



“The Adequacy of Existing Financial Protections for Queensland Seniors”

Submission to the Communities, Disability Services and Domestic and Family Violence Prevention Committee from the Seniors’ Legal and Support Service, Caxton Legal Centre Inc.

EXECUTIVE SUMMARY

This submission highlights the current lack of availability of sources of financial advice and counselling for older people, particularly those of the “older old” and CALD clients who have limited means and resources and who may have physical frailties while retaining capacity. Many of the services listed as providing assistance are not targeted towards the provision of financial advice but are directed at specific issues, most of which have a reactive rather than a protective or proactive capability. Accessing these services is dependent on online access and capability on the part of the older person, and where that person is on a fixed income, the costs of access to the internet may be too expensive. Education is paramount and a State based education and awareness program is essential targeting specific groups in relation to identifying and preventing financial abuse. Finally further consultation at a multi disciplinary level engaging the legal profession, financial sector, community and law enforcement groups is necessary to formulate appropriate policy and legislative responses to financial abuse with a focus on both prevention and civil law remedies.

SUMMARY OF RECOMMENDATIONS

1. That a Queensland Elder Abuse prevalence study be funded and undertaken.
2. That the definition of “relevant relationship” in the Domestic and Family Violence Protection Act 2012 (Qld) be broadened to include paid carers, companions, friends and boarders. In the alternative, consideration be given to separate Elder Justice legislation which could more appropriately address these issues.
3. Continued funding for an expansion of financial counselling services
4. The establishment of financial literacy workshops for older Queenslanders
5. A financial counselling and advisory service ancillary to the Public Trustee for older Australians with capacity but with other frailties.
6. A major public awareness and education program including publication of post card size “Ten Tips to Avoid Financial Abuse”.
7. The establishment of supported family mediation services for older people and their families to address and resolve financial issues (models are available in other jurisdictions as discussed in the body of the report.)
8. Legislative provisions for compensation for losses caused by financial abuse. The common law has not adapted sufficiently quickly to provide realistic accessible and appropriate remedies for elder abuse victims and does not provide deterrence for financial abuse in the first instance. Current remedies do not properly compensate for the pain and suffering endured by victims of financial abuse, and do not provide appropriate monetary recompense, and access to such remedies are limited by both the remaining financial means of the client and their health and capacity to pursue them.¹

¹ “Elder Abuse: how well does the law in Queensland cope?” Queensland Law Society and Office of the Public Advocate Joint Paper June 2010 at 8.

PART 1

Background to this Submission and Overview

This submission is provided to the Communities, Disability Services and Domestic and Family Violence Prevention Committee's (CDSDFVPC) Inquiry into the adequacy of existing financial protections for seniors, which was referred to the Committee by the Legislative Assembly on March 27 2015.

The Seniors Legal and Support Service (SLASS) and the Caxton Legal Centre commend the government's concern for examining the adequacy of existing protections for seniors in light of the high numbers of financial abuse cases seen by the service.

Together with some legislative reforms to the Domestic and Family Violence Prevention Act 2012 to expand the meaning of "relevant relationship", SLASS at Caxton supports an increased allocation of resources to creating a Queensland State Strategy for Elder Abuse and a state prevalence study to more clearly inform Government of the parameters of the problem of elder abuse in our community, and to assist in targeting services for the most vulnerable of our seniors. It is clear that:

- a) There remains a need for additional appropriately resourced advice and education services for vulnerable older people who while they have capacity, lack the financial literacy and capability to undertake complex financial tasks without such support and thus become easy prey for financial predators; and
- b) There is a need for increased response to the special needs of CALD communities and Indigenous and Torres Strait Islander communities, where financial and English literacy may be especially poor and cultural differences, for example around the often limited role of women in family decision making may render them especially vulnerable in later years.

Caxton strongly supports increased community education addressing improved financial literacy and capability of older people, as well as resourcing some level of supports for financial decision making where the older person is deemed to have capacity despite advanced age and frailties, where the only consistent protections are provided for older persons with impaired capacity via the Office of Public Guardian and the QCAT Guardianship jurisdiction.

Attention should also be directed to the difficulties of obtaining redress in the courts for older persons who have been financially abused, as for older clients with few means such remedies are time-consuming, and expensive, and an older client may find them inaccessible.

We reiterate our call for the introduction of a dedicated Elder Abuse Act, as discussed at length in Caxton's earlier submission to the then Domestic and Family Violence Protection Bill 2011. It would be much more ideal if elder abuse could be dealt with separately under a dedicated Act, leaving the DFVPA to deal with the other matters incorporated under its ambit. However, until such time as a specific Seniors or Elder Abuse Act is introduced by the State Government, the protections needed by our clients need to be contained in the DFVPA, and the protections provided by the "relevant relationship" requirements remain too narrow.

Our response to the terms of reference of the Inquiry is set out below.

PART 2

“The abuse and neglect of older people is everyone’s business. The challenge is to create a ...community which does not tolerate a culture of abuse and neglect. This will be a community which offers information and support to its vulnerable citizens, informing them of their rights and offering protection through legal and social mechanisms which prevent abuse, provide easy pathways to help and provide a mandated service response so that vulnerable older people are offered help and opportunities for ongoing assistance.”²

INTRODUCTION

SLASS is funded by the Department of Communities and part of Caxton Legal Centre Inc., a not for profit community legal centre. SLASS provides free legal and social work support to older Queenslanders who are at risk of or experiencing abuse. The model is unique in that it pairs a social worker and a solicitor who can visit the older person in their home or residential facility. The Service offers legal advice, representation and social work support. SLASS also provides approximately 32-40 Community Legal Education seminars across the greater Brisbane metropolitan area per year to seniors groups, service providers, care workers, hospital staff and any other persons who work closely with older people. The Service has also contributed to the Public Advocate’s Advisory Group on supported decision-making and the new Capacity Handbook for Legal Practitioners. SLASS also maintains a high profile within Queensland in elder abuse consultative matters and collaborates regularly and consistently with other SLASS services in Queensland and with seniors’ services interstate.

DEFINITIONS

“Elder” and “Older person”

In Australia, the term is not defined by common law and therefore has no legal meaning. In 2007 the Federal Government in their report “Older People and the Law” used the term “older Australians” when referring to persons aged 65 years or over.³ In 2002 the World Health Organisation’s World Report on Violence and Health looked at elder abuse and recognised that a person is considered of older age in developed countries at 60 or 65 years of age. It was acknowledged that adopting an age of 50 years may be better practice in the case of Indigenous Australians.⁴ SLASS assist people who are aged 60 years and over and 50 years and over for Indigenous Australians.

² South Australian Public Advocate and University Of SA Human Rights and Security Research Innovation Cluster: Closing the Gaps; Enhancing South Australian’s response to the Abuse of Vulnerable Older People (Report for the Office of Aging and Disability Services October 2011)

³ House of Representatives Standing Committee on Legal and constitutional Affairs, Parliament of Australia, *Older People and the Law* (2007) [1.26].

⁴ World Health Organisation, *Definition of an older or elderly person (2009)*
<<http://www.who.int/healthinfo/survey/ageingdefnolder/en/>>

“Elder abuse” has been defined by the World Health Organisation as: *Any Act occurring within a relationship where there is an implication of trust, which results in harm to the older person. Abuse can be physical, sexual, financial, psychological, social and / or neglect.*⁵

“Financial abuse”

There is no universal definition of financial abuse. The World Health Organisation has proposed the following:

“...the illegal or improper exploitation or use of funds or of other resources of the older person”⁶.

Financial abuse can take many forms and includes making improper use of an older person’s property or money without their consent, forced changes to a will, involuntary transfer of property to another person, withholding of funds from the older person, failure to pay loans, coercing the older person into signing a guarantee or loan and misappropriation of enduring powers of attorney.

It has been the experience at SLASS that a range of forms of abuse may be perpetrated on an older person with the primary aim of predation – in order to access their funds and/or property. The incidence of financial abuse occurs at approximately 42% of all cases, but this may be conservative.⁷ A recent Irish study reported the most frequent combination was psychological and financial abuse (20%)⁸ and this is consistent with SLASS findings irrespective of the factor of impaired capacity.

It is widely understood that the results of financial abuse often lead to a marginal existence for the older adult victim. The ramifications may last for the remainder of the older adults’ lives because there is little or no time to replace the exploited resources or money. In addition, if exploitation occurs, it could lead to an exacerbation of the older adult’s health problems, such as hypertension, heart disease, and other stress-related conditions such as depression, anxiety, and posttraumatic stress disorder; it may even lead to premature death.⁹

⁵ WHO, Geneva; Krug, E; Dahlberg, L; Mercy, J; Zwi, A; and Lozano, R (Eds) *“World report on violence and health”* Ch.5. See also WHO and the International Network for the Prevention of Elder Abuse (INPEA) Toronto Declaration, *The Missing Voices Report: views of older people on elder abuse*; Geneva 2002.

⁶ *ibid*

⁷ Statistics taken from CLSIS reports Caxton Legal Centre

⁸ Clancy et al ., 2011; Manthorpe, Samsi & Rapaport: *“Responding to financial abuse of people with dementia”* 24:9 (2012) *International Psychogeriatrics* 1454-64 at 1455

⁹ Brandl et al., 2007; Nerenberg, 2008

PART 3

PREVALENCE STUDIES AND DATA

Australian and overseas studies estimate that between 3 and 5 % of older people aged 65 years and over and living at home suffer from various forms of abuse or neglect.¹⁰ Most of the victims are women.¹¹ Older women are more likely to be abused after their partner dies¹² and more likely to be abused by a broader range of family members than men.¹³

The Australian Institute of Criminology states “4.6% of older people are victims of physical, sexual or financial abuse, perpetrated by family members and those in a duty of care relationship.”¹⁴

Financial abuse is emerging as a significant form of abuse.¹⁵ Research indicates that psychological and financial abuse, being non-physical forms of abuse, are the most likely forms of abuse to be perpetrated often by the person’s relatives, in particular their adult daughter or son.¹⁶

There is a strong link between the abuse of older people and dementia. A 2011 report estimated that the number of Australians with dementia over 60 years of age will triple from 2011 to 2050 (from 266,574 to 942,624).¹⁷

When focusing on financial abuse, there are concerns that dementia renders an individual more vulnerable than others because they become less able to protect themselves, have declining abilities to identify and manage risks, may not report concerns, or fail to be taken seriously. These concerns are widespread and are evidenced by international prevalence estimates of the extent of abuse among older people generally.¹⁸

SLASS File Audit 2015

SLASS recently undertook a review of 500 closed cases in the period 2014-2015. The objective of the review was to gain a better understanding of our client base and the issues they were presenting with in order to provide a more effective service. The results closely mirrored the prevalence studies outlined above.

¹⁰ Kurrle 2004, p.809.

¹¹ Rabiner, O’Keefe & Brown, 2004

¹² Brozowski & Hall 2004.

¹³ Livermore, Bunt & Biscan, 2001.

¹⁴ Kinnear & Graycar 1999,p.1., Smith, Fraud and Financial abuse of Older Persons, Australian Institute of Criminology No 132 Oct 1999

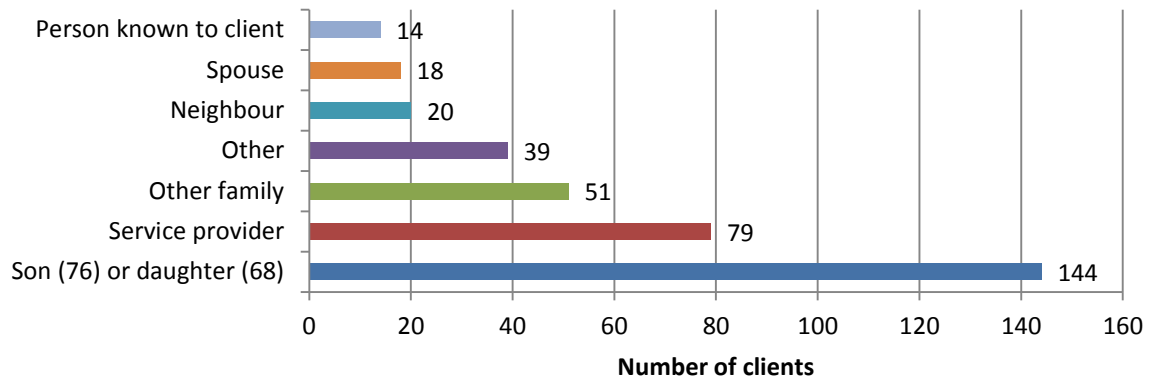
¹⁵ Office of Seniors Victoria, 2005 & 2012.

¹⁶ Brill, 1999; Cripps, 2001; Boldy, Webb, Horner, Davey, & Kingley, 2002; Faye & Sellick, 2003; Johnson 1997; Cavanagh 2003.

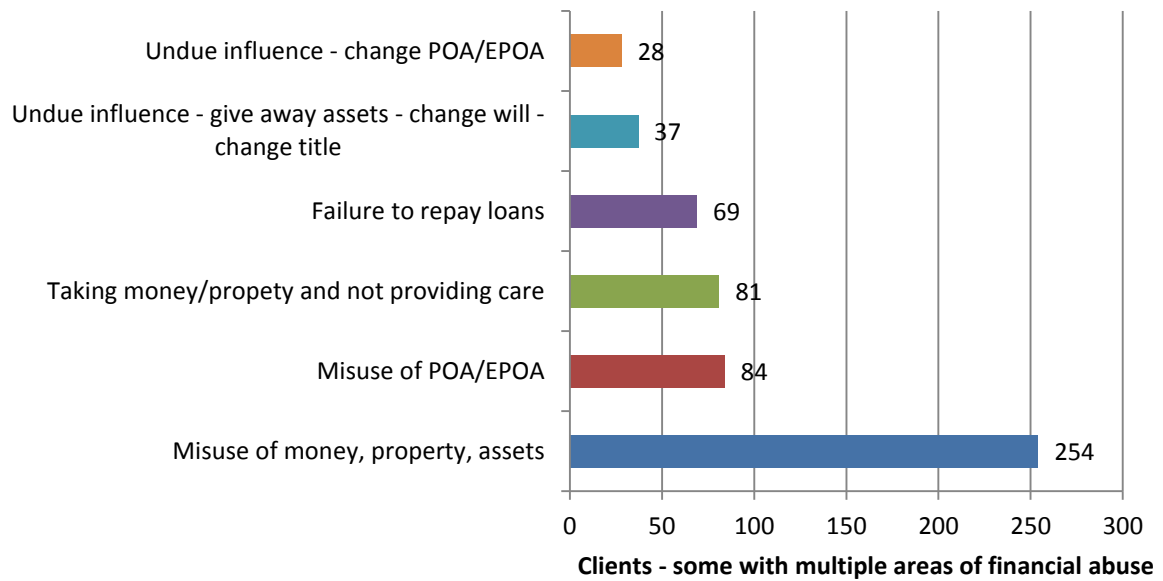
¹⁷ Deloitte Access Economics, 2011.

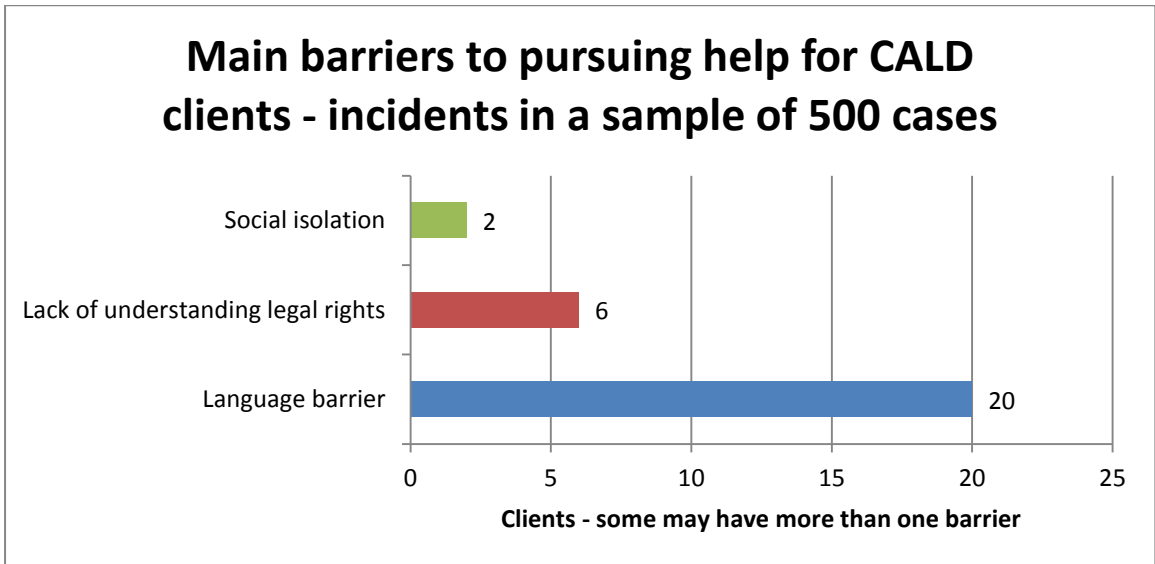
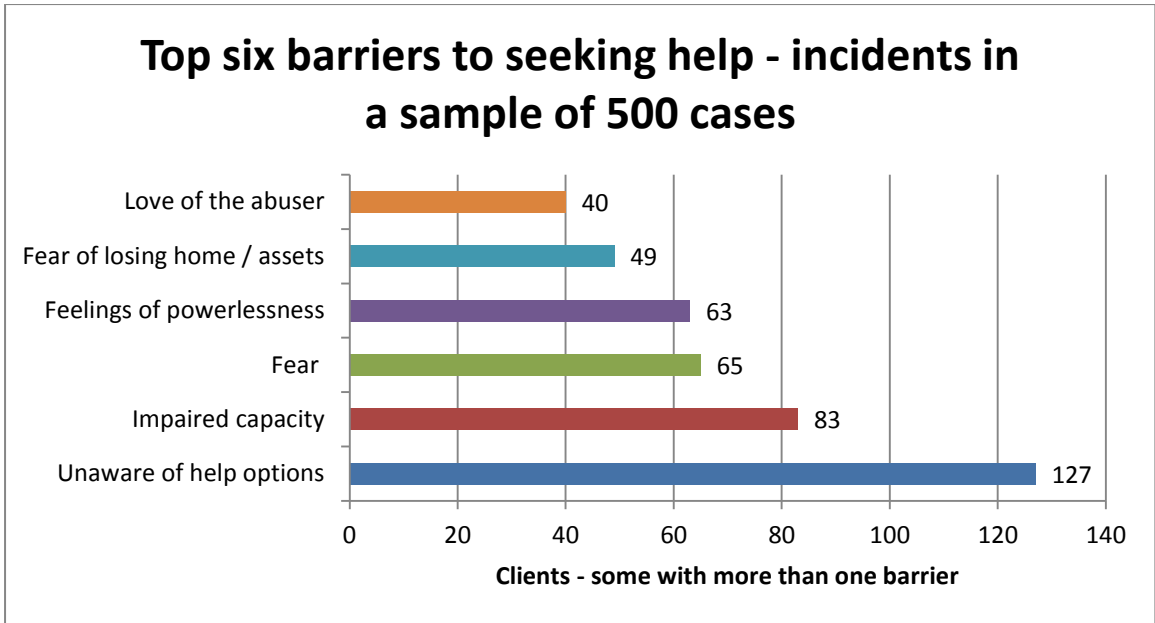
¹⁸ Manthorpe et al ‘Responding to the financial abuse of people with dementia: a qualitative study of safeguarding experiences in England’ 24:9 2012 International Psychogeriatrics 1454-64 at 1454

Perpetrator's relationship to client - from a sample of 500 cases



Some major areas of financial abuse - from sample of 500 cases





In order to better approach the issue of financial abuse and the current trends, it is submitted that funding is required for a Queensland prevalence study to be undertaken. There is currently neither a national prevalence study of elder abuse in Australia nor a state study for Queensland.

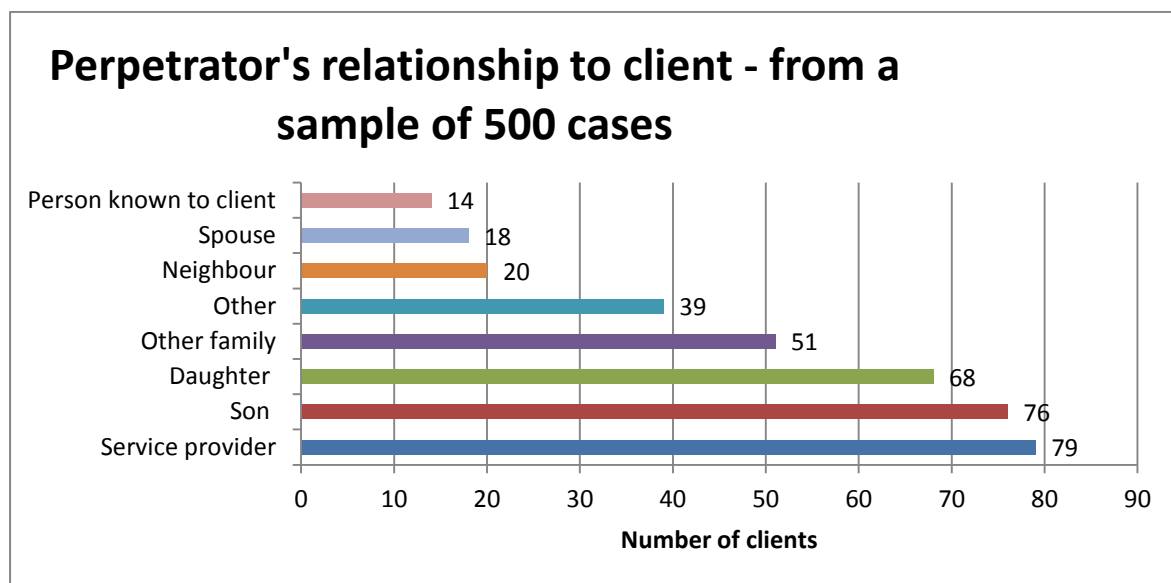
Recommendation:

That a Queensland prevalence study be funded and undertaken.

Domestic and Family Violence Prevention Act 2012

Domestic violence research has shown that all forms of abuse are often interconnected and are part of a complex, shifting kaleidoscope or mosaic of abuse, often with the misuse or abuse of power and control at the centre.¹⁹ The addition of financial and psychological abuse as a form of abuse in the 2012 legislation was welcomed by SLASS in that it provided a tangible recourse for our clients who were suffering financial abuse at the hands of family members.

However many of our clients are presenting with abuse being perpetrated by those not included in the definition of “relevant relationship”. As outlined above in the SLASS case audit, financial abuse, whilst primarily perpetrated by family members is also perpetrated by paid carers, friends, neighbours, boarders and those who ingratiate themselves into an older person’s life.



¹⁹ Bagshaw, 2003.

PART 4

TERMS OF REFERENCE

1. The current levels of financial literacy of seniors and how that can be improved, for example by education programs.

Financial Literacy and Financial Counselling

Financial counselling assists people who are experiencing financial difficulties or who need information relating to credit and debt. It aims to raise the financial literacy of clients, empower them to regain control of their financial situation, and enable them to learn financial management skills. The Financial Counsellors Association of Queensland is a small association run by volunteers. Unfortunately all state funding of financial counselling ended on 30 June 2013. The Commonwealth provided funding in time to offer some new positions for the retrenched financial counsellors but the impact of the loss of qualified counsellors was felt across the community sector.

Older persons display significant variability in levels of financial literacy but the clients who most commonly present to the SLASS are generally financially disadvantaged, on fixed incomes, and have limited financial literacy.

It has been found that financial literacy in Australia tends to be highest amongst people aged between 50 and 60, professionals, business and farm owners, and university and college graduates. Financial literacy was lowest for unemployed, females, and those from non-English speaking backgrounds with a low level of education. Such findings are consistent with other research which indicated financial literacy is dependent on gender, age, and language.²⁰

Older women in particular have been identified as having little experience of handling financial affairs as their husbands in many instances have controlled the larger financial decisions and as a result lack the confidence or experience in handling money decisions. This perspective is supported by research and a Victorian study of the legal needs of older people showed 72% of respondents who indicated they had problems with financial decisions were female.²¹

Older parents are also being asked to guarantee loans for their adult children and this is proving to be another source of financial abuse. The University of Sydney and NSW Law Reform Commission undertook empirical research into the experiences of guarantors and showed that:

- 65% were female
- 65% were over 50, with the highest proportion being over 60 years or older (37%);
- 40% were born overseas and 85% were from non-English speaking backgrounds; and
- 26% were guaranteeing loans for adult children.²²

Cultural factors can often lead to older people from culturally diverse backgrounds feeling obliged to provide financial assistance to family members without proper regard for the

²⁰ Steen & McKenzie, Financial Stress, Financial Literacy, AABFJ Volume 7, no. 3, 2013 31-46

²¹ McCullough, S., Older People and the Law, 1995, Table 4.4.1.

²² Lovric, J and Millbank, J., Research Report 11: Darling please sign this form: a report on the practice of third party guarantees in New South Wales, 2003, paragraphs 3.6-3.633.67.

commercial viability of the transaction. There can also be considerable confusion about the nature of a third-party guarantee, as the concept of such a transaction is foreign to many cultures.

Lack of knowledge about options leaves older people open to exploitation if they trust the wrong adviser.

Case Study 1

Mrs A was a 63 year old woman on a Disability Support Pension who suffered from a debilitating condition severely affecting her mobility. She owned a modest house in an outlying suburb worth about \$260,000.00 which was adapted for her disability and was fully paid off. When Mrs A's daughter asked her mother to act as guarantor for a business loan to help the daughter into a franchise, Mrs A agreed, believing that her total exposure would be \$11,000.00. Mrs A said " I had such a hard life myself I wanted things to be better for my daughter." The bank did not explain the nature of the guarantee to Mrs A, who as a result of lack of financial literacy and poor overall literacy, did not understand the bank statements and eventually the legal letters from the bank's legal advisers which followed upon the loan repayments falling into arrears. Mrs A had received a letter requiring her to leave her home as a result of a default judgement which was read to her by a concerned friend. In this case SLASS worked with the Caxton Legal Centre Consumer Law team to have the default judgement set aside, and Mrs A was able to stay in her home. However, the impact of Mrs A's poor literacy skills and low levels of general literacy made her an easy victim for sharp lending practices as she consistently maintained that at no time had the consequences of signing a guarantee been fully explained to her, and SLASS/Caxton found her a credible witness.

Banking, credit and debt

The main problems confronted by older people in relation to credit and debt reflects the increasing use of technologies in banking, and also the high proportion of older people on fixed incomes and pensions.²³

A Human Rights and Equal Opportunity Commission (HREOC) Inquiry²⁴ into the accessibility of technologies for older Australians and people with a disability identified a range of barriers including:

- The cost of access to computers or internet connections

²³ Department of Ageing, Disability and Homecare , Premiers Forum on Ageing Report: Consumer Protection, 1 October 2002, p. 22.

²⁴ Human Rights and Equal Opportunity Commission, Accessibility of electronic commerce and new service and information technologies for older Australians and people with a disability, Commonwealth of Australia, Canberra, 31 March 2000.

- The need for awareness and training in use of ATMs and EFTPOS
- Older people's concern about privacy and security of internet transactions
- Concerns for personal safety when using ATMS

Enduring Powers of Attorney

There remain significant issues with the porous nature of enduring documents. Issues have arisen for clients of our service regarding:

- lack of awareness of the true extent of the financial powers;
- the lack of awareness of capacity issues by qualified witnesses such as Justices of the Peace and solicitors;
- the timing of powers (the ease with which a box is ticked in order for the attorney to assume the financial power immediately);
- the widespread lack of awareness on the part of both attorneys and principals of the General Principles outlined in the Powers of Attorney Act 1998²⁵; and the Guardianship and Administration Act 2000²⁶.
- In addition, many older persons have small or non-existent family or social networks. If they are SLASS clients it is highly likely that they are already experiencing a fracturing of family dynamics as a result of financial abuse, and there is often simply no suitable attorney available to be appointed.

At the same time there may be strong pressure from providers of aged care services to make such an appointment which increases the likelihood that the appointment will be a poor one with an increased chance of abuse.

Case Study 2

Mr B was an 92 year old gentleman who had suffered severe financial abuse at the hands of his attorney (his son and only child). Mr B's son had made an application to the QCAT Guardianship Tribunal to have his father declared impaired. When the Tribunal found that Mr B had capacity, Mr B was then left with the predicament of having to arrange for the sale of his house in order to fund aged care. Mr B felt that he had neither the financial/property expertise nor the energy to undertake the sale, and there was simply no help available for him to do this. He had no other family, and his friends had pre-deceased him. There is no agency or service that can support Mr B or assist him in this task.

²⁵ Powers of Attorney Act 1998 (Qld) Schedule 1; Part 1 at 76

²⁶ Guardianship and Administration Act 2000 (Qld) Schedule 1 at 200.

Case Study 3

In a matter very similar to **Case Study 1** above, Miss C was a 94 year old client of SLASS, who contacted us following her treating GP's certification that she had capacity and who had suffered financial abuse at the hands of her attorney, her niece. Miss C was quite feisty and revoked the power of attorney, but explained to SLASS that she now had no-one she could appoint except perhaps her paid carer. She had no remaining family, as she had never married or had children, and her only other relative was a nephew living in England with whom she had had no contact for 30 years. The service felt very concerned about such an appointment of a paid carer and explained to Miss C the nature of the risks of such an action. Miss C said that she desperately needed help to sell her home and move into aged care and while she was prepared to access a RACF brokerage service, she needed help with selling her house, and she could see no other course of action.

SLASS was also contacted by an elderly client who intended to appoint her pool maintenance person as her attorney as she had, at 93, no friends or family available to appoint.

These case studies emphasize the points made above, firstly that a finding of capacity does not necessarily mean that an older client will have the ability or the knowledge to undertake such actions without support, and such clients (especially the "older old") often may lack the family or social network which would provide a range of suitable appointments for an enduring power.

RECOMMENDATIONS

1.1 Continued funding for financial counsellors in Queensland

1.2 Financial literacy workshops for older Queenslanders – these may be undertaken in collaboration with local government seniors' programs or potentially via collaborations with banks and industry (an example of how this was tackled through an initiative in Illinois – where a community partnership was formed with Allianz, to provide grants to support their financial literacy workshops for seniors. These workshops are intended to educate seniors about the increasing problem of elder financial abuse and offer guidance on steps they can take to protect their finances.)²⁷

1.3 Financial Counselling ancillary service to Public Trustee - for elderly clients who are not impaired but may lack financial literacy and capability, or who may have physical illnesses and frailties, and who do not have computer access and are not computer literate.

²⁷ Professional Services Close-up 25.08.13

2. What support and advice is available to assist seniors with their independent decision making

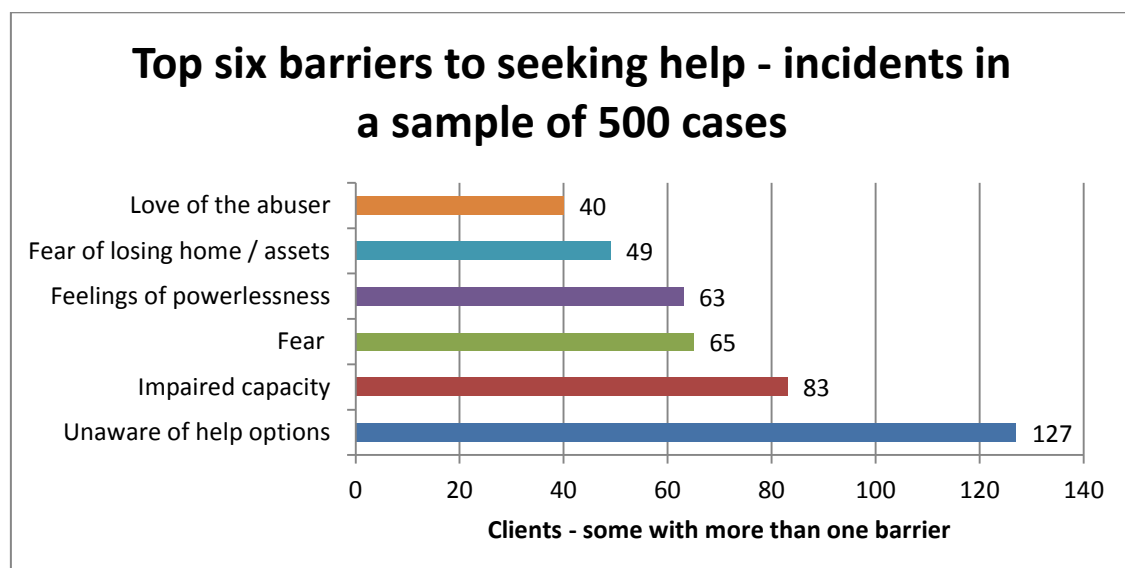
The difficulties facing vulnerable seniors are exemplified in the following case study:

Case Study 4

Mrs D, an 80 year old female aged pensioner was taken from hospital after cancer treatment by her son and taken to a financial institution and then a solicitor's office where she signed a Transfer for half of her home to her grandson and a mortgage for the full value of the home. She received no financial advice or independent legal advice. She does not clearly recall signing the documents as she was heavily medicated at the time due to her cancer treatment. She was assured it was a "short term loan" for a month. Twelve months later she was advised she was in arrears with her mortgage and the mortgage now was in excess of the value of her home. She did not know she had a mortgage. SLASS wrote to the financial institution requesting the financial due diligence file that should have been undertaken when writing the mortgage. The financial institution refused to cooperate. SLASS made an application to the Financial Ombudsman who requested the parties make representations for their consideration. The financial institution agreed (without accepting liability) to release our client's home as security for the mortgage and release the mortgage entirely.

The SLASS case audit 2015 of 500 cases indicated on a very small scale the barriers confronting older people accessing assistance in relation to financial abuse. As represented in the graph below, the majority of clients were prevented from seeking assistance due to their being unaware of their rights and options.

The barriers to effective reporting and in turn responding to elder abuse is summarised in a lack of education, fluctuating capacity, fear of the abuser and the consequences of reporting the abuse, namely a fear of being institutionalised and a lack of awareness of legal rights and options.



The following organisations provide varying levels of advice and support.

Brisbane City Council links to Aged Care Services in Queensland with further links to a list of organisations providing information and support. None target assistance with general advice and support for financial decision making, although some organisations provide systemic advocacy, (COTA, Office of Public Advocate) and some provide personal advocacy for specific situations (Carers Qld, QADA)

Centrelink Financial Information Service (FIS) provides information on financial issues including financial planning, understanding financial or investment products, income and assets tests, and taxation. As well as attending public seminars, people can make an appointment to receive individualised information from a FIS officer, however, FIS does not provide investment recommendations. The FIS is free and open to anyone, whether or not they are in receipt of social security benefits. However long delays are often experienced accessing this service.

Department of Fair Trading provides advice about consumer protections and rights, scams together with online resources and information available for non-English speakers. Phone contact is available.

Financial Counselling: The Queensland government website redirects clients to national financial counselling website. Instructions for finding appropriate source of financial planning require considerable online research. For many older people this requires a degree of computer access and literacy that many do not have, particularly in the 80+ age group. There is also no capacity for these services to conduct home visits and clients are required to attend an office or opt for a telephone appointment.

Uniting Care Community – Financial First Aid Line: This is a first stop for Queenslanders who are in financial trouble. This is a free telephone advice service offering assistance setting up a money management program. The service will also offer a referral to a free financial counsellor for a face to face consultation.

Moneycare – Salvation Army Financial Counselling : A service offered to those in financial difficulty and provides counselling and a range of “Self Help” tools on their websites. Appointments are face to face but can be conducted over the phone for those in remote locations.

The Importance of Education

According to the World Health Organisation’s report on elder abuse “...prevention starts with awareness...” and this is achieved through education and training.²⁸ Investment in prevention and early intervention services in will deliver a significant saving in current public spending. Older people who experience abuse are more likely to suffer depression and physical abuse than those who don’t experience abuse.²⁹ The emotional and physical trauma suffered by victims has significant cost implications to the health and welfare services who work with these older people.

Whilst there is no Commonwealth, State or Territory legislation specifically aimed at elder abuse, it has been argued that the issue is a lack of education about, and awareness of legal rights as the real

²⁸ Krug EG et al., eds. World report on violence and health. Geneva, World Health Organisation, 2002: (Ch 5 Abuse of the Elderly).

²⁹ Ibid.

issue, not specific legislative reform.³⁰ SLASS submits that a two-pronged attack is required – the need for education and financial literacy is essential, but there must be effective assistance to those who still lack financial literacy or are too frail to undertake the actions that are required to protect their interests. The difficulties in pursuing avenues for compensation (particularly in respect of defaulting attorneys) for older persons with limited means, is a further access to justice issue in this context.

Specific education is required for legal, health care and care providers to assist them to identify the abuse, respond effectively and make an appropriate referral. Interagency collaboration is essential as the abuse of older people is a legal, medical and social problem. As stated above “elder abuse is everyone’s business” and a State wide awareness and education campaign would assist in educating the wider public as to the issue. The Australian Banking Association has taken the lead in producing detailed factsheets on financial abuse and has engaged in a strong campaign to educate their front line banking staff on recognising the signs of financial abuse and impaired capacity.

Publication of materials is recommended such as “Ten Tips to Prevent Elder Abuse” in a post card or wallet size format which is easy to distribute and small enough to conceal from a potential abuser who may be living with the older person. SLASS have compiled their own version:

TEN TIPS FOR AVOIDING FINANCIAL ABUSE

1. Don’t give your PIN to anyone.
2. Don’t give your internet banking details to anyone. Don’t permit a friend, carer or family member to register your account for internet banking.
3. Before loaning any money, giving any money, moving in with family, allowing family to move in with you seek INDEPENDENT legal advice and obtain your legal advice ALONE.
4. Talk to Centrelink before loaning or gifting any money, property or moving in with a family member. Your pension could be affected.
5. Make a will and review it every 2-3 years.
6. Get regular capacity assessments from your GP and keep them with your Will.
7. Make an Enduring Power of Attorney (EPOA) and review every 2-3 years.
8. Don’t sign an EPOA until you understand what you are signing including that the power over your financial affairs starts when YOU choose.
9. Join a group and keep healthy. So stay active and keep in contact with friends, neighbours and extended family. A risk factor for elder abuse is social isolation. Research has found that those at risk share some common features – living alone and poor health.
10. Speak up! Call Seniors Legal and Support Service (SLASS) on 3214 6333, tell a friend, tell a neighbour but report the abuse.

³⁰ Victorian Government, submission no.121 to the ‘Legal Actions, in Older People and the Law, Standing Committee on Legal and Constitutional Affairs, House of Representative, Canberra, 2009.

3. Online and internet based vulnerabilities and the prevalence and vulnerability of seniors to scams.

Vulnerability to online scammers is not confined to older people and may well be intergenerational. But when people are older, personal loneliness may be a powerful influence in highlighting susceptibility to scammers, and once money has changed hands, the older person is seldom in a position to recoup their losses. SLASS sees a small amount of “romance scams” and nationally in 2014 Australians lost \$28 million to romance scams.³¹ Victims are equally split by gender and Australians over the age of 65 represent 14% of victims according to the Australian Competition and Consumer Commission “Targeting Scams Snapshot 2014”³². This data correlates with the small amount of male and female clients seen by SLASS in the sample of 500 clients.

Case study 5:

Mrs E was 72, and had been left comfortably provided for with a property and other assets worth \$400,000.00 upon her husband’s death. She began an online relationship with a scammer in a strong belief that he was genuine. Mrs A confessed to SLASS that she didn’t get on with her 2 children and was very lonely, and that the online relationship had given her back an interest in life. SLASS provided counselling and linked Mrs A into community organisations, but she had already lost over \$200,000.00. Mrs A admitted that she missed the online relationship and was keeping up occasional contact despite the danger.

In this case Mrs E’s children became increasingly concerned about the impact of the scamming losses and begged their mother to stop all contact. However SLASS was aware that while loneliness was a significant factor, the additional factor was the hope that the client felt that the online relationship could change her life, and that the losses she incurred seemed less important for a time than preserving that hope. Loneliness and social isolation are potent factors in facilitating abuse.

4. Agencies and organisations that provide advice and support to seniors requiring financial protection

Seniors Legal and Support Service – legal advice and social work support
Parks and Villages Information Link (PAVIL) - Caxton Legal Centre
Caxton Legal Centre Inc. – consumer service and general law service
Legal Aid Consumer Protection Unit
Financial Ombudsman Service
Credit Ombudsman Service

³¹ <http://www.abc.net.au/news/2015-05-18/aussies-lose-millions-to-romance-scams-investment-fraud/6478230>

³² <https://www.accc.gov.au/system/files/Targeting-scams-2014-infographic.pdf>

The Ombudsman Services whilst not providing advice and support are valuable in responding to complaints in relation to financial services. The limitations of these services are that they can only assist with financial service providers who are members of the respective organisations. The remainder of the organisations listed are limited in their capacity to engage in a meaningful level to the clients that present for advice and assistance due to resourcing issues.

All services unfortunately tend to respond in a more “reactive” rather than “proactive” way.

The solution to providing a proactive response would be a collaboration between a wider group of the community that is currently being engaged. It is proposed that a holistic, multi-agency approach is needed to examine these issues and consider legal reform where appropriate in order to address the needs of older Queenslanders. Such an approach needs to be combined with a major education and awareness campaign targeting:

- The legal profession
- Service providers
- Health professionals
- Queensland Police Service
- Justice of the Peace
- Financial institutions

RECOMMENDATION

Supported Family Mediation

Supported mediation has the potential to be well suited as a form of dispute resolution for older people. It is submitted that a participatory model of supported mediation is the best way to address the ageist context in which abuse occurs, namely allow the older people to participate in the solution instead of relying on intervention.

It is proposed that a model of supported mediation be utilised to serve as education and prevention.

A supported family mediation is a cooperative process aimed at assisting older people and their families prevent or resolve family conflicts and to empower the older person to make decisions that protect their interests and their rights. The process would allow the older person to find areas of agreement which can be incorporated into solutions that the people themselves create. These mediations or meetings would serve as an early form of intervention whereby families can develop strategies in relation to the older person’s finances and property to guard against potential risk of exploitation or abuse from a family member.

The potential advantages include:

- Empowering the older person by giving them a voice in an open forum;
- Hasty decisions are potentially prevented;
- Protective mechanisms can be put in place to prevent any future financial exploitation of the older person;

- Family members are educated on behaviours perceived to be normal but is in fact financial abuse;
- Escalation of a family dispute into legal action is avoided and matters are prevented from going to QCAT or through the court process.

A similar project titled “The Older Person Centred Mediation Project” is currently being trialled in South Australia involving collaboration between the Department for Families and Communities, Alzheimers Australia SA, Guardianship Board, Office of the Public Advocate, Relationships Australia SA, University of South Australia and Flinders University.

Mediation / Alternative Dispute Resolution

In the experience of SLASS, one of the most significant problems in the area of financial abuse of older Queenslanders has been the fact that on most occasions, the only legal recourse is the Court of Equity which in turn requires an almost impossibly high hurdle to overcome before the Court can entertain the matter.

The claims of financial abuse generally involve issues of undue influence, unconscionable conduct and constructive trust. The law of undue influence does not adequately provide for situations of elder abuse. Undue influence is a 19th century doctrine established in an era where people generally had a shorter life expectancy and less often became financially and physically dependent on others. The law presumes undue influence exists within established relationships including parent and child **but not** child and parent. Therefore for an older person to establish undue influence against a child they must rebut the legal presumption that a transfer of an asset from a parent to a child is a gift unless it can be established that at the time of the transfer no gift was intended.³³ This is a complicated and very expensive exercise and not recommended to be attempted without specialised Counsel.

Clients on a pension and often with limited financial and general literacy are excluded from seeking equitable relief due to the high cost and the risk of a costs order against them if their claim fails. Unfortunately the Magistrates’ Court and QCAT being the most accessible courts to SLASS clients lack trained adjudicators to determine such complex claims.³⁴

Longer life expectancy and a significant increase in real estate values has resulted in complex family dynamics with the older person’s unencumbered home presenting as a tempting target for a cash poor family member. In addition to the lack of government funded aged care, the older person’s home is used as a bargaining tool in return for a family member undertaking home based care.

A widely supported recommendation and recurring theme throughout the various reviews of the issue of financial abuse of older Australians has been for family based mediation or alternative dispute resolution.

³³ LexisNexis *Australian Encyclopaedia of Forms and Precedents, ‘Undue Influence’*
 <http://www.lexisnexis.com/au/legal/search/runRemoteLink.do?bct=A&risb=21_T22103480099&homeCsi=267952&A=0.689915966593434&urlEnc=ISO-8859-1&&dpsi=0086&remotekey1=REFPTID&refpt=AEFP.GIFT6.4620&service=DOC-ID&origdpsi=0086>

³⁴ Rodney Lewis, ‘An Elder Abuse law for New South Wales’ 26 June 2013, p. 19.

In 2009 the House of Representatives, Standing Committee on Legal and Constitutional Affairs discussed the report “Legal Actions, in Older People and the Law” and recommended:

“...funding for mediation and dispute resolution services to assist older people to resolve financial disputes within the family situation.”

The Law Institute of Victoria submitted to the abovementioned Standing Committee their support for “...information and education programs on the part of older persons, their families, their carers and solicitors.” This submission was supported by State Trustees of Victoria who suggested, “...having dispute resolution mechanisms available where the mediation can be used rather than having people finishing up in Courts and Tribunals.”

A multi-disciplinary consultation involving the legal profession, financial sector, community care workers, older persons advocacy groups and law enforcement is needed to formulate an appropriate response to the increasing problem of financial abuse of older Australians.

5. The role of the financial sector in ensuring adequate safeguards for seniors in relation to financial decision making

The financial sector, in particular that Australian Bankers’ Association have spent significant time and money consulting with key stakeholders in formulating a financial abuse package on their website. The package consists of:

- Industry guideline “Protecting vulnerable customers from potential financial abuse”;
- Consumer Fact Sheet “Protecting yourself from financial abuse”;
- Industry guideline “Responding to requests from a power of attorney or court appointed administrator”;
- Consumer Fact Sheet “Setting up power of attorney to help manage your banking needs”;
and
- New tool to help detect financial abuse of Australians – an online tool for banking staff to educate and assist them recognise potential instances of financial abuse.

CONCLUSION

This paper has identified a number of obstacles experienced by older persons when accessing advice, support and assistance in relation to financial abuse. The issues and recommendations made require consideration in order to protect older persons from falling victim to financial abuse. It is our submission that the first step to be taken is to increase awareness of the issue of financial abuse of older persons. Financial abuse and elder abuse in general is notoriously under reported due to the abuse taking place primarily in a family based setting. Due to the unique nature of elder and financial abuse, it is our submission that the most effective means of preventing and resolving this issue is by way of a supported and facilitated family mediation. Only when there is adequate community awareness of the issue would a more comprehensive legislative review of the law surrounding older people be effective.