

**Inquiry into Elder Abuse**

**Legal Aid NSW submission to the  
Legislative Council Standing Committee  
No.2**

**November 2015**

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## Introduction

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance to socially and economically disadvantaged people across NSW.

Legal Aid NSW provides information, community legal education, advice, assistance and representation, through a large in-house legal practice and private practitioners. Legal Aid NSW also administers the funds a number of services provided by non-government organisations, including 36 Community Legal Centres (CLCs) and 28 Women's Domestic Violence Court Advocacy Services (WDVCASs). Legal Aid NSW has several specialist services one of which is the Civil Law Practice Older Person's Service.

Legal Aid NSW thanks the Standing Committee No.2 (the Committee) for the opportunity to make submissions to the Inquiry into Elder Abuse (the Inquiry). The following submissions are derived from the experiences of Legal Aid staff currently working at Legal Aid NSW.

Should you require any further information or wish to discuss this submission, please contact Nicholas Ashby, Solicitor, Strategic Policy and Planning, Legal Aid NSW, telephone 02 47254608 or [Nicholas.ashby@legalaid.nsw.gov.au](mailto:Nicholas.ashby@legalaid.nsw.gov.au).

## Executive summary

Legal Aid NSW notes that the terms of reference of the Inquiry are a broad requirement to report on elder abuse in NSW.

Legal Aid NSW is regularly instructed by older persons and this submission contains some detail of the types of assistance that may be provided by Legal Aid NSW to these clients. As Legal Aid NSW is a publicly funded legal assistance services provider, the Committee may take the view that these legal services fall primarily within term of reference 3:

The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received by those agencies or organisations.

This submission considers two areas of Legal Aid NSW legal practice.

The first part of the submission considers the services that Legal Aid NSW provides to older clients through the Civil Law Practice Older Person's Service (OPS), with a particular focus upon elder financial abuse and the types of matters encountered by the OPS since it was established in 2008.

The OPS is a specialist service within the Civil Law Division, running in partnership with the Aged-Care Rights Service (TARS). The OPS provides legal information, advice, assistance, community legal education and representation to older people about their legal rights. Older people can be particularly vulnerable to domestic and family violence from family members, other people living in residential facilities or carers. Some of the services provided by the OPS relate to elder financial abuse (EFA).

The second part of the submission considers the range of legal services Legal Aid NSW provides to victims of domestic and family violence. These services are available to victims of all ages, including older clients. This part of this submission outlines the nature of the services provided to older clients through the Women's Domestic Violence Court Advocacy Program through WDVCSs and the complementary Domestic Violence Practitioner Scheme.

The last part of the submission is a brief outline of the community legal education provided to older clients by Legal Aid NSW.

We have included relevant case studies to illustrate the services provided.

## Legal Aid NSW – Civil Law Practice Older Persons Service

In 2008 Legal Aid NSW established the Older Persons' Legal and Education Program (the Program). This initiative was in response to a report published by the Law and Justice Foundation of NSW, *The legal needs of older people in NSW* (2004). This report highlighted the particular legal needs of older people in NSW and the need to increase the access of older people to legal help.

As part of the Program Legal Aid NSW set up a specialist Older Person's Unit, now the Older Persons Service (OPS), within the Civil Law Practice and also provided funding to The Aged-care Rights Centre (TARS) to provide telephone legal assistance to older people in NSW on a wide range of legal issues.

TARS provides legal advice and assistance for older people in NSW in a range of areas of law.

The OPS supports the whole of Legal Aid NSW to provide effective legal services to older people. The OPS also:

- provides legal advice and minor assistance in some cases
- provides casework services to older people who are eligible for legal aid, and
- gives talks to groups of seniors and community workers on legal issues affecting older people.

### Elder financial abuse (EFA)

Legal Aid NSW regularly assists and represents older persons who have been victims of elder financial abuse (EFA). Legal Aid NSW is generally limited to offering legal advice in the majority of cases of EFA as most of these clients are not eligible for legal aid under the Legal Aid NSW eligibility policies. However, as demonstrated in the case studies below, there are certain types of matters where Legal Aid NSW may make a grant of legal aid to an older person to represent them in their matter.

The OPS prioritises the provision of legal representation to older persons in circumstances where they are at risk of losing their home or an interest in a home. Forms of financial abuse where no loss of dwelling is involved generally fall outside Legal Aid NSW eligibility policies and consequently the service provided is limited to legal advice. If legal representation is required the OPS may refer the older person to a pro bono legal service.

In the experience of Legal Aid NSW, EFA may be sub-categorised in the following ways:

- Theft or fraud, and specifically:
  - Fraudulent transfer of title and registration of mortgages
  - Abuse of enduring power of attorney
- Loss of dwelling, and specifically:
  - Loans, Guarantees and Mortgages
  - Gifts of assets including transfer of property, and
  - Granny flat arrangements.

## Theft and fraud

One of the more obvious examples of EFA experienced by older clients of Legal Aid NSW involves outright criminal conduct such as theft or fraud. Typically, the victim of the abuse had no idea that the abuser was taking their assets. The abuser may obtain the older person's bank account details, ATM card, or other means of withdrawing funds and withdraw money from their account without the victim's knowledge.

Alternatively, the abuser may have forged the older person's signature on cheques or other documents, allowing the abuser to obtain a financial benefit at the victim's expense.

A third example is where the abuser may have persuaded the older person to provide an authority to the bank for the abuser to access their account or an authority to arrange direct debit of their pension into the abuser's bank account.

## Fraudulent transfer of title or registration of mortgages

Legal Aid NSW has been instructed in cases relating to forged applications to transfer land, property, shares and other investments from the elder person to the abuser beneficiary, usually a family member.

If the transfer concerns a dwelling, Legal Aid NSW may be able to fully represent the client's interests through a grant of legal aid. Where the client is not eligible for legal aid the service is limited to providing independent legal advice to the client. Legal Aid NSW has found that elder client's often welcome the latter which may be the only legal service open to them in what is a highly distressing situation.

## Abuse of enduring power of attorney

An enduring power of attorney grants the appointed attorney the same legal authority to deal with the older person's property as the older person. Legal Aid NSW has been instructed in matters in which the attorney has conducted dealings in the assets of the older person, for example by selling the property, without the owner's knowledge and certainly without consent.

The attorney is in a fiduciary relationship with the donor (the appointor) and is bound by a number of formal duties, including the duty to act in the best interests of the donor. Legal Aid NSW has advised in matters of misappropriation of property by the attorney. These matters are complex and usually require a third party who has become aware of the misappropriation to intervene and make an application to the Guardianship Division of NSW Civil and Administrative Tribunal (NCAT) to replace the attorney.

Once an attorney has breached his or her obligations and taken the donor's assets it can be very difficult to recover this property, particularly where the attorney has already dissipated the funds. Legal action to recover the assets has to be commenced in the Equity Division of the Supreme Court on the grounds of breach of fiduciary duty. This is likely to be costly and complex litigation. Furthermore, unless the proceedings concern a dwelling, Legal Aid NSW is likely to be limited to providing legal advice.

## Loss of dwelling

In the experience of Legal Aid NSW, the class of older persons most vulnerable to financial abuse are those who are 'asset rich but income poor.' In most cases, the older persons own their own home but have a relatively low income, often just the age pension. The following paragraphs summarise some examples of EFA in this area.

## Loans, Guarantees and Mortgages

Legal Aid NSW observes that older persons may risk losing their property if they agree to mortgage their home for the benefit of third parties. The typical situation arises when an adult child persuades the older person to enter the secured loan/mortgage contract as the borrower and assures them that they will make all the repayments.

Problems inevitably follow when the adult child defaults on the loan repayments and the bank commences proceedings for possession of the older person's home in order to discharge the debt. In the unfortunate event that this occurs, not only is the older person at risk of losing their home but is also at risk of losing their age pension, or having it reduced because of Centrelink rules that apply in relation to gifting of assets.

The following case studies illustrate some of these issues.

### **Case study**

Mr and Mrs Day were an elderly couple on the age pension from a non-English speaking background. Their youngest son asked them to help him borrow money to purchase some properties he wanted to develop. At the time Mr Day was in the early stages of dementia. Mrs Day queried how they could assist their son as low-income pensioners. Their son assured her with words to the effect of, "Don't worry, you just sign the papers, I will make the payments to the bank." The papers were a loan contract for \$600,000 and a mortgage was subsequently registered against Mr and Mrs Day's home. Mr and Mrs Day signed these documents at the office of their son's solicitor.

Two years later the son advised Mr and Mrs Day that he was unable to keep up the repayments on the loan and that they would have to sell the house to discharge the debt. Mr and Mrs Day reluctantly put the house up for sale and the proceeds of the sale settled the balance of the loan and discharged the mortgage. Their eldest daughter took them in to her home as they had nowhere else to go.

Centrelink found out about the sale of their home and suspended their pensions pending an investigation about their future entitlement. Centrelink subsequently informed Mr and Mrs Day that they had been overpaid since the date the loan was taken out. Mr and Mrs Day were required to repay the overpayments and their future pension entitlements were reduced by about fifty per cent (50%).

Mr and Mrs Day were wholly unaware of the requirement to inform Centrelink about the loan borrowed against the equity in their home. Unfortunately, Centrelink regarded the loan funds as their asset. As the total loan funds were above the Centrelink asset threshold, Centrelink determined that Mr and Mrs Day had not been entitled to the full pension from that date.

Centrelink treated the proceeds of the sale of the house as a 'gift' to their son. The fact that the loan had been for their son's benefit and that they used the money from the sale of their home to pay out the loan made no difference. Mr and Mrs Day were advised by Centrelink that any gift over \$10,000 is to be regarded as a 'deprived asset' for a period of five (5) years. This meant that Centrelink treated the proceeds of the sale of the house as if it was the clients' asset and deemed they had received income. This exceeded the income allowable for a full pension and their pension was reduced accordingly.

Legal Aid NSW assisted Mr and Mrs Day by persuading Centrelink to waive the debt and to make a hardship application that resulted in their full pension being restored.

### **Case study**

Mr and Mrs Jones were an elderly couple who entered into a loan as a co-borrower with their son for \$200,000. The loan was secured against their dwelling property on the understanding that the son would use the loan monies to build a house and that he would make all the repayments. Mr and Mrs Jones did not receive any independent legal or financial advice prior to entering into the loan.

In October 2006, their son requested an increase from the lender of the loan to \$240,000 without Mr and Mrs Jones' knowledge. Mr and Mrs Jones then signed loan application documents but were not aware of the content or implications.

In June 2007, their son approached a finance broker to refinance the home loan. Mr and Mrs Jones did not meet or communicate with the broker. Without instructions from Mr and Mrs Jones, the broker prepared and submitted an application for an investment loan for \$300,000 secured against their home. Mr and Mrs Jones were the co-borrowers in respect of the loan which was used by their son to discharge the previous home loan of \$240,000. The balance of funds were released to the son's nominated bank account.

Mr and Mrs Jones instructed Legal Aid NSW that they recalled signing the loan application but they had not actually read the document. At the time of signing the application, Mrs Jones was undertaking treatment for cancer and was frequently in hospital.

Legal Aid NSW assisted the clients in a negotiation process, successfully reducing the clients' liability to the bank and securing the bank's agreement not to seek vacant possession of the property. The bank also agreed to suspend repayment of the balance of the loan until either the death of Mr and Mrs Jones or sale of the property.

### [Gifts of assets including transfer of property](#)

Gifts of assets occurs where an abuser takes advantage of a position of trust to persuade the older person to gift assets. The abusive conduct occurs either because the older person does not fully understand the nature of the decision to gift assets or because of an implicit threat that care and affection will be withdrawn by the abuser if the assets are not transferred. The older person invariably consents to the transfer assets to the abuser but does so without comprehension of the consequent financial disadvantage to themselves.

### **Case study**

Cyrus was an 86 year old man who was residing in a nursing home where he had been placed by his son who had ceased visiting him. Cyrus wanted to know when he could go back to home.

A staff member at the home made enquiries on his behalf and found out that the home had been transferred to his son some years previously. Cyrus had no memory of signing the transfer but recalled an occasion when his son came to his home and plied him with alcohol rendering him intoxicated.

Legal Aid NSW assisted Cyrus to lodge a caveat on the property claiming an equitable interest and commenced Supreme Court proceedings to have the transfer set aside on the basis it had been procured as a result of undue influence. The matter settled before hearing after Cyrus' son agreed to transfer property back into Cyrus' name.

## Granny flat arrangements

It is often the case that older people find themselves living alone in their own home but as a consequence of age, have difficulty coping with daily life. The older person may agree to a 'granny flat arrangement' with one of their adult children where the older person makes a financial contribution to their child in exchange for being able to live under the same roof.

Such arrangements may also involve the older person selling their home and gifting the proceeds of the sale to the adult child for the purpose of buying a property for the occupation of all generations of the family. Alternatively, the arrangement may involve a transfer of property title to the adult child who then resides in the older person's home. In the experience of Legal Aid NSW, these arrangements often result in the older person's name being removed from the title.

Granny flat arrangements frequently work well and can be of great mutual benefit to all parties. However, Legal Aid NSW has seen cases where the family relationship has broken down and the older person has been evicted from the property, often without recompense.

The adult child may take advantage of the fact that they are the registered legal owners of the property and the agreement with the older relative was not documented.

Legal Aid NSW submits that this is a form of elder financial abuse. Legal Aid NSW may be able to make a grant of legal aid and to represent the elder person in these circumstances. The following case study is an example of such a matter.

### **Case study**

Roberta was 65 years old and on the age pension. Ten years earlier she had been receiving the disability pension and living in public housing. Roberta was also awarded compensation from a motor vehicle accident.

Roberta's daughter Lisa suggested that they could jointly buy a property. Roberta agreed and contributed the majority of the purchase money. Lisa borrowed the balance. Lisa later married and had children. Roberta cared for the children while Lisa went to work. Tensions arose between Roberta and Lisa and her husband who ultimately evicted Roberta, leaving her homeless and without any compensation for the contribution she had made to the purchase of the property.

Legal Aid NSW placed a caveat on the property on behalf of Roberta and notified Lisa that she was prepared to commence proceedings in the Equity Division of the Supreme Court to obtain orders that the house be sold and Roberta paid the proportion of her contribution to the property from the proceeds of the sale. Lisa agreed to pay out her mother's share without the need for court proceedings.

## Recommendation: Dispute Resolution

For many instances of elder financial abuse involving loss of dwellings, the only appropriate legal jurisdiction is the Equity Division of the Supreme Court of NSW. Litigation in this area is inevitably legally and factually complex, expensive and time consuming.

Legal Aid NSW recommends that a cheaper, simpler forum should be established to resolve these disputes without the need for protracted and expensive civil litigation in the Supreme Court of NSW. A possible forum would be NCAT.

## Domestic and Family Violence

Domestic and family violence is behaviour that deprives or restricts another person from exercising their basic human rights. It is a complex form of violence which can include physical, sexual, psychological, social, economic, legal and cultural harm. It is violence that infringes another person's right to equality, security, liberty, integrity and dignity and to their physical safety and psychological health. To the extent that these rights are recognised in law, Legal Aid NSW play a key role in ensuring that these rights are protected.

As the largest provider of legal services in New South Wales, Legal Aid NSW is often the first point on contact for many women and children seeking legal assistance to escape domestic and family violence. Domestic and family violence affects all practice areas of Legal Aid NSW. The Legal Aid NSW Family, Civil and Criminal Law practice areas provide a wide range of legal services to people including older persons affected by domestic and family violence. These services include significant ongoing casework for a range of legal problems arising from domestic and family violence. More often than not elder abuse occurs in the context of domestic and family violence.

In NSW, the primary response to domestic violence is through the criminal justice system – arrest, prosecution, punishment, and protection orders. However, domestic violence often precipitates a cluster of complex, interrelated and ongoing legal problems that are not only of a criminal nature but also include family and civil law matters, as well as social problems.

The most effective way to assist people in domestic violence situations, and to protect their rights, is to provide early, holistic, client-focused legal responses and appropriate referrals to other services to address social and welfare needs. Without such assistance, by its very nature, domestic violence contributes to the social exclusion of victims and defendants.

Consistent with a multi-pronged approach to service delivery, Legal Aid NSW provides an extensive range of legal services to people in domestic violence matters through its crime, family and civil law programs.

Legal Aid NSW has recently established a specialist Domestic Violence Unit (DVU) dedicated to the legal and social needs of victims of, or people affected by, domestic and family violence.

In addition, Legal Aid NSW also funds domestic and family violence-specific services, as follows:

- the Women's Domestic Violence Court Advocacy Program (WDVCAP), a Legal Aid NSW program dedicated to assist women in NSW who are victims of domestic and family violence. The WDVCAP provides court advocacy services to women and children in need of protection orders in 108 Local Courts across NSW, and
- the Domestic Violence Practitioner Scheme (DVPS), a duty service which assists women and children to obtain legal protection through an Apprehended Domestic Violence Order (ADVO) at 32 Local Courts across NSW.

A summary of the work of Legal Aid NSW in the area of domestic and family violence is set out below.

## Family Law

Legal Aid NSW assists victims of domestic and family violence through its Family Law Division in-house practice and private lawyers in matters including:

- representation for children in every matter before the NSW Children's Court and in every matter in which a Family Law Court appoints an Independent Children's Lawyer, a criterion being an the allegation of family violence
- legal advice and representation for parties in care matters before the NSW Children's Court, including where a party is the victim of domestic and family violence
- advice, minor assistance and representation for applications for appropriate and safe parenting orders
- advice, minor assistance and representation in property settlement and spouse maintenance applications including applications for sole occupation of a home to exclude a perpetrator of family violence
- advice, minor assistance and representation in applications for divorce or nullity
- applications for injunctions against an alleged perpetrator of family violence and applicants in ADVO matter, and
- Family Dispute Resolution in care and protection and family law matters.

In addition, the Family Law Division Early Intervention Unit (EIU) provides duty representation for clients at the Sydney, Parramatta and Newcastle Registries of the Family Law Courts and outreach advice clinics throughout NSW. The objective of the EIU is to help people resolve their family law issues as early as possible without the need for lengthy litigation, with a special focus on reaching disadvantaged communities who have difficulty accessing legal services, including people living in rural and remote areas, homeless people and Aboriginal communities.

## Civil law

Legal Aid NSW assists victims of domestic and family violence through the Civil Law Division in-house practice, private lawyers or CLC lawyers in matters including:

- advice where a client is entitled to victim's compensation as a result of domestic and family violence
- advice, minor assistance and representation in visa applications and immigration matters where a client is affected by domestic and family violence
- advice, minor assistance and representation in circumstances where a client's access to public or private housing has been affected by domestic and family violence, and
- advice, minor assistance and representation in other civil law problems such as relationship debt, discrimination and social security payments.

## Criminal law

Legal Aid NSW assists victims of domestic and family violence through the Criminal Law Division and through funding private lawyers in domestic and family violence related matters such as:

- advice and representation for private applicants for Apprehended Domestic Violence Orders (ADVOs), or on a cross-application by an alleged perpetrator
- advice and representation to alleged perpetrators of domestic and family violence where they have been charged with a criminal offence
- advice and representation to clients who have been charged with a criminal offence against an alleged perpetrator, and
- advice and representation to a child or young person under 18 who has been charged with a domestic and family violence related offence or named as a defendant in an application for an Apprehended Violence Order (AVO), through the Children's Legal Service.

## Domestic Violence Unit

The Domestic Violence Unit (DVU) is a newly established specialist Legal Aid NSW unit dedicated to the legal and social needs of victims of, or people affected by, domestic and family violence.

The DVU will provide targeted services to victims and people affected by domestic and family violence by connecting with clients at crisis point and providing advice, representation and casework predominantly in family law and care and protection, but also in housing, social security, credit/debt problems, migration, victim's compensation and criminal law.

The DVU will also partner with existing services to provide holistic, high quality and client focused service delivery to victims and people affected by domestic and family violence.

## Women's Domestic Violence Court Advocacy Program (WDVCAP)

Legal Aid NSW administers state government funding for 28 Women's Domestic Violence Court Advocacy Services (WDVCASs) across the state through the WDVCAP. The WDVCAP provides funding to incorporated non-government organisations through triennial service agreements. WDVCASs provide information, advocacy and referral to women seeking legal protection from domestic and family violence through an Apprehended Domestic Violence Order (ADVO). WDVCASs operate at 114 local courts across the state.

In 2014-15, WDVCASs provided 22,557 clients with 102,127 service events. In 2014/15, funding for WDVCASs totalled \$8,018,246 (GST exclusive).

The WDVCAP was established in 1996 and expanded in 2009 from 65 to 114 local courts. The Program has not received a funding increase since 2009 except indexation.

The WDVCAP is recognised as a best practice model of service delivery. The Program maintains effective partnerships with key agencies and service providers, particularly NSW Police Force. In 2010 Legal Aid NSW won a Premier's Gold Award in the 'Leading Change' category for the 2009 WDVCAP expansion.

In addition, WDVCSs play a lead role in the NSW Government *It Stops Here: Safer Pathway* domestic and family violence reforms. WDVCSs host the Local Coordination Points, a key component of Safer Pathway. These services provide women experiencing domestic and family violence with threat assessment and case coordination, including warm referrals to a range of service providers to meet clients' ongoing needs.

Local Coordination Points also provide secretariat support for local meetings regarding victims at serious threat of further harm, known as Safety Action Meetings (SAMs). SAMs aim to lessen or prevent serious threats to victims' life, health or safety through targeted information sharing between key government agencies and non-government services.

## Elder abuse

WDVCASs across NSW report that a growing number of clients are older women. In 2014/15 WDVCSs provided 4,215 service events to clients aged 60 or older. For example, far South Coast WDVCS, which services Bega, Narooma, Batemans Bay, Moruya, Eden and Bombala Local Courts, reports the following statistics:

- Clients aged 51-55: 35 in 2012/13 and 115 in 2013/14
- Clients aged 56-60: 20 in 2012/13 and 56 in 2013/14
- Clients aged 60 or older: 19 in 2012/13 and 55 in 2013/14

This change is attributed to a number of factors, including the ageing population and the increase in adult children residing with their parents. Cases in which older women are abused by an adult child or grandchild who is drug or alcohol affected or mentally ill, or both, are on the rise.

Older women experiencing domestic and family violence are often reluctant to seek formal help because of fear of getting their child or children into trouble with the legal system, or because they are dependent on their abuser, both financially and practically. In addition, older women often feel too ashamed to report abuse due to cultural attitudes about domestic and family violence being a 'private matter'. This is particularly the case where a woman has been abused by her partner for many years and that partner is now her primary carer.

WDVCASs noted that it is often only when Police are called to an older person's home that the victim is able to connect with support services.

Lastly, WDVCSs reported that elder abuse is often evident in matters discussed at Safety Action Meetings. For example, at the Waverley meeting it is common for victims assessed as at serious threat of injury or death to include older women being abused by adult children. Safety Action Meetings are proving effective in addressing elder abuse through improving information sharing and collaboration between services.

While the experience of the WDVCS is limited to elder abuse of women, it has also been observed that elder abuse of men is evident in matters discussed at SAMs.

## Case studies

The following case studies illustrate the types of matters encountered by WDVCSs in which older persons are victims of domestic and family violence. The case studies demonstrate the type of work undertaken by the WDVCSs under current State funding.

### **Case Study: Elder Abuse and Co-morbidity of Mental Health and Drug Use**

Beth was a 60 year old woman living in the Waverley area. Her 30 year old son, George, used 'Ice' (methamphetamine) and had multiple mental health diagnoses including bipolar and drug induced psychosis. Beth loved George and worried about him all the time. George was becoming increasingly aggressive towards Beth and seemed to be becoming more unstable.

One morning George entered Beth's home, asked her for money for drugs, threatened to kill her with a kitchen knife and hit her across the face. Beth felt she had no choice but to call the Police but at the same time wanted to protect George.

George was arrested and admitted to the mental health unit at the local hospital for a period of six weeks. He was discharged and went back to live in a boarding house. Even though George was supposed to be living at the boarding house, he continued to return back to Beth's house for support and money.

Police applied for an ADVO to prevent George attending Beth's house.

One night Beth woke up and found that George was standing over her shouting and accusing Beth of killing his pets. Beth was terrified, but eventually got away and called the Police. George was arrested again and was admitted to the mental health unit of the hospital.

When Police referred Beth's matter to the WDVCAS for support, Beth told the Court Advocacy Worker that she genuinely believed that George would kill her one day and that his psychosis and aggression were escalating with his increased Ice use.

Beth's matter was considered to be a serious threat by the Police and the WDVCAS, and it was placed on the agenda of the Safety Action Meeting (SAM). At the SAM, information sharing revealed that George, as well as having multiple mental health diagnosis, also had a personality disorder.

Through information sharing it was discovered that George had a close knowledge of the mental health and justice systems and was presenting as severely mentally ill in court in order to be dealt with under the Mental Health Act and scheduled. When at the hospital, George would be able to control his mental health symptoms so that he could be released from the hospital back into the community.

By discussing this matter at the SAM, Mental Health professionals and the Police were able to coordinate their response to this highly volatile matter. George spent several months in prison, giving Beth the time to recover and engage in further counselling in order to make plans for her safety in future.

*This case study highlights the complexity of emotions experienced by mothers being abused by their adult children and their understandable reluctance to take formal action even when there are significant risks to their safety. In addition, this case study points to the importance of information sharing between agencies in responding to complex domestic and family violence and mental health issues.*

### **Case study: Older woman abused by grandchildren**

Wendy was the grandmother of two female convicted offenders. Wendy had been the carer of her granddaughters since they were toddlers, along with their siblings. Both granddaughters were heavy users of drugs and alcohol.

Wendy disclosed to WDVCAS a long history of unreported verbal abuse and recent physical abuse from her granddaughters. Wendy stated that she had stopped going to the doctor for her injuries, as she was too embarrassed about how people were looking at her.

Wendy lived in the same home for 20 years. She didn't want to move because her mother's ashes were buried under a tree in her back yard. Wendy suffered from anxiety and depression.

WDVCAS received a referral for Wendy from NSW Police following an incident when her granddaughters assaulted her, made threats to kill her and slashed the tyres of her car. The WDVCAS provided support to Wendy for the criminal proceedings against her granddaughters - one at the Local Court and the other at Children's Court, including support at the hearing. Police had charged both with assault occasioning actual bodily harm, common assault, malicious damage and breach of an ADVO.

The WDVCAS provided the following services to Wendy:

- Referral to Victim Services for counselling
- Referral to Staying Home Leaving Violence for a safety assessment and to have her locks changed. Wendy was too scared to leave her home until her locks had been changed
- Information about other support services in Wendy's area
- Application to Victim Services for financial assistance for the purchase and installation of security cameras, which was approved, and for a recognition payment and submission for assessment.

### **Case study: Older woman abused by adult son**

Sarah was the elderly mother of an abusive adult son, Henry. Henry was verbally and financially abusive to both of his parents. Henry had a mental health disorder and misused alcohol and drugs. He was in and out of the family home and was often absent for long periods of time. Henry would take money from the home and stand over and verbally abuse Sarah, who was elderly and frail.

The WDVCAS assisted Sarah and her husband through the court process to obtain an ADVO. The order restricted Henry's access to their home. Sarah and her husband connected with a local support group and Police through the WDVCAS.

Sarah and her husband said that in their experience, most people could not understand the nature of parent/child abuse. Family and friends believed that abuse was restricted to a husband and wife dynamic, and could not understand a son being financially or verbally abusive to his parents. They also said that they felt they had done something "wrong" in relation to raising their son, carrying unfounded guilt about his abusive behaviour.

### **Case study: Older woman abused by adult daughter**

The WDV CAS received a referral from Police for 62 year old Mary in March 2015. Mary was a widow who lived in the family home with her son, Ben, aged 20. Mary's cultural background was Hindu.

Police attended Mary's home as a result of a domestic dispute with her daughter Sarah aged 39. Sarah did not reside in the family home. Sarah had attended the family home to discuss some financial matters. During this visit an argument developed and Sarah became aggressive toward Mary and Ben. Sarah threatened to punch Mary in the face if she did not give her \$75,000 for a house deposit. Sarah kicked Mary in the upper thigh causing Mary to fall.

Police arrived a short time later and entered the home. Police took pictures of the damage and the destroyed property and took statements from Mary and Ben. Police also took photos of Mary's injuries.

Approximately two hours later the Police placed Sarah under arrest and took her to the police station to be interviewed. Sarah was charged, provided with a court attendance notice and served with a provisional ADVO.

A caseworker from the WDV CAS made phone contact with Mary two days after the incident. Mary stated she was very embarrassed, hurt and ashamed of the behaviour of her daughter. Mary believed Sarah's conduct was a direct reflection, to the Police and other people, of the way Sarah had been raised.

Mary stated that her daughter was regularly abusive and demanding money. Mary also stated that usually she gave Sarah the money to avoid this sort of thing, stating that on a previous occasion she had given Sarah \$20,000.

Mary felt very ashamed that she had to go to court to give evidence against her daughter and felt very concerned about the impact this would have on Ben.

The caseworker spoke to Mary about the court process, the role of the Police and the AVO process. The caseworker informed Mary that the WDV CAS could offer her support on the day of court and at a hearing if required.

Sarah did not consent to the ADVO and the matter proceeded to hearing. The WDV CAS provided support to Mary and her son Ben throughout the court process, including by arranging a meeting with the police prosecutor and officer in charge.

On the day of the hearing Sarah changed her plea to guilty to the charge on amended facts. Mary found this process upsetting and confusing. Mary felt that it was important that her daughter be truthful to all about her poor behaviour.

Mary and Ben expressed sincere gratitude to the caseworker for her support and all the phone calls and time taken to help them through this ordeal. Mary stated that as a result of the support and information she had received she felt stronger to deal with this issue if it arose again in the future.

### **Case study: Older woman abused by her husband**

Mildred was born in 1935. Her husband, George, was born in 1932. Mildred had experienced ongoing domestic and family violence at the hands of George for most of her life. At the time Mildred came into contact with the WDV CAS, the couple were separated under the one roof. Police removed George from the house following an incident when George was physically violent to Mildred.

The Aged Care Assessment Team (ACAT) became involved because of the husband's mental health issues and housed him while tests were being completed. Police obtained a final ADVO for the protection of Mildred. However, without knowledge of the history of domestic violence or the ADVO, a psychiatrist then advised the court that the husband was not unwell and could return home.

The WDV CAS contacted the ACAT social worker to explain that the husband could not return home because of the ADVO. The social worker then worked to place the husband in other accommodation, but this was voluntary and he chose to leave after a couple of months. The husband pressured Mildred to apply to remove or vary the ADVO so that he could return to the family home, which she eventually did.

### **Case study: Elderly woman abused by adult daughter and grandson**

An 82 year old woman, Nadine, was assaulted by her daughter and grandson. Police attended the incident and made a referral to the WDV CAS. Nadine did not want to give a statement to Police directly after the incident, however she disclosed more information when contacted by the WDV CAS.

Nadine gave the WDV CAS permission to inform the Police. The Police subsequently obtained a full statement and charged her daughter and grandson with assault. The matter proceeded to hearing, and the daughter entered a guilty plea on the day. A final ADVO including a no-contact condition was granted. Nadine did not have to give evidence.

## [Domestic Violence Practitioner Scheme \(DVPS\)](#)

The Domestic Violence Practitioner Scheme (DVPS), is a panel of private legal practitioners administered by Legal Aid NSW. These practitioners are funded by Legal Aid NSW to provide advice and representation to women experiencing domestic and family violence on ADVO list days at 32 local courts across NSW on a duty basis.

DVPS practitioners assist women to make a private application for an ADVO, and women defendants in ADVO and domestic and family violence offence matters in certain circumstances. They also assist women in relation to their other legal needs, including family law issues.

DVPS practitioners work in close partnership with WDV CASs. WDV CAS coordinators are responsible for developing and maintaining the DVPS roster at each court to ensure that a suitable practitioner attends every ADVO list day.

Practitioners must be experienced in criminal and family law to be on the DVPS panel.

## Recommendations

The case studies above illustrate the key role played by WDVCSs in supporting older women through the court process and in relation to their ongoing welfare and legal needs.

Based on the experiences of WDVCSs, Legal Aid NSW makes the following recommendations:

- increase training and community awareness initiatives regarding elder abuse, particularly in relation to victims' reluctance to engage with Police and services when the violence is perpetrated by children or grandchildren.
- improve referral pathways to specialist domestic and family violence services (for example, WDVCSs) from aged care facilities, older persons' services, mainstreams services and forums like the ACAT. This is essential given the cultural and practical barriers older women face in accessing support.
- expedite roll-out of the Safer Pathway reforms across NSW to ensure that WDVCSs are appropriately resourced to assist older clients, and to ensure that all older women at serious threat of injury or death due to domestic and family violence are referred to Safety Action Meetings.

## Community Legal Education

Legal Aid NSW has produced a number of brochures to assist older people with legal issues. In particular the Committee may consider the following relevant to the topic of elder abuse:

- *Are you experiencing violence or abuse? You can make it stop*
- *Helping your family financially; understand the risks*
- *Moving in with the family? Make sure you protect your interests*

Legal Aid NSW has also hosted talks to groups of seniors and community workers on the topic of EFA to raise awareness of this problematic social issue and to elicit appropriate referrals to Legal Aid NSW of older people who may benefit from our services.

### **Case study: Borrowers Beware radio campaign**

Legal Aid NSW observes from its experience that many Arabic and South Eastern European older people are not aware of the risks associated with using their homes as security for loans obtained for the benefit of a family member.

Legal Aid NSW receives a disproportionate amount of applications for help from older people from these ethnic groups at the point at which banks want to take possession of their homes in order to discharge a loan taken out for the benefit of a son or daughter.

Legal Aid NSW wanted to communicate these risks, but in a way that resonated with older people in those communities. 'Borrowers Beware', a partnership project with The Aged Rights Service, commenced in early 2015. The project's innovative approach of delivering community legal education via community radio broadcasts aimed to educate Arabic and South Eastern European (specifically Croatian, Serbian and Macedonian) elderly people about the dangers of borrowing money against their homes.