

**Submission
No 36**

**INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW
SOUTH WALES**

Organisation: Mid North Coast Community Legal Centre

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The Hon Greg Donnelly MLC
Chair, General Purpose Standing Committee No 2
Legislative Council
Parliament of NSW
Parliament House
Macquarie St
Sydney NSW 2000

13 November 2015

Dear Mr Donnelly,

I write to make this submission to the Inquiry of the General Purpose Standing Committee (No 2) into Elder Abuse. This matter is an important one, with a significant impact on older people in our community and we welcome the opportunity to offer comment.

Mid North Coast CLC is a community legal centre funded by the NSW and Federal governments to provide free legal assistance to disadvantaged residents of the Kempsey, Port Macquarie and Greater Taree Local Government Areas. Priority clients (those who receive advice and casework assistance) include: people in financial hardship, those with disabilities, people at risk of homelessness, Aboriginal and Torres Strait Islander people, young people, people living with family violence, people from culturally and linguistically diverse backgrounds and elderly people.

Demographics of the Mid North Coast region

The Mid North Coast of NSW has a significant proportion of elderly people (aged over 65 years). The 2011 Census shows that 21% of the Mid North Coast Region¹ were aged over 65, with that proportion set to increase to 31% of the population by 2031².

Based on the local demographic, Mid North Coast CLC has developed an interest in issues of elder exploitation and abuse. Our service has provided legal assistance to 592 people aged over 65yrs in the 4 ½ years since we opened. This represents over 16% of our client group.

¹ "Mid North Coast" is defined in the NSW Government's Ageing Strategy as the Local Government Areas of Bellingen, Coffs Harbour, Nambucca, Kempsey, Port Macquarie-Hastings and Greater Taree. Although Mid North Coast CLC only provides direct assistance to residents of the lower LGAs of this region this snapshot area will be used for the sake of consistency.

² NSW North Coast Ageing Strategy – NSW Government 2014 Appendix B at 33



We anticipate that demand for our service will continue to increase in line with the increasing population of older people in the region.

Ageing and capacity

The NSW Capacity Toolkit is a useful tool which sets out the following³ as broad tests of a person's capacity:

- Their ability to understand the facts and main choices involved.
- Their ability to weigh up the consequences of the choices and how the consequences affect them.
- The ability to communicate their decision.

Loss of capacity may come about in a number of ways, including in some situations as a result of age-related illness.

Loss of capacity is a situation which makes any person vulnerable to exploitation or abuse. Vulnerability may be increased where a person has not made previous arrangements to protect their choices by giving an Enduring Power of Attorney or Enduring Guardianship to a trusted person. However, it is also the case that giving an Enduring Power of Attorney or Enduring Guardianship to someone who may be proven to be untrustworthy simply entrenches their vulnerability.

Mid North Coast CLC has adopted the policy of providing free legal education and advice on Powers of Attorney and Enduring Guardianship, and where a person is in receipt of a full Aged Pension (or can demonstrate other indicators of severe financial hardship) may also assist with drafting these documents. This policy is aimed at ensuring that all people, regardless of their income or assets, have an opportunity to understand and plan ahead for a time when they may lose capacity.

As a result, Mid North Coast CLC has had a number of clients who have related incidences of elder abuse to us. Although it is not the biggest part of our work, we do have some comments to offer which may be of use to members of the Committee, and we thank them for the opportunity to put these comments forward.

General Issues in Dealing with Elder Exploitation and Abuse

We are aware that financial exploitation and abuse often happens in circumstances of social isolation, vulnerability of a client (sometimes related to their capacity), and cultural norms about the expectations of family and the inviolacy of family privacy. We also note that there can be peer pressure to maintain an image of family togetherness which may prevent older people from feeling they can disclose what is happening to their friends or peers. In this regard, elder abuse victims are in a position of vulnerability and dependence similar to that of a victim of domestic violence.

³ Capacity Toolkit, NSW Attorney General's Department 2009 at 18

The pathways for seeking assistance are often unclear or mixed. Police may treat financial exploitation as a “civil matter” and be unwilling to become involved without clear evidence of physical mistreatment. Where there are specialist “vulnerable persons” officers in a Local Area Command, their expertise in dealing with complex situations is of great assistance. We would encourage the Government to consider funding additional specialist officer positions and training them with skills for local culturally sensitive practice.

The lack of any service with statutory investigation powers in relation to financial exploitation or misuse of powers of attorney means that there is often no place to turn for independent assessment of a person’s concerns⁴. The NSW Elder Abuse Helpline is a good referral resource, but lacks the capacity to do more than that. As registration of Power of Attorney documents is in most circumstances optional⁵ there is generally no centralised mechanism for checking the currency or veracity of such a document if it is relied upon by a financial services provider. It has been suggested that a state or national register of Powers of Attorney may assist. We recognise there are issues of privacy to be considered as well as the cost of registering documents and the cost to maintain such a register however we agree with the recent Alzheimers Australia Discussion Paper⁶ that this be referred to the NSW Law Reform Commission to examine the possibility for such a register.

Local Working Groups

Mid North Coast CLC, Disability Advocacy, Alzheimers Australia (NSW), UnitingCare Ageing and NSW Health (Aged Care Assessment Team) are foundation members of a local working party known as the Hastings Elder Abuse Prevention Network (HEAPN). This group was formed in 2012 to try to bring a collaborative approach to addressing cases of abuse and some of its causes.

This has enabled us to provide targeted referrals to agencies who have elder abuse on their radar, and who have an established interest in some of the underlying causes. Each agency has its own priorities and protocols, but we share an understanding of the issues involved and the need to link a person into support as quickly as possible.

However, we note that due to the high demand in the region, there may be limited capacity for publicly funded social workers to assist in depth. Legal assistance can help someone understand and uphold their legal rights, but the circumstance of exploitation or abuse usually occurs within a family dynamic of trust and dependence, and this is best dealt with by social workers.

⁴ W. Lacey “Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia” in Sydney Law Review 2014 (Vol 36; 99-130) at 126

⁵ Powers of Attorney must be registered with NSW Dept Land and Property Information if it is to be used in dealings affecting real estate

http://www.lpi.nsw.gov.au/about_lpi/faqs/land_title/whats_a_power_of_attorney

⁶ Alzheimer’s Australia Discussion Paper #10 Preventing Financial Abuse of People with Dementia” June 2014

We note that in some regions of Australia there has been great success in partnering legal and social work professionals⁷ and believe the funding of cooperative partnerships such as this is could be worthy of further consideration. Caxton Legal Centre, for example, derives the bulk of its funding for legal/social work services from government grants⁸, enabling them to provide a free and more comprehensive service to vulnerable older people.

We also note the introduction of Safety Action Meetings⁹ through the “It Stops Here” (Safer Pathway) domestic violence reforms brought in by the NSW Government and consider that some victims of ongoing and entrenched elder abuse (particularly where there is coercion or physical violence) may benefit from the cooperative structure mandated by the legislative reforms. Such a format brings together a number of services with power to direct support to victims, underpinned by a statutory framework¹⁰ which mandates participation and information sharing by the key relevant services. This may not be appropriate for all situations of elder abuse, however the formalisation of a co-operative approach to supporting clients could be of great benefit to vulnerable older people.

Most Common Forms of Abuse seen by Mid North Coast CLC (MNCCLC) – some Case Studies

MNCCLC’s practice most commonly deals with financial abuse and exploitation by people in a close family relationship with the older person. The examples detailed below demonstrate a repeated pattern of close family who have exploited an older person’s goodwill and trust for their own financial gain.

Case Study 1

Our client had been in hospital as a result of an accident. When our client awoke after surgery, a family member was present with a solicitor and presented our client with documents granting power of attorney and guardianship to the family member. Our client felt under some duress to sign the documents but did so out of a sense of obligation.

Over the next few years our client’s relationship with the family member had become strained and our client felt that the family member was looking for a way to manage their own financial stress. The family member wanted our client to sell our client’s home and use the funds for investment purposes.

Our client wished to cancel both the power of attorney and guardianship.

⁷ Seniors Legal and Support Service such as at Brisbane’s Caxton Legal Centre – more information is available here https://caxton.org.au/sails_slass.html (accessed 9.11.15)

⁸ 2013-14 Annual Report, Caxton Legal Centre <https://caxton.org.au/pdfs/Annual%20Report%202013-14.pdf> at 32 (accessed 9.11.15)

⁹ The framework for Safety Action Meetings is set out in the manual available at this link http://www.crimeprevention.nsw.gov.au/domesticviolence/Documents/It%20stop/Safety_Action_Meeting_manual.pdf (accessed 9.11.15)

¹⁰ Crimes (Domestic and Personal Violence) Act 2007 Part 13A

As our client did not have a copy of either the power of attorney or enduring guardian documents, our client authorised MNCCLC to obtain these document from our client's former solicitor so that we could assist our client to revoke them.

Case Study 2

Our client was persuaded by a family member to take out a reverse mortgage over our client's home and funds from the loan were paid directly to the family member. The family member made payments of interest on the loan but eventually stopped all payments and the relationship between our client and the family member has broken down entirely.

Our client is on the aged pension and he is unable to contribute to paying the loan. The loan continues to increase with interest being capitalised on the loan. The result of the reduction in equity in the home may impede our client from selling his home and moving to an aged care facility in the future. There are questions surrounding our client's understanding of the financial implications of the loan and the family member's role in the loan application. MNCCLC and another specialist Community Legal Centre are assisting our client. MNCCLC also linked this client to other services for financial counselling and personal support.

Case Study 3

Our client was an elderly person who had a number of family members in financial hardship living with our client. The family members used considerable amounts of electricity, internet and telephone service with no attempt to compensate our client. Under pressure from our client's family, our client took out an equity release against the value of our client's home to pay for improvements to the property. Our client couldn't pay the mortgage repayments and was subsequently served with a Statement of Claim for the whole amount. Sadly our client became too ill to provide instructions and passed away.

As the cases above show, there are a number of vulnerable older people in our community whose financial security has been undermined by abuse of trust, and whose relationships with family are strained as a result. Our clients had all communicated their sense of betrayal at the events that had occurred to them, and worry about what sources of support they may have available to them in the future.

Recommendations for new initiatives

MNCCLC would like to suggest for consideration by the Committee, that the NSW Government:

- Refers the possibility of a register of Powers of Attorney to the NSW Law Reform Commission for their consideration.

- That the NSW Government investigates the proposal for a statutory authority with power to investigate financial exploitation of vulnerable people.
- Consider funding collaborative practice units where social workers and lawyers support older people experiencing abuse.
- Consider funding additional specialist “vulnerable persons” officers in Local Area Commands in the state, particularly areas with a high population of older people.
- Consider broadening the scope of new domestic violence responses such as Safety Action Meetings to include vulnerable older people so they are linked into appropriate supports as they escape abusive situations.

Yours sincerely

~~Jane Titterton~~
~~Principal Solicitor~~
~~Mid North Coast~~ Community Legal Centre