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16 November 2017

The Honourable Nick Goiran MLC
Chairman
Select Committee into Elder Abuse
Legislative Council
Parliament House
PERTH WA 6000

Dear Minister

INQUIRY INTO ELDER ABUSE

Thank you for your letter dated 18 September 2017 inviting written submissions in response to the Inquiry into Elder Abuse.

Legal Aid WA provides legal advice, assistance, and representation in a wide range of civil law matters including assistance to people who are experiencing elder abuse, particularly financial elder abuse.

We are grateful for the opportunity to make a submission to this Inquiry and now **enclose** a copy of our submission.

We look forward to the outcome of the Inquiry and wish to indicate that we are happy to appear before the Committee when required.

Please do not hesitate to contact Justin Stevenson, Director Civil Law Division, Legal Aid WA to discuss our submission.

Yours faithfully

Justin Stevenson
for DIRECTOR OF LEGAL AID



LEGAL AID
WESTERN AUSTRALIA

SUBMISSION

LEGAL AID WESTERN AUSTRALIA

**SELECT COMMITTEE INTO ELDER
ABUSE**

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Table of Contents

Introduction.....	3
Terms of Reference.....	3
(a) Determine an appropriate definition of elder abuse.....	3
CASE STUDY 1	5
(b) Identify its prevalence.....	5
(c) Identify the forms of elder abuse, including but not limited to neglect ...	6
CASE STUDY 2	9
(d) Identify the risk factors	10
CASE STUDY 3	11
(e) Assess and review the legislative and policy frameworks	12
CASE STUDY 4	12
(f) Assess and review service delivery and agency responses.....	13
CASE STUDY 5	15
(g) The capacity of the Western Australia Police to identify and respond to allegations of elder abuse	16
(h) Identify initiatives to empower older persons to better protect themselves from risks of elder abuse as they age	16
(i) Consider new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse	17
CASE STUDY 6	17
(j) Consider any other relevant matter	18

SUBMISSION

LEGAL AID WESTERN AUSTRALIA

SELECT COMMITTEE INTO ELDER ABUSE

Introduction

Legal Aid Western Australia (LAWA) provides a wide range of information, advice and representation services to vulnerable and disadvantaged people throughout Western Australia. We provide assistance in criminal, family and civil law matters.

The Civil Law Division at LAWA regards elder financial abuse as a priority area of legal need. Our response is mostly directed to this area of elder abuse.

Assistance in elder financial abuse matters is provided by way of legal advice, minor assistance or representation under a grant of legal aid.

LAWA appears in hearings at the State Administrative Tribunal (SAT) in guardianship and administration matters, especially where elder abuse is a factor.

LAWA is an active member of the Alliance for the Prevention of Elder Abuse WA (APEA: WA) convened by Advocare and is a member of the Reference Group convened by the Department of Justice tasked with protecting the rights of older Australians.

We are pleased to make this submission to the Select Committee into Elder Abuse and would be happy to appear before the Committee in the future.

Terms of Reference

(a) Determine an appropriate definition of elder abuse

A number of agencies have given a great deal of consideration to the definition of elder abuse. Most recently the Australian Law Reform Commission has given in depth consideration to the definition.

In our submission, it is important to adopt a broad definition of elder abuse.

The age at which someone is considered to fall into the category of “elder” is usually about 65, however this should not necessarily be applied in an inflexible way.

In our experience there are a number of other factors to consider including:

- Whether the person is Aboriginal or Torres Strait Islander. There is a significant gap in the life expectancy of Aboriginal and Torres Strait Islander people and other Australians.
- Whether the person is from a culturally or linguistically diverse (CALD) community. Some older people from CALD communities may experience social isolation to a higher degree than other Australians.
- The older person may otherwise be more vulnerable to abuse because of ill-health or disability and more dependant on adult children or others in the community for care and support, regardless of their age.

We support the World Health Organization (WHO) definition of elder abuse (see below), primarily because it is broad, includes the feature of a relationship of trust, and would also include neglect:

‘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’.

APEA: WA defines elder abuse as any act which causes harm to an older person and occurs within an informal relationship of trust, such as family or friends. The *Elder Abuse Protocol, Guidelines for Action*, published by APEA: WA is informed by a great deal of research and engagement with stakeholders over many years. We support the definitions of elder abuse as set out in the *Elder Abuse Protocol, Guidelines for Action*.

Other organisations may use broader definitions, and include abuse that is perpetrated by paid workers in a position of trust such as accountants, carers, health professionals, real estate agents, etc. Some of the abuse perpetrated in those scenarios may constitute criminal offences and therefore subject to criminal prosecution on complaint to the Police.

Abuse can take many forms, including financial or material abuse, neglect, emotional or psychological abuse, social abuse, physical abuse, or sexual abuse.

The following case study illustrates why the age of the person is not necessarily as determinative of elder abuse as the personal circumstances of the person.

In this case, our client was relatively young (in her late 50s), but the factual situation had all the hallmarks of potential elder abuse.

Our client’s mental health and dependency on her daughter rendered her particularly vulnerable to abuse and exploitation. These issues were compounded by the mixing of money with her daughter, without the protection offered by indefeasibility of title.

CASE STUDY 1

Our client had a history of mental health issues, including schizophrenia and bipolar disorder. At various times throughout her life she had been hospitalised and received treatment for these issues. She was estranged from one of her daughters who lived in Brisbane. The other daughter, who lives in Perth, is her carer and has an enduring power of guardianship over our client.

The relationship with her daughter in Perth is fractious, and our client instructed us that her daughter was verbally abusive towards her and had physically assaulted her on one occasion.

Our client had sold her property and gave the entire proceeds of sale to her daughter (\$270,000), with the intention of her daughter building a new home, which was to include a granny flat with its own access and entrance to the road. Our client was reluctant to move in with her daughter due to their relationship breakdown but felt pressured to do so.

Our client was not consulted during design or construction of the house. Upon completion, she discovered that the granny flat had not been built. Instead, a small wing at the very back of the property was constructed, which contained a bedroom with an en-suite and a small kitchenette. Our client was very unhappy about this. She felt very isolated at the back of the property.

She did not feel welcome in the house and felt she had to remain in her wing. She felt further isolated by her daughter's refusal to let her own a dog. Her previous dog died the year before and she desperately missed him.

Our client received the disability support pension and had no other savings. She was also socially isolated. She wanted to move out, however lacked the strength and support to do so. She did not want to upset her daughter by asking her for any money to help her to move out, nor take any action that may adversely affect her relationship with her grandchildren.

(b) Identify its prevalence

We are especially concerned about the rising incidence of elder abuse in the community. Research indicates that about 1 in 20 older Western Australians will suffer some form of elder abuse. Financial abuse is the most likely form of elder abuse. With the increasing costs of aged care, there has also been a corresponding spike in the number of older people entering into informal "assets for care" arrangements with their families, which often can work well, but which can equally be to the detriment of the older person.

Anecdotally, LAWA is aware of the increasing incidence in the number of elder abuse matters which are referred to us, and the number of clients presenting with features of elder abuse, preponderantly in the area of elder financial abuse.

At times, elder abuse can be difficult to detect and may remain hidden until the older person reaches a crisis situation. In our experience, cases involving

possible elder abuse are brought to our attention by doctors (GPs) and allied health workers such as social workers working in hospitals.

Where elder abuse occurs in the home environment, it will be difficult to identify its prevalence.

Data collection for agencies working with older people remains a difficult issue.

Recommendation 3–5 of the ALRC report proposes that there should be a national prevalence study of elder abuse to build the evidence base to inform policy responses.

A June 2017 policy paper prepared by the Office of the Public Advocate, Victoria entitled “*Are national elder abuse prevalence studies inclusive of the experience of people with cognitive impairment? Findings and recommendations for future research*” states at page 1 that:

The Australian Institute of Family Studies’ (AIFS’) research report on elder abuse, commissioned by the Attorney-General’s Department, found “there is very limited evidence in Australia that would support an understanding of prevalence of elder abuse, and there is emerging recognition of the need for systematic research in this area”.

To address this gap the Attorney-General’s Department has provided further funding to AIFS to scope a national prevalence study.

The policy paper prepared by the Office of the Public Advocate, Victoria goes on to say that:

“With increasing numbers of dementia sufferers in line with Australia’s aging population, and the strong likelihood that cognitive impairment is a risk factor for elder abuse...further research examining the experiences of people with cognitive impairment is warranted.”

LAWA strongly supports the need to identify the prevalence of the various manifestations of elder abuse, to properly inform appropriate legislative responses.

(c) Identify the forms of elder abuse, including but not limited to neglect

LAWA endorses the “examples and signs of elder abuse” identified at page 9 of the *Elder Abuse Protocol, Guidelines for Action* (see below):

Financial or material abuse

Improper use of an older person's finances or assets.

Examples:

- Misappropriation of assets, money or valuables
- Forced changes to legal documents
- The denial of access to personal funds
- Forging signatures
- Misuse of a bank card or Enduring Power of Attorney
- The Carer spending the older person's money on themselves and not the older person

Signs:

- The older person not being able to access adequate food, clothing, shelter or utilities
- Unusual activity in bank accounts
- No access to bank statements
- Interference with mail
- Not being able to pay normal accounts and having an accumulation of unpaid bills
- Having less money to spend
- Fear, stress, and anxiety

Neglect

The failure to provide the necessities of life, such as adequate food, shelter, care and emotional support.

Examples:

- Preventing an older person from accessing services
- Receiving Carer's Allowance but not providing care to the older person

Signs:

- Malnourishment and weight loss, hypothermia, overheating, or clothing inappropriate for the season
- Injuries that have not been properly cared for
- Poor personal hygiene
- Abandoned or left alone for long periods
- Lack of social, cultural, intellectual, or physical stimulation
- Lack of safety precautions, or inappropriate supervision

Emotional or psychological abuse

Inflicting mental anguish, fear, or feelings of shame and powerlessness. It may be verbal or nonverbal, and it is usually part of a pattern of behaviour repeated

over time and intended to control the person by maintaining a hold of fear over them.

Examples:

- Verbal intimidation, humiliation, harassment, and shouting
- Threats of various forms
- Withholding affection
- Removal of decision-making power
- An Enduring Guardian acting inappropriately

Signs:

- Resignation
- Shame
- Depression
- Confusion
- Social isolation
- Insomnia
- Marked passivity or anger
- Anxiety

Social abuse

Preventing an older person from having social contact with family or friends or accessing social activities of their choice. This may also have the effect of hiding abuse from others.

Examples:

- Preventing the person from having contact with family or friends
- Unexpected cancellation of services
- Withholding mail
- Disconnecting the telephone without the older person's consent
- Living in and taking control over the older person's home without their consent
- Preventing the older person from engaging in religious or cultural practices

Signs:

- Sadness or grief at the loss of important relationships
- Withdrawal, listlessness, or lack of interaction with other people
- A lowering in self-esteem
- Appearing ashamed

Physical abuse

Deliberately causing physical pain or injury, including physical coercion and physical restraint.

Examples:

- Slapping, hitting, bruising, pushing and shoving, tripping
- Physically restraining
- Over or under medicating

Signs:

- Discrepancies between an injury and the explanation of how it happened
- Burns, bruising, and injuries at different stages of healing
- Being seen by different doctors and hospitals/treatment centres

Sexual abuse

A broad range of unwanted sexual behaviour, including rape, indecent assault, sexual harassment and sexual interference.

Examples:

- Rape and indecent assault
- Sexual harassment
- The use of sexually offensive language and/or materials/media
- Touching inappropriately

Signs:

- Bruising around genitals
- Unexplained venereal disease
- Torn/stained/bloody underclothes
- Bruising on the inner thighs
- Difficulty in walking or sitting
- Sitting huddled and in fear of being touched

The ALRC report sets out categories of elder abuse at paragraph 2.46.

At LAWA we are much more familiar with cases involving financial elder abuse. The following case study is illustrative of just one of many financial elder abuse matters that are referred to us.

CASE STUDY 2

A social worker at the Fiona Stanley Hospital referred a 79 year old man to LAWA for advice and assistance. The man and his wife usually resided in NSW. However, on a visit to WA, his wife was hospitalised at the Fiona Stanley Hospital, in intensive care, to receive medical treatment because of complications related to her dementia. Our client had his own health difficulties, suffering a stroke 7 years ago and was paralysed down the right side.

The couple had 3 adult sons. One son resided in NSW and the 2 other sons reside in WA. Our client complained that the eldest son travelled to NSW and sold all of the furniture from the client's home in NSW and also took \$80,000 from his bank account, allegedly acting under a power of attorney. Our client was adamant that he did not sign a power of attorney and was taken to the bank by his eldest son to withdraw the money. He wanted to return to NSW when his wife was well again.

We contacted the Legal Aid Commission, NSW and they undertook title searches of the property which showed that the title was registered jointly in the names of our client and his wife. No power of attorney was registered.

We obtained bank statements which showed that \$80,000 was recently withdrawn from our client's account, leaving a balance of just under \$8,000.

We contacted the eldest son and demanded that he return the \$80,000 to our client's account. As a result of our assistance the money was returned in full to our client's account.

(d) Identify the risk factors

LAWA regularly provides advice and assistance to clients presenting with financial elder abuse problems. A significant proportion of these matters involve duress or fraud committed by an adult child, occurring in circumstances where the older person usually has low levels of financial literacy. The client presentation may also be complicated by a lack of understanding about the transfer of real property or other investments such as shares.

In some instances, more traditional gender roles have been a significant complicating feature of the client presentation. In our experience, some elderly female clients have told us that their husband took care of all of the financial matters. After the husband has died or become incapable, the elderly (surviving) spouse has no understanding of the financial arrangements or investments in place, nor any useful knowledge of financial and related property matters. Quite often, clients present with a complete lack of sophistication in these matters, and do not appear to understand or comprehend legal documentation such as property transfer documents and enduring appointment documents.

In our experience, the above scenario also plays out quite frequently in some migrant communities.

We are very familiar with the risk factors set out at paragraph 2.61 of the ALRC report, in particular in relation to the person experiencing the abuse:-

- Dependants
- Significant disability
- Poor physical health
- Mental disorders (such as depression)

- Low income or socio-economic status
- Cognitive impairment
- Social isolation

Paragraph 2.62 of the ALRC report identifies the following risk factors for perpetrators, namely:

- Depression
- Substance abuse: alcohol and drug issues, and
- Financial, emotional, relational dependence on the abused.

LAWA endorses the “risk factors in elder abuse” identified at page 12 of the *Elder Abuse Protocol, Guidelines for Action* (see below):

Several factors increase the risk that an older person will be abused. These include:

- Dependency – the older person may be dependent on others for social, emotional, physical, financial, and spiritual support; this vulnerability is increased when the abuser is also dependent on the older person.
- Family dynamics and living arrangements – unresolved issues, family conflict, and spousal violence, as well as shared living arrangements, may heighten the risk of conflict and abuse.
- Social isolation – the older person may be isolated by location, mobility, physical impairments, intellectual impairment, or language and cultural barriers.
- Health and cognitive impairment – physical and mental impairments, including illness, dementia, and depression, may reduce the older person’s ability to protect him/herself.
- Addictions – alcohol, prescription or illicit drug use, or gambling addictions on the part of the older person or carer, may increase the risk of abuse.
- Carer stress – this may lead to abuse, especially when combined with other risk factors, such as social isolation and/or addiction on the part of the family carer.
- Language and cultural barriers – all risk factors above may be heightened by language and cultural barriers, including historical influences or immigration

The following case study illustrates how risk factors such as advanced age, ill health, remoteness and loss of a long term partner combine to increase the risk of elder abuse occurring.

CASE STUDY 3

We assisted a 90 year old man who had been living in Broome. In or about 2012, he was diagnosed with cancer of the lymph glands and was given a 10% chance of survival. He travelled regularly to Perth for medical treatment. Our client had recently lost his wife of 52 years.

Our client did not keep his money in the bank, preferring to keep it at home in cash. He is unsure exactly how much cash there was, however he believed it was over \$100,000. Because he was worried about leaving the cash at home while he went to Perth for medical appointments he gave money to his son for safe keeping. He informed his son that he could use small amounts of cash from time to time, as long as he returned all the cash in full upon its return to our client, if and when he recovered from his illness. In the event that he passed away, he informed his son that he could keep the cash as he was his only living child. There was email evidence of this agreement.

Our client subsequently recovered from his illness and asked his son to return the money to him. He required the money to fund his move into an aged care facility. His son only returned \$14,000 to our client, refusing to give him the remainder as agreed. Our client's son refused to communicate with him and all contact ceased.

LAWA assisted our client by sending a letter of demand to our client's son, for the return of the remaining \$86,000. Our client's son eventually paid back the money, after we threatened to start court proceedings against him to recover the money.

(e) Assess and review the legislative and policy frameworks

The following case study illustrates how the court and tribunal systems can be misused to perpetrate acts of elder abuse, and the importance of the assistance provided by LAWA in responding to the client's needs as required.

CASE STUDY 4

Our client was an elderly widower who remarried later in life. The couple both had adult children from their previous marriages. They purchased a property as joint tenants through a shared equity loan from Keystart Home Loans. On the basis of their respective ages, the couple decided that the wife would survive our client and as such, her will left her property to her adult children.

However, our client survived his wife and due to the right of survivorship as a joint tenant, our client became the sole registered proprietor of the property. Our client's health deteriorated and he was required to move into a nursing home. This breached the terms of the Keystart loan, which required the borrower to reside in the property, and the property needed to be sold.

One of the late wife's children felt aggrieved that the property was not in her mother's estate and believed she had an interest in the property. In an ill-conceived effort to prevent the sale of the property, she registered a caveat against the property.

Despite LAWA's numerous requests to remove the caveat, she refused to do so. We then sought and obtained an order in the Supreme Court to have the caveat removed, allowing the property to be sold.

Several months after the property was sold, the other party applied to the State Administrative Tribunal for an order for Administration over our client. If successful, our client would lose the right to look after his own finances and the other party would be responsible for managing his financial affairs.

LAWA represented our client in the State Administrative Tribunal and the application was dismissed for lack of any evidence that our client was suffering from a mental impairment.

LAWA considers that statutory exceptions to indefeasibility of title should be given further consideration, to protect the interests of older people who have entered into assets for care arrangements.

Further, LAWA considers that the law in relation to caveatable interests should be better clarified by statute, again, to increase the range of protections available to older people who have entered into assets for care arrangements.

(f) Assess and review service delivery and agency responses

LAWA provides legal advice, assistance and representation in a range of elder abuse matters, particularly where there has been elder financial abuse.

LAWA has:-

- established a protocol with the State Administrative Tribunal (SAT) for referral of matters in the Guardianship and Administration stream at SAT;
- entered into a MOU with Advocare that guides a partnership that strives to protect the rights of older Western Australians; and
- established informal referral arrangements with the Department of Health.

LAWA considers that more funding support to increase the capacity of these types of collaborative arrangements, including the establishment of more health justice partnerships targeting older people and people in residential aged care environments, is highly desirable.

LAWA strongly endorses the recommendation made by the ALRC that state tribunals (that is, the State Administrative Tribunal) should have jurisdiction to resolve family disputes involving residential property under an 'assets for care' arrangement.

The Supreme Court is not truly accessible to all but the wealthiest individuals and corporations. The family dynamics and power imbalances involved in these types of disputes also mean that a tribunal is a more appropriate forum for attempting to resolve disputes around family arrangements.

We consider that this should be a legislative reform priority for Western Australia.

LAWA has previously facilitated stakeholder engagement around other dispute resolution and mediation models. In late 2015 we hosted a meeting attended by representatives of the Citizens Advice Bureau, Northern Suburbs CLC, and the University of Western Australia to further explore options for resolving disputes about family arrangements.

Some time ago the Dispute Resolution Branch (DRB), Department of Justice and Attorney-General (Queensland) was tasked with exploring options for the development and implementation of Supported Elder Mediation following a recommendation of the *Queensland Parliamentary Inquiry into the adequacy of existing financial protections for Queensland's seniors*. This recommendation was in response to concerns about the accessibility of justice for seniors in cases of elder abuse.

In relation to the ALRC report recommendations, LAWA supports the recommendation that newly-appointed private guardians and private financial administrators should be required to sign an undertaking with respect to their responsibilities and obligations.

We do not consider that it is necessary or appropriate to extend this requirement to guardianship and administration appointments to the Office of the Public Advocate WA and the Public Trustee WA.

To be effective, we agree that this requirement should be accompanied by education, support and assistance to improve the understanding of guardians and financial administrators of their roles, responsibilities and obligations. However, any training or education should not be compulsorily imposed on all guardians or administrators.

In relation to the ALRC report recommendations relating to enduring appointments, LAWA considers that the proposed safeguards are generally appropriate and supports this recommendation.

Some of the suggested changes are quite burdensome however the added burdens around requirements such as witnessing and conflict transactions must be considered in the context of the magnitude of the potential abuse or misuse of an enduring document.

Overall, LAWA considers that the detriment in establishing the recommended safeguards outweighs the benefit (protection to donors of the power).

It is accepted that fraud could still be perpetrated, notwithstanding the safeguards recommended by the ALRC. We consider that the mechanisms, controls and regulation of enduring appointments are more likely than not, to have a deterrent effect on fraudulent behaviour.

LAWA strongly supports the recommendations made by the ALRC for compensation and penalty orders within the jurisdiction of the State Administrative Tribunal (SAT).

In our experience, elderly clients are extremely reluctant to commence court proceedings against a person such as a family member, especially their adult child. The cost and complexity of Supreme Court proceedings is also a major disincentive to relying on this jurisdiction for satisfaction, whereas the SAT is more flexible and informal in the manner in which it can attempt to achieve resolution of disputes. Further, there is an existing human rights stream which is familiar with issues and scenarios that arise under the *Guardianship and Administration Act 1990*.

Legal Aid WA supports the recommendation made in the ALRC report for the establishment of a national register with appropriate privacy controls. In our experience, a national register could greatly assist banks and financial institutions to have a clearer picture of the existence, revocation or other details concerning enduring documents.

The following case study illustrates how issues have arisen at the time that a death certificate is created, resulting in unintended consequences when the surviving spouse applies for superannuation.

CASE STUDY 5

Our client was in her 80s when she formed a relationship with a man, also in his 80s. They commenced living together and were great supports to each other. The relationship was recognised by Centrelink and by the community in general, continuing for approximately 10 years until our client's partner passed away. He had become frail towards the end of their relationship, and had moved into residential aged care prior to his death. During that time, the relationship continued and our client visited him every day.

His family had never approved of the relationship, and after his death made life difficult for our client by informing the funeral directors not to put her name on the death certificate (as the de facto spouse).

Not only did this cause stress and anxiety to our client, but difficulties arose when she tried to claim her entitlement to periodic superannuation payments as a de-facto spouse.

With LAWA's assistance, our client was able to satisfy the superannuation fund that she was a genuine de-facto spouse, resulting in the spouse benefit being paid to her.

(g) The capacity of the Western Australia Police to identify and respond to allegations of elder abuse

We are unable to comment on this item.

(h) Identify initiatives to empower older persons to better protect themselves from risks of elder abuse as they age

At LAWA the civil law in-house practice provides legal advice and quite intensive assistance (usually by way of negotiation) in a range of consumer protection, mortgage stress, credit and debt and guardianship and administration matters to respond to the increasing demand for advice, assistance and representation to address elder abuse matters.

When a grant of legal aid is not available, our civil law in-house practice provides assistance through our Social Inclusion Program. This assistance is targeted to respond to the needs of the most disadvantaged and vulnerable West Australians. We provide legal assistance directed at achieving the highest impact and resolution of outcomes for clients.

The civil law in-house practice also provides representation in the guardianship and administration stream of the State Administrative Tribunal.

LAWA offers holistic legal assistance to people experiencing elder abuse through the advice and representation services provided by its specialist domestic violence and family law in-house practices. In addition, one of our civil law lawyers is also a registered migration agent. Therefore, the suite of legal assistance offered by LAWA to people experiencing elder abuse is diverse and all encompassing.

Regional offices also provide a range of advice and representation services across Western Australia.

Due to funding constraints, grants of legal aid for elder abuse matters are not available to private practitioners.

However, the Civil Litigation Assistance Scheme (CLAS) (administered by the Director of the Civil Law Division, LAWA) is an alternative source of funding assistance for people experiencing elder abuse matters, and are represented by a private practitioner.

LAWA considers that improving the financial literacy of older people is critical and supports this recommendation which was made in the ALRC report.

Community awareness and education campaigns are important ways to inform and protect against elder abuse.

The Purple Road is an initiative of the Older Persons Rights Service at Northern Suburbs Community Legal Centre (NSCLC). This community awareness

campaign is a good example of ways to raise community awareness about elder abuse and initiate conversations about this sensitive issue. Under the Purple Road campaign SCALES Community Legal Centre and NSCLC have teamed up to provide a peer education scheme.

(i) Consider new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse

LAWA strongly supports increased collaboration between health professionals and legal service providers through Health Justice Partnerships (HJPs). These partnerships should ideally be designed to be flexible and responsive to the needs of the participants, and maximise the transparency of referral pathways.

WREN (Women's Resource and Engagement Network) is a collaboration between NSCLC and LAWA.

This HJP provides wrap-around legal and non-legal services in safe locations, to assist women experiencing domestic violence to protect themselves and their children, and to support women to access other services, such as crisis accommodation, counselling and financial advice.

Although not specifically targeting its service delivery to elderly people, WREN and the civil law in-house practice have jointly provided support and advice to older women.

The following case study illustrates the benefits of HJPs, by establishing relationships and referral pathways between health professionals and legal services.

CASE STUDY 6

A concerned GP contacted the Director, Civil Law Division, LAWA to seek legal advice for his patient, a 90 year old lady.

Her 87 year old husband died the week before. They had been married for 20 years, however title to the matrimonial home had always remained in his name only. Her husband's will left the matrimonial home to his 4 children and herself in 5 equal shares.

After his death, one of the husband's adult children from his first marriage moved into the home, was making arrangements to sell the home and had applied to the State Administrative Tribunal (SAT) for a guardianship order over our client.

The GP considered that our client had mental capacity, but was somewhat frail.

We provided advice to our client about safety planning, potential entitlements under the *Family Provision Act 1972*, and the guardianship application which had

been made to SAT. Following our involvement, the application to SAT was discontinued.

We have recently become aware of the concept of Eldercaring Coordination.

Eldercaring Coordination is a dispute resolution process, modelled after the concept of Parenting Coordination, for high conflict families regarding the care and safety of elders. We understand that 5 states in the USA are currently piloting this type of program.

Although we have very little information about Eldercaring Coordination, the concept may be worthy of investigation.

(j) Consider any other relevant matter

LAWA considers legislative change is warranted to address the following impediments to access to justice for people experiencing elder abuse:

- The presumption of advancement
- The nature and range of equitable remedies available to older people as a result of failed family arrangements and 'assets for care' arrangements
- Jurisdiction for seeking equitable relief
- Low or no cost mediation and other dispute resolution services