

## **Attachment B: Elder Abuse Case Studies Provided by Community Legal Centres August 2018**

*Outlined below are a selection of case studies provided by centres across Australia that demonstrate the issues faced by people experiencing elder abuse and the vital work undertaken by centres to support their clients and communities.*

### **Nancy's Story**

Nancy, 91, is frail, in poor health and lives in her own home. Two years ago, Nancy's son moved in with her, along with his partner and two adult children. Neighbours reported to police that Nancy was being subjected to verbal, financial, emotional and physical abuse by her son and grandchildren. Police were unable to lay charges as Nancy refused to provide statements to the police. Police issued a Family Violence Safety Notice against Nancy's son but the resulting Intervention Order did not prevent him from residing at his mother's home due to lack of detail.

When Nancy was admitted to hospital after a 'fall' nursing staff noted that her son was pressuring her for money during his visits. This was causing Nancy to feel extremely anxious and upset. She disclosed that her son had also organised for her to appear at a Magistrates' Court to revoke the Intervention Order.

To protect Nancy from further abuse, the nursing staff contacted the Elder Abuse Advocate at ECLC and Nancy's case manager at another local service. ECLC recommended that a joint letter be submitted to the Court prior to the hearing, outlining the abuse concerns.

This resulted in an extension of the Intervention Order and continued police monitoring when Nancy returned home. Ongoing collaboration between police, ECLC and other services has been critical to ensuring Nancy's safety and ongoing care.

### **Agne's Story**

For some months, Agnes has been seeing a counsellor. In these sessions Agnes reported patterns of emotional and social abuse and denigration perpetrated by her son. Many of his tactics mirror those used by her abusive ex-husband.

Recently, Agnes' son asked her for financial assistance in the form of a guarantee or a loan secured by her property. When she refused, her son accused her of "blocking him from buying his home". While it was difficult to say "no", it was symbolic in that it built on the work she was doing with her counsellor around assertiveness.

In light of these discussions, Agnes started thinking about making arrangements for the future. She wanted to remain living in the property for as long as possible, and would be open to paying for services, making modifications, etc to allow for this. She also wanted to make sure her son was involved, but was concerned he might make decisions that were good for him, but not good for her.

Having identified some of these "life problems" as "legal problems", Agnes' counsellor suggested she speak to the HJP lawyer. Initially, Agnes was reluctant, as she didn't want to

jeopardise her relationship with her son. But she trusted her counsellor, who assured her she could trust the lawyer.

When Agnes first met with the HJP lawyer she wanted to appoint her son under an enduring power of attorney. The lawyer outlined her options, emphasising the importance of choosing the right person to be involved in managing her affairs. Involving the wrong person may have significant legal, financial and emotional consequences.

After this advice, she decided to appoint her nephew, who she believed was better equipped to understand what she wanted and manage her finances. However, to preserve family relationships, and prevent a legal challenge in the future, Agnes wanted her nephew to consult with her son.

Further, she wanted to limit her nephew's authority to make financial and personal decisions: she wants to make sure she can remain living in the community for as long as possible; and direct him to seek financial advice regarding the payment of residential aged care fees.

The HJP lawyer arranged for a pro bono lawyer to advise Agnes on strategies to ensure she could remain living in her home for as long as possible, without compromising her housing. The pro bono lawyer also drafted enduring powers of attorney appointing her nephew, with the appropriate restrictions, while also ensuring Agnes' son was consulted.

### **Guarantees and business loans**

Steph is a 65-year old woman living alone who suffers from depression and anxiety. Her sole source of income is Centrelink. She was approached by her brother-in-law to act as a guarantor for a business loan of \$1 million he was seeking from a bank. Steph is dyslexic and illiterate, leaving school in year 8. Her brother-in-law promised her that the guarantee would only be for two years, after which he would refinance with the bank.

He later approached her for a further \$70,000, taking Steph to his lawyer's office to sign the guarantee. When she arrived at the lawyer's office, all her family members were there in the room and she felt pressured to sign the guarantee, even though she was unable to read it due to her illiteracy (which her family knew about).

After two years, Steph called her brother-in-law to ask to get the guarantee removed and discovered that his business had gone into liquidation. The bank requested her to sign a deed of forbearance, agree to sell her home and waive all her legal rights. Steph contacted Consumer Action for help. We assisted Steph to negotiate with the bank to release her from the guarantee and therefore save her home from being sold.

### **Co-borrowers of loans secured against a home**

Moira is a 75-year-old woman who suffers from dementia. She has been assessed to have no capacity to make financial and lifestyle decisions and her sister has medical power of attorney over Moira. Moira already had a home loan with the bank. After her husband died, her nephew Gavin and his wife moved into Moira's house and moved Moira to the back of the house. Gavin

has been physically abusive to Moira in the past. Since Gavin moved in, Moira does not have access to the kitchen sink and washes the dishes in her bathroom.

Gavin wanted to put an extension on Moira's house and subdivide the property. Gavin arranged for Moira to refinance her home loan and for Gavin and Moira to get a new home loan for \$700,000 which was secured over Moira's home. Gavin also added his name to the certificate of title as an owner of the land. The loan was arranged by a broker, who is friends with Gavin, and the loan documents were signed in Moira's home. Moira did not understand what she was signing due to her dementia. Gavin promised to make the loan repayments but he lost his job and now Moira and Gavin are in default of the loan. The bank have threatened Moira that they will seize and sell her home. Moira came to Consumer Action for help and we are negotiating with the bank to void or reduce the home loan.

### **Refinanced home loans precured by fraud**

Prath is a 64-year-old man receiving a veteran's pension, he suffers from post-traumatic stress disorder, depression, anxiety and ongoing physical illnesses which mean he cannot work. Prath is cared for full time by his wife Priyanka who is also on a pension. The couple have no savings or investments and their only significant asset is their home. Prath and his wife do not speak English. Prath's daughter-in-law Beth approached him asking for a loan of \$200,000, asking that he obtain this money through refinancing his home and giving her the \$200,000. Beth worked as a real estate agent and had an introducer arrangement with the bank where she would get commissions for organising loans. She organised the loan paperwork from Prath and promised she would repay the loan within 9 months to a year.

The Bank made minimal inquiries into Prath's ability to afford the loan. Prath and his wife could not read the loan documents and signed them in the presence of Beth. They felt they could not say no because otherwise Beth would not let them see their grandchildren. When the loan was approved, Beth marched Prath to the bank to withdraw \$200,000 which Beth took. Some months later, Beth took Prath to the bank to withdraw a further \$80,000 for her, then a further \$16,000 on another occasion.

Beth was charged with fraud by the police (for a different matter) and ceased repayments on the loan meaning that Prath and Priyanka's home was now at risk of being repossessed. Consumer Action took the matter to the Financial Ombudsman Service and, after protracted negotiations, the bank agreed to return Prath and Priyanka to the position they were in before refinancing their home loan, waiving the \$296,000 loan taken out on behalf of Beth. Prath and Priyanka and are now meeting their mortgage repayments and their housing is stable.

### **Unauthorised transactions by a family member**

Rebecca's only income is the disability support pension. She has a complicated relationship with her daughter and often feels pressured into doing things she does not want to. Between 2013 and 2017, a number of unauthorised transactions occurred on Rebecca's account which resulted in \$29,000 being taken from her life savings. Rebecca thought that someone was stealing her money and she asked the bank for help, but they did not help her because they claimed that she authorised the withdrawals.

Rebecca came to Consumer Action for help and we took the dispute to the Financial Ombudsman Service. We obtained copies of the phone recordings which showed that her daughter was calling the bank and impersonating Rebecca to “authorise” the withdrawals. We negotiated with the bank and they agreed to provide Rebecca with a full refund of \$29,000. We also negotiated that further safeguards be placed on her bank accounts to prevent further financial abuse from occurring.

### **Theft: When elder abuse is considered a ‘family matter’ and the police refuse to assist**

#### *Case Study*

BCLS was contacted by ‘Susan’ who was concerned about her aging mother, ‘Dot’ who has dementia. ‘Dot’ had earlier given financial power of attorney to her son ‘Ted’ when she went into a nursing home, and he invested \$200,000 of her savings which were the balance of the sale of her home. ‘Susan’ suspected that ‘Ted’ had used this money to pay his own mortgage when he lost his job. When ‘Susan’ confronted him he admitted that he had used the money to pay his home loan but as ‘Ted’ was now bankrupt any equity in his home was going to the Trustee in Bankruptcy.

The police didn’t classify ‘Ted’s’ actions as theft because they considered it a “civil matter”. Although it would be straightforward to prove that ‘Ted’ has taken the money in breach of his duty as attorney, civil proceedings could be very drawn-out and probably expensive and ultimately ‘Ted’ has no money to recover so he couldn’t repay the amount taken anyway. BCLS did successfully assist ‘Susan’ at VCAT to replace ‘Ted’ as attorney and to investigate the matter.

#### *Case Study*

Rosa’s son Mark was living in Australia with his wife and suggested that Rosa move to Australia to live with them in their home. She sold her home and many of her belongings and used what she had left over from the sale of her home to build an extension on her son’s property where she could live. Rosa’s name was not put onto the title of the property and there was no agreement in place about the details of what Rosa would receive in exchange for the improvement she had made to the property. Mark and his family were very busy and Rosa was left to herself. It was challenging being in a new country with a new language, and driving on the other side of the road made getting around difficult. She found herself to be very lonely. Her relationship with her son and his family deteriorated over time. After some years, Mark lost some investments that he had been relying on and they were struggling to meet their mortgage repayments. Six months later Mark told Rosa that they had to sell the property and downsize and there would be no room in the new house for Rosa. They refused to repay more than Rosa’s initial investment in the property even though Rosa had spent that amount 15 years before and the property had appreciated greatly in value over that time.

Action: Rosa engaged the assistance of Seniors Rights Victoria. A caveat was lodged on the title of Mark’s house. Mark and his wife had to negotiate with Rosa to have the caveat removed before the house could be sold. As a result of the negotiations, Rosa received enough money from the sale of the property to secure an independent living unit. The unit had been found as a result of collaboration between Seniors Rights Victoria and a community housing organisation.

### **When elder abuse is family violence**

John and Maria are an older European couple with a home in Sunshine. Their only son, Dominic, asks if he and his wife, Sue, can move in for a few weeks as their landlord is selling their rental property. Dominic is unemployed and has problems with alcohol. He moves into the garage with his three dogs, who proceed to destroy the backyard and clothesline. Sue has serious mental health issues, and takes over the older couple's bedroom, where she sleeps throughout the day. The younger couple refuse to make any financial contribution to household costs, and utility bills increase fourfold during their time of occupation. John and Maria struggle financially and also suffer from stress, depression and poor health as a result of the situation.

Action and outcome: After more than a year of Sue and Dominic being asked and refusing to leave, John and Maria seek assistance from Seniors Rights Victoria. After various efforts to have the couple removed fail (such as attempts at mediation, letters etc), John and Maria are supported by SRV to make an Application for an Intervention Order (IVO) on the grounds of economic and psychological abuse. An IVO is granted with an exclusion order on the grounds of economic abuse, and is enforced by local police.

### **Coercion and Enduring Powers of Attorney**

Andrew, a 50 year old, moves into his 90 year old father's home after taking him to a lawyer to appoint him as Enduring Power of Attorney. Andrew is in considerable financial difficulty and wants to ensure he will receive an inheritance. He begins a deliberate campaign to convince his father, Peter, that he is losing his "marbles", and therefore his capacity to manage his own affairs. Andrew insists on taking Peter to medical appointments and manages to convince his father's GP that Peter is exhibiting signs of dementia, which lead him to be put on medication that produces a sedative like effect. Andrew then arranges a Neuropsychological Assessment and drives his father to the appointment after ensuring he has taken the 'dementia medication' earlier that day. Unsurprisingly, Peter is deemed to lack decision making capacity. Following this assessment report, Andrew makes a successful application to VCAT to become Guardian and Administrator for his father.

Action & Outcome: As part of his ongoing medical review, Peter is taken off the dementia medication a few months later, and his condition improves markedly. His suspicion of his son grows, and he seeks to challenge the orders. Over the next 18 months, he endures five separate neuropsych assessments and is consistently determined to have capacity. VCAT conducts a hearing, and is about to revoke its previous orders, when Andrew applies for a Rehearing to secure his control. At this point, the processes for VCAT hearings, medical testing and legal fees for representation have cost his father over \$40,000. Peter finds out about Seniors Rights Victoria through a doctor, and its lawyers provide him with legal assistance for the Rehearing Application as he is unable to pay any further legal costs. VCAT ultimately revokes all orders and Peter is able to appoint his own trusted attorneys under a new Enduring Power of Attorney.

### **Kim's Story**

Kim attended an organised activity group for older members of the Vietnamese community. She mentioned to cohealth's outreach worker that she had given some money to her son so he could start his business – she mortgaged her property to do this. Having attended one of the PD sessions delivered by the lawyer, the worker recognised the client would benefit from some independent legal advice and encouraged Kim to speak to the lawyer about it. The lawyer met with Kim and arranged for a pro bono firm to advise her on the legal risks of this arrangement and draft a formal loan agreement to reduce some of these risks.

## **Culturally and Linguistically Diverse Older People**

### ***Case Study***

Mrs F from an Eastern European country married an Australian man in 2006 and moved to Australia to live with him. The husband had multiple extra-marital relationships and the relationship ended. Mrs F had been psychologically abused by her husband. She had limited savings and was forced to leave the unit he owned and in which she lived. The CLC social worker assisted Mrs F with urgent temporary housing and subsequently, successfully appealed a public housing decision to refuse her housing based on her ownership of an old unit in Hungary valued under \$30,000 and untenable. The CLC social worker assisted Mrs F to form social connections and feel resilient enough to proceed with her legal issues. All communications with Mrs F have been through an interpreter and the client's bilingual friend.

Lawyers from the CLC advised Mrs F as to her family law rights for property settlement and spouse maintenance. They entered into negotiations with the husband's private lawyers. They secured her right to remain in the unit until urgent housing was obtained. When negotiations for spouse maintenance and property settlement were unsuccessful they filed an Application in the Federal Circuit Court of Australia (FCCA). Preparation of the court documents was labour intensive in so far as everything had to be translated between Hungarian and English.

The CLC lawyer then prepared a "brief" to a family lawyer from the same CLC to appear on behalf of Mrs F at the first return date of her application in the FCCA. The CLC social worker attended to give Mrs F support. The duty lawyer engaged in lengthy negotiations to achieve a settlement in favour of Mrs F which was drafted up and approved by the Judge. The lawyer is further assisting the client with a debt issue.

### ***Case Study***

An eastern European client in her 60's was referred to the CLC. Mrs A, who spoke almost no English, was estranged from her alcoholic husband who was living downstairs in the same dwelling with her violent, widowed son and his children. Mrs A feared for her safety and the wellbeing of her young grandchildren. Using the Telephone Interpreter Service the CLC arranged for transport to bring Mrs A to and from the CLC office so she could speak freely. We were unable to book a face-to-face interpreter but were able to use one via the conference phone.

Mrs A described herself as suffering from depression and an obsessive compulsive disorder. She needed help because:

- her son threatened to kill her with a knife and behaved violently towards her
- Police called to the house and seemed to talk to the son who speaks English and appeared to do nothing to hear our client's side of the story

- she suspected that the Police and others were told by the son that she was mad and to ignore her
- she had loaned money to her son and needed it back
- she was worried that her grandchildren were inadequately cared for
- she felt she should move out of the home but had insufficient income and would be ineligible for social housing.

Mrs A presented in a distressed and emotionally unstable state. To help our client begin to progress we provided advice on how to get a divorce and property settlement. We also referred her to a bilingual support worker who could support Mrs A to have her child safety concerns listened to and to receive appropriate emotional and social support to reduce her isolation and improve her emotional health. We also discussed a safety plan with Mrs A so that she had practical strategies if threatened.

In subsequent contact our client asked for advice about applying for a domestic violence protection order. She was interested in a referral to a support service who were able to offer bi-lingual counselling support as well as help to apply for a DVO and seek alternative housing.

The partnership between the CLC and support service is working well for this client who will be able to extract herself from an abusive family. With long-term community support and counselling, we expect Mrs A will make a gradual recovery in terms of her mental health and become less socially isolated.

### ***Case Study***

A new resident came to an aged care home and was asked to sign a resident agreement. He could not read English as it was not his first language. He was not offered the assistance of an interpreter to assist him to understand what he was agreeing to. His contract stated that he agreed to allow the aged care provider to have a caveat on his title in the event he could not pay his fees.

### ***Case Study***

An older single parent arrived in Australia under the aged parent sponsorship. She brought all her money to pay for the visa fees and deposited the money into a term deposit to access when her visa was finalised. The money was inappropriately managed by one of her children and all the money has spent. When the visa application was determined, the older person was not only without any money to pay for the visa fees but was also requiring more intensive health care and found herself at risk of becoming homeless because her children are refusing to care for her.

### ***Case Study***

In one case example through our service a woman from a Greek background and her husband, lived in their own villa. Their daughter encouraged them to sell their home and contribute to a granny flat on the daughter and son-in-law's property interstate. They followed the daughter's suggestion and 2 years later the relationship broke down and they returned and began renting. The client was very distressed and was advised to place a caveat on the daughter and son-in-law's property protecting her right to claim an equitable interest (constructive trust) for the return of her contribution.

### ***Case Study***

The CLC had an enquiry from an elderly Vietnamese woman whose son had encouraged her to transfer the title of her house into the son's name. The son told her she could reside in the house for her lifetime until she passed away or required aged care. The elderly woman did not realize such a gift could impact on her age pension. A person on the age pension is unable to gift more than \$10,000 a year or \$30,000 over 5 years without it being deemed an asset and reducing the age pension. She also did not realize she had lost her security in her residence in that she was no longer on the legal title. If the son tried to evict her then she would have to take expensive action in the Supreme Court to try to claim an equitable interest in the property.