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Open Ended Group on Ageing (8th Working Session, 5-7 July 2017) Input on Guiding Questions: Neglect, Violence and Abuse

The National Association of Community Legal Centres (NACLC) is the national peak body for 190 community legal centres (CLCs) in Australia. NACLC has ECOSOC Special Consultative Status. Community legal centres are not-for-profit, community-based organisations that provide legal assistance and community development services to their local or special interest communities. Many CLCs provide assistance to older persons and some specialise in assisting older persons with elder rights-specific issues including elder abuse, financial exploitation, social protection including social security, aged care and accommodation, decision-making and guardianship. Centres have formed an Older Persons Legal Services Network (OPLS) of NACLC. More recently, OPLS has joined with community-based elder abuse hotlines and aged care advocacy services to establish *Elder Abuse Action Australia* - a national entity to represent the views of elder abuse prevention advocates and service providers. Many CLCs are also experts in discrimination law. NACLC has engaged in working sessions of OEWGA since the 4th session. It has made a series of submissions and numerous interventions.

NACLC relies upon and endorses other input documents including the joint submission from AGE Platform Europe, HelpAge International, The Law in the Service of the Elderly, and NACLC of which NACLC is a co-author.

1) In your country, are there specific studies or surveys (from governmental, non- governmental or academic sources) on violence, abuse and neglect experienced by older persons?

There are no national or state/territory (provincial) prevalence studies excepting Western Australia (2011). A number of studies are planned and/or underway at present (e.g. Queensland). The Australian Government recently announced a Policy Commitment to develop a “national plan to protect the rights of older Australians”. Funding allocated for the development of the national plan is set at A\$15 million. NACLC contends that an issue as complex and multi-dimensional as elder abuse requires a whole-of-government proportionate response and the funding allocation should be increased to reflect this. NACLC has also suggested that the National Plan to Reduce Violence against Women and their Children is a possible model for funding and implementation.

NACLC has welcomed several Australian Government initiatives, including the Australian Institute of Family Studies publication of a Research Report which looks to understanding issues, frameworks and responses to elder abuse in the Australian context. It also catalogues provincial responses to elder abuse. In addition, the Australian Law Reform Commission has been asked to undertake an Elder Abuse Inquiry and has published an Issues Paper and Discussion Paper. NACLC has made submissions to both the Issues Paper and the Discussion Paper. The recommendations from the ALRC Inquiry will provide a useful blueprint for reform moving forward. In addition, some provincial governments have conducted Parliamentary Inquiries or Commissions of Inquiry, though these have been mixed- some are focused on the issue of family violence and have looked at elder abuse as a particular manifestation of family violence (e.g. Queensland, Victoria) and others have focused on the phenomenon of elder abuse (e.g. New South Wales, South Australia).

2)(a) What forms of violence, abuse and neglect (e.g. physical, psychological, sexual, financial, or other) are registered? What is the setting in which they occur (i.e. residential and non-residential)? Is there information about the type of perpetrators?

All forms of elder abuse occur in all settings in Australia, including both private and public. Importantly, elder abuse should not be defined in a manner that restricts the context or environment within which it occurs. The diversity of the potential perpetrators and particular contexts distinguishes violence, abuse and neglect in older age from other forms of violence, for example male violence against women. Perpetrators may include spouses and partners and other family members, community members (non-family) known or unknown to them, community leaders, law enforcement groups, service providers, legal representatives, guardians and attorneys. Whilst an interdependence between the perpetrator and the older person is critical in some contexts, perpetrators are not limited to those who might be considered to fall within

an expectation of trust. Further the impact of intersectional or multiple discrimination is linked to the experience of older persons, including the impact of sexism, racism and ableism.

2)(b) Does violence, abuse and neglect particularly affect specific groups of older persons? If so, which groups and how?

Violence, abuse and neglect can affect all older persons, however specific groups at greater risk include people with cognitive impairment or other disability, people who are socially isolated or who have a life history of trauma including interpersonal and domestic and family violence, women, and members of the LGBTIQ community. Significant work needs to be done to identify the risk factors for and characteristics of elder abuse within Aboriginal and Torres Strait Islander communities and within Australia's culturally and linguistically diverse communities. Some contextual work has been done in the Aboriginal and Torres Strait Islander context in Western Australia and South Australia. Some initial issues include the impact of lack of services in remote areas, the interplay of family obligation within community, kinship structures and clan groups, past experience of institutionalisation and negative impacts of post-colonial experience.

3) Does your country's legislation explicitly address issues of violence, abuse and neglect against older persons? If not, what legislation applies to such issues in the context of older persons? Does this legislation sufficiently address the full range of violence against older persons?

No national or provincial laws exist that are specifically targeted to elder abuse or neglect. This includes laws to investigate allegations or provide protective measures or compensate, remediate or rehabilitate victims of elder abuse or restrain or punish perpetrators of abuse. Provincial laws include laws that criminalise violence, abuse and neglect in general terms, and provide protections against violence and abuse in general terms. There are provincial systems for supporting victims of crime but none have a focus or indeed any expertise on victims of elder abuse. There are provincial systems for investigating abuse of children or persons with disability or persons with impaired capacity of all ages.

Gaps in protections and systems have been identified by national reports and national and provincial legal needs and legal information needs studies. The extent of Commonwealth constitutional power to legislate in this area is debated. NACLC has suggested the use of model, consistent, harmonised laws in this regard.

4) What legislation exists to protect older persons specifically against financial abuse, including inheritance abuse?

No national or provincial laws exist that are specifically targeted to elder financial abuse. Australia's first National Report on Older People and the Law (2007) identified numerous reforms, the majority of which remain unimplemented. Gaps include specific laws to investigate allegations, provide protective measures or compensate, remediate or rehabilitate victims of elder abuse or restrain or punish perpetrators of elder abuse. Provincial inquiries have considered the issue of financial abuse of older persons (Queensland, New South Wales) and have recommended a range of measures. Considerable reform is needed in the areas where elder financial abuse coalesces including supportive decision making, banking and financial services, aged care services, pensions and superannuation, insurance and family agreements.

The grounds for obtaining protection orders differ across provincial family violence legislation. Some of these laws do contain specific protections for economic abuse. Public Guardians (also called Public Advocates) are established by legislation at a provincial level but have varied powers with respect to elder abuse. They have limited powers to investigate allegations of abuse and neglect of persons with impaired capacity (of all ages). They can also in some cases take protective action such as seeking compensation, and suspending attorneys powers (e.g. Queensland). In other provinces similar provisions have been recommended (e.g. New South Wales).

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