

**Australian Lawyers Alliance**

**GPO Box 7052**

**Sydney NSW 2001**

Dr Jane Barratt  
International Federation on Ageing

By email: [jbarratt@ifa-fiv.org](mailto:jbarratt@ifa-fiv.org)

15 May 2013

**Re: Submission by Australian Lawyers Alliance  
United Nations Convention on the Rights of Older Persons**

Dear Dr Barratt,

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

The ALA is represented in every state and territory in Australia. We therefore have excellent knowledge regarding legislative change and what impact this will have upon our clients. More information is available on our website.<sup>1</sup>

We have reviewed the submission prepared by the National Association of Community Legal Centres to the Office of the High Commissioner for Human Rights on "Public Consultation on the Human Rights of Older People". Broadly speaking, we agree with that submission.

The ALA wishes to make a submission in relation to two primary areas of concern relating to the international recognition of the human rights of older people: age discrimination in the workforce; and elder financial abuse.

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<sup>1</sup> Australian Lawyers Alliance (2013) [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au)

## Age discrimination

Of particular interest to the ALA is the increasing requirement for older Australians to continue to work, because of reduced access to the aged pension, while battling subtle discrimination in obtaining paid employment. In 2009, the Australian Federal Government published its decision to increase the age at which Australians are eligible for the Age Pension: "From 2017 the qualifying age for the Age Pension will gradually increase from 65 to 67 by 2023"<sup>2</sup>. The increase in the eligible age will be gradual over this period.

By increasing the age at which Australians are eligible for the age pension, the Federal Government has impliedly acknowledged that older Australians have a part to play in the workforce of the country. The problem is that it is increasingly difficult for Australians over the age of 50 to obtain employment. The Australian Human Rights Commission has identified numerous barriers to older persons obtaining paid employment.<sup>3</sup> Although the rights of older Australians are recognized, and discrimination prohibited in legislation<sup>4</sup>, addressing ageist perceptions in communities generally, and employers particularly, remains a considerable barrier to employment. This problem will only become greater as more people enter the over 50 age group and are unable to access aged pensions until 67.

The National Association of Community Legal Centre's submission referred to above has summarised this problem well: challenging ageist perceptions needs to "remain a focus"<sup>5</sup>. A positive focus on the ability of older people to contribute to the productivity of a nation, reinforced by international recognition and support in a Convention on the Rights of Older Persons is an important factor in changing the way members of international communities perceive the value and capacity of older people. Ultimately this is likely to lead to generally improved respect for, and acknowledgment of, the rights and responsibilities of older people, without which it is difficult to make real life advances in conditions of older people.

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<sup>2</sup>Secure and Sustainable Pension Reform: Age Pension Age, Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) <http://jennymacklin.fahcsia.gov.au/node/456>.

<sup>3</sup><http://www.humanrights.gov.au/publications/working-past-our-60s-reforming-laws-and-policies-2012#Heading65>.

<sup>4</sup> *Age Discrimination Act 2004 (Cth), Fair work Act 2009(Cth), various state and territory anti-discrimination legislation.*

<sup>5</sup> National Association of Community Legal Centres submission to the Office of the High Commissioner for Human Rights Public Consultation on the Human Rights of Older persons 2013 at page 13

## Elder financial abuse

Elder abuse occurs when the relationship of trust between an older person and another is abused and results in harm – financial, psychological, physical, social, neglect or sexual – to the older person<sup>6</sup>.

In relation to elder financial abuse, Robinson and others have said:

Financial abuse of older people, defined as 'the illegal or improper use of older person's property or finances' (Kurrie and Dadler, 1944:6), is a common, growing and little researched area of elder abuse. Though older people often fear abuse by strangers, abuse of older people largely occurs within families, with adult children being the main perpetrators<sup>7</sup>.

The proliferation of superannuation as a consequence of government policy will mean that there will be increasing numbers of older people who will have access to substantial retirement capital and income which is likely to give rise to an increased risk of financial abuse. This risk may be compounded by the current generation's high level of debt and an increasing dependence on inheritances to meet these debts<sup>8</sup>.

Elder financial abuse by trusted persons may take a variety of forms, such as misappropriation of money and property, facilitating changes to wills and other documents, taking benefits under guarantees and loans, and misuse of enduring powers of attorney.

In Australia, unlike in the United States and Europe, there is no mandatory reporting scheme for cases of suspected elder financial abuse. Given the increasing numbers and proportions of older people in Australian society, there is a need to at least consider whether such a scheme should be adopted in this country. As noted by Ann Lyons, former President of the Queensland Guardianship and Administration Tribunal, now Justice of the Supreme Court of Queensland:

"If such a mandatory scheme were to be adopted it would clearly have important policy and resource implications which need to be thought through but other jurisdictions are asking the question and we also need to be having the discussion as well<sup>9</sup>."

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<sup>6</sup> Australian Network for the Prevention of Elder Abuse, 1999

<sup>7</sup> Robinson, Setturlund, Wilson, Tilse, Rosenman "Financial Abuse within families: Views from Family Members and Professionals" paper presented to Australian Institute of Family Studies Conference Melbourne February 2003; cited by A Lyons 'Enduring Powers of Attorney – Common Problems and Emerging Issues' page 12 fn 8, paper presented to Queensland Law Society Succession Law Conference, Brisbane, October 2004.

<sup>8</sup> Daniela Intili "Dividing Up the Family Pie" Money Magazine November 2002, cited by A Lyons "Enduring Powers of Attorney – Common Problems and Emerging Issues" paper presented to Queensland Law Society Succession Law Conference, Brisbane, October 2004, page 13.

<sup>9</sup> A Lyons "Enduring Powers of Attorney – Common Problems and Emerging Issues" paper presented to Queensland Law Society Succession Law Conference, Brisbane, October 2004, page 14. For a

In any event, it is acknowledged that without a register for powers of attorney, or mandatory reporting of elder abuse it is impossible to determine with any accuracy exactly how widespread elder financial abuse is within the community. However, a study conducted by the Office of the Public Advocate in Western Australia reported that almost 10% of all cases which came before the Guardianship Board in February 1999 were elder financial abuse cases<sup>10</sup>.

Elder financial elder abuse is a serious human rights issue that needs to be addressed by a multi faceted response from the government and non government sector. It is everyone's responsibility to take steps to realise recognition of the right of older persons by recognition in an international convention. As Mahatma Ghandi said: "A nation's greatness is measured by how it treats its weakest members."

I am available for further comment on these areas. Please contact on (07) 4639 0357 or [ccheek@clewett.com.au](mailto:ccheek@clewett.com.au).

Yours faithfully,



Catherine Cheek

Chairperson for Elder Law Committee, Queensland

Australian Lawyers Alliance

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discussion of these issues see Radio National's The Law Report, Tuesday, 19 July, 2005 "Elderly Abuse" <http://www.abc.net.au/rn/talks/8.30/lawrpt/default.htm>

<sup>10</sup> Brill D, "Safeguarding the Financial Interests of Vulnerable Seniors", a Research Project by the Office of the Public Advocate Western Australia, 1999 cited by A Lyons "Enduring Powers of Attorney – Common Problems and Emerging Issues" paper presented to Queensland Law Society Succession Law Conference, Brisbane, October 2004.