

Elder Abuse and the role of the Community Legal Centre (CLC)



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Abstract

Elder Abuse is a growing issue in our society, with the rising cost of living and ageing population, and can only be effectively addressed by a united, and cohesive approach. For the purposes of this submission, we look at the issue of Elder Abuse and the growing concerns, the capability of the Community Legal Sector to address Elder Abuse nationally, and make key recommendations for moving forward.

Elder Abuse

Elder Abuse is defined by the World Health Organisation (2018) 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". The first reported reference to elder abuse in Australia was by the Social Welfare Commission in 1975 (Social Welfare Commission 1975, in Kurrle and Naughtin 2008: 110), which mentioned that older people needed protection from exploitation by relatives, friends and the general community.

Elder abuse is a significant issue for the Western Australian community, as the population is ageing and the percentage of people over age 65 is increasing exponentially. "Based on a range of international prevalence and incidence estimates for elder abuse victimisation, an average prevalence rate for WA was calculated to be 4.6% (ranging between 3.1% and 6.0%). This is an estimate of approximately 12,500 victims of some form of elder abuse in WA for 2011. Combined with population estimates for WA, it is anticipated that the total number of victims over the age of 65 will increase by around 90% over the next twenty years" (Clare, Black Blundell, and Clare; 2011).

Elder Abuse is defined across 5 categories:

- Physical Abuse
- Sexual Abuse
- Emotional Abuse
- Financial Abuse, and
- Neglect

There are also distinct risk factors that affect older people and increase their likelihood of experiencing elder abuse (see below table (Pillemer, et al, 2016)).

Level	Risk factors	Strength of evidence	Protective Factors	Strength of evidence
Individual (victim)	Functional dependence/ disability	Strong	Social support	Strong

	Poor physical health	Strong		
	Cognitive impairment	Strong		
	Poor mental health	Strong		
	Low income/SES	Strong		
	Gender	Potential		
	Age	Potential		
	Financial dependence	Potential		
	Race/ethnicity	Potential		
Individual (perpetrator)	Mental illness	Strong	Living arrangement	Strong
	Substance abuse	Strong		
	Abuser dependency	Strong		
Relationship	Victim–perpetrator relationship	Potential		
	Marital status	Potential		
Community	Geographic location	Potential		
Societal	Negative stereotypes on aging	Contested		
	Cultural norms	Contested		

Role of the Community Legal Sector (CLC)

The research conducted by Clare, Black Blundell, and Clare (2011) recommended significant, cohesive review into the area of Elder Law to develop firm parameters around appropriate ways to address Elder Abuse formally. This recommendation is shared by the Australian Law Reform Commission (2017) who state “the ALRC makes recommendations relating to adult safeguarding laws aimed at safeguarding and supporting adults ‘at risk’. These laws would provide adult safeguarding agencies a role that is complementary to police, and are aimed at improving responses to elder abuse. This role is ideally held by the Community Legal Sector who already have the framework, experience, and commitment to ensure justice for vulnerable older people.

Community Legal Centres across Australia are working collaboratively with the local community, Police, and courts to ensure that

CASE STUDY 1

Mary (83 years old) has attended her local CLC as her partner had died and she needed some legal advice. The Solicitor identifies that Mary has large sums of money being taken from her bank by her daughter. Mary is aware and very upset that the money is being taken but relies on her daughter to manage the bills – so feels she has no option.

The Solicitor explains various options to Mary and together they develop an action plan to stop the abuse and recover some of the money. The Solicitor draws up a letter to the daughter advising that the stolen money needs to be repaid and suggesting a mediation to discuss repayment. The CLC Financial Counsellor then works with Mary to set up direct payments and a weekly budget so that she can manage her own bill payments and maintain her independence.

every citizen has access to justice. We provide a service that is free to the consumer and offers holistic services to improve their outcomes, and build their resilience and capacity. It is our belief that the holistic nature of our services is what will give people experiencing elder abuse, the best outcome for success, and ongoing resilience. Most Community Legal Centres offer a legal service, as well as ancillary support services such as:

- Financial Counselling
- Tenancy Advocacy
- Disability Advocacy
- Emergency Relief
- Disability Discrimination Law
- Criminal Injury Law, and
- Aboriginal services

Financial Elder Abuse is the most common form of Elder Abuse, and the most common ways of perpetrating financial abuse are through “misuse of family agreements, Centrelink nominee arrangements, banking authorities, and Enduring Powers of Attorney (or EPAs)” (Clare, Black Blundell, and Clare, 2011)..These holistic services mean we can support an older person to address and stop the financial abuse, and then use the skills of our Financial Counselling services to liaise with their debtors, financiers and banks to advocate for payment extensions, apply for the appropriate support and assistance, and access government relief initiatives to help the older person get back on their feet and increase their independence (therefore reducing their vulnerability).

CASE STUDY 2

Jean (76 years old) sold her home and gave the money to her daughter and son-in-law who built her a granny flat on the back of their property, so they could assist with her care. She has lived there for 3 years, and now the daughter’s marriage has dissolved and the home is to be sold (including her granny flat). Jean is scared as she is now facing homelessness and has no stake in the profit of the property.

The CLC Solicitor drafts a letter for the daughter and son-in-law requesting a mediation to ensure Jean receives some of the profit from the sale of the home. The Tenancy Advocate then assists Jean to find a rental property and the Disability Advocate gets her engaged with aged care services so she can live independently with formal supports, while they negotiate a fair

Our specific strengths as a sector

Legal Support

Community Legal Centres are renowned for our ability to garner the support of the for profit legal sector through pro bono work, evening legal advice clinics, and volunteers. Community Legal Centres have operated through their ability to attract and retain these amazing legal professionals for the betterment of the broader community. We also have a staff of highly qualified and experienced lawyers who have significant experience and success in Family Law – which is very similar to the Elder Laws that are being proposed. Community Legal Centres would be able to refine this legal practice to develop specific services for older people across the whole country through our current geographical and regional profile, meaning every older person had access to justice and support to prevent and stop elder abuse.

Holistic service provision

Community Legal Centres also have internal services that are complimentary to the legal services, especially in the area of elder abuse which is most commonly financially motivated. Our service in Financial Counselling, Tenancy and Disability Advocacy mean we can support the older person to address Elder Abuse through legal avenues, and then support them to reduce their vulnerability, source a new home away from the abuser, access formal services and supports (to reduce dependence on the perpetrator for support), and develop plans for ongoing financial sustainability.

Access to vulnerable older people

Community legal Centres see thousands of people each year, many of whom are older people accessing their holistic services. We also have a large network of other agencies and community services who work in the fields of aged care, disability services, and the general community service sector. We are linked with the Department of Human Services, Department of Housing, Department of Child Protection and other agencies that refer clients to us on a daily basis for legal and ancillary services. This gives us good access to vulnerable older people, and reduces our need to market and campaign our services (making us efficient, and able to meet the demand quickly).

Economies of scale and efficiencies

Community legal Centres as individual agencies are smaller not for profits, but we are connected and united as a larger group giving us shared resources, increased capacity and the benefit of economies of scale. We are able to support people from all over Australia through our internal referral pathways and the fact that our agencies are geographically dispersed to ensure maximum coverage – even in very remote and rural areas. We collaborate on initiatives such as community education and work together to share resources, staff, volunteers and knowledge, making us incredibly efficient, and meaning we can support more clients for every dollar we are funded.

Community Education

Community Education is a recommended action in nearly every research paper on Elder Abuse, as this is identified to be one of the most important areas in which to increase the capacity of older people and the agencies and community that support them to recognise and respond to Elder Abuse (Richardson, et al, 2002; Clare, et al, 2011; ALRC, 2017; Lachs, & Pillemer, 2004, Jogherst, et al, 2003). Community Legal Centres are already providing significant community education sessions to many different client and community groups on areas of Family Law, Grandparents raising Grandchildren, and Financial management, so we have the appropriate staff and skills to continue this process for Elder Abuse education, and broaden the community awareness of Elder Abuse and the appropriate response.

Recommendations

Recommendation 1 – Broad Community Education Campaign

The ALRC (2017) stated as a key recommendation “legal initiatives should be combined with initiatives to enhance community awareness of elder abuse as part of a National Plan”. It is recommended that the Elder Abuse response include a Community Education campaign that focus on the recognition of, and response to Elder Abuse. This response could include:

- Face to face community education sessions in various areas across Australia
- Educational videos
- A broad advertising campaign using mainstream media

It is recommended that this program be facilitated by a National peak body who can then utilise their regional resources to facilitate the training, and can coordinate a single, unified message that is easily understood by all involved.

Recommendation 2 – Community Legal Centre funding for Elder Abuse services

Elder abuse is currently being addressed by advocacy agencies who do not (generally) have the legal knowledge and ability to represent or enforce Elder Abuse strategies. By funding Community Legal Centres to deliver Elder Abuse services, victims would be able to address their issues in a safe and protected space, confidentiality is protected at all times, and services would be easily accessible to the Police, hospitals and other agencies who identify the abuse.

It is recommended that the funding is spread through the Community Legal Centres to ensure an Elder Abuse service is available at every Community Legal Centre, and the response for clients is consistent and fair.

Recommendation 3 – Centralised Reporting

Currently Elder Abuse statistics and prevalence is unknown, due to a lack of centralised reporting and coordination.

It is recommended that the Community Legal Centre Associations for each state be the central point for information collection, with each Community Legal Centre submitting data and statistics on the types of Elder Abuse, number of cases and number of community education sessions presented. This will give us a cohesive national picture and improve our understanding of Elder Abuse prevalence and trends.

References

Clare, M., Black Blundell, B., Clare, J. (2011) Examination into the extent of Elder Abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data. University of Western Australia. Western Australia.

World Health Organisation (2018) Elder Abuse. Accessed 12 July 2018, 8:16pm @ http://www.who.int/ageing/projects/elder_abuse/en/

Kurrle, S. E., and G. Naughtin (2008). An overview of elder abuse and neglect in Australia. *Journal of Elder Abuse & Neglect* 20 (2): 108-125.

Pillemer, K., Burnes, D., Riffin, C., & Lachs, M. S. (2016). Elder abuse: global situation, risk factors, and prevention strategies. *The Gerontologist*, 56(Suppl_2), S194-S205.

ALRC - Australian Law Reform Commission (2017) Elder Abuse – A National Legal Response (ALRC Report 131). Accessed <https://www.alrc.gov.au/publications/elder-abuse-report-on-14th-july-2018>

Richardson, B., Kitchen, G., & Livingston, G. (2002). The effect of education on knowledge and management of elder abuse: a randomized controlled trial. *Age and ageing*, 31(5), 335-341.

Lachs, M. S., & Pillemer, K. (2004). Elder abuse. *The Lancet*, 364(9441), 1263-1272.

Jogerst, G. J., Daly, J. M., Brinig, M. F., Dawson, J. D., Schmuck, G. A., & Ingram, J. G. (2003). Domestic elder abuse and the law. *American Journal of Public Health*, 93(12), 2131-2136.