote-2)

**By 2021 more than 30% of Australia’s older population will have been born outside of Australia.[[3]](#footnote-3)**

The Advocare ‘Elderly Abuse in CALD Communities: Best Practices Guidelines’ study states that this increase may be the result of changing patterns of Ethnic Migration to Australia.[[4]](#footnote-4)

The House of Representatives in their report *Older People and the Law* (2007)[[5]](#footnote-5) and the organization Capacity Australia[[6]](#footnote-6) acknowledge that Elderly CALD clients are both at higher risk of financial abuse and significantly disadvantaged when it comes to accessing services for several reasons, including:

* language barriers;
* onerous cultural expectations that elderly people should be primarily cared for by their families;
* issues with trusting authorities as a result of experiences with public figures/ authorities in their country of origin;
* cultures that do not recognize the signs of financial abuse due to the expectation that a parents finances should be passed on to the children; and
* specific mental illnesses related to torture and trauma for elderly CALD persons from a refugee background.

For these reasons, any national best practice guidelines must extensively address best practices for lawyers and advocates assisting elderly clients from a CALD background.

**PURPOSE OF A BEST PRACTICES GUIDELINE ON ELDER FINANCIAL ABUSE**

Financial abuse and consumer fraud are the most common type of elder abuse.[[7]](#footnote-7) Legal services are costly and often beyond an elderly person’s budget, particularly in cases where one has suffered or is suffering from financial abuse. The majority of elderly clients receive assistance from community legal centres. Community legal centres are often lacking in funding and resources. As a result, they are often forced to rely on volunteers with limited experience. The creation of a national uniform best practice guideline for legal practitioners assisting elderly victims of financial abuse is essential as it will:

* alleviate stress on community legal centres struggling to properly equip lawyers and legal volunteers;
* create a national expectation of the standard of care owed to elderly persons; and
* encourage private firms to assist in providing pro-bono legal services to elderly persons by giving lawyers a quick guide to basic practices essential to assisting elderly clients.

A best practices guideline will promote and support older people’s ability to participate equally in their community and access services and advice, allowing it to meet the scope of the ALRC Terms of Reference.[[8]](#footnote-8)

**POTENTIAL CHALLENGES**

The Australian government must be prepared to invest significant financial and material resources in order to create a best practices guideline with specific emphasis on CALD elderlies because:

* creating a best practices guideline will require inter-agency collaboration between NGO CALD groups and government agencies such as the Department of Health, My Aged Care and HACC;[[9]](#footnote-9)
* CALD seniors must be involved in projects to explore the issues of elder abuse. This requires outreach into CALD communities, education and the formation of strong networks with CALD leaders; and
* diversities exist within CALD communities.

**CONCLUSION**

A uniform best practice guideline for lawyers and advocates assisting elderly persons suffering from financial elderly abuse plays a significant role in an elderly person’s right to access justice. I endorse the submission made by Advocare and the Center for Vulnerable Children and Families on elder abuse in CALD communities. I further recommend the structure and content of the SRV Guideline when forming a national best practice guideline for lawyers as it provides complex information in a simple, easy to understand format. Finally, I submit that special emphasis should be made on best practices when assisting CALD clients in any uniform best practice guideline implemented.

1. Louise Kyle, 'Assets for Care: A Guide for Lawyers to Assist Older Clients at Risk of Financial Abuse (Guideline, Seniors Rights Victoria/ Council on the Ageing, 2012). [↑](#footnote-ref-1)
2. Above n 2. [↑](#footnote-ref-2)
3. Department of Social Services, Australian Government, *National Ageing and Aged Care Strategy <*<https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/07_2015/dss1582_aged_care_strategy_cald_a4_vaccessible.pdf>> [↑](#footnote-ref-3)
4. Dr Barbara Black Blundell and Prof. Mike Clare, 'Elder Abuse In Culturally and Linguistically Diverse Communities: Developing Best Practice' (Report, Centre for Venerable Children and Families/ Advocare Incorporated, September 2012), 3, 7.2.3. [↑](#footnote-ref-4)
5. Standing Committee on Legal and Constitutional Affairs, House of Representatives, *Older People and the Law* (2007), 166. [↑](#footnote-ref-5)
6. *Sangita Bhatia, 'Elder Financial Abuse in CALD Groups'* (Presentation, Capacity Australia, accessed 14 August 2016). [↑](#footnote-ref-6)
7. Standing Committee on Legal and Constitutional Affairs, House of Representatives, *Older People and the Law* (2007), 15. [↑](#footnote-ref-7)
8. Australian Law Reform Commission, Protecting the Rights of Older Australians from Abuse, Terms of Reference (Elder Abuse: IP 47) *<*[*https://www.alrc.gov.au/publications/terms-reference-15*](https://www.alrc.gov.au/publications/terms-reference-15)*>.* [↑](#footnote-ref-8)
9. *Sangita Bhatia, 'Elder Financial Abuse in CALD Groups'* (Presentation, Capacity Australia, accessed 14 August 2016). [↑](#footnote-ref-9)