

Real Life Research in Partnership



Understanding Civil Law Needs of Older People and Building Research Capacity in Community Legal Centres

March 2022

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ACKNOWLEDGEMENTS

The authors would like to acknowledge and thank members of our project advisory group who provided valuable guidance and input into this project.

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We would also like to thank student intern Elena Mitchell who provided editing and proof reading assistance.

Funding for this project was provided by a Knowledge Grant from the Victoria Law Foundation.

Funded by
Victoria Law
Foundation



The office of Barwon Community Legal Service is on the traditional lands of the Wadawurrung people of the Kulin Nation. We acknowledge their history, elders and deep and ongoing connection and stewardship of Country.

Table of Contents

LIST OF TABLES	5
LIST OF FIGURES.....	5
1. EXECUTIVE SUMMARY	6
1.1 Key project learnings	6
1.2 Key research findings	8
1.3 Key recommendations	11
2. INTRODUCTION.....	12
2.1 Project aims	12
2.2 Partners	12
2.3 Need for research examining civil law needs of older people	13
2.4 Partnership Model.....	16
2.5 Research internship overview.....	16
2.6 Ethics approval	17
3. METHOD	18
3.1 Overview and data sources	18
3.2 Research questions	19
3.3 Data presentation and analysis.....	19
3.4 Limitations	19
3.5 Benefits of research	21
4. LITERATURE REVIEW	22
4.1 Introduction	22
4.2 Defining elder abuse	22
4.3 Scope and risk factors	23
4.4 Studies on Ageing and Elder Abuse	25
4.5 Civil Law Issues	27
4.6 Responses.....	29
4.7 Impacts of COVID-19.....	30
4.8 Summary	31
5. FINDINGS	32
5.1 BCLS data	32
5.2 External data review and civil law needs of older people.....	42
5.3 Stakeholder interviews examining civil law needs of older people.....	49
6 CONCLUSIONS AND RECOMMENDATIONS.....	67

6.1 Recommendations for BCLS	67
6.2 Systemic issues	69
7 REFERENCES.....	71
8 APPENDICES.....	76
Appendix 1: Tables containing breakdown of BCLS CLASS data	76
Appendix 2: Tables containing breakdown of available Barwon region demographic data.....	80
Appendix 3: Questions used in stakeholder interviews and focus groups examining civil law needs of older people	81
Appendix 4: Overview of community sector survey questions	82
Appendix 5: Selected breakdown of questions and responses from community sector survey results	84
Appendix 6: Overview of questions from BCLS Staff interviews	86

LIST OF TABLES

Table 1- Proportion of Colac and Geelong Population as Empty-Nesters and Seniors

Table 2 - Percentage of BCLS clients experiencing family violence

Table 3 - Number of Older People receiving BCLS services, July 2017-June 2020

Table 4- Number of BCLS Services and Clients aged 60+ July 2017-June 2020

Table 5 - Breakdown of data from the National Legal Needs Dashboard

LIST OF FIGURES

Figure 1 - ABS, Census of Population and Housing, 2016 (Usual residence data)

Figure 2 - Proportion of 65+ living alone

Figure 3. Word Cloud - visual representation of top 3 civil law issues affecting Older People in Barwon region

Figure 4. Survey responses - Older people approaching worker with civil law problem

Figure 5. Confidence in Directing an Older Person to an Appropriate Service

1. EXECUTIVE SUMMARY

1.1 Key project learnings

In early 2020, Barwon Community Legal Service (BCLS) received funding from the Victoria Law Foundation (VLF) as part of their Knowledge Grant funding stream. The purpose of the Knowledge Grants is to support community legal organisations to better understand their data and use it to respond to community need.

The Knowledge Building Project (the project), allowed BCLS to invest time and resources into undertaking a research project in partnership with Deakin University to better understand the civil law needs of older people in the Barwon region.

The project also sought to develop an evidence-based framework for the collection, interpretation and application of available data, which would lead to ongoing collaboration with Deakin to build BCLS' research and data capacity across other areas of their legal practice.

The project model established a formalized partnership with Deakin's Work integrated Learning (WIL) Program that embedded virtual student research interns within BCLS to assist with the collection and interpretation of data.

The project has provided the following key learnings:

Ethics approval challenges and impact on incorporating lived experience in research

BCLS and Deakin University initially applied for ethics approval through the Faculty of Arts Human Ethics Advisory Group to examine the civil law dimensions of elder abuse, and to include older people as a voice in the research itself. The initial plan was to facilitate focus groups with older people through connections within BCLS' local networks to obtain qualitative data to inform the project's findings. The project was however informed that this would require a higher risk ethics application that would take considerably longer to approve. The difficult decision was therefore made to apply for a lower risk ethics approval, which did not extend to interviewing older people directly due to the risk of raising problematic legal issues that cause harm or distress.

In addition, as the project occurred during the COVID-19 pandemic, no travel was permitted by Deakin University. This prevented any face-to-face interviews and focus groups, which meant all were ultimately conducted online using MS Teams. The ethics requirements stipulated all data was to be stored within Deakin University's systems. Interview data could be stored in this way but it was not possible to transfer internal data housed by BCLS that involved confidential case files or database records.

A further ethics application was lodged with the Victoria Police Research Coordinating Committee to interview three police personnel in the Geelong and surrounding region regarding their experiences of elder abuse. This request was rejected after several months of deliberation.

Partnership key to success

Central to the success of this project is the partnership that has been established between BCLS and Deakin's Criminology program. The partnership allowed students studying criminology, forensic science and psychology along with law to have real life experience of research in a community organisation.

The project was guided by a Project Advisory Group, which included representatives from Victoria Legal Aid, Diversitat multicultural council, Barwon Health, BCLS' legal practice, and Victoria Police. The Project Advisory Group provided a valuable role in guiding research and connecting the project with potential sources of data. There is a hope that this research project will also provide a valuable resource for the reference group agencies involved in this project.

Impact of COVID and designing a virtual research internship

This project plan and partnership model were initially designed prior to the impacts of the COVID-19 pandemic. BCLS was able to adapt its partnership model and planned to allow for the team, including the research interns, to run the project virtually. While this was the first time BCLS had conducted an internship program entirely virtually, it was able to put in important measures to support the research interns and provide adequate supervision and guidance during the project. See Chapter 2.4 of this report for further detail about the partnership model.

Student reflections on internship demonstrate value of project

The positive feedback from students participating in the internship is a testimony to the importance of the project for BCLS. It provided a rare opportunity for students to engage directly in the research process, through close supervision with BCLS and Deakin criminology staff, which is not generally possible in their undergraduate studies. Utilizing students also built the capacity of BCLS to undertake data collection and conduct focus groups with external stakeholders, which are usually time consuming and resource intensive.

Students were asked to evaluate their internship experience by completing an exit survey designed by BCLS. There were also very favourable evaluations and informal comments provided to Deakin WIL and criminology staff. Feedback received included the below comments from participating interns which demonstrate the value of the project:

"This was not an easy internship. The work was complex and time-consuming. It was also deeply rewarding, and brought joy to my Covid-controlled world. I loved my team work, the supervision and the way Barwon involved us as peers. It was the best part of my degree."

"Being able to utilise and build on the knowledge I have gained through my degree on this important project was so fulfilling. It has given me an idea of the kinds of roles I would like to apply for after graduating."

1.2 Key research findings

The findings are broadly consistent with those from access to justice and legal needs research and provide further insight about civil legal needs of older people in the Barwon region. This research builds upon and contributes to an already established knowledge base.

1.2.1 BCLS data and civil law needs of older people:

Legal Assistance services to older people

- CLASS data showed that over a 3-year period between July 2017 and June 2020:
 - 12% (1036) of all legal assistance services were delivered to 749 older people in the Barwon region
 - Older people made up 14% of all clients receiving services
 - BCLS is reaching approximately 10% of older people in its region with potential legal need¹
- Services to older people are increasing over time, while client numbers are relatively stable
- Very low rate of services provided to older Aboriginal and Torres Strait Islander clients
- Older people more likely to receive ongoing casework support
- Family violence is most common legal issue experienced by older people, followed by wills and powers of attorney and then motor vehicle accidents.

BCLS client profile of older clients

- A large proportion of clients' experienced financial disadvantage, family violence or live with a disability
- A majority of older people accessing its service receive an Age Pension or Disability Support Pension
- More than half of older clients assisted by its service lived within the Geelong region.
- Very low number of older Aboriginal and Torres Strait Islander clients accessing BCLS.

BCLS case file review

- A limited review of BCLS files suggests:
- There is no data entry point in CLASS for identifying cases as elder abuse files
- Not all cases involving elder abuse were classified as family violence files on the system but involved a wider range of civil law areas such as fines, consumer, law powers of attorney, property matters
- Most cases involved a family member either as a perpetrator of elder abuse or as a concerned family member acting on behalf of the older person who was potentially experiencing abuse
- All cases relating to elder abuse involved financial matters, such as loaning money without knowledge of being the guarantor or knowing that they would have to pay funds, or paying fines incurred by younger children
- Digital literacy and access was a particular barrier for a number of clients, which included not having a computer, email address or mobile phone.
- There were examples of family members trying to protect the older person from financial abuse, but by restricting the older person's autonomy were at risk of committing abuse themselves

¹ National Legal Needs Dashboard predicts approximately 7220 older people in the Barwon region have potential legal need

- One case highlighted the particular barriers to accessing legal services experienced by older people within aged care settings, and the impacts of services classifying clients as not having mental capacity as opposed to having legal capacity

BCLS staff interviews

Emerging themes on how BCLS understands elder abuse and its civil law consequences

- There is no agreed definition of older person
- Elder abuse not defined specifically but seen on a spectrum
- Elder abuse is often included family violence but there were elements that made elder abuse cases unique
- There is no systemic way of classifying elder abuse cases as an organisation
- It is important to take a holistic and rights based approach to civil law needs of older people
- Common civil law issues older people experience included family violence, legal issues relating to decision making such as guardianship, powers of attorney, medical treatment decisions and wills, along with legal issues relating to financial problems such as credit, debt and scams.

1.2.2 External data and civil law needs of older people

- People aged between 60-69 years old are the largest growing age group in Greater Geelong. Nearly a quarter of all older people in the Greater Geelong region live alone.
- The Barwon region contains significant disparity in disadvantage with higher proportions of older individuals associated with people with high levels of disability, widows and widowers and providing unpaid assistance to a person with a disability.
- Some postcodes with the highest proportions of older people had the highest levels of advantage: for example Queenscliff and Surf Coast.
- The Crimes Statistics Agency data shows a significant increase in victimisation rates of Victorians over 65 years of age over the last ten years, with perpetrators of assault most likely to be an adult child.
- There is a lack of publicly available stakeholder data to assist in identifying civil law needs of older people.
- 13% of people aged 65+ in Barwon region have predicted legal need. Data from the Need for Legal Assistance Service (NLAS) on the National Legal Needs Dashboard shows that approximately 7,220 of people aged over 65 years in the Barwon region are predicted to have legal need, compared to 749 older people who received services from BCLS over the three year period. This means BCLS meets the legal needs of just over 10% of the older people in the region who have predicted legal need.
- Safe Steps data showed the number of older people accessing crisis support for family violence services in the Barwon region is most likely significantly underestimated.

1.2.3 How local agencies understand the civil law needs of older people

There are general perceptions about:

- An increase in elder abuse since the pandemic
- The need for flexibility in defining 'older person'
- A clear range of common civil law issues facing older people, which included: abusive relationships; financial abuse; informal family agreements; housing problems; scams; and a general lack of support leading to abuse.
- Factors that made older people more vulnerable to experiencing civil law issues included discrimination, lack of autonomy and family violence
- Older people were usually connected with legal and other community services through police, welfare workers or other aged care staff

Legal services were seen as a vital support service for older people. However, several suggestions were made to improve access to justice for older people. These included:

- Holistic service responses to challenge ageism
- Simplified service systems and more access to free legal assistance
- Older people need to be included within solutions
- Clear and plain English resources aimed at specifically older people
- The funding of early intervention and prevention initiatives
- Service mapping and strengthening relationships between legal and other community services
- Place-based services and a co-care models to reach vulnerable older people
- Legal Health checks for older people.

Key findings from stakeholder survey

- Most respondents viewed the main civil law problems affecting older people as being financial issues, inability to access services, elder abuse or family issues
- Most feel confident in knowing the right service to contact if they deal with an older person facing a legal problem, however simplified information about available services recommended
- Most viewed the lack of targeted services, particularly for older people from Aboriginal and Torres Strait Islander and CALD communities, to be key barriers to seeking help
- Information sessions to assist older people, rather than improving online services, were seen as important developments.

1.2.4 Identified barriers to obtaining legal assistance for older people in the Barwon region

Emerging themes from BCLS staff interviews

- Barriers older people experience accessing legal assistance included lack of knowledge of services, being unable to access legal services safely, and concern about damaging family relationships
- Particular barriers that CALD communities might face in accessing legal services included language and cultural barriers or potential community backlash if an older person sought assistance from a legal service or took out a family violence intervention order
- Particular barriers that Aboriginal and Torres Strait Islander older people might face included not feeling culturally safe to disclose they are Indigenous when accessing BCLS services, or a preference for accessing Aboriginal and Torres Strait Islander specific legal services
- Help seeking is generally considered reactive rather than proactive

- COVID and legal assistance provided via phone negatively affected access for some vulnerable older people, particularly those in the Colac Otway region. However, other older people experiencing mobility and transport issues, are likely to have benefited from the remote delivery of services.
- Isolation, mobility and digital literacy are all barriers that older people experience in accessing legal services.

Emerging themes from stakeholder interviews

- There was a view that many older people had the perception that a lawyer would cost too much and so are reluctant to access;
- Lack of mobility can be a real barrier for older people to access legal services;
- Complexity of service system can also mean that older people do not access legal assistance when they need it;
- Assistance provided is not always adequately tailored to older people and accessing mainstream services can be a deterrent;
- Dementia and other cognitive conditions can also impact an older person's ability to access legal service;
- Difficulties in determining older person's decision making capacity could act as a barrier;
- Lack of funding or continuity of funding for legal services;
- Communication and language barriers, particularly for CALD communities;
- Aboriginal and Torres Strait Islander communities unlikely to access mainstream services;
- Lack of digital literacy;
- COVID and the fact many services had to move online or provide support virtually.

1.3 Key recommendations

1.3.1 For BCLS

- Changes needed to better capture data for older people accessing BCLS services
- Engagement with local Aboriginal and Torres Strait Islander organisations to improve access to civil law assistance for older Aboriginal and Torres Strait Islander communities
- Co-location of BCLS services within organisations supporting older people to extend reach of family violence legal assistance services for older people – in Colac and Geelong regions
- Ensuring outreach or co-located services target people experiencing financial disadvantage, CALD communities, and people living with disabilities
- Develop a legal health check tailored to the civil law issues experienced by older people
- Providing legal assistance that centres the rights, autonomy and independence of the older person
- Community Legal Education needed for services that support older people and for older people directly
- Continue to build the relationship with Work Integrated Learning Program and Deakin University for future research initiatives

1.3.2 Systemic issues

- Challenge ageism and promote autonomy of older people
- Increase digital literacy and adapt services to ensure accessibility
- Increased state and federal funding for community legal centres to integrate and target their services
- More proactive inter-agency education initiatives to prevent civil law issues

2. INTRODUCTION

Conducting research can be challenging for a Community Legal Centre (CLC) given the limited funding CLCs receive to deliver legal assistance services, the unique skill set that research requires and the balancing of the competing priorities of front line service delivery.

The project enabled BCLS to invest in its research skills, exploring ways of partnering to build sustainable research partnerships, and use its own and other sources of available data to better understand civil law needs of older people, while offering real life research experience for Deakin University students

2.1 Project aims

The aims of the research project were to:

- Develop a new understanding of the civil law needs of older people and barriers preventing access to legal assistance in the Barwon Region;
- Develop a better understanding of referral pathways and service gaps for older people;
- Strengthen BCLS civil law and family violence services by incorporating this research into everyday practice;
- Develop and embed an evidence-based framework to enable a sustainable research practice to continue at BCLS in partnership with Deakin University beyond the life of this project.

2.2 Partners

Barwon Community Legal Service

BCLS is an independent Community Legal Centre (CLC) funded by the State and Federal Governments to provide free legal information, advice, and casework to members of its local community. A key part of its work is community education and awareness and contributing to law reform, as well as providing direct legal assistance.

BCLS supports the legal needs of people living within the Barwon region, which includes City of Greater Geelong, Bellarine, Surf Coast and Colac Otway communities and has operated in the region for 35 years.

BCLS is a generalist civil law CLC and assists clients with a wide range of civil law issues including: family violence and family violence intervention orders; elder abuse; family law; consumer, credit and debt; Centrelink and social security; fines and infringements; employment; tenancy if related to family violence; Neighbourhood disputes; motor vehicle accidents and victims of crime.

Deakin University

Deakin University's School of Law and staff working within the Criminology program have had a long association with BCLS. This includes various members of Deakin staff serving on the board of BCLS, and a range of collaborative initiatives. BCLS receives funding from Deakin University Student Union (DUSA) to run the Deakin Student Legal Service at the Waurin Ponds and Waterfront Campuses, along with having a long-standing internship program for Geelong-based Deakin University law students who undertake placement with BCLS. Much of the social justice orientation of the Criminology program provides a unique opportunity for students with empirical research skills to assist in developing BCLS research capacity on areas related to every day legal practice, including a range of both civil and criminal law issues.

Deakin University has increased emphasis on promoting Work Integrated Learning (WIL) for its students. This can be quite challenging in a field such as Criminology, where student aspirations for work placements in ‘action-oriented’ settings are often unable to be met. Hence the partnerships with BCLS on this project was welcomed wholeheartedly by the WIL team in the Faculty of Arts and Education,² and provides a template for future externally funded projects with a direct impact on a small partner organisation. This impact was also important given all but one small component of the project was coordinated online due to restrictions on work and direct contact due to the COVID-19 pandemic.

Project Advisory Group

The project was guided by an Advisory Group comprising key local and statewide agencies located in the Barwon region or with an interest in the civil law needs of older people. The reference group included representatives from Victoria Legal Aid, Diversitat Multicultural Council, Barwon Health, BCLS’ legal practice, and Victoria Police.

The purpose of the Project Advisory Group was to:

- Guide the delivery of the Knowledge Building Research project;
- Provide input and feedback into planned research activities;
- Contribute to the development of questions to be included in interviews and surveys;
- Identify and facilitate access to data sources to be examined as part of the project;
- Encourage representation of a broad range of stakeholders in all research activities
- Foster collaboration amongst local stakeholders to ensure as many perspectives as possible are represented in the project;
- Identify and assist in removing barriers to successful delivery of the project;
- Share the findings of the project and incorporate findings of research where appropriate.

2.3 Need for research examining civil law needs of older people

Ageing population in the Barwon region

The Barwon region has a significantly ageing population. In the City of Greater Geelong region the age structure forecasts a 34.6% increase in the population of retirement age people between 2016 and 2026³. This demographic change is likely to affect the nature and demand for legal assistance amongst the community BCLS serves.

Data in Table 1 shows there are also larger proportions of “empty nesters”⁴ - those aged 60 to 69 years who are approaching retiring age or already retired - and seniors aged 70 – 84, within parts of the Barwon region compared to both metro Melbourne and Regional Victoria. Colac Otway communities have higher proportion of over 60 year olds compared to the regional Victorian average.

² The project gives special mention to Rose Watson who organised the application process for students with BCLS, and Tony Chalkley who Chairs the undergraduate Unit that provided credit for the students who worked on this project.

³ City of Greater Geelong, 2016.

⁴ Empty nesters refers to 60 – 69 year olds who are approaching retirement age as well as those who have retired already. It is a time when people consider moving into smaller dwellings and has implications for housing policies as well as service provision.

Table 1 -Proportion of Colac and Geelong Population as Empty-Nesters and Seniors⁵

Region	% of population Empty nesters and retirees (age 60 – 69)	Seniors (age 70 – 84)
Colac Otway	14.6	12
Greater Geelong	11.8	10.1
Regional Victoria	13.4	11.1
Greater Melbourne	9.3	7.7

Prevalence of legal need and barriers to accessing justice for older people

Legal Needs Analysis traditionally frames legal need spiking within younger and middle-aged population groups. This is largely due to how legal need has been measured and the tools that are available to measure it. People's legal needs can change over time as they age. This can impact the complexity of people's legal needs, and be a challenge for legal assistance services when ensuring that their services are targeted and tailored. The legal needs of older people often include specific areas of 'elder law',⁶ that involve property disputes, wills, powers of attorney and a range of other civil law areas that are associated with the nature of ageing.

Research also shows that while older people experience fewer justiciable events than other members of the Australian population, they still suffer significant barriers to access to justice.⁷ There is research showing that older people are much less likely to seek help for legal issues, experienced lower resolution rates, and obtained the least optimal legal outcomes when compared to other age groups.⁸

Lack of prevalence data relating to elder abuse

BCLS practices in elder law and commonly provides legal assistance to older people experiencing elder abuse and older people experiencing family violence. BCLS has seen a significant increase in demand for family violence legal assistance.

Table 2 is drawn from BCLS service data and indicates that over time the proportion of clients experiencing family violence has increased, and for the 2020/21 financial year comprised a total of 61% of clients. Overall, 58% of the legal assistance services provided by BCLS was related to family violence.⁹

Table 2 - Percentage of BCLS clients experiencing family violence

Financial year	Percentage of clients
2017/18	47.6
2018/19	49.3
2019/20	51
2020/21	61

⁵ Above n. 3

⁶ Lewis (2018).

⁷ Sage-Jacobson (2015).

⁸ Ibid.

⁹ BCLS (2021).

Along with its legal practice, since early 2019 BCLS has convened the Barwon Elder Abuse Primary Prevention (BEAPP) Network. This initiative is funded by the Department of Families, Fairness and Housing and aims to prevent elder abuse by increasing community understanding of elder abuse, strengthening engagement with community and commitment by community leaders and increasing understanding of useful preventative strategies. Within the context of this work, however, it became clear that there was limited data available to understand how prevalent elder abuse and other civil law issues were in the Barwon region.

Historically there has been a lack of data relating to elder abuse more broadly. Research shows that up to approximately 14% of older people may experience elder abuse.¹⁰ However, given the widely reported observation of underreporting, it is predicted that the rate of elder abuse may be as high as 25% of people over the age of 65 years.¹¹ A recent prevalence study conducted by the Australian Institute of Family Studies, and the most extensive study into elder abuse in Australia to date, found that one in six older Australians (15%) reported experiencing abuse in the 12 months prior to being surveyed between February and May 2020¹².

Elder abuse spans diverse civil law areas

Upon further investigation within BCLS's own legal practice, it was evident that there was no clear process for systematically identifying which files were elder abuse cases. Instead, analysis revealed that the legal matters in case files were variously classified by legal problem type spanning diverse civil law areas, including but not limited to family violence; consumer, credit and debt; Centrelink and social security, fines and infringements; powers of attorney and guardianship. The lack of a clear system of classifying legal problems facing older people, and identifying those underpinned by elder abuse, made it very difficult to understand how common elder abuse cases were in BCLS' practice.

It was also difficult to ascertain whether older clients were also experiencing related "non-legal" issues affecting their ability to access legal assistance relating to health, housing, mobility and isolation. Historically these problems have often been perceived as family rather than legal issues by family members, police, health and community service providers. These problems can affect an older person's independence and ability to access legal services. As such, these problems go largely unreported and unaddressed.

Addressing civil law issues could limit escalation to criminal law

At an intuitive level, addressing civil law issues adequately, as well as the barriers to accessing legal services, can prevent more serious or systemic forms of abuse experienced by older people. However, many criminological studies focus primarily on how to target crime victimisation experienced by older people, rather than civil law problems that can potentially escalate into criminal victimisation.¹³ This includes developing stronger multi-agency policies that help to protect older people, with the broader view of limiting their exposure to both civil and criminal law problems.¹⁴

Often missing from these accounts is the role of civil law as a potential limiting force that can prevent family, friends or service providers from engaging in elder abuse. This important observation was a key starting point in this study, given the extensive array of civil law issues experienced by older people.¹⁵

¹⁰ Kaspiew et al., (2018).

¹¹ Dow and Brijnath (2019), p. 145; Council of Attorneys-General (2019), p. 13; Kaspiew, Carson and Rhoades (2018), p. 6; WHO (2015), p. 74; Hill & Katz (2019), p. 1.

¹² Qu, et al., (2021)

¹³ See James and Graycar, (2000)

¹⁴ Manthorpe (2007), p. 139-153.

¹⁵ ALRC, (2017).

2.4 Partnership Model

Central to the success of this project was building a strong partnership with Deakin University, in particular with staff teaching in the Criminology program. While it is common for CLCs to host law students who contribute to legal assistance service capacity, it is less common to draw upon the expertise of students from other disciplines, including criminology and forensic science, to assist with building the organisation's research capacity.

The project team worked closely with Criminology staff within Deakin University's Faculty of Arts and Education to design a Work Integrated Learning (WIL) research internship for criminology students undertaking sole degrees or studying in combined degrees in law, psychology and forensic science.

The internship opportunity was advertised via the WIL team 24 applications from Deakin students were received. The project team comprised members of BCLS and Deakin Staff who interviewed shortlisted applicants and five internships were awarded.

The internship embedded the recruited interns into two cohorts of student researchers within BCLS one day per week over two 12 week periods to help collect, analyze and collate the data presented in this report. Cohort one focused on met need and cohort two were tasked with examining unmet need.

This work contributed to student assessments and the work produced also formed the basis of this report. This report was then cowritten by staff from both organisations.

The partnership was sustained throughout each phase of the project by regular contact BCLS and Deakin University staff, rather than a formalised memorandum of understanding. All staff involved had a direct interest in overseeing the progress of the students and the production of the final report for VLF, while Deakin students received formal credit for their active participation under BCLS auspices and timely completion of written work that was submitted for the project, including critical reflections on the internship process. Deakin University staff and students also actively participated in project various milestones, such as attending meetings with the Project Advisory Group and reporting on the progress of the research to VLF. The model has potential to be extended into other similar projects examining different subject areas in future.

2.5 Research internship overview

The internship was overseen by BCLS staff, and regular check-in sessions with Work Integrated Learning (WIL) and criminology staff at Deakin University were provided to interns. The model enabled the internship to be conducted primarily online, and key components for its success included:

- Weekly check-in and check-out meetings with interns to ensure that the research was progressing and issues were addressed early;
- Detailed work plans for each research intern;
- Opportunities for interns to present interim findings and early observations of data at BCLS staff meetings, leadership team meetings, and Project Advisory Group meeting;
- Reflective journaling by interns to record their internship experience and key learnings from the project; and
- Ensuring interns received credit for their time as part of the WIL program

Students undertaking the research internship were engaged in a range of research activities associated with the project. These included taking lead roles in each of the following:

- Undertaking a systematic review of literature examining civil law issues affecting older people and elder abuse

- Examining and synthesising publicly accessible data on elder abuse and the civil law needs of older people
- Examining and analysing BCLS case files
- Scoping relevant legislation that deals with civil law issues affecting older people
- Designing questions to ask BCLS staff and external stakeholders
- Designing the questionnaire for local stakeholders
- Conducting interviews with key stakeholders, which included note taking and data analysis functions
- Preparing draft summaries of key issues that were used in this report

2.6 Ethics approval

This project received ethics approval from the Faculty of Arts Human Ethics Advisory Group (HEAG: Project number HAE 20-016), which took several months to complete. Ultimately, low risk approval was granted to collect anonymised data from existing data sets with the permission of relevant agencies, and to interview stakeholders who work with older people in the Geelong region. This permission extended to all Deakin staff and students involved in the project, who were required to complete an ethics questionnaire that is logged with the project's ethics forms, as well as BCLS staff involved in data collection for this project.

Ethics requirements meant that it was not possible to conduct primary research with older people and interview them about their legal needs, as was originally intended.

3. METHOD

3.1 Overview and data sources

A key starting proposition for this work was the view that if civil law issues for older people are adequately and effectively addressed, there is reduced scope for victimisation of older people and a lessened need for the use of the criminal law against people involved in abuse targeting older people. In other words, civil law issues can help to prevent elder abuse.

For the purposes of this project's research, older persons are defined as those aged 60 years and above, or 50 years and above for Aboriginal and Torres Strait Islander people. We chose these parameters as they are aligned with the eligibility for Victoria's community legal service for older people, Seniors Rights Victoria. However, as noted in the literature review, the term 'elder' is not defined easily or consistently across different agencies.

This project examined BCLS data over a three-year period from July 2017 to June 2020. Client and service counts included full clients only, that is, those who received something more than only a triage, information or referral service.

The research was divided into two phases. Each phase included the following data collection and sources as follows.

Phase one data was collected from December 2020 to February 2021. As part of this phase a comprehensive literature review was conducted on the civil law needs of older people. The BCLS data base was also examined to extract, review and analyze quantitative service data recorded in the Community Legal Assistance Services System (CLASS) database. A number of semi-structured focus groups were also conducted with select number of BCLS staff members, along with a randomized case file review of seven BCLS case files involving older people.

Phase two data was collected from March 2021 to June 2021 and included collating, reviewing and analysing available demographic data demonstrating potential legal need for older people in the Barwon region. Data sources included Australian Bureau of Statistics (ABS) datasets, the Law and Justice Foundation of NSW's National Legal Needs Dashboard, and other open source demographic data maintained by other agencies.

Within this phase semi-structured focus groups and interviews were conducted with key stakeholders examining what BCLS could do or improve to better meet civil law needs of older people in the Barwon region¹⁶. Stakeholders were also surveyed through an online survey¹⁷ that was distributed through BCLS' existing networks via the Barwon Elder Abuse Primary Prevention Network. The Survey asked participants for their input on the areas of legal need for older people in the Barwon region and the barriers that potentially affect the ability of older people to access legal assistance and justice.

¹⁶ Note that this report uses extensive quotes from the interviews while retaining the anonymity of all interviewees. 13 people in total were interviewed across 7 sessions. Interviewees included representatives from Dementia Australia, Victoria Legal Aid, Seniors Rights Victoria, Barwon Health and Diversitat; program workers from local family violence services with extensive experience in understanding elder abuse were also interviewed along with case workers based in Colac providing rural services to older people.

¹⁷ The survey was conducted via Survey Monkey and had 28 responses from participants from a range of organisations including Neighbourhood House, Meals On Wheels volunteers, Men's Sheds, Senior Citizens clubs, local council and other community organisations.

3.2 Research questions

The following questions were designed to guide research activities across each phase.

Phase 1	<ul style="list-style-type: none"> • Consolidate available internal and external data on civil law needs of older people and elder abuse • Interrogate how BCLS understands/classifies elder abuse and its civil consequences • Investigate how local agencies recognise the civil law needs of older people and the barriers that older people experience
Phase 2	<ul style="list-style-type: none"> • Investigate and compare the frequency, geographic location and type of civil law problems experienced by older people in the Barwon region with data available for other regions • Determine how civil law problems experienced by older people come to the attention of legal and other community services, and identify referral pathways • Investigate: <ul style="list-style-type: none"> ○ Risk factors that make older people more vulnerable to experiencing civil law problems ○ Whether and how local agencies and key stakeholders recognise civil law as relevant to their clients' everyday problems ○ Whether and how local agencies and key stakeholders assess the importance of legal help for older people in the context of such problems ○ Barriers preventing older people from obtaining legal assistance in the Barwon region

3.3 Data presentation and analysis

This largely exploratory research is primarily intended to investigate and describe how BCLS practice meets the legal need of older people in the Barwon region based on collation and analysis of available evidence.

However, it is important to understand that sight of met and unmet legal needs is contingent on available data. As such, the knowledge-building element of this grant sought to explore what BCLS is currently doing to address the legal needs of older people, and assess how it compares with available information about the likely relevant legal need in the region. Regional-level need was assessed using the quantitative and qualitative data sources collected and analyzed in Phase 1 and Phase 2 of the project.

Following the imposition of COVID-19 restrictions, the method for this project had to be further adapted. This report presents evidence derived from the internal analysis of BCLS case files together with publicly available data about demographic trends and their relationship with legal need. The analysis identifies and presents core themes evident from the demographic data, BCLS service data and views and experiences of BCLS staff and key stakeholders.

3.4 Limitations

Ethics prevented direct engagement with older people

The original plan for this research was to directly engage with older people to canvas their legal needs and report experiences of accessing justice. However, due to ethics challenges outlined above, the project was unable to directly include older people in the research. This is, therefore, a key limitation of the project's findings and an issue that should be addressed in any future research on the legal needs of older people that might be conducted in partnership with universities and their students.

All research conducted in virtual format due to COVID-19

In addition, COVID-19 lockdowns in Victoria also required further change to the proposed research activities and methods, namely preventing in-person interviews with stakeholder agencies. Regardless, BCLS are confident that the switch to online interviews together with an online survey did not substantially affect the nature or quality of the information collected, nor the resulting analysis.

Limitations in measuring unmet legal need

There are, however, particular methodological and practical difficulties in assessing the scope of 'unmet legal need' using legal service and existing reporting practices. Legal assistance service data provides only a measure of those in need who successfully sought and obtained a service from a service provider, in this case BCLS. This, more accurately, is a measure of expressed legal need. Other data collection methods and sources, such as interview and surveys, are needed to measure whether or not people may have experienced legal needs that they did not 'express' by seeking assistance. The data collected in this report nevertheless provides important information on issues affecting the legal needs of older people in the Barwon region¹⁸.

Issues with BCLS CLASS data

There were recognised particular limits with CLASS data, and the way that BCLS collected data about older clients. Limitations included the failure to tag elder abuse as a legal problem type within BCLS cases, and the age classifications for older people, which are segmented into clients, aged 50-64 years and 65+. CLASS also does not separate older Aboriginal and Torres Strait Islander clients from aged 50+. These classifications do not match the definitions of 'older person' that are common in the literature or used by other government and community services. This made extracting relevant reports from CLASS more difficult. In addition, some important relevant social indicators, such as lack of mobility and digital access, are not systemically recorded within CLASS, and are inherently difficult to measure. Review of CLASS data also revealed a high proportion of clients did not have a postcode attached to their case. This made comparison between rural and regional (or the Geelong area of Barwon) impossible. Thus, there was no consistent data to show whether or how far people travelled to reach BCLS. These limits extend to poor data management practices more broadly, including a lack of essential information being systematically, consistently and accurately recorded about BCLS clients in CLASS. These difficulties are all related to the fact that CLASS is primarily a legal assistance service database that has limited application for use to investigate elder abuse.

Only small sample of staff interviewed and casework files reviewed

Only a limited number of BCLS files were examined due to COVID-19, as BCLS was in the process of transitioning to electronic files at the time of this research. This meant it was only possible to examine hard copy files, but due to COVID restrictions, research interns could only attend the BCLS office to conduct the file review on a limited number of days.

Due to time constraints and limited lawyer capacity, research interns were only able to interview a small sample of BCLS staff and staff from key legal, health and allied professionals. People with particular expertise in dealing with older people were identified, regardless of whether they also held an understanding of civil law issues.

Old census data and lack of specific public data relating to older people

Note that many public data sources are quite dated or rely on data from previous census periods. Therefore, they are not always representative of current issues that face older people. Also, many data collected by other agencies are not specifically devoted to dealing with older people. This can mean that data are not collected with the needs or issues of older people in mind.

¹⁸ McDonald et al., (2020).

Only preliminary findings could be drawn from stakeholder survey

The survey findings are preliminary only, and due to the small response rate, raw figures from the survey, not cross tabulated findings, are presented. The original aim was to obtain a broader coverage of responses from a variety of services that deal with older people in the Geelong region, but Covid-19 lockdowns made it difficult to publicise the survey outside of established community and online networks.

3.5 Benefits of research

These difficulties are offset by the practical importance of this exploratory research on civil law need and older people not only to BCLS, but to other CLCs who deal with older client groups. This research provides a framework for evidence-based practice in the legal field that can readily be adapted to other priority client groups and legal problems. Despite small sample sizes, the data provides important detail on the views of service workers that have direct impact in shaping improved policy and outreach programs for older people in the Barwon region.

In addition, the partnership model for this research was mutually beneficial, providing new information and analysis for BCLS and real-world, first hand research experience for Deakin University students. This model promises to expand with similar mutually beneficial projects in future.

4. LITERATURE REVIEW

4.1 Introduction

Literature examining the civil law needs of older people is linked to the literature on elder abuse. The increased concern relating to both areas is significant, and a growing range of studies identify key issues in understanding how law can appropriately target the harms and vulnerabilities experienced by older people. This literature is presented in five parts:

- Defining and understanding elder abuse
- Scope and risk factors
- Studies on ageing and elder abuse
- Civil law issues
- Responses

4.2 Defining elder abuse

Elder abuse is not a discrete legal term, but encompasses an array of civil and criminal law issues. The concept was initially identified in 1975¹⁹ and has since been accepted as:

*a single, or repeated acts, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.*²⁰

This can include criminal conduct, such as family violence,²¹ or behaviour that is part of a 'continuum of intrafamilial violence' starting with child abuse, developing to spousal abuse and ultimately ending with elder abuse.²² The *National Plan to Respond to the Abuse of Older Australians*²³ (*National Plan*) recognizes the potentially 'devastating physical, emotional and social consequences' of health and social issues that can affect older people. As such, the definition of elder abuse employed in the plan include physical, sexual, psychological/emotional, financial abuse and neglect as key forms of harm affecting older people.²⁴ Such harm can stem from deliberate or unintentional conduct and can involve a single incident or repeated and ongoing events.

The ABS defines 'older person' as someone aged 65 years or above, which overlaps with the age range for elder abuse.²⁵ However, many domestic and international studies and services use 60 years as the starting age, with some differentiating between 'old' people (65-84 years) and 'old old' people (85+ years).²⁶ Due to their shorter life-expectancy, Aboriginal and Torres Strait Islander people are commonly classified as older from the age of 55 years, with the term 'elder' having distinct meanings to Aboriginal and Torres Strait Islander peoples.²⁷ Definitions can also depend on or vary due to a particular status, such as 'the age of "retirement"', which is commonly seen to be 65 years for men and 60 years for

¹⁹ World Health Organisation, (2002a), p. 2.

²⁰ WHO (2018) cited in Dow & Brijnath (2019) p. 144; Lewis (2018), p. 42.

²¹ Senior Rights Victoria (2018a) p. 3 but contrast with Dow & Brijnath (2019) p. 144 who oppose this view.

²² Kurrle et al., (1991) p. 150.

²³ (2019), p. 2.

²⁴ Council of Attorneys-General (2019), p. 3; Dow and Brijnath (2019), p. 2014; WHO (2002a), p. 3; NARI (2020), p. 17.

²⁵ Kaspiew, Carson and Rhoades, (2018), p. 2.

²⁶ Kaspiew, Carson and Rhoades, (2018), p. 2.

²⁷ Council of Attorneys-General (2019), p. 2; Kaspiew, Carson and Rhoades, (2018), p. 12.

women. The age of access to a pension, superannuation, or Senior's Card are further examples of variation in understanding and definition.²⁸

A historical lack of discussion and understanding of elder abuse affects understanding prevalence and victimization rates, and the role of civil and criminal law in protecting older people.²⁹ Variations in societal attitudes towards older citizens has been seen as a factor leading to underreporting of serious abuse, and affected by different cultural demands and roles of children to act as carers,³⁰ or other customary behaviours such as the sharing of money between family members.³¹

The *National Plan* acknowledges various forms of physical, sexual, psychological or emotional, financial abuse and neglect be recognized and combated.³² Many of these issues require policy, service and infrastructure reforms that go well beyond law and legal assistance, and variously point to state and territory health, law enforcement, and other 'safeguarding' measures, such as Public Advocates, Public Guardians and the principles underpinning guardianship.³³ It also includes reconceptualising guardianship provisions to incorporate the idea of 'substituted judgement' as 'the basis for any substitute decisions' that affect older people.³⁴ Such an approach can safeguard and protect older people who may otherwise be vulnerable to abuse and exploitation in care and guardianship arrangements.

4.3 Scope and risk factors

Research indicates that psychological and financial abuse are the most common forms of reported elder abuse.³⁵ Older women are more likely to be victims, while perpetrators are usually known to the victim, either as adult sons or daughters, ex-spouses or partners, step children, other relatives, neighbours or paid professionals. Perpetrators are often financially dependent on the older person and commonly have been found to also have mental health issues, drug, alcohol or gambling addictions, or a strong sense of entitlement over the older person's assets.³⁶

Financial, psychological and physical abuse are widely considered to be underreported and as affecting up to 20% of older people,³⁷ with even higher rates of underreported prevalence in CALD communities.³⁸ The barriers to reporting elder abuse mirror those facing victims of intimate partner violence.³⁹ It is also rare for a victim to experience only one type of abuse.⁴⁰ Most reported incidents of elder abuse involve women who:

- Have poor physical or mental health;
- Limited financial support;
- Live alone with the perpetrator;
- Are from non-English speaking backgrounds; or
- Experience social isolation.⁴¹

²⁸ Lewis, (2018), p. 42.

²⁹ WHO (2008), p. 118.

³⁰ Dow and Brijnath, (2019), p. 147; Sooryanarayana et al., (2013), p. 322.

³¹ Boldy et al., (2005), p. 6.

³² Council of Attorneys-General, (2019), p. 3.

³³ Chesterman, (2020), p. 384-387; Queensland Government, Department of Communities, n.d.

³⁴ Chesterman, (2020), p. 387.

³⁵ Kaspiew, Carson and Rhoades, (2018), pp. 5-7.

³⁶ WHO (2015), p. 74; NARI (2020), p. 23-29; Hill & Katz (2019), p. 1; Kaspiew, Carson and Rhoades, (2018).

³⁷ Dow and Brijnath (2019), p. 145; Council of Attorneys-General (2019), p. 13; Kaspiew, Carson and Rhoades (2018), p. 6; WHO (2015), p. 74; Hill & Katz (2019), p. 1.

³⁸ Hill & Katz (2019), p. 3; AIHW (2019), pp. 53-54; WHO (2015), p. 74.

³⁹ Dow et al., (2019), p. 854-855.

⁴⁰ Council of Attorneys-General (2019), p. 13.

⁴¹ Hill and Katz (2019), p. 2-3; WHO (2015), p. 74; WHO (2008), p. 115; NARI (2020), p. 13; ALRC (2017), p. 8.

Criminal victimisation differs from abuse. This is borne out by a review into crimes against older people in 2018 by the Crime Statistics Agency in Victoria.⁴² For example, reported cases of sexual victimisation are equally prevalent amongst people aged over the age of 85 years, compared with those in the 75-84 and 65-74 age brackets.⁴³ Most offences against the person, property and threats to commit crime are directed at individuals in the 65-74 and 75-84 age brackets. High rates of violent crimes against the person, including ‘around one-third of assaults’, were ‘committed by a family member’, with around 60% ‘committed by the victim’s child’ or in the victim’s home.⁴⁴ This suggests lower rates of ‘stranger-danger’ crimes against older people in public places, while lower comparative rates of family involvement in property, deception and fraud-related offences, however, are likely to result from underreporting by an older victim or lack of awareness of victimisation or that an offence has occurred or is occurring.

A lack of shared understanding of what constitutes elder abuse, together with fear of retaliation, incapacity and disability, feelings of dependence, guilt and a willingness to protect the perpetrator or family relations, are all well-recognised barriers to reporting elder abuse. An older person or health or other professional might also fail to recognize the abuse, which can lead to delays in providing appropriate responses.⁴⁵ Stigma and shame often prevent older people reporting abuse involving younger family members. These barriers can be magnified in CALD and rural communities, and have broader policy and service implications due to Australia’s ageing population.⁴⁶

Geographic isolation is a prominent risk factor. It can prevent access to information, while ‘travelling ... distance and time’⁴⁷ can restrict access to professional legal services. People in rural communities can also have complex legal requirements, such as those involving farming properties, family trusts, and seasonal financial pressures. Fear of retribution, cognitive and physical barriers, cultural, religious or generational barriers, and literacy or language difficulties can be profound for older people in rural areas, with these vulnerabilities magnified by limited access to professional legal services.⁴⁸

There is also widespread evidence that many older people prefer ‘face to face’ services’, and especially those that are located and accessible in their local communities.⁴⁹ Lack of mobility and lack of digital literacy can increase dependence on others and force older people to rely on other family members for assistance which can heighten potential exploitation. Older people who rely on public transport often face ‘poor coverage during weekends and ... outside normal [working] hours’ and can face substantial difficulty travelling to service locations.⁵⁰

It is common for online services or new technologies to overlook the needs of older users and people with disabilities.⁵¹ Although teleconferencing and Telelink services are useful for older people with limited mobility’ they often heighten digital literacy demands, while lack of mobility and digital literacy can prevent older people searching for and successfully obtaining information.⁵² Specialist electronic hardware, such as mice, might be needed to help some older people with conditions such as arthritis.

⁴² Walker, (2018) at <https://files.crimestatistics.vic.gov.au/2021-07/Crime%20Statistics%20Agency%20In%20Fact%209%20Crimes%20against%20older%20people.pdf>.

⁴³ Walker, (2018), p. 2.

⁴⁴ Walker, (2018), p. 2-3.

⁴⁵ Dow et al., (2019), p. 854.

⁴⁶ Hill & Katz (2019), p. 1; Kaspiew, Carson and Rhoades (2018), p. 13; Council of Attorneys-General (2019), p. 16; Dow & Brijnath (2019); Council of Attorneys-General (2019), p. 4.

⁴⁷ Edwards and Fontana (2004), p. 3.

⁴⁸ Ries, Johnston and McCarthy (2016), p. 3.

⁴⁹ House of Representatives Standing Committee on Legal and Constitutional Affairs (2007), p. 158.

⁵⁰ Somenahalli and Taylor (2007), p. 8.

⁵¹ Warren, Mann and Harkin, (2021).

⁵² Edwards and Fontana (2004), p. 17, 58-59.

4.4 Studies on Ageing and Elder Abuse

After two decades of quite sporadic treatment,⁵³ there is a growing awareness of the significance of elder abuse as a social problem. This has given rise to the landmark ALRC report in 2017, and the national plan to respond to elder abuse, which was a direct legacy of the ALRC's insights.⁵⁴ It has also led to a series of studies in the United Kingdom and internationally identifying key elements of legal need for older people that is also building in Australia.⁵⁵

In 2020 the first national survey and most extensive study into elder abuse was conducted in Australia. 7,000 people aged 65 and over living in community were surveyed (the study does not cover people in residential care settings or people with cognitive impairment). It was found that 1 in 6 older people aged 65 years and over experienced elder abuse in the 12 months prior to being surveyed and 61% did not seek help when they were abused.⁵⁶ It was also revealed that elder abuse can take the form of psychological abuse (12%), neglect (3%), financial abuse (2%), physical abuse (2%) and sexual abuse (1%). Perpetrators of elder abuse are often family members, mostly adult children, but they can also be friends, neighbours and acquaintances.⁵⁷

Interviews with older people reveal that fear of negative consequences for both the abuser and themselves, belief the abuse was not the fault of the abuser, and the impact of stigma, shame and embarrassment are key reasons for not reporting abuse.⁵⁸ The fear of negative consequences is often tied to the formality of legal processes, forced exclusion of the abuser from the older person's home or the potential for the abuser to receive criminal punishments. This can be compounded by the cost of legal services or the delay in their provision when a legal problem is recognised.⁵⁹ This realisation can often occur when formal intervention is taking place in court. For example, one respondent in Dow et al.'s study who had contacted Seniors Rights Victoria for help regarding a residency dispute with her son indicated 'when they said they had a barrister waiting I said "I can't do that to (my son) I just can't do that to him"'.⁶⁰ One definitional problem stems from the inappropriate or otherwise unhelpful classification of elder abuse as family violence leading to gaps in training of staff and potential misunderstanding and misclassification of problems and preferred outcomes.⁶¹

While 'available evidence does not indicate that older people currently have a higher *incidence* of legal need than the general population',⁶² there are complexities with how we measure legal needs of older people. These include methodological challenges surveying older people living in residential care, and the fact that the proportion of complex legal problems increases with the greater number of older people in the population. There is also a greater likelihood of complex legal issues, compounded legal problems, and disproportionate reluctance to report or pursue a legal issue.⁶³ This might require introducing more robust protections to prevent the misuse of powers of attorney and related delegated legal rights when an older person is considered to lose their capacity to make decisions, or a uniform national power of attorney.⁶⁴ In absence of legislative reform, many private legal issues associated with misuse of decision-

⁵³ See Edwards and Fontana (2004) for an important starting point.

⁵⁴ Council of Attorneys General, (2019).

⁵⁵ Sage-Jacobson (2015).

⁵⁶ Qu, et al., (2021)

⁵⁷ National Elder Abuse Prevalence Study: Final Report, (2021).

⁵⁸ Dow et al., (2019), p. 856-858.

⁵⁹ Sage-Jacobson (2015), p. 152.

⁶⁰ Dow et al., (2019), p. 857.

⁶¹ Dow et al., (2019), p. 860.

⁶² Sage-Jacobson, (2015), p. 150.

⁶³ Sage-Jacobson, (2015), p. 150.

⁶⁴ Peiris and Hockley, (2021).

making power involve complex common law and equity issues that can be difficult for laypersons to understand or require privately funded legal assistance.

Service gaps can also compromise the provision of legal support for older people.⁶⁵ For example, Lewis⁶⁶ indicates most areas of identifiable abuse are covered by the criminal law, which has a high degree of formality, limited preventative value, and can have consequences neither the abused person nor the abuser desire. Older people also often require legal advice in varying contexts and concerning various decisions in contexts that are governed by civil areas of law, including support regarding medical care, entitlement to public health carers, responsibilities of bank staff in financial transactions and arrangements, aged care advocates or complaints processes, relationships and arrangements with neighbours and family members. The lack of consideration of the needs of older people as a specific cohort across such a wide range of agencies means that many areas of law reform come from other lobby groups, such as 'disability and mental health advocates', or those with 'substitute decision-making' powers acting on behalf of older people. This often means certain direct service needs of older people are missed, which can magnify potential gaps in appropriate services affecting older people, and as noted above, particularly for those living in rural and remote areas, and where financial disadvantage and geographic isolation can exacerbate service access barriers.⁶⁷ Indigenous and CALD communities will also often require culturally-specific and appropriate forms of service and support.⁶⁸ Such complexities are now widely seen to require interagency recognition and responses that are suitable to both victims and perpetrators of elder abuse.⁶⁹

Property and land issues are also sometimes a significant problem for many older people. This spans access to stable homes as well as parks, gardens and other recreational spaces. For example, older people living and working in community or public rental housing often experience difficulties associated with ongoing maintenance, where support rails and other mobility aids are often uninstalled. The same problems emerge for older people living in private rentals.⁷⁰ In response, there are calls for a 'legal security of tenure'⁷¹ to fortify specific property rights and entitlements for older people, regardless of their living situation, and as a strategy to improve their wellbeing in light of the various insecurities associated with the ageing process.

A final important study surveyed health professionals about the merits of having a legal support person co-located within their services.⁷² This study indicated a strong overall preference by health professionals for legal assistance to be co-located in community-based health services, even if health professionals also held a general belief that older people did not always require legal solutions to many of their problems. Health professionals also believed they had an important role to play and should work alongside legal professionals in preventing elder abuse.⁷³ This colocation model also increased the confidence health professionals had in identifying elder abuse, a finding which is consistent with other studies examining legal partnerships with other service industries.⁷⁴ There is a growing evidence base around the effectiveness of health justice partnerships – collaborations that embed legal help into healthcare services and teams, including those that target older people that demonstrate this service model as increasing reach and accessibility of legal assistance services⁷⁵.

⁶⁵ Sage-Jacobson, (2015), p. 156-157.

⁶⁶ (2018), p. 43-44.

⁶⁷ Lewis, (2018), p. 44.

⁶⁸ Ethnic Communities Council of Victoria, n.d.

⁶⁹ Manthorpe (2006).

⁷⁰ Webb, (2018), p. 67-69.

⁷¹ Webb (2018).

⁷² Lewis et al, (2020).

⁷³ Lewis et al, (2020), p. e223.

⁷⁴ Pascoe (2014).

⁷⁵ Forell (2018), Forell and Nagy (2019).

4.5 Civil Law Issues

The Collaborative Planning Resource produced by the Law and Justice Foundation of NSW⁷⁶ provides an overview of the legal needs of older people aged 65 years and older. This report highlights how this group is not completely homogenous, taking into consideration that older Indigenous Australians and Torres Strait Islanders are described as 50-55 years or over due to their lower life expectancy. This report highlights that older people face disadvantages that overlap with other disadvantaged priority groups. The findings from the legal needs survey outline that '55% of those aged 65 years or over have low personal income and 18% have a disability'.⁷⁷ The LAW Survey also highlighted older persons reported significantly lower levels of legal problems compared to other age groups. This may be due to older persons failing to identify legal needs or believe their problems are unimportant. There might also be greater ignorance of personal circumstances.

People aged 65 years or over are also more likely to ignore their legal problems compared to those in the 18-54 years age group. The older groups view legal professionals as persons to consult at similar rates compared with other age groups except for people aged between 34-54 years, where the rates of consultation are much higher.⁷⁸ This study also identified barriers to older people accessing legal assistance. These included the types of isolation precipitated by physical incapacity or dependency, technological barriers in accessing helplines or websites, or lack of locally accessible specialist legal assistance services.⁷⁹

The most significant examination of civil law issues affecting older people was undertaken by the Australian Law Reform Commission (ALRC) in 2017. In addition to various barriers to accessing independent legal advice, including lack of awareness of a legal problem or the availability of low cost legal services,⁸⁰ there is also a belief that there are few legal experts who care about or are specialists in the wide variety of issues that are classified under the banner of elder law.⁸¹ This means many older people believe they might not be able to see one person to deal with the range of legal problems they are likely to experience. These factors contribute to a lack of confidence amongst older people in enforcing their legal rights or report a legal problem they might be experiencing⁸². These issues span a wide range of civil law practice areas.

Guardianship and financial administration

Guardianship and financial problems that older people experience often concern forced arrangements that compromise the autonomy and wellbeing of an older person.⁸³ For example, legislation governs the circumstances in which the Victorian Civil and Administrative Tribunal can appoint a representative guardian from the Office of the Public Advocate (OPA) to manage someone's affairs when they are unable to do so themselves.⁸⁴ However, it is estimated around 21% of older people were impacted by coercion, unwilling cooperation or a range of other signs of elder abuse associated with problematic or non-consensual guardianship arrangements.⁸⁵

⁷⁶ Coumarelos, McDonald, Forell and Wei (2015).

⁷⁷ Ibid, p. 24.

⁷⁸ Ibid, p. 25.

⁷⁹ Ibid, p. 26.

⁸⁰ House of Representatives Legal and Constitutional Affairs Committee, (2007), p. 160; Elder Law Committee of Law Institute of Victoria Council (2006); Edwards and Fontana (2004), p. 106.

⁸¹ Elder Law Committee of Law Institute of Victoria Council (2006); Lewis, (2018).

⁸² Sage-Jacobson (2015).

⁸³ ALRC (2017), p. 56.

⁸⁴ *Guardianship and Administration Act 2019*; OPA (2020).

⁸⁵ Bedson, Chesterman and Woods (2018).

Enduring powers of attorney

To prevent and minimise the scope for disputes and proactively manage estate issues, it is recommended that all significant medical, financial and personal decisions are made prior to a person losing their legal decision-making capacity.⁸⁶ Enduring powers of attorney can contribute to or facilitate elder abuse in circumstances where decision-makers lack independence and make decisions in their own interests, such as children, who can abuse powers of attorney to make other financial decisions to increase their own personal benefit or prospective inheritance without explicit approval from an ageing or infirm parent.⁸⁷

Family Agreements

These are often informal verbal arrangements made between family members, and often without independent legal assistance.⁸⁸ For example, arrangements will often be made where children of the older person will agree to provide ongoing care in exchange for money, property or tenancy. However family agreements are often a source of disputes and are rarely upheld when there is a breakdown or change in the family relationship, such as when a son or daughter experiences divorce, separation or enters into new personal relationships.⁸⁹ Family agreements are unlikely to involve legally enforceable contracts, which can compromise the level of care or result in an older person losing the “proceeds of their home”.⁹⁰ For example, a caveat, resulting trust or actions under the laws of undue influence or unconscionable conduct can be invoked to provide the older person some protection.⁹¹

Wills

Over 93% of Australians aged 70 or more have a will, and they and other estate planning can be used to both prevent harm and do harm’,⁹² particularly when an older person is forced to change their terms against their wishes. Professional support is recommended for older clients in planning or overseeing a will.⁹³ Certain events, such as the onset of illness or other significant changes to life circumstances, such as the death of a spouse, divorce, remarriage, and new relationships of dependency can give rise to a change in legal circumstances affecting entitlements and inheritance and where it may be prudent for a new will to be made.

Centrelink, social services, health care and NDIS services

Many older people often fail to apply for government entitlements or can be defrauded of carer’s payments by their children.⁹⁴ ‘Granny flat interest’ in the property of a child or friend can also reduce an older person’s entitlements to the aged pension. Older people are generally ineligible for NDIS benefits but might not receive appropriate support through the aged care system for ‘complex and progressing disability’.⁹⁵ Such lack of care can result in unintentional forms of abuse through the failure to provide age appropriate services⁹⁶ or recognition of other conditions such as dementia, depression or intellectual disabilities, which are evident in up to 24% of substantiated cases of elder abuse.⁹⁷

⁸⁶ Carter et al., (2016), p. 408.

⁸⁷ Senior Rights Victoria (2020).

⁸⁸ Fitzroy Legal Service (2020); ALRC (2017), p. 203.

⁸⁹ ALRC (2017), p. 149, 203; The Aged Care Services Inc (2010), p. 5.

⁹⁰ ALRC (2017), p. 206.

⁹¹ ALRC (2017), pp. 209-210; Fitzroy Legal Service (2020).

⁹² National Older Person’s Legal Services Network cited in ALRC (2017), p. 267

⁹³ Fielding (2019), p. 24.

⁹⁴ ALRC (2017), p. 246.

⁹⁵ National Seniors Australia Group (2012), p. 5; Birks (2020).

⁹⁶ Edwards and Fontana (2004), p. 51.

⁹⁷ Schofield and Mishra (2003), p. 110; Bedson, Chesterman and Woods, (2018).

Superannuation and banking

People with self-managed superannuation funds (SMSFs) are unlikely to seek assistance from a CLC and government regulation is likely to detect financial abuse with industry funds. Given that up to '55% of SMSF members are aged between 55 and 74 years of age',⁹⁸ financial abuse and related legal, taxation or compliance burdens can give rise to problems and disputes amongst families, particularly where business and SMSF interests collide, such as where a 'business premises [is] owned by the SMSF and leased to the family business.'⁹⁹

With respect to banking, while the responsibility on banks to detect financial abuse remains 'voluntary and unenforceable', mandatory reporting has been criticised as a strategy that could undermine 'the independence of elders' at the expense of protecting their financial interests.¹⁰⁰ Alternatively, the Australian Banking Association has an extensive campaign aimed at advising older people and banks to improve their awareness of scams and other forms of financial abuse.¹⁰¹

Consumer protection

Older people have been identified as especially vulnerable consumer fraud, financial mismanagement, online fraud, credit card debts and various forms of economic crime.¹⁰² National reporting schemes have been suggested as a strategy that could help to identify specific consumer problems affecting older people, while community information sessions and online services are suggested as ways to help increase awareness about scams and other fraudulent activities that specifically target older people, although older people can also experience barriers accessing digital technology.¹⁰³ Improved online services can assist older people to monitor their financial accounts and improve the detection of financial harms, provided they are publicised and have adequate in-built protections.¹⁰⁴

4.6 Responses

The *National Action Plan to Respond to the Abuse of Older Australians 2019-2023* outlines five key priority areas to combat elder abuse. These are:

- enhancing understanding of the problem
- improving community awareness
- strengthening service responses
- planning for future decision-making and
- strengthening safeguards for vulnerable adults.¹⁰⁵

The National Plan included some funding to trial specialist units that provide dedicated services to support older people experiencing abuse. Examples of the types of legal services that have been funded out of this program include specialist elder abuse units that combine work of lawyers, social workers and other support staff to develop case plans and respond to older people's need and health justice partnerships that provide training for health care workers to identify vulnerable older people and refer

⁹⁸ ALRC (2017), p. 114.

⁹⁹ ALRC (2017), p. 251.

¹⁰⁰ ALRC (2017), p. 299; Ahmed (2017), p. 51.

¹⁰¹ Australian Banking Association, n.d. at <https://www.ausbanking.org.au/priorities/financial-elder-abuse/>.

¹⁰² Kaspiew, Carson and Rhoades (2018), p. 32.

¹⁰³ Australian Banking Association, n.d. at <https://www.ausbanking.org.au/priorities/financial-elder-abuse/>.

¹⁰⁴ ALRC (2017), p. 300-301.

¹⁰⁵ Council of Attorneys-General (2019), p. 10.

them for legal support. In Victoria, there is only one funded service arising out of this trial that is run by Eastern Community Legal Centre servicing the eastern suburbs of Melbourne¹⁰⁶.

This initiative is supplemented by several state campaigns, including *An Age-Friendly Community* (QLD), *Age-Friendly Canberra* (ACT), *Respect and Protect Older Tasmanians* and *Stopping Family and Domestic Violence Policy* (Vic). Free telephone counselling services are available for older people who recognize potential abuse.¹⁰⁷ Several government and private organisations support the education and protection of vulnerable older Australians, including *MoneySmart* (ASIC), *ScamWatch* (ACCC) and *Safe & Savvy* (Commonwealth Bank of Australia).¹⁰⁸

Older people also require mental health and substance abuse services, and other measures to prevent social isolation. This requires agencies to improve their capacity to identify elder abuse, and greater understanding of prevalence rates, the characteristics of victims and perpetrators, consideration of policies such as the mandatory reporting of physical and financial harm, and the harmonization of different state laws governing powers of attorney and enduring guardianship.¹⁰⁹ There have also been calls for expanded mediation services to resolve financial disputes that require more development and advocacy.¹¹⁰

Civil law can assist in preventing more serious forms of abuse that can otherwise result in criminal proceedings. However, while specific offences to deal with elder abuse have been proposed, criminal prosecutions are also seen as potentially being harmful for and to be avoided by older people, such as where that would go against their wishes, such as where the perpetrator is a family member.¹¹¹ There is therefore some risk that greater criminalization might, ironically, create additional barriers to older people seeking assistance in circumstances of elder abuse. Most crimes currently associated with elder abuse are pursued under laws relating to fraud, intentionally causing injury, assault and sexual assault.¹¹²

4.7 Impacts of COVID-19

COVID-19 potentially magnified the social isolation of many older people. It also contributed to greater financial instability, increased vulnerability to financial scams and difficulties in accessing healthcare, home supplies or engaging with online services. These changes can increase personal feelings of neglect and distancing from friends and family.¹¹³ Home restrictions can also generate new abusive situations and exacerbate pre-existing abusive relationships. Isolation and restrictions can also obscure and hide abuse, and further limit prospects for intervention by police, social services and other authorities and agencies. However, one suggested benefit arising from the experience of COVID-19 restrictions is that older people may have improved their use and technological competency with digital communications and information platforms.

¹⁰⁶ ECLC's Elder Abuse Response Services, ROSE (Rights of Seniors in the East) and ELSA (Engaging & Living Safely & Autonomously), provide free and confidential legal advice and assistance to older people experiencing or at risk of elder abuse. ROSE, a partnership with Oonah Belonging Place, provides assistance to older people across the eastern metropolitan region while ELSA, a partnership with Eastern Health, is dedicated to supporting older people receiving care at Eastern Health

¹⁰⁷ FACS (2016), p. 5; Australian Government Attorney General's Department (2019), p. 32-35, Kaspiew, Carson and Rhoades (2018), p. 32.

¹⁰⁸ Australian Government Attorney General's Department (2019), p. 75; Kaspiew, Carson and Rhoades (2018), p. 32.

¹⁰⁹ Kaspiew, Carson and Rhoades (2018), p. 13; ALRC (2017), p. 4; Council of Attorneys-General (2019), p. 25; FACS (2016), p. 5; Senior Rights Victoria (2018b), p. 6; WHO (2002a), p. vi; WHO (2002b), p. 143; NARI (2020), p. 37-39; COTA (2020), p. 1-30.

¹¹⁰ Bagshaw et al., (2015), p. 447.

¹¹¹ Senior Rights Victoria (2018a), p. 5-6; Lewis (2017), p. 4.

¹¹² Senior Rights Victoria (2018a), p. 4; Tasmanian Government p. 12.

¹¹³ Makaroun and Rosland (2020), p. 876.

4.8 Summary

Two key themes emerge from the literature on elder abuse and civil law issues. The first is the underreporting of financial, psychological and physical abuse that can impact older people. This issue contributes to a lack of research on how these issues affect older people, and the profiles and motives of perpetrators of different forms of elder abuse. The second is the complex relationship between civil law issues and actionable forms of abuse under existing criminal laws. These complexities are magnified by either an all-or-nothing criminal law emphasis, and the lack of understanding of the legal needs of older people. Geographic isolation, lack of mobility and inability to access services or assistance through new technologies can also affect identification and response to elder abuse, which can be more pronounced in rural communities. All of these issues are central to understanding the civil law needs of older people in the Geelong region, and the role of BCLS in extending effective access to justice for this growing population group.

5. FINDINGS

5.1 BCLS data

As part of the project, the following categories of internal BCLS data were collected and analyzed:

- Quantitative data obtained from the Community Legal Assistance Services System (CLASS) database
- A limited case file review of files where legal assistance where the client was classified as an older person for the purposes of the research (i.e. over 60 years of age).
- Qualitative data obtained from focus group interviews with selected BCLS staff members

5.1.1 CLASS database

Background

BCLS uses CLASS to record details of services provided to clients. CLASS is a cloud-based database hosted by Community Legal Centres (CLCs) Australia and has been designed as a case management and reporting database. BCLS primarily uses CLASS for reporting to CLCs Australia rather than as a case management tool.

To support Phase 1 of the Knowledge Building Project, an analysis of CLASS data was undertaken to help understand what legal assistance services BCLS provides to older people. This overlaps with understanding whether and how BCLS classifies elder abuse in its service data. Analysis of CLASS was done in conjunction with the staff interviews and case file reviews to help answer the following research questions:

- What are available internal and external data on civil law needs of older people (including elder abuse)?
- How does BCLS understand and classify elder abuse and its civil law consequences?

Scope

For this analysis, an older person was defined as someone 60 years and older, and for Aboriginal and Torres Strait Islander people, 50 years and older. The CLASS data examined BCLS client services provided in the three-year period from 1 July 2017 to 30 June 2020. All BCLS services relating to court/tribunal, duty lawyer, legal advice, legal tasks and other representation (ongoing casework support) were included in the dataset for analysis. Note that BCLS services where only information and referral was provided were excluded from the dataset.

Legal assistance services delivered to older people

Table 3 documents the analysis of data over the relevant three-year period. This table presents the following key findings about BCLS services:

- 12% (1036) of all legal assistance services were delivered to 749 older people in the Barwon region
- Older people made up 14% of all clients receiving services over the examined three-year period

- Based on these numbers and estimated figures from the National Legal Needs Dashboard, this suggests that BCLS serves approximately 10% of older people in the Barwon region likely to have a legal need.¹¹⁴

Table 3 - Number of Older People receiving BCLS services, July 2017-June 2020

Total services* delivered by BCLS – July 2017 to June 2020 <i>Services excludes information and referrals</i>	Total clients receiving services – July 2017 to June 2020 <i>Client numbers only include full clients (not people receiving information or referral services)</i>	Total services delivered to older people (%)		Total number of clients aged 60 + (unique clients)	
		Aged 60+	Aboriginal and Torres Strait Islander aged 50+	Aged 60+	Aboriginal and Torres Strait Islander aged 50+
8, 726	5, 251	1036 (12%)	18 (0.2%)	749 (14%)	13 (0.25%)

Services to older people increasing over time

The number of services delivered to older people has grown steadily between July 2017 and June 2020, while the number of clients has remained relatively stable. Compared to 2017 there has been a 30% increase in the number of BCLS services delivered to older people in the Barwon region. Somewhat surprisingly, the number of services provided to older clients supported in 2019/2020 increased despite the impact of COVID-19 and the fact that services could only be delivered online for the last 3 months of the financial year.

Table 4- Number of BCLS Services and Clients aged 60+ July 2017-June 2020

2017-2018		2018-2019		2019-2020	
Total No. services and clients		Total No. services and clients		Total No. services and clients	
Aged 60+		Aged 60+		Aged 60+	
Services	Clients	Services	Clients	Services	Clients
296	237	340	267	382	232

Very low rate of services provided to older Aboriginal and Torres Strait Islander clients

BCLS CLASS data demonstrates a very low rate of service provided to older clients who identify as Aboriginal and Torres Strait Islander. Table a) *Number of BCLS Services and Clients identified as Aboriginal and Torres Strait Islander aged 50+ July 2017-June 2020* (Appendix 1) indicates only 0.2% of BCLS services were provided to a total of 13 Aboriginal and Torres Strait Islander people aged 50 and above, representing, only 0.25% of BCLS's total clients.

¹¹⁴ National Legal Needs Dashboard: <http://www.lawfoundation.net.au/legalneedsdashboard> predicts approximately 7220 older people in the Barwon region have potential legal need.

Older people more likely to receive ongoing casework support

Older people are much more likely to receive a higher level of legal assistance or ongoing casework support which is classified on the CLASS database as 'other representation' compared to younger clients. CLASS data shows that 21% of ongoing casework involving legal assistance for older people was ongoing legal casework compared with around 12% for people aged under 60. Older clients were also much less likely to access one off legal advice compared to younger clients, and less likely to access the BCLS duty lawyer service for assistance with family violence intervention orders. In addition to these figures, Table b) *Total BCLS Services Delivered to Clients and Older People, July 2017-June 2020* (Appendix 1) demonstrates that:

- 14% of clients aged over 60 were provided assistance with legal advice compared to 44% of younger clients, and
- 7% of older clients accessed the BCLS duty lawyer service compared to 26% of younger clients.

Family violence most common legal issue older people receive a service for

Table c) *Three Most Common Legal Problems Experienced by Older People* (Appendix 1) indicates that over the examined 3 year period, the most common legal services provided to older people were related to family violence or family violence intervention orders (30% of total legal assistance services to older people). This was followed by legal assistance services related to Wills and Powers of Attorney (21% of total legal assistance services), then Traffic and Vehicle Regulatory offences (12% of total legal assistance services).

Client profile of older people accessing BCLS services

BCLS CLASS service data reflects service priorities. BCLS prioritises access to its legal services for clients experiencing certain indicators of disadvantage that make it harder for them to access justice. This includes priority legal support for people experiencing family violence, disability, homelessness, financial disadvantage.

Large proportion of clients' experienced financial disadvantage, family violence and were living with a disability

Table d) *Number and Proportion of BCLS Clients Reporting Key Indicators of Disadvantage* (Appendix 1) indicates that 92% of older people accessing BCLS services were experiencing financial disadvantage, which meant they either were receiving Centrelink benefits, or did not have the means to pay for a private lawyer.

In addition, approximately 21% of older people accessing BCLS services presented with a family violence indicator, and 25% reported living with a disability. Finally, ten of the 13 Aboriginal and Torres Strait Islander clients BCLS assisted reported living with a disability and all were experiencing financial disadvantage.

Table e) *Proportion of BCLS Clients Receiving Social Security Benefits* (Appendix 1) indicates that nearly half of older people receiving legal assistance from BCLS (45%) were on an aged pension. Much lower proportions were on other social security benefits including disability support (12%), Newstart (7%) or a carer's payment (3%).

Very small number of older Aboriginal and Torres Strait Islander people accessing BCLS services

As outlined in Table a) (Appendix 1) it is clear that a very limited number of Aboriginal and Torres Strait Islander clients accessed BCLS services in the three-year period examined. This could be due to clients already accessing community controlled Aboriginal and Torres Strait Islander specific legal services in the Barwon region, or clients not feeling culturally safe or comfortable to disclose their Indigenous status to a mainstream legal service like BCLS. There could also be other barriers at play including a lack of

knowledge of free legal assistance services available in the region. As yet there is no established relationship between BCLS and the local Aboriginal Corporation Wathaurong. Steps are in place to establish a partnership in the next financial year, which would improve BCLS engagement with Aboriginal and Torres Strait Islander communities and First Nations clients.

Majority of older people accessing BCLS services are from Greater Geelong

Data in Table f) *Geographic Breakdown of BCLS Clients, July 2017-June 2020* (Appendix 1) revealed that a majority of older people accessing BCLS services lived within the city of Greater Geelong area (66% of total older clients), with relatively low numbers of older people from the Colac Otway regions accessing BCLS services (5% of total older client). This is despite a disproportionately higher population of older people living in the Colac region compared to both regional Victoria and Greater Melbourne.

5.1.2 BCLS case file review

Background

To provide additional context to the CLASS data the project undertook a small-scale review of randomly selected files where ongoing casework was delivered to older clients.

Scope

We analyzed seven casework files with the assistance of the relevant BCLS community lawyer, where possible, who could provide context and further information on each of the selected files. The framework used to review each file included the following issues:

- Age of client
- Legal problem
- Location of client
- Whether the case involved a family relationship
- Assistance provided
- Outcome
- Priority community indicator, including:
 - Aboriginal and Torres Strait Islander Living with a disability
 - On Centrelink
 - Financial disadvantage
 - Experiencing family violence
 - CALD background
 - Living in regional or rural community, and
 - Any barriers identified in accessing BCLS services.

Illustrative case study

The following casework example is provided below to demonstrate the detail available from a casefile and lawyer review, and the beneficial impact legal assistance can have on an older person's legal problem for an older person seeking assistance. Information has been anonymised to maintain confidentiality.

Valerie, a single mother of two children, worked for decades as a nurse to pay off the mortgage on the family home. At the age of 68, her eldest son, Wayne, asked her to invest her superannuation in a business he was setting up. Valerie felt pressured to help her son, investing most of her superannuation and signing a number of contracts. When the business failed, she discovered that her home was mortgaged under a Loan Guarantee for \$250,000, which she alleged she was not correctly informed about, and her home was the only asset the bank could sell. She came to our legal service for advice about how she could keep her home being sold by the bank. We looked into the issues, obtained some specialist advice from Consumer Action Law Centre and assisted Valerie to make a complaint to the Australian Financial Complaints Authority (AFCA) - against both the bank and the mortgage broker that

Wayne hired to set up the loan. After 8 months of advocacy and negotiation, AFCA made a determination that the bank had misrepresented the guarantee to the mortgage broker and to Valerie and that it was therefore completely unenforceable. The determination set Valerie free from a \$250,000 financial burden and meant she could keep her home.

Overview of the casework file review

The casework file review indicated a broad range of civil law issues where BCLS provided casework services. The areas of law ranged from fines, to guardianship to seeking assistance from a government authority. Most involved clients with multiple service priority indicators and access barriers, including limited access to email or digital technology. All of the clients in the review had accessed services directly at the BCLS office or through an outreach service.

Table g) *Profile of BCLS Case Files Involving Older People* (Appendix 1) provides an overview of the casefile review.

Key Themes from casework file review

While the review was only small in scale, several key themes were identified in the analysis. Due to ethical constraints which require maintaining confidentiality, the description that follows is provided at a general high level.

No data entry point identifying cases as elder abuse files

BCLS had no specific recording or data entry practice to identify cases of elder abuse in its casework files. While this is informative in itself, it meant that it was difficult to draw conclusions about prevalence of elder abuse amongst older clients receiving BCLS services where casework was provided.

Not all casework files involving elder abuse were classified as family violence files

Many cases that did involve elder abuse were classified under different categories on CLASS, such as family violence, fines, consumer, powers of attorney, or property matters.

Consequently, instances of elder abuse could be obscured within a wide range of legal matter categories.

Family Member Involvement

Every casework file reviewed involved family members, either as a perpetrator of abuse or helping the client to deal with abuse or a civil law problem, except for one case where an older person had sought help on their own without assistance of a family member for a deceased estate. Most cases of elder abuse involved a perpetrator who was a family member. On multiple occasions a family member was a supporting party for the client, and helping them access legal assistance. There were examples of a younger family member who had approached BCLS, acting on behalf of an older person who was being abused or experiencing a civil law problem.

Casework outcomes

While many cases had positive outcomes, this was not the case for every older person who received casework services. For example, some cases resulted in fines being paid by the older person or a family violence intervention orders being made despite the older person disagreeing.

Financial Matters

Most of the casefile reviewed involving elder abuse related to financial issues, such as being party to a loan agreement without knowledge of being made the guarantor or having to make payments, or paying fines incurred by younger children. Several of the cases involving financial issues involved children with various types of mental illness, which may have increased the severity of abuse/civil law problem experienced by the older client.

Digital Literacy

One consistent barrier evident in many of the case files is a lack of digital literacy. Without this fundamental understanding, older people may put others in a position of trust to handle their technology, which may increase vulnerability to issues such as financial exploitation, and also act as a barrier to obtaining legal information and assistance. This reliance may also present issues in an aged care or a hospital setting, because an older person's autonomy is restricted as they are not able to communicate without the assistance of staff. The casework file review indicated that some older BCLS clients did not have access to a computer, an email address, or a mobile phone, which impacts their ability to access services, or seek help about their civil law problem.

Importance of Autonomy

There were many examples of younger family members attempting to protect older family members from financial abuse. However, when these actions restrict the older person's financial or living autonomy, they can become a form of financial control and abuse. Examples in the files suggest people acting on behalf of an older person may sometimes be acting in their own interests, rather than reflect the wishes of the older person. In one example, younger family members attempted to prevent financial abuse by restricting the older person's access to funds to go overseas. In attempting to protect the older person from a potentially poor decision, this case illustrates how intervention can also limit their lifestyle choice and autonomy, which could amount to financial abuse.

Barriers to accessing clients and providing legal services

The review revealed older people in aged care experiencing some barriers to accessing legal services, particularly due to misunderstanding and restrictions regarding capacity. On one occasion, BCLS lawyers were denied access to a client in aged care as carers stated the older person did not have medical capacity to talk to lawyers. This was despite a contrary assessment indicating the older person had legal capacity to provide instructions to a lawyer.

Powers of Attorney and Aged Care settings

Several case files involved disputes regarding powers of attorney, and where younger family members were controlling the client's finances and choices. Another issue concerned examples of older people being put into aged care against their wishes. Aged care or hospitalisation can both increase vulnerability to financial abuse as the victim may not want their assets or property sold.

5.1.3 BCLS staff interviews

Background

To provide additional context and insight into the quantitative data and casework file review, we conducted interviews with four BCLS staff. The aim was to understand how legal staff understood the civil law needs of older people, how elder abuse cases are classified, and the barriers older people might face in accessing legal services.

Scope

We conducted one interview with two lawyers and two separate interviews with individual lawyers. Due to COVID restrictions all interviews were conducted virtually via MS Teams.

All four participants were asked the same series of questions. For a full list of questions see Appendix 6: *Overview of questions from BCLS Staff interviews*. Direct quotes have been extracted and italicised below.

How BCLS understands elder abuse and its civil law consequences

No agreed definition of older person

Analysis of the interviewees revealed that BCLS did not have a clear cut-off age for when to consider a client as an 'older person', and there were differing responses about when BCLS classifies a client as an older person. Responses ranged from aged 55 and above, to aged 65 and above. It was also noted that BCLS did not have a separate definition of older person for Aboriginal and Torres Strait Islander clients, and did not routinely adjust for the gap in life expectancy of Aboriginal community members.

Elder abuse not specifically defined but seen on a spectrum

It was clear that BCLS did not employ one standard definition of elder abuse. Rather, elder abuse was considered as part of a broad spectrum that occurs alongside other civil law issues experienced by older people, and often spanned diverse areas of law.

I think it's definitely a spectrum and it encompasses a whole lot of different things.

There was also a reluctance to adopting a standard definition of elder abuse. One interviewee explained this as follows:

Older people experience the same types of legal issue as any other people, and the aim is to provide help regardless.

BCLS staff considered that age was a key element of an elder abuse case. However, this also depended upon the circumstances and capacity of the client involved, as illustrated by the following:

I think for us we would probably define it on an age basis ...I think it would probably mean different things to different lawyers as well [as] based on the work that they do and the types of cases they see. And I think the other element of it is that it really depends on specific circumstances and a person's own capacity. Because you can have someone who is 50 that has less capacity ... you would associate with perhaps someone who is going through later in life.

Other key themes evident in discussing the definition of elder abuse included someone taking advantage of the vulnerability that an older person experiences in life and diminishing an older person's rights because of their age. Elder abuse was also seen as having both subjective and objective elements, including older people who are objectively experiencing elder abuse, but who might not identify themselves as experiencing abuse.

You can look at a person's situation and say 'That's elder abuse', but the person in that situation won't identify themselves [as] that's elder abuse. ... you can definitely say its subjective, when the

older person thinks they've been taken advantage of, or they're scared ... but I also think there's another element of it which is the objective side of when a person not in that situation looks at it and can identify it even though the person who is in it may not feel that they are necessarily being abused

Elder abuse included family violence but some elements made elder abuse cases unique

In defining elder abuse broadly, lawyers observed several cases that conformed to the definition of family violence, including those that display all the elements of physical, emotional, financial and sexual abuse. However, BCLS staff also identified cases involving older people who experience particular vulnerabilities, such as social isolation, ageism and family members taking away older people's right to make decisions about their lives.

No systemic way of classifying elder abuse cases

Several lawyers observed that there was no systemic way of classifying elder abuse cases on the BCLS data management system. It was also suggested that it would be useful to adopt a system which flags a case file as involving elder abuse:

It's very subjective to say what's elder abuse and what's not. What we could possibly do is add a category to say this was a consumer issue and involved elder abuse or it was a mortgage issue and elder abuse, and so put it as a second sub-category ... Maybe just [flag] potential elder abuse ... Or suspected.

Importance of a holistic and rights-based approach to civil law needs of older people

Several staff reinforced the importance of adopting a 'rights-based' approach to working with older people, as illustrated by the following:

It's all about that rights-based approach of people being hindered or stopped from accessing their rights ... abusing them or taking advantage of them because of their age and making the assumption that because of their age they're valued less or have less capacity.

Family violence, financial abuse and decision making issues were common civil law problems older people experience

A range of civil law issues commonly experienced by older clients were identified by BCLS staff. In particular, family violence and legal issues concerning personal safety were considered to be very common:

It's often parents and children or parents and grandchildren, where the grandchild is visiting grandma and abusing them and getting money out of them and taking money out of their purse.

Also common were legal issues relating to decision making including guardianship, powers of attorney, medical treatment decisions and wills. Financial issues including credit, debt and scams, along with some older clients approaching BCLS for assistance managing gas or electricity bills were also reported.

Barriers older people experience accessing legal assistance

Staff identified several barriers to accessing legal services that older people commonly experience.

Lack of knowledge

Several participants identified that many older people in community may not know that there are free legal services available to assist them with their issues.

Unless you've been in the system previously a lot of people don't know there's free legal services around and you can get a free opinion on whether something's right or wrong without that obligation to take it any further or spend money.

Cannot access legal assistance in a safe way

It was also noted that, particularly during the COVID-19 pandemic lockdowns in Victoria, many older people experiencing elder abuse were living with people who were perpetrating the abuse. This denied these people a safe avenue for accessing legal services:

They can't get away from the people who are abusing them in order to go and see a lawyer.

Worry about damaging family relationships

Many older people who attended BCLS knew they were experiencing a legal issue such as elder abuse or family violence, but did not want to take legal action. Staff explained that this was because they were often concerned about the consequences of taking action and particularly not wanting to damage family relationships.

They have already decided they're not going to do anything and they're not going to see us, they're not going to tell anyone about it.

(Older people) don't (want) to see a lawyer about it because what are they going to do about it? Nobody wants to go to court ... you don't want to take your own family to court.

Barriers in CALD communities

Many newly arrived migrants or people from CALD communities may not speak English as a first language. It also often affected their knowledge and understanding of their legal rights:

They might not speak English at all, or even if they do speak a little of it, they don't understand our laws, so they don't understand what's right or wrong within our system.

Participants also explained how members of CALD communities can experience backlash if someone decides to take action and get assistance for a particular legal issue. This creates barriers to reporting family violence or other legal issues affecting older people. For example,

... if you do complain about it the whole of your community will then turn against you ... someone who's violent towards their partner and the partner goes off to court to get a family violence order, they're the ones who the community are angry with ... because they got an order against the other person.

Barriers facing older Aboriginal and Torres Strait Islander people

BCLS does not provide legal services to many Aboriginal and Torres Strait Islander clients, and a range of factors may mean Aboriginal and Torres Strait Islander people prefer specific Aboriginal legal services such as Djirra or the Victorian Aboriginal Legal Service (VALS). It was acknowledged that Aboriginal and Torres Strait Islander people may not feel culturally safe to identify as Aboriginal when speaking to a BCLS lawyer.

There's definitely specific services available to Indigenous people so they're more likely to have the stats. It actually is unusual for us to have a client who is Indigenous. We have lots of CALD people ... but very few Indigenous people. ...

Some people might not want to identify as Aboriginal or Torres Strait Islander when they are, and you might say, 'Well, why not?' Because they don't want to go to VALS or they don't want to be treated ... to be given another label, they just want to be there and they won't identify.

Help seeking is reactive not proactive

Staff also reported that many older people accessing BCLS only sought assistance when things were reaching crisis point, rather than accessing legal assistance earlier or proactively:

People tend to come when it's two days before their hearing in court or the mortgagee sale is on next week ... instead of coming a year earlier when you can actually work on something well ...

COVID and remote legal assistance for older people

BCLS staff suggested that COVID-19 lockdowns had impacted service delivery and affected older people in a negative way. This included barriers associated with providing legal assistance only remotely by phone, which also affected how lawyers interacted with and could obtain instructions from clients.:

... during COVID it's been much harder for the people that are suffering from the abuse to do something about it, but also much harder for the workers, legal and medical, and all those people, to pick up that something's going on whereas they may have picked up something if they were in person.

... whilst we're still talking to people on the phone for appointments, its changed ... You pick a lot of things up from face-to-face and facial expressions and the way that people respond when you say something to them or the way they act with their relative when they're sitting in front of you.

Barriers of isolation, mobility and lack of digital literacy

BCLS staff also identified isolation, lack of mobility and inability to access digital services as other key barriers to accessing legal services.

Access for older people in all sorts of ways would be a difficulty for them because a lot of them ... might not know things exist, they're not able to drive or use busses any more or public transport ... and a lot now use, they usually have mobile phones ... but they still mightn't use the internet very much. And that's assuming they're English speaking.

It's about access to our services in general. It's difficult for any elderly person to get anywhere and they don't necessarily like talking on the phone, they don't have technology to do things online, so unless we can actually be where they are I think there will always be a difference between the general population percentages and the number that actually come through our door.

5.2 External data review and civil law needs of older people

Background

To assess the potential prevalence of unmet legal need in the Barwon region, we reviewed publicly available data to provide a snapshot of population demographics of older people across Victoria and in the Barwon region.

Scope

Multiple key stakeholders exist which work with, or hold data regarding, older individuals. This data can be utilised to provide a snapshot of population demographics across Victoria and in the Barwon region, while also providing an insight into the legal needs of older citizens. This data review analysed publicly available data from:

- Crime Statistics Agency (CSA)
- Australian Bureau of Statistics (ABS)
- Victorian and Geelong Magistrates Courts
- Victorian Local Governments
- Consumer Affairs Victoria
- Financial Counselling Victoria
- Financial Counselling Australia

As part of the research, the Law and Justice Foundation of NSW's National Legal Needs Dashboard were utilised, an interactive online data tool that helps legal assistance services and justice departments identify potential legal need through providing access to relevant data that be broken down by different levels of geography and demographic characteristics.¹¹⁵

Note that many public data sources are quite dated or rely on data from previous census periods. Therefore, they are not always representative of current issues that face older people.

Civil legal needs of older people in Barwon region

While the civil law needs of older people were difficult to determine based purely on the publicly available demographic data for the Barwon region, several key themes emerged from the data analysis.

Snapshot of Barwon region population data

From available ABS data,¹¹⁶ the Barwon region has the following demographic profile:

- Barwon region has a population of approximately 324, 307 people¹¹⁷
- 21.1% (54,220 people) aged over 65 in the Barwon region
- 1.07 % of the population identify as Aboriginal and Torres Strait Islander – of this community approximately 538 people are aged over 50 in the Barwon region¹¹⁸
- 21.9% are identified as living with a disability
- 14.2% residents born overseas
- 12.3% provide unpaid assistance to someone living with a disability
- 50.7% population identify as female and 49.2% identify as male

¹¹⁵ Law and Justice Foundation of New South Wales, accessed via <http://www.lawfoundation.net.au/legalneedsdashboard>

¹¹⁶ ABS, Region Summary, accessed 15 April 2021.

¹¹⁷ Census data accessed via <https://profile.id.com.au/g21-region/population?IBMid=30&BMIndigStatusID=0&COIID=3290&Denominator=3290&BMID=40&WebID=10>

¹¹⁸ Census data accessed via <https://profile.id.com.au/g21-region/indigenous-age-structure?IBMid=30&BMIndigStatusID=0&COIID=3290&Denominator=3290&BMID=40>

60-69 year olds are the largest growing age group in Greater Geelong

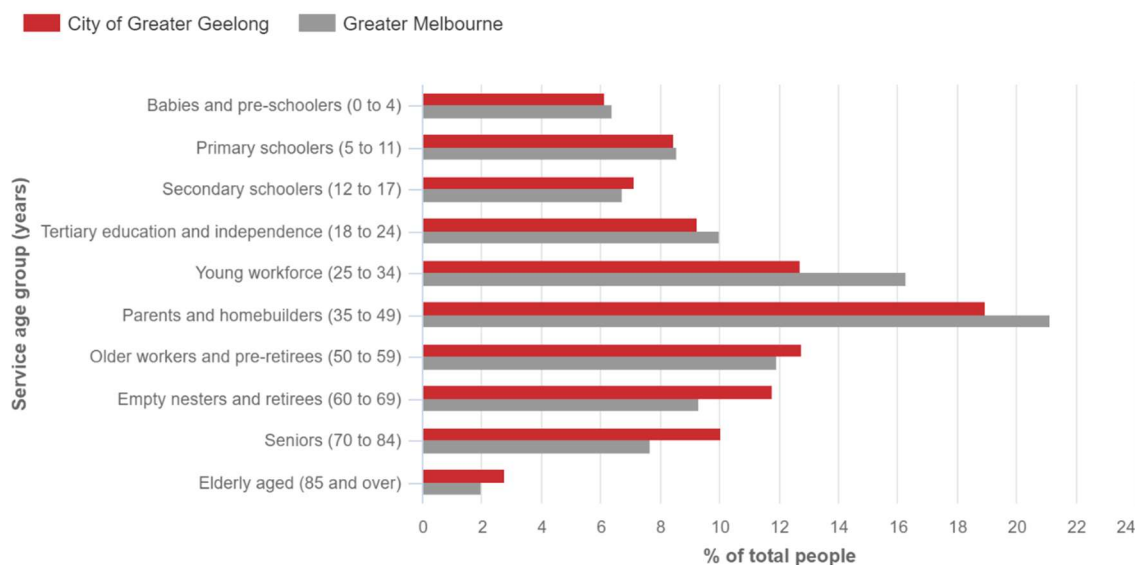
Population data for the Barwon region which includes City of Greater Geelong, Borough of Queenscliffe, Surf Coast Shire and Colac Otway Shire are publicly available.

Data shows the changing age structure of the Barwon region's population, including data that demonstrates that from 2011 to 2016 60-69 year olds are the largest growing age group in the City of Geelong, followed by 25-34 and 70-84 year olds.¹¹⁹ This suggests that Barwon has an increasingly ageing population. Figure 1 shows that, compared to the Greater Melbourne region, the City of Greater Geelong has a comparatively higher proportion of residents in the 50 and over age groups.

Figure 1 - ABS, Census of Population and Housing, 2016 (Usual residence data)

Age structure - service age groups, 2016

Total persons



Source: Australian Bureau of Statistics, Census of Population and Housing, 2016 (Usual residence data). Compiled and presented in profile.id by .id (informed decisions).

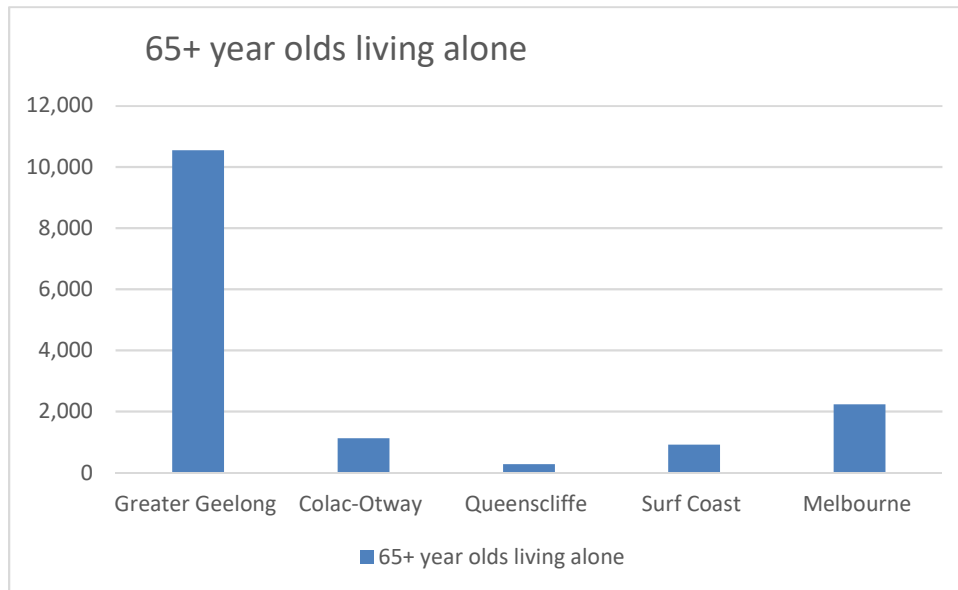
.id informed decisions

Nearly a quarter of all older people in the Greater Geelong region live alone

Social isolation is a particular risk factor for older people living in the Greater Geelong region. Local government data shows that 10,550 of those aged 65 years and over live alone. This group accounts for just under 25% of the over 65 year old population, which is the highest in the Barwon region.

¹¹⁹ City of Greater Geelong: Service age groups, City of Greater Geelong, <https://profile.id.com.au/geelong/service-age-groups>, accessed 1 April 2021.

Figure 2 – Number of 65+ living alone



Barwon region contains significant disparity in disadvantage

Data shows that there are significant pockets of disadvantage within the Barwon region, along with significant pockets of advantage, providing stark evidence that the Barwon region is not homogenous. Consequently, each area within Barwon needs to be examined as to how different factors may affect legal need.

For example, there is considerable variation in the percentage of those aged 65 years and over. This ranges from 13.5% of the population (Lara) to 39.3% (Point Lonsdale-Queenscliff). Similarly, the percentage of those born overseas ranges from 7.4% (Colac) to 26.5% (North Geelong-Bellpark) and persons living with a disability range from 12.5% (Torquay) to 31.9% (Corio-Norlane)¹²⁰. Therefore, given the demonstrated link between experience of disadvantage and legal need¹²¹, the proportion of those potentially at risk of legal need can be expected to vary somewhat across different townships within the Barwon area.

Of particular note:

- The regions where there is most advantage also include a significantly older population
- There were key regions that included higher rates of older people on the age pension and a high SEIFA score of disadvantage these included: North Geelong; Newcomb; Portarlington and Colac
- There were also particularly high rates of disability in Corio, Newcomb and Portarlington, which also contain significantly high proportion of older people.

These figures are further reported in Table i. *Overview of ABS SA2 Area data from Barwon region* (Appendix 2).

CSA data shows a significant increase in the victimisation rates of older Victorians

State-wide crime data across a range of offences is widely available. The ABS provides the most comprehensive overview of criminal offending and victimisation, with an added focus on family violence offending and victimisation¹²². Additional reports outline levels of victimisation for a range of offences (i.e. crimes against the person and property offences) and number of cases passing through the Magistrates

¹²⁰ ABS, accessed via <https://dbr.abs.gov.au/index.html>

¹²¹ Coumarleas, et al., (2012); Forell (2018); Forell and Nagy (2019).

¹²² ABS (2020b).

Courts¹²³. More in-depth data in relation to perpetration and victimisation, including sex and age breakdowns of victims, age breakdown of finalised intervention order applications¹²⁴, and age, sex and relationships type of family violence victims/perpetrators are also available¹²⁵. Customisable data also provides access to specific data on crime rates in local government areas across Victoria and the Barwon region¹²⁶.

The CSA provides specific data related to the victimisation of older people. A 2018 report provides comprehensive data on crimes against older Victorians. Over the period of 2008-2017, there was a statistically significant increase in the victimisation rates of Victorians over 65 years of age, peaking in 2016 at 18,427 victims per 100,000. Theft was the criminal offence committed most regularly against older Victorians, making up 45.8% of victimisation events, followed by burglary (24.8%), property damage (17.9%) and assault and related offences (5.6%). For older Victorians, 62% of crimes against the person involved a perpetrator known to the victim, compared to only 4.1% of property and deception offences. Some 34.4% of assault and related offences were committed by the victim's family, with 60.8% of these cases committed by a child against a parent. Those aged 85 years or older made up the largest proportion of sexual assault offences at 33.9%, while almost 60% of these offences across all older age groups taking place at a nursing home or healthcare facility.¹²⁷

Lack of publicly available stakeholder data identifying civil law needs of older people

Much of this data is useful in understanding the victimisation rate of older Victorians and in providing demographic information regarding the older people of the Barwon area. What is missing, however, is specific data from several stakeholder groups which would provide further information on the civil law needs of older Victorians. For example, while Consumer Affairs and Financial Counselling Victoria provide data on the types of inquiries and help that is given, no demographic data is publicly available which would indicate how many older Victorians have concerns regarding finances and potential acts of financial abuse¹²⁸.

Additionally, as much of the advice given is through online mediums those accessing assistance can remain anonymous, thereby undermining the ability of such agencies to collect and report demographic data. Similarly, while the Magistrates Court provides data on criminal cases per court region through annual reports, publicly available data on offence types and demographic data on defendants or witnesses who appear in court are not available¹²⁹.

Finally, while ABS and CSA provide comprehensive data across a number of crime types, demographic data relating to victimisation and perpetration is not as widely available. For example, while ABS data on victims provides age group demographics for various offences, older people are contained within the 45 years and older category, therefore not providing sufficiently specific data regarding potential instances of elder abuse or specific legal needs of those aged 65 years or older. Similarly, CSA provides data relating to 'family incidents' which are likely to overlap incidents of elder abuse, however this data does not

¹²³ CSA (Crime Statistics Agency) (2021), Victim Reports, CSA; and MCV (Magistrates' Court of Victoria) (2021), Annual Report 2019-2020.

¹²⁴ Ibid

¹²⁵ Above n. 120

¹²⁶ Ibid

¹²⁷ Walker S (2018), In fact 9: Crimes against older people in Victoria, CSA, accessed 1 April 2021.

¹²⁸ CAV (Consumer Affairs Victoria) (12 March 2019), Data sets, CAV, and FCA (Financial Counselling Australia) (2019), 2018-2019 Annual Report, FCA.

¹²⁹ MCV (Magistrates' Court of Victoria) (2021), Annual Report 2019-2020, Magistrates' Court of Victoria, accessed 1 April 2020.

contain age specific data on victims, nor on the perpetrators of these offences, undermining the usefulness of this data for understanding the legal needs of older Victorians.

Overall, while some data exists which helps to demonstrate the legal needs of older Victorians across a range of criminal offences. However, the currently publicly available data is particularly limited with respect to the civil law needs of older people, and identifying instances of potential elder abuse, be that from physical, financial and psychological or neglect. There is therefore an imperative to make such data more freely available to better understand the nature of elder abuse and identify effective strategies to increase access of civil and criminal law resources by older people.

13% of people aged 65+ in Barwon region have potential legal need

To examine the projected legal needs of older people in the Barwon region, the National Legal Needs Dashboard developed by the Law and Justice Foundation of NSW was interrogated.

The aim of the dashboard is to help identify potential legal needs across Australia through a series of indicators and at various levels of geography. Indicators are population counts based on various socio-demographic criteria and provide a proxy measure of potential legal need by identifying people more likely to require legal assistance should they experience a legal problem as has been revealed through legal needs research¹³⁰.

The dashboard uses a range of indicators to assess potential legal need, indicators include:

- Need for Legal Assistance Services (NLAS) indicators
- Population data (ABS data from 2016)
- Recipients of social services benefits
- Recorded incidents for selected criminal offences (not relevant in this project as it only utilized crime statistics from NSW)

The NLAS (Capability) indicator provides a proxy measure of legal capability by identifying a group of people who fit particular criteria who may have potential legal need.

At the time of conducting this research, older people were represented by a separate priority group category within the dashboard, namely NLAS (65+). A key limitation of this data is that it does not separate Aboriginal and Torres Strait Islander older people (aged 50 years and above) and include this group within the NLAS (+65) indicator. As noted however, this was updated and a NLAS Indicator for older people now also has a priority category for Aboriginal and Torres Strait Islander people aged 50 years and over.¹³¹ To be included within this group the older person must:

- Be aged 65 and over
- Have a personal income less than \$26,000 per year
- Have a highest year of school completion of Year 9 (ages 65-74) or Year 8 (ages 75+)
- Not be currently a full-time or part-time student; and
- Not have a non-school qualification, such as a trade certificate or an academic qualification later in life

Using the NLAS (+65) Indicator, the National Legal Needs Dashboard data shows that out of the 54,220 older people within Barwon region, approximately 13% of older people (7230) have potential legal

¹³⁰ Australian Legal Needs Dashboard – Explanatory Notes-

[http://www.lawfoundation.net.au/ljf/lawed15.nsf/9f2043ee7ccfa2ddca256f1200115808/2fcda42f9d2f3cac8525865500128d8c/\\$FILE/explanatory-notes-130121.pdf](http://www.lawfoundation.net.au/ljf/lawed15.nsf/9f2043ee7ccfa2ddca256f1200115808/2fcda42f9d2f3cac8525865500128d8c/$FILE/explanatory-notes-130121.pdf)

¹³¹ In December 2021 the Law and Justice Foundation of NSW updated the Legal Needs Indicators and no longer have a separate NLAS indicator for older people, instead they are included within the NLAS (CLC) Indicator. Their definition of older person now includes Aboriginal and Torres Strait Islander people aged 50 years and over.

need, with most of these older people residing in the Greater Geelong and Colac Otway regions. The dashboard data also demonstrates that approximately 70% of older people (38, 480) in the Barwon region receive the Age Pension.

Table 5 - Breakdown of data from the National Legal Needs Dashboard

	Population	NLAS (Aboriginal and Torres Strait Islander)			NLAS (65+)
		NLAS (Capability)	NLAS (CALD)		
Victoria	5,926,626	291,030	15,230	634,140	149,420
Colac-Otway	20, 972	1,320	90	280	720
Greater Geelong	233, 431	12,270	760	11,160	6,120
Surf Coast	29,400	880	90	380	340
Queenscliffe	2,852	60	<10	40	50
Total number of people with potential legal need		14, 530	950	11,860	7230

Safe Steps data provided for the Barwon region is most likely significantly underestimated

Table ii. in Appendix 2 documents relevant data provided by SafeSteps that offers a snapshot of the clients supported in the Barwon Region for the most recent financial year (from July 2020 to June 2021). This data was collated from Case notes for all clients who contacted Safe Steps except people who had not agreed to provide details or consent to a file being opened. Data included only women who are 60 years old and over, and 45 years and over for Aboriginal and/or Torres Strait Islander Communities (Aboriginal and Torres Strait Islander), from the G21 postcodes (which also included the Golden Plains Shire which is just outside of the Barwon Region).

- In the non- Aboriginal and Torres Strait Islander group there were 9 clients older than 60 from the G21 postcodes who had contacted Safe Steps, in a total of 68 contacts. Another 67 clients (247 contacts) are neither Aboriginal nor Torres Strait Islander, but there is no clear data about their age and/or postcode.
- In the Aboriginal and Torres Strait Islander group 6 clients aged older than 45 were from the G21 postcodes who contacted Safe Steps, in a total of 20 contacts. There are another 17 clients (641 contacts) who are identified as Aboriginal or Torres Strait Islander, but there is no clear data about their age and/or post code.
- Seven clients (with 22 contacts) were aged 45 or older from the G21 postcodes. However, we don't have any Aboriginal and Torres Strait Islander data about these clients.

It is important to keep in mind these figures are underestimated, as there is a significant number of clients with Case Notes but no Aboriginal and Torres Strait Islander , age or postcode/location data (268 clients with 1309 contacts). Safe Steps also received calls from clients where no contact details are provided and are entered as a 'Support Action'. There may be clients from the Barwon area within this cohort that were also not included in Appendix 2 and this data looks particularly underrepresented when looking at BCLS

data which shows that from 2019- 2021 we provided 120 family violence related services to older people in the Barwon region.

5.3 Stakeholder interviews examining civil law needs of older people

Background

To tap into the insights of professionals who work with older people in the Geelong and Colac regions a series of stakeholder interviews were conducted. This included how legal and other professionals recognise and understand the civil law needs of older people, how elder abuse is identified, what barriers older people face in accessing legal services, and how those barriers can be overcome.

Scope

Seven interviews were conducted with 13 people from a variety of public and private service providers who work directly with older people. All interviewees had lived or worked in the Geelong region for between 1.5 years up to the whole of their lives. They had a wealth of experience and understanding of life in both metropolitan and rural Barwon areas. Those interviewed worked in a range of service areas, and have experience of engagement through a range of short and long term community service projects. Client numbers for the agencies of those interviewed ranged from between 300 and 5,000. Services ranged from highly generalised, mainly providing referrals to specialist agencies offering more direct support older people, while others work solely with older cohorts for a list of interview questions asked during these focus groups See *Appendix 3: Questions used in stakeholder interviews and focus groups*.

5.3.1 Definitions and general themes

Perception of increase in elder abuse since pandemic

Several respondents noted their perception of an increase in cases of elder abuse since the COVID-19 outbreak and government-imposed lockdowns in 2020.

I've been with the agency I suppose since the middle of last year, and [have] been quite staggered at the amount of referrals, in relation to elder abuse ... My understanding is the [service has] been particularly busy over the last year, and that the incidence of family violence have (sic) increased ... I think the COVID lockdown has escalated relationship difficulties ... for ... older women who have had other networks and other friends to go out to and that's been taken away from them ... I'm actually working with a number of women who have left very long-term relationships because they don't like the way they are treated and that escalated through the COVID lockdown (Stakeholder Interview 2).

This is concerning given at least seven extended lockdowns are likely to have reshaped legal needs for older people in regional Victoria between March 2020 and November 2021.¹³²

Definition of older person needs to be flexible

It was generally considered that there needs to be flexibility in defining older people to accommodate different community needs and the services provided in localised areas with small populations (Stakeholder Interview 3). Some services do have an age limit or standard definition of an 'older person'. Respondents generally identified 'older people' as those aged 65 or over, or 50 and over for Indigenous people. These were also the ages commonly tied to government funding requirements for services for older people (Stakeholder interviews 2 and 3). However, some interviewees also thought service age limits or ranges should not exclude people from accessing different types of services (Interview 5). One respondent indicated that 'we also would work with people who might have an ageing condition who are under 65, so we don't have a clear definition' (Interview 2). Here, an ageing condition included 'dementia or a health condition'.

Some agencies based their service eligibility requirements on age, although this was varied. For example, one organisation provided services to older people who were aged 55 and over (Interview 4), while Senior

¹³² Ballarat and Grampians Community Legal Service, (2021)

Rights Victoria defined an older person as someone aged 60 years or above older, other organisations defined older Aboriginal and Torres Strait Islander people as 45 years and above (Interview 7).

Definition of elder abuse included discrimination, lack of autonomy and family violence

The question of 'abuse' is closely linked to legal need. This included specific types of harmful conduct as well as 'discrimination against people being able to ... participate in the activities that at the level they would like to without independence being undermined' (Interview 1). A variant of this definition was 'not having ... autonomy and control over decisions being made about their lives' (Interview 5).

Others viewed abuse in terms of the nature of the relationship with the abuser. For example:

older people ... can experience elder abuse from any type of kind of caring relationship ... anyone who's responsible for making sure that they've got all the things that they need ... It's probably a more emerging issue in terms of our awareness of it (Interview 5).

There were clear links between abuse and the need for support in the area of family violence. This was expressed in the following statement:

Clearly, elder abuse is a central concept in the definition of family violence so we want to make sure [in this specific region] that we're engaging with elderly people ... and are aware of the supports and focus around family violence ... that involves legal assistance (Interview 3).

It was also felt that unlike many forms of family violence, elder abuse is not as confined by gender where perpetrators are mostly male and victims mostly female. Rather, elder abuse involves more gender parity amongst victims. As one respondent indicated:

Dad might be the victim of violence from his daughter ... so ... the way the family violence sector understands elder abuse ... doesn't fit within that gendered framework of when you are talking about ... 15-44 year old women [being more likely to experience family violence] (Interview 2).

5.3.2 Key civil law issues facing older people

Many older people do not require or receive any assistance from social or legal services. Often, those that do are experiencing disadvantage. This means that publicly funded services often dealing with older people who are sometimes very disadvantaged and have higher levels of legal and related needs. As one interviewee working in law indicated: 'we never see people on their best day' but 'older people who are well resourced are generally not coming to us for assistance' (Interview 4).

Key stakeholders were encouraged to think about legal areas common to their areas of work.

Respondents in Interviews 3 and 7 referred to: 'family violence intervention orders, housing, and tenancy agreements ... wills and ... legal matters around property ownership', while Interview 5 reinforced 'child support and divorce property settlement ... employment rights' and Interview 3 elaborated by mentioning debt, wills, 'family parenting orders ... [and] family law which is a nightmare'. Interview 4 mentioned the relationship between relatives and formal criminal justice processes, such as fines and friends or relatives in custody.

Many respondents indicated the existence of compounded legal problems. For example, one interviewee explained that uncovering one legal problem often leads to uncovering more: 'once we start to do that assessment we find that potentially there is some other violence within the family ... [and] financial issues ...' (Interview 5).

Informal family agreements

Informal family agreements appear to be a common aspect of actual and perceived elder abuse. Most commonly, 'adult children [were] involved in family violence against a mother or a father' who was older,

and the 'parents [were]... trying to maintain the relationship at their own cost ... not wanting to ask the daughter or son to leave the premises' (Interview 6).

'Granny flat agreements' were also mentioned, where the older person will agree to reside with a child, or a child to reside with an older person in exchange for care being provided. One respondent noted an increase in cases involving 'adult children returning home' due to COVID, but this has also emerged outside of the context of the pandemic lockdowns (Interview 7). The desire to keep these disputes as family matters may also contribute to their underreporting, and can extend to cases where a '*vulnerable older person who has a carer who is a family member*' and another family '*might bring them to court because they're concerned that the carer is taking advantage of the older person*' (Interview 4).

Housing

In smaller communities, an older person often owns a property that is rented by a friend or relative. In such cases, older people might have '*to pay a lawyer to write a letter*' to deal with relatively minor property matters (Interview 3). Police might be unwilling to intervene in such cases because they are viewed as family disputes.

The financial benefit of remaining at home can mean an older person might be unwilling to agree to more costly dedicated care arrangements. This is because:

the property is assessed as their asset and there's financial implications ... so [older people] ... will often deny themselves care for the sake of not removing their family from the home (Interview 7).

A problem of increased homelessness, particularly involving women who experience family violence, was also identified. Many older women have little superannuation to draw on, might not be eligible for a pension or are otherwise financially dependent on their violent husbands. This means they rely purely on federal government payments and '*you certainly can't access rental on a Centrelink payment, not private rental anyway ... its unaffordable*' (Interview 2). Homelessness is a symptom of '*so many other issues*' that require '*early intervention*' and make '*other legal issues more visible*' (Interview 4). The prospect of homelessness was also considered problematic in rural locations:

a single woman who may be not quite up pension age maybe on NewStart is literally impossible to pay rent in this region, and even if you can ... get the accommodation and we tried to work with agent [and] ... say, an older woman she'll be very quiet you know she'll, she'll be a good tenant, but ... it's a real concern and with the housing, emergency housing ... there's a very limited supply of properties ... for older women (Interview 3).

Support agencies often work directly with real estate agents to try to help older people as many forms of emergency housing are often prioritised for younger families (Interview 3). Women seeking temporary accommodation might also be financially liable for motel accommodation, or reliant on food or supermarket vouchers until public support becomes available, which might not cater to their emergency needs in dealing with violent spouses or children (Interview 3).

Many older people '*are not aware of the law*' when landlords enter rental properties without notice or fail to provide maintenance after being asked (Interview 6). One key stakeholder mentioned that COVID-19 reinforces the problem of constant changes in law, as it is difficult to know '*what you can and can't do in regards to wearing masks and we go and we can't go and I mean last year would have been very scary for some of our people living alone*' (Interview 6).

Scams

Scams can arise due to '*door to door salesmen*' (Interview 6), trades people or dating scams and the like. One key stakeholder described a problem that often affects the savings and finances of older men:

we've got quite a few men ... they're interested in women ... they may have had divorces ... but they get interested in women in dating, and then all of a sudden they're paying phone bills, ongoing and large bills with overseas calls ... and then not having enough money for themselves to pay their own bills (Interview 7).

Caring roles and financial abuse

When caring for their children or grandchildren, '... the older person's money gets subsumed by the family's needs and the older person doesn't have cash' (Interview 7). In addition:

Quite a few grandparents who are having care of children but have no legal [rights] on the jurisdiction and then something is wrong with child protection gets called in and they're totally cut out ... and then they have to pay lawyers but don't technically have rights as grandparents even though they have brought the child up because they are more stable than the parents (Interview 3).

This can also contribute to psychological and other forms of abuse by children who decide whether the 'grandparents [should be] .. able to see their children ... [or] using the grandchildren as a weapon ... [and] if they don't do what they're asked' (Interview 3).

Older people are going without legal representation if cannot afford private lawyers

One key stakeholder indicated 'most of the clients that we would deal with, the elderly clients, wouldn't financially be able to fund private legal advice' so rely on other services that are unsuited to dealing with their needs (Interview 6). This can compromise the level of independent advice or care many older people receive. It is also difficult for older people to assert their rights when negotiating with local councils or other public service departments that are 'not always very helpful [as there is not often] a strong community development focus' (Interview 3).

Abusive relationships

Older people who experience abuse tend to 'stay in an abusive relationship because it's challenging for them to navigate outside of that relationship ... [and] you might not have strong family support so making the first step for finding help can be very difficult' (Interview 6). Older people in need of legal assistance can also be 'disempowered by the people upon whom they rely, such as adult children' (Interview 7). This links to broader social attitudes that pressure older people to support adult children who might have needs for a variety of reasons, such as those that have been:

in prison ... [with] mental health issues or drug and alcohol issues' which force the older person to enter parenting mode even when they themselves are suffering from ... disabilities or disadvantage' (Interview 7).

As noted above, relationships of care and dependence also extend to caring relationships with grandchildren.

I'm working with a couple of grandmothers who have had the care of their grandchildren for a long time and now these grandchildren have become teenage boys ... the element of drugs and violence [that] comes into that and we've put a whole group of older people at risk (Interview 2).

Older people who rely on their children to set up accounts or engage with online services¹³³ might not know 'how to access that or how to change things ... because if something changes in the relationship it might remove their access' (Interview 2). This is a symptom of 'too many people' knowing an older person's business, which can undermine the privacy and independence from family members (Interview

¹³³ Warren, I., Mann, M. and Harkin D. (2021).

2). Older people in such circumstances might also be reluctant to report problems with these arrangements due to being 'embarrassed about the situation or a bit concerned of retaliation' (Interview 2).

Lack of support

Isolation and lack of social and care support, includes problems with things such as hygiene (Interview 7), can also result from, or be a symptom of, neglect. As one respondent indicated: *'sadly enough, the women that I'm seeing don't have a lot of support networks friends' (Interview 6).*

5.3.3 Barriers to seeking help

Older people usually *'want to be seen as independent [and having] the ability to do ... [things for] themselves'* (Interview 1). However, they are also likely to express *'a bit of a fear of going to a lawyer because it will cost so much'* or concern that there is *'no one there that can address the situation'* (Interview 3).

Embarrassment and social expectations are also barriers to seeking assistance, and can even prevent an older person from leaving situations of violence and abuse, as demonstrated by the following:

as people's health deteriorates ... this can have a huge impact .. where the woman has experienced family violence for years, [and] possibly ... even separated, and then the partner has a terminal illness [so] the expectation would be to go back and see him til the end (Interview 3).

Social expectations about parent and child relationships also prevent seeking independent help:

... sometimes I think older people don't really want to pursue something because it would get their child in trouble ... and not wanting to go through those processes and then also trying to maintain a relationship with that child' so they put up with physical abuse (Interview 5).

Other barriers include *'access to services and transport for older people ... and access to the internet ... and having the technology to do that and their skills and abilities'* (Interview 6).

Services might have inaccessible offices or locations (Interview 4), which means the services may, in turn, only be accessible as any outreach they offer.

Lack of Mobility

Social isolation is closely linked to lack of mobility.

Older people sometimes lose their mobility, they potentially can then experience social and emotional issues because they're not able to go and do all the things that you know they've been able to do in the past ... [and] that can really cause ... problems or social isolation (interview 5).

Complexity of service system

Lack of awareness of available services is also a critical issue, and can be the difference between people trying to obtain assistance or not, especially where there are a complex web of different types of services providers, providing different types of services, to different types of priority client groups: *'we have a lot of services in the region so making sure people know about them and can access those services'* is important (Interview 6).

For example, stakeholders reported that many older people have little knowledge about how to navigate complex systems. Complexity is related to the technical issues surrounding *'the legal system and ... where they might go and their knowledge'* and:

just not knowing where to start, and even if they do identify specific legal issues where they need to go to a lawyer or they need to go to Centrelink or they need to go to a tenancy tribunal ... [the] pathway is so difficult to identify for older people (Interview 3).

Such issues can create and exacerbate barriers to successfully obtaining assistance, as illustrated by the following stakeholder:

A number of the older women I have worked with who might be in their 80s have limited knowledge of their entitlements, and may believe that they're not entitled to anything because that's how they've been informed by usually long term partners ... they've not heard anything [so they think] they're are not entitled to anything ... So there's a lack of information. There's an enormous ... confusion about how do you actually get things that might be helpful to you with all the changes in aged care... It's very very complex now to actually request support. So, for all the people having to log on to my aged care or ring someone that might be out of their ability and being able to access or use mobile phones might be difficult, and being able to link into the services that are most appropriate to them [is difficult when] they don't know what they are. So, they're very reliant on someone being able to act on their behalf. (Interview 2)

The complexity of rights, responsibilities and the service environment was especially daunting for someone who chooses to leave a violent home situation in older age:

if a woman who was experiencing family violence who happened to be in that older age bracket, she might have experienced family violence for the last 40 or 50 years but only now built up the courage to leave a relationship, and then all of a sudden she's got this whole service system to navigate that she doesn't understand, so if you add technology into that and all the processes that you need to go through and all the paperwork and the forms and so on that you might have to do ... all of a sudden she finds herself homeless with no income and not overly confident navigating this service system. (Interview 6)

Mainstream services dealing with family violence often do not capture older people (Interview 6). This gap a particular concern given that around 7,000 offences against the person are reported against older people each year in Victoria.¹³⁴

Assistance not tailored to older people

Another barrier to successfully obtaining assistance are services that are not appropriately tailored to the needs of older people. For instance, one stakeholder explained how some well-intentioned initiatives could misfire, and cited the example of an older client who had been provided with a mobile phone to facilitate emergency support was actually '*quite challenging for an older woman who says "I've been given this thing and I actually don't know what to do with it"*' (Interview 2).

Dementia and other cognitive conditions

Some older people take a confronting health diagnosis, such as dementia '*in their stride and look at strategies to be involved in activities*' but some might be in denial, and '*they refuse everything but struggle with the day-to-day*' (Interview 1). This means special arrangements might have to be made to assist older people who have trouble understanding the protective functions of law. Circumstances such as COVID-19 lockdowns and moving to online only service provision can exacerbate access barriers, particularly for many older people who '*didn't have the technology*' (Interview 4) to access online forms of assistance.

¹³⁴ Walker, (2018), p. 3.

One stakeholder explained that conditions such as dementia and other cognitive impairments required greater education and support for those involved in caring and service provision, and explained how there was often miscommunication and misunderstanding to manage:

How do families, and a person with dementia, adapt to that change of the diagnosis, and what that means, [and] how to communicate effectively to the person with dementia ... especially [to ensure] their involvement in communities and organizations? So sometimes people with dementia, they might appear to be okay ... without any impairments, and sometimes that can be misunderstood by people in business and community [so it is important] to create that awareness and prevent that discrimination (Interview 1).

Difficulties in determining older person's decision-making capacity

Dementia and other communication problems can also make it difficult to determine whether or not there has been any abuse or exploitation of an older person that warrants intervention by authorities and community services.

I ... [was] working with an older man who just [had] a random person moved into his unit and I really struggled to get anybody to respond because he obviously lacked capacity to make decisions ... He'd had [a] neuro assessment and had dementia but this younger fella had moved into the unit to care for him. The police wouldn't attend because there was no welfare concern because ... the man himself was saying "well he's my friend. He's looking after me" and, you know, taking him to the bank a fair bit but still looking after him (Interview 2).

As a result, when it comes to questions of legal capacity and possible exploitation 'there's lots of judgments made about older people, but also to actually get clarity around the ability to make decisions is near impossible' (Interview 2). Circumstances can also change quickly. For example, an older person might have a 'guardian appointed due to having lost capacity, then regained capacity'. As decision-making capacity can vary over time, it is often challenging and difficult to provide appropriate services that directly accommodate the person's particular needs (Interview 7).

Lack of funding for services

Stakeholders also reported that much of the support older people require 'is actually not funded' which contributes to time delays for services that are needed 'immediately' (Interview 2). Many agencies also face funding insecurity and competitive tendering process which mean they can only help extremely vulnerable people due to funding constraints and overloaded case workers (Interview 6).

Recent improvements to health service provision were seen as being more beneficial to the next generation of older people who will understand the structures better than the current generation.

Funding arrangements also change often with competitive tendering. This is a particular concern as up to 30% of the population in the BCLS catchment will be aged 60 or over in coming years. Some stakeholders suggested that agencies therefore needed to be more strategic in

how we identify the older people who may need legal assistance, and then delivering through education, public awareness campaigns ... and empowering older people to [engage with] digital technology ... which includes [overcoming] the fear of making mistakes (Interview 7).

Services are currently 'set up by the government quite separate to the service providers needs and the client's needs' and they tend to be 'KPI based' rather than client service needs based (Interview 2). Many services have also moved online and government assistants cannot provide real-time or personalised advice to deal with specific client needs.

Communication and Language barriers

Older people, and especially those with dementia, mental illness and other cognitive forms of impairment, often have comprehension difficulties. It is therefore important for all service workers to *'speak clearly ... quite often I have to spend quite a bit of time clarifying ... where I'm from, and what the services I provide because they can become very overwhelmed ... (Interview 1).*

People from CALD backgrounds also experience communication problems that can magnify disadvantage, vulnerability and prevent the reporting of legal problems underpinning by abuse. Communication and language barriers can also make navigating the service environment challenging and lead to older people in need giving up on trying to obtain assistance, as illustrated by the following stakeholder interviewee:

the aged care system has been quite confusing for a lot of people, particularly ... if there's a language barrier. They don't even go down the interpreter road. They just go 'it's too hard. I don't know what to do, we'll just leave it as it is' (Interview 2).

Language barriers can also produce *'cultural misunderstanding' (Interview 7)*. This can further enhance the dependence of older people from CALD backgrounds have on their children and others in the community to navigate complex systems on their behalf.

Complex legal areas affecting older people, those with mental illnesses or facing language barriers are often *'very difficult for anyone to ... navigate without a lawyer' (Interview 4).*

In Geelong, stakeholders also highlighted difficulty accessing interpreters, making it difficult for people from CALD background to access independent support. Stakeholder interviewees also observed that it was quite rare for duty or community-based lawyers to have adequate:

capacity to request reports, and speak to doctors request assessments in terms of any health issues, mental health issues or impairments, and ... investing in that kind of case management ... [to produce an] outcome where this person felt heard in the Magistrate's Court [and that] all the relevant material was put to the Magistrate (Interview 4).

Aboriginal and Torres Strait Islander communities less likely to access mainstream services

Stakeholder interviewees also explained how Indigenous people will use *'specific Aboriginal services ... but are not ... taking up [mainstream] services because of gaps, lack of trust and history in the context that they grew up in' (Interview 3)*. For example, previous experience, mistreatment and marginalisation had created *'historic distrust ... of governmental authorities, police [and] child protection'* that can magnify overall reluctance *'to use the support mechanisms that are available' (Interview 7)*. As a result:

Traditionally ... the rate of engagement with the health service or generally by Aboriginal and Torres Strait Islanders is fairly low ... which ... is a direct implication in terms of having legal support actually on site and potentially available for the community (Interview 3).

Lack of digital literacy

Older people also often rely *'on the people abusing them to set up or navigate the technology' (Interview 7)*. Technology was seen as being of limited value for *'people with cognitive ... [or] visual impairment'* and those who were not computer literacy or digitally savvy (Interview 7).

Stakeholders further explained that while many websites have *'a lot of rhetorical positive information ... about how people can be maintained at home, but the reality is we can't get those packages for people' (Interview 7)*. Such advice is difficult for people from CALD and non-English speaking backgrounds to understand without help from family members or independent people.

Many older people were said to *'want to see people in person and see hardcopies and receive mail'* (Interview 6) because digital technology can be *'completely overwhelming for a lot of people'* (Interview 1). Older people might also not understand how *'live media content'* or other video communications platforms and webcams operate, so they are potentially *'excluding themselves without realising they're excluding themselves'* (Interview 7).

The overwhelming nature of technology for some older people means many of the most vulnerable receive no services or assistance at all *'because there's no ... assertive outreach model'* (Interview 2). This can either delay or prevent adequate provision of help because an older person's problems are not identified. For some, technology can create additional financial hardships as those who do engage with technology or reside with younger family members might experience *'mobile phone, telephone contracts blowing out because you've used the internet all day every day and all of a sudden you have this massive bill'* (Interview 6).

COVID-19 and the pandemic

COVID-19 has enhanced isolation for older people *'who haven't been able to participate in their activities'* and further highlighted the problem of *'immobility ... and transport'* because Geelong is:

... [such a] big region so for people to get where they need to go they haven't got that mobility or, you know, they don't have internet access public transport and they don't know the services that can be a real barrier (Interview 2).

Some people who experienced difficulties with money prior to COVID-19 received additional housing and family payments. This could be a double-edged sword, particularly where additional money was quickly exhausted:

I've had numerous stories from clients that they save the extra money, and they've used it ... to actually buy a car so they can transport their family or ... pay off debts and ... they have had to ... live hand to mouth and go to handouts which is terribly humiliating and disempowering. So it's not, not a good situation at all and here we are this rich country (Interview 3).

One stakeholder interviewee also explained that COVID-19 had created various unexpected financial and service pressure, as many new people:

who have never needed support before, all of a sudden were in financial difficulty. [In a] housing survey that we did they interviewed 175 people in our area and about ... 40% of those people, in the last 12 months, ran out of money ran out of food and didn't have enough money to buy more ... and that was a range of age groups (Interview 6).

COVID-19 also disrupted *'outreach ... [and] community legal education'* which were key strategies *to support that 'way we provide legal information'* (Interview 4) and facilitate service access and uptake.

5.3.4 Local data collected about older people and referrals to legal services

Most organisations collect data about older people and other client groups through an agency-specific *'client management system'* (Interview, 2) and through standardised information reporting processes. These are often subject to quality assurance procedures as a condition of funding, but remain confidential to preserve client anonymity.

Annual reports often contain very generalised data with limited detail, often just to fulfil reporting requirements (Interview 5). Some agencies and inter-agencies conduct research projects and other kinds of formal and informal engagement from time-to-time, while individual staff will be informed by publications produced by other agencies.

Cases involving older people are usually discovered by informal discussions with service workers, often around personal problems or those involving neighbours. This informal method of information flow means people who work in health services usually require some legal knowledge, and awareness of appropriate legal and related service referral pathways.

Formal referrals generally emerge after *'police report because there's been a situation of violence or whether there's been someone identified at risk'* (Interview 2). This usually occurs when the older person is already at considerable risk and after an indicate coming to the attention of authorities has already occurred. Formal agency and police reports are, however, sometimes 'quite generic', which means there is little information about a person's background circumstances that might underlie their legal problems. Some people are also likely to refuse intervention and help.

It was suggested that many agencies focus on responding to identified needs or meeting known needs, unless specific project funding is available.

There was also suggestion that available data painted a fairly grim picture of how agencies in the region are meeting the legal needs of older people:

The available data that we are aware of says that the legal needs of older people ... are not really being met in a lot of a lot of instances, and we're aware of the ways in which the law doesn't serve the needs of older people ... [and we are] often unable to help ... For example where [there is an] interest in property, have they surrendered or given interests in property to children [through 'granny agreements'] ... [or] exchanged assets for care where they don't get back what they thought they were ... that becomes a very nebulous equitable area and a very expensive area of law to ... pursue (Interview 7).

Stakeholders explained that agencies are rarely funded to explain general legal issues to older people. Structural aspects of how information is provided to older people are important because *'everything starts to have a money value which older people don't understand very well'* and providing help to clients has *'moved to managing a budget, away from what are the best outcomes for this person'* (Interview 2). As a result, *'if you add an element of elder abuse or needing legal advice you can see why they wouldn't bother'* seeking help, because *'it's just too hard'* (Interview 2). This means that for many older people potentially experiencing various forms of elder abuse, *'the idea of independent help is very difficult in a legal context in those situations'* (Interview 2).

5.3.5 Target areas for improving services

All stakeholders were asked for their views on how to improve the current responses to dealing with the legal problems older people face. Identified issues once again encompassed a range of broad social and related legal issues responses, highlighting the need for more specific targeted service reforms.

Holistic service responses needed aimed at challenging ageism

Broader *'conversations about community attitudes ... towards older people ... [which helps to give] the power back to older people to have agency and autonomy and to support them to make their own decisions'* (Interview 7) were considered to be particularly important. In particular, there was said to be a need to confront ageism at the societal level because:

People need to feel like they're going to get taken care of in their older years ... how do we make people feel safe and that we can all look forward to that [in] retirement time ...? [How do] we actually allow people to grow old ... at home for as long as they want to and how [do] they get support ... [so] they're not made to feel like a burden and they are acknowledged for all the work they've done? (Interview 7)

This could be potentially achieved by *'raising the status of our collective human rights .. [to make sure people are aware that] all people have got rights'* (Interview 7), while also acknowledging that ageism is also a key driver of abuse. Thus, it was also said that it was necessary to combat *'stereotyping ... and putting all older people into one basket'* (Interview 5) that often accompanies ageist thinking.

Simplified service systems and more access to free legal assistance

Simplifying service systems would have several benefits for improved service accessibility and uptake. Older people often go to one agency to get help but *'they'll share their whole story, because they're not sure how to navigate the system'* (Interview 6).

Some people they think all the issues are like one big issue, but it's actually just multiple issues that need to be resolved by going to different places ... when we deal with family violence ... referrals ... we're dealing with legal issues and housing issues [and] ... mental health issues... so a lot of the problems are seen in isolation [but they are] compounded (Interview 6). Provision of more legal assistance funding would mean *'more access to legal aid'* (Interview 3) and allow *'expansion of those kind of [free legal] services'* to match demand (Interview 5).

Cost is seen to be prohibitive for many older people who require legal help, particularly for complex situations with compounded legal issues. For more complex matters,

[You] often come to the point where you need to talk to a lawyer ... but ... legal aid is not always available on a whole range of aspects particularly in the property ... area (Interview 3).

Easy to understand information and help to navigate the service environment was also considered by stakeholders to be necessary because *'if you don't know it's [a service is] there and you can get assistance ... you're not going to access it'* (Interview 6). This extends to all aspects of the legal assistance service environment, and recognising the particular access needs of different cohorts, particularly online systems and printed documents that can be 'overwhelming' and create discrimination (Interview 1). For instance, the following stakeholder cautioned against overreliance on technology to meet the needs of older people:

Technology isn't the way to go for the older generation and we may need to simplify things rather than complicate things ... and reducing the steps that it takes to get help (Interview 6).

Include older people in design of solutions tailored to their needs

Older people should be supported to participate and provide input *'about what they'd like to see'* and *'synchronizing that information'* so agencies are better informed about effective ways to meet their needs (Interview 7). This includes collecting more primary data about how to improve a range of health, legal and social services.

Many problems associated with addressing the civil law needs of older people are related to the highly 'reactive' nature of much legal service provision. In such a service environment it was said to be difficult to balance competing interests because while some older people *'are vulnerable and ... we want to be able to protect them. But it's also ... right [for them] to decide what that means'* (Interview 2).

Clear and accessible information is important *'so that if people do need some of that support then they know where to go to get it'* (Interview 6). This involves producing legal material for older people:

that's easy to understand [so] that people might be able to digest because everything seems so complicated, with the age of contracts and multi-agency partnerships and all of that sort of thing, so get simplifying everything (Interview 2).

Early intervention and prevention initiatives need to be funded

Stakeholders pointed to benefits of ‘risk assessment[s] and actually scan[ning] data for those earlier opportunities to intervene in what might be elder abuse ... right across the spectrum’ (Interview 7). Improved data sharing could also temper the ‘increase of people seeking help and an increase in reports’ (Interview 5), while developing targeted programs enabling older people to become better at ‘recognising their own needs, their own support needs and then seeking help ... [or] who can help them’ (Interview 5).

Measures such as these can promote greater awareness about the nature of compounded legal and related issues that older people face:

They need housing because of this whole range of things behind them ... [it] might be they have a civil law issue but behind that [there’s] 10 other things that need support ... or the civil law issue might be something that’s third or fourth down the list because first I need to have a roof over my head and second food and ... third their kids (Interview 6).

Funding also needs to be matched to service demand, rather than the costs of service provision. This includes improved funding for preventative measures, because it is counter-productive to have people raise complex legal problems for the first time on:

the afternoon they approach, and then they’re told “Sorry we can’t do anything for three months” because we’ll lose them [and] we might disadvantage them more’ (Interview 2).

Service mapping and strengthening relationships between legal and allied services

People working in all industries and sectors require simplified pathways to assist with providing appropriate advice to help older people seek legal assistance. One stakeholder considered a flow chart outlining relevant agencies could assist service providers to provide appropriate referral advice when they believed they encountered an older person who requires legal assistance (Interview 2).

Improving the network of legal and allied services throughout the Geelong and surrounding areas would also help to raise awareness for workers in different sectors about the range of cross-agency support and referral pathways to assist older people who appear to be experiencing problems, as was highlighted by the following stakeholder interviewee:

Community legal services know about each other and the services we provide [through] different law firms but in terms of other support services, I think ... some service mapping ... and clear kind of warm referral pathways would be kind of gold standard, I think would really overcome some of those issues (Interview 4).

Promoting greater awareness of available legal assistance amongst service staff in various agencies provider services to older people was a way to make legal assistance more accessible. This was particularly beneficial

because they know clients ... Getting information about what’s available to them is often through our practitioners just having those conversations and having that relationship with practitioners so definitely polishing up our practitioners knowledge of what’s out there I think would be would be handy (Interview 5).

The Barwon ‘Elder Abuse Prevention Network’ was cited as a beneficial initiative that further builds on existing state government initiatives to promote greater coordination and awareness of the primary prevention of elder abuse across Victoria.¹³⁵ This network brings people from a range of service areas to share mutual experiences and learn about how to work together to prevent elder abuse. The network was

¹³⁵ See Victoria State Government, ‘Preventing Elder Abuse’, Available at <https://www.health.vic.gov.au/wellbeing-and-participation/preventing-elder-abuse>; Nerenberg, (2008).

said to have been very helpful in raising ‘*awareness and mentorship*’ (Interview 1) about civil law issues, particularly for people who have no legal training or only limited knowledge of law. It also helped to raise ‘*awareness with other agencies ... around what elder abuse looks like*’ (Interview 5).

Place based services and a co-care models needed to reach vulnerable older people

Health Justice Partnerships were also considered beneficial. This is because ‘*a lot of the services are fairly well connected and communicate reasonably well through various networks and informally, so I think there’s huge potential to work in collaboration*’ (Interview 3).

Providing support to older people ‘*in their environment ... whether that’s their home or somewhere that they’re comfortable to meet*’ was considered to be particularly important (Interview 2). This can help to offset mobility challenges older people face:

Incorporating information in those spaces [older people are] already going and already interacting with ... so they don’t have to go out of their way to get that information (Interview 5)

Outreach partnerships between health, police and support services, coordinated through local councils and the like, can also help to address legal issues different agencies encounter. The development of public-facing support services, focused on older people and their needs, was also advocated:

An identified Older Person’s Officer at ... [the local] Shire that could then direct them ... we used to have Citizens Advice Bureaus and they were often for older people [but] they disappeared ... where you could actually go and someone would assist you. [We have many older people on] the disability support pension ... women [who]... have been deterred [in obtaining help because]... they are on Newstart and are expected to do some sort of job search but they’ve been deterred [due to] multiple issues ... At Centrelink they could have someone, an aged officer there once a week and then people could go down and have a chat about their particular issues’ (Interview 3).

Older people often seek assistance from general practitioners, who face enormous time pressures, and ‘*don’t build up a rapport and don’t make timely or appropriate referrals*’ (Interview 7).

More formal ‘co-location opportunities’ were also suggested as a strategy to promote informal information exchange and improve service delivery across agencies with different functions. For example, one stakeholder interviewee explained that:

Co-location is a great way to do it because you can ... have the client in the room, [the] service in the room and yourself in the room and you’re ... all learning at the same time so having the ability to take ... the pressure off the caseworkers having to know all this by actually being able to get a service in the room with the client (Interview 6).

Legal Health checks for older people

Legal health checks were also cited as ‘*a simple tool*’ that could help to expand the potential for various agencies to identify legal problems facing older people. As the following stakeholder explained:

Cross agency ... [and] cross professional training so that there is that ability to identify a legal need without needing to be a legal specialist, and then also knowing what the agencies are that you can refer on to ... a simple tool like a Legal Health Check or embedding some of those tools locally (Interview 3).

Such initiatives, however, require ‘*recurring funding around ... prevention activities*’ and ‘*a broadening of funding and broadening of agencies participating*’ (Interview 5). One stakeholder warned that, commonly, ‘*what’s happening in this space is done on a tight budget and ... [there is] less importance that’s placed on older people*’ (Interview 5). Increased funding can help establish and support appropriate service models. As the following stakeholder explained,

5.4 Community Sector Survey

Background

A small-scale online survey of people involved in providing community services to older people was completed by 28 people. This online survey was distributed through BCLS's networks developed through the Barwon Elder Abuse Primary Prevention Network. The results provide some useful insights into what kinds of civil law issues older people are experiencing in the Barwon region. The aim of the survey was to address the following two issues:

- Canvas the civil law needs of older people and barriers preventing access to legal assistance in the Barwon Region;
- Understand the legal referral pathways and service gaps for older people;

Scope

The respondents came from a range of community agencies and groups who are engaged with older people. The majority of respondents identified as female (57.1%) with only 14.2 % identifying as male and the remainder skipping this question. Of the respondents who indicated their age, fourteen (66.7%) were aged over 55 years with all aged 35 or over.

Half of the respondents (50%) specified involvement with a range of community services including Meals on Wheels, and various senior's clubs. % respondents worked for a community agency or participated in men's shed activities. Nearly a third of respondents (28.6%) worked for or volunteered with another community organisation and most respondents (67.9%), indicated that between 80 and 100% of their service's users were aged over 60 years or over 50 in the case of Aboriginal and Torres Strait Islander peoples.

An overwhelming majority of respondents were from the Greater Geelong region (85.7%), while 2 lived in the Surf Coast Shire and one in the Otway Shire. The majority (64%) of respondents had lived in the region for over 5 years.

For a list of questions that were asked as part of this survey please see Appendix 3: *Overview of community sector survey questions* and Appendix 5: *Selected breakdown of questions and responses from community sector survey results*.

Findings

The survey findings identified four key types of matters where older people were vulnerable to legal problems. These were financial and Centrelink problems, wills and estates, violence and various forms of abuse, and family disputes. Two other prominent problems areas were matters involving neighbourhood and housing disputes. More than one-third of respondents had direct experience of an older person with a legal problem. Ten respondents (35.7%) indicated dealings with an older person who had mentioned a civil law problem to them, while a further 10 (35.7%) indicated this had not happened, and 8 (28.6%) reported that they did not know.



Figure 3. Word Cloud Outlining top three most common Civil Law Issues experienced by older people in the Barwon region¹³⁶

Scams, financial issues, abuse and housing identified as common civil law issues

When asked about experience of older people having approached them about certain concerns, more than half of respondents identified scams and housing or living arrange issues, and one-third disputes with family about money and elder abuse or family violence. Amongst those issues listed as 'other', reported by just over one in ten respondents (11.1%) were concerns with Centrelink, power of attorney and being taken advantage of by neighbours.

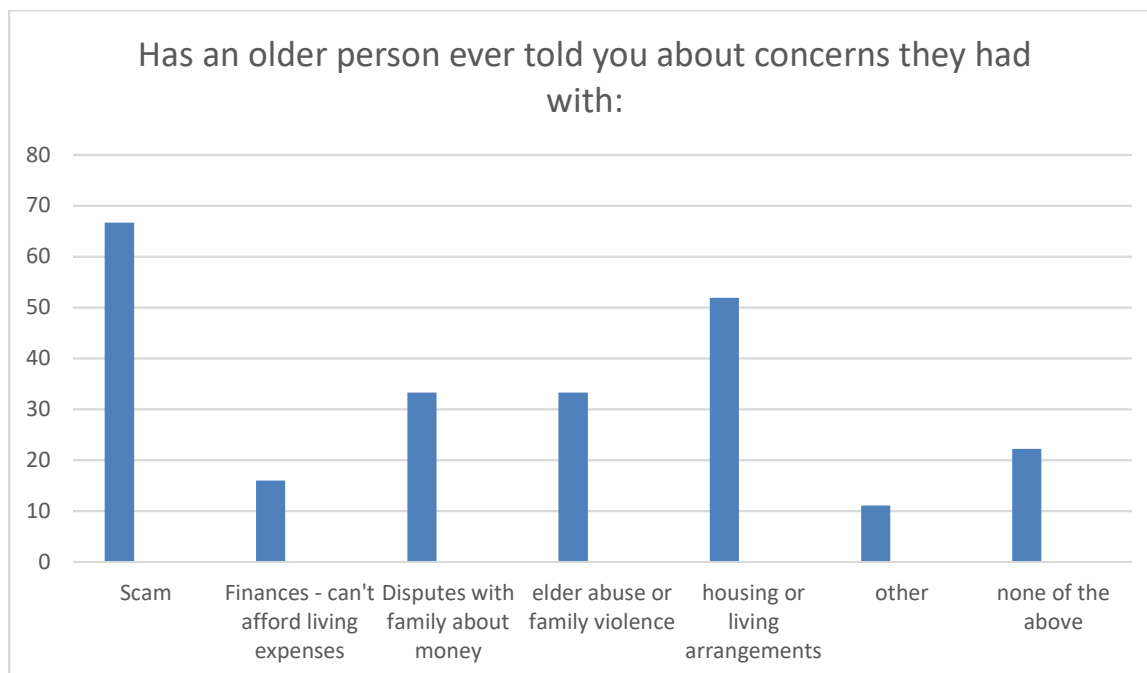


Figure 4. Survey responses - Older people approaching worker with civil law problem (Percentages tally over 100% as respondents were asked to provide multiple responses)

¹³⁶ Figure 3 provides a visual overview of responses outlining the top three most common civil law issues experienced by older people in the Barwon region according to people providing community services to older people.

The majority of respondents identified these issues as civil law problems (59.3%), while 22.2% of respondents indicated they did not, and 5 respondents (18.5%) were unsure.

Community sector somewhat confident in connecting older people to civil law assistance

In response to a question about confidence in directing an older to the correct legal service for a civil law problem, more than three-quarters (77.7%) were somewhat, very or extremely confident. The most prevalent response amongst respondents was being 'somewhat confident' accounting for one-third of answers.

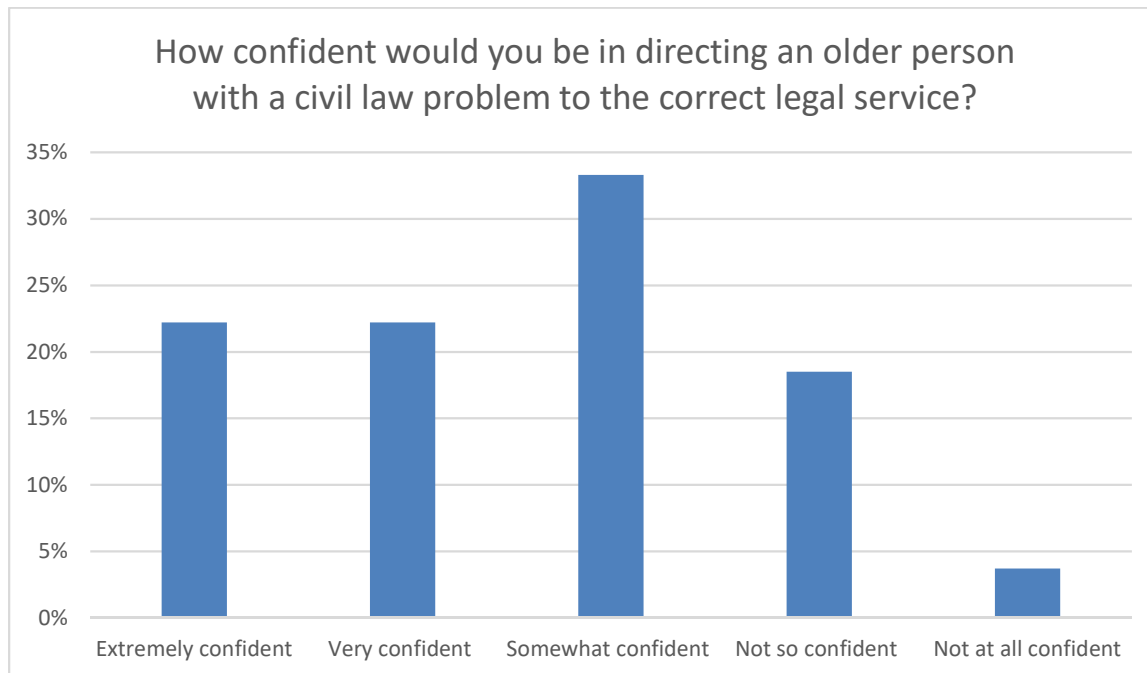


Figure 5. Confidence in Directing an Older Person to an Appropriate Service

Respondents were also asked to explain their level of confidence.

Four of the 21 comments (19.0%) indicated a lack of knowledge about legal services, what they could do, and their current name, with respondents noting they were '*not sure where to go myself*' and that '*it's hard to know what services deal with issues ... also services change names often.*'

Several respondents indicated they '*have an understanding of what services are available*' or were confident in '*get[ting] them to talk to someone about what is going on*'. One respondent indicated they formerly worked '*in local government so that helps me to understand what services are available*' while three others indicated they would '*contact my supervisor for advice*', or inform '*a senior staff member*'.

One social worker reported awareness '*of how to engage with clients and appropriate services to support our client group*', while another indicated that legal problems arise regularly, so their service has '*a network of people and organisations to go to that we can refer people to*'. Another indicated that dealing with older people '*is an area we try and stay informed about for our elderly clients in the event we need to get information for them*', while two respondents indicated they would '*need some time to research the next step*' such as '*VCAT or Legal support, police*'.

Majority of respondents provide information to older people about civil law rights

Nearly half of all respondents (48.2%) agreed that there is value in professional development training on how to identify civil law problems, while 22.2% disagreed, and 29.6% indicated that they were unsure.

More than half (51.9%) of the respondents indicated that they already provide information or services to help older people understand their civil law rights. This included information sessions, guest speakers, brochures, and agency referrals. However, more than one-third (37.0%) indicated they did not, and 3 (11.1%) that they were unsure.

Internet most common source of civil law information

In response to a question about where they obtained civil legal information the most common answers were the internet, managers or work colleagues, professional networks or brochures, and information booklets. Other specified sources of information included 'the Community Legal Service in the appropriate region or the Women's Legal Service', 'contacting the local member's office', email subscriptions to relevant organisations, and consulting with a disability advocate.

Majority of respondents identified Legal Aid or CLC as appropriate referral pathway for civil law issues

In response to a hypothetical case example of an older person with civil law issues, 59.3% of respondents indicated that they would seek professional legal assistance either through Legal Aid or a Community Legal Service, with either the hypothetical client alone or with their family. Just under one in five (18.5%) indicated that they would contact Senior Advocacy/Rights Victoria or the Elder's Rights Advocacy Service. A minority indicated that they would: report the issue to a supervisor; contact an elder abuse hotline, would undertake their own research to determine the appropriate course of action to take; and report the situation to police.

Declining health, geographic location, lack of mobility and social isolation rated as highest risk factors for civil law problems

When asked to rank four contributing factors related to vulnerability to civil law problems in order of seriousness, declining health, geographic location, lack of mobility and social isolation were viewed as heightening the vulnerability of older people to civil law problems.

Challenges with data trying to assess challenges for older people obtaining legal assistance, particularly from diverse communities

As part of the survey we designed questions which attempted to assess community sector respondent's views on the challenges older people face in accessing legal services. Respondents were also asked how older people from marginalized or vulnerable Aboriginal and Torres Strait Islander, CALD, LGBTQI and regional/rural communities experience challenges in accessing legal assistance.

It was, however, difficult to obtain meaningful data from these questions for a number of reasons, not the least being that it was unclear whether respondents had experience or lived experience of these challenges. As it was not possible to connect and survey older people directly, these questions highlighted the challenges of trying to obtain data from people providing second-hand accounts of supporting or working with older people, rather than the direct experiences of older people themselves.

Despite these challenges, several barriers to obtaining legal assistance for older people were identified. In particular, knowing which services to contact, digital literacy issues, the complexity of the service system older people need to navigate, and the perceived cost of legal services were commonly reported.

A final question asked respondents to identify any additional issues they considered worth mentioning. One respondent referred to the need to 'provide relevant up to date information to services such as Community Houses' to help staff, volunteers and older people. Another indicated uncertainty on how to help 'a lovely lady' who reported 'a dispute with her body-corp around placement of a new clothes line', while another suggested providing 'information sessions ... [because] older people do not like going online and that is not where they get their information'. Another respondent explained the need to alter perceptions of older people who might 'fear' the cost of legal services or might not have encountered legal problems earlier in their lives, specifically that:

Older people are in fear of 'wasting' their money. There is an historical perception that any type of legal fees are extremely expensive. People need to be assured that the services that can assist are either free or fully detail the costs involved in seeking legal assistance. Assurance of safety and benefit needs to be addressed as any legal needs (are) usually something a person may never (have) had to deal with before.

6 CONCLUSIONS AND RECOMMENDATIONS

This research confirms the legal needs and barriers to legal assistance experienced by older people are well recognised by service workers in the Geelong area. While older people made up 14% of all clients receiving assistance from BCLS between July 2017 and June 2020, there is a significant proportion of older people with unmet legal need being missed.

As BCLS services for older people have increased by 30% during the examined three-year timeframe, it is important to develop more systematic evidence to effectively target this population. As key stakeholders indicated, this is best achieved by appropriate 'service mapping' (Interview 4) that establishes clear referral pathways and, where funding is available, co-located services.¹³⁷

Two sets of recommendations are presented in this chapter. These relate to recommendations that BCLS can implement, and broader systemic issues affecting older people that will need wider coordinated effort to be addressed.

6.1 Recommendations for BCLS

Recommendation 1: Changes needed to better capture data for older people accessing BCLS services

An important issue for BCLS is to ensure there is ongoing review of existing case records dealing with older people, and a standardised approach to capture of client experience of elder abuse. Changes to data management processes would allow files to be categorized in such a way as to accurately document when files involve elements of elder abuse, especially for case files that span diverse areas of civil law. Current practices only capture information about an older person experiencing abuse if their file is classified as a family violence or family violence intervention order file on the BCLS CLASS system.

Other suggested changes to enable a better understanding of how BCLS provides legal services to older people could include flagging each case involving older people, where age is a relevant factor in their matter, identifying if there are elder abuse risk factors on the data management system, and identifying those requiring more complex casework. This is particularly important given that 21% of cases involving legal assistance provided by BCLS to older people involved ongoing legal casework and multiple legal problems.

Recommendation 2: Engagement with local Aboriginal organisations to improve access to civil law assistance for older Aboriginal and Torres Strait Islander communities

Data clearly shows only a very limited number of older people who identify as Aboriginal and Torres Strait Islander are accessing BCLS services. Across the three-year period, only 13 Aboriginal and Torres Strait Islander clients who were aged over 50 accessed legal assistance from BCLS. It was difficult to determine from NLAS indicators how many Aboriginal and Torres Strait Islander people aged over 50 in the region have potential legal need¹³⁸ and whether older people are accessing Aboriginal legal services rather than BCLS services.. It is recommended further engagement with local Aboriginal organisations be undertaken to better understand the extent of unmet civil legal need for Aboriginal and Torres Strait Islander older people in the Barwon region. BCLS is currently taking active steps to engage with the local Aboriginal Corporation Wathaurong to explore and develop a partnership aimed at improving BCLS

¹³⁷ See also Lewis et al., (2020).

¹³⁸ National Legal Dashboard indicated that in the Barwon region the NLAS Aboriginal and Torres Strait Islander Indicator suggested 950 people across all age groups had potential legal need. At the time of accessing data Aboriginal and Torres Strait Islander older people (aged 50 and above) were not counted within the NLAS +65 category.

engagement with Aboriginal and Torres Strait Islander communities and First Nations clients, and to develop strengthened referral pathways with statewide community controlled Aboriginal legal services Djirra and VALS.

Recommendation 3: Co-location of BCLS services within organisations supporting older people to extend reach of family violence legal assistance services for older people – in Colac and Geelong regions

Family violence remains a considerable proportion of BCLS work with older people. This means it is likely there is a much larger 'dark figure' of older people experiencing family violence that is unknown or does not come before BCLS. This points to potential benefits of increased legal outreach by BCLS in conjunction with other family violence services in the Geelong and Colac regions, including co-located services to increase the reach of family violence related legal services for older people. This is particularly important for the Colac region, as data revealed that while there is a disproportionate number of older people residing within the Colac Otway region, there are relatively lower numbers of older people accessing BCLS services.

Through exploring a co-care model that integrates civil law assistance into those organisations already engaged with older people, barriers to accessing legal assistance identified in this research could be, to some extent, overcome. In particular, barriers relating to the complexity of the service system, the lack of tailoring of services to older people, difficulties associated with determining older people's capacity, and lack of mobility can all be mitigated by co-care and co-location service strategies.

Recommendation 4: Ensuring outreach or co-located services target people experiencing financial disadvantage, CALD communities, and people living with disabilities

While data reveals that a high proportion of older people who are accessing BCLS services are experiencing financial disadvantage, disability or other priority indicators, NLAS data reveals that that BCLS are currently servicing approximately 10% of the older people within the Barwon region with potential legal need. Expanding outreach services and education in geographic areas with high populations of older people experiencing financial disadvantage, higher populations of older CALD people and those with disabilities is especially important given that most people who seek assistance through BCLS have face multiple forms of disadvantage likely to otherwise inhibit their ability or willingness to seek out appropriate legal services earlier.

Recommendation 5: Develop a legal health check tailored to the civil law issues experienced by older people

Importantly, the research clearly demonstrated that BCLS staff are well aware of the spectrum of civil and criminal law problems facing older people, and the challenge of accessible and effective service provision. This includes general service capacity and funding challenges. Legal health checks that encompass a range of civil law issues, such as motor vehicle accidents, fines, late payment of utility bills, welfare and service provision, and other day-to-day legal problems, could be beneficial.

Recommendation 6: Providing legal assistance that centres the rights, autonomy and independence of the older person

The BCLS case file review, staff interviews and interviews with stakeholders demonstrated the need for there to be an emphasis on the importance of independent help to maintain, as best as possible, the independence of the older person. This is especially important as most victims of elder abuse live with or are the parents and grandparents of their abusers.

Recommendation 7: Community Legal Education needed for services that support older people and for older people directly

Further educational outreach could target the services that provide help to older people, as well as older people more directly. Through the interviews with service providers, it was clear that the service system was seen as complex. Simplified information about civil law problems experienced by older people, and appropriate referral pathways would help a broad spectrum of community service workers to help connect older people with legal assistance.

Older people themselves also need to be engaged in understanding civil law issues, and potentially harnessing their experiences as ambassadors who can provide assistance in local community groups and other locations where older people gather and socialise.

Recommendation 8: Continue to build the relationship with Work Integrated Learning Program and Deakin University for future research initiatives

A final issue here is the success and prospects for continuing the BCLS WIL initiative with Deakin University. This project provided both proof of concept and reciprocal benefit by enabling a targeted research project involving a wide range of literature and data to enhance student learning and skill development. This was beneficial to both students and staff at Deakin University, given they were provided the opportunity to work on an area of clear importance and need for BCLS. This provides a valuable model for future research-led educational initiatives on similar topics in future.

6.2 Systemic issues

Many key stakeholders and survey responses pointed to structural problems associated with ageism and lack of knowledge of legal rights or where to obtain assistance as key barriers to seeking help. These problems are underpinned by increasingly complex service structures that lack funding security. Simplifying these structures is clearly beyond BCLS capacity, but using educational tools to create information about referral pathways that is easy to understand provides a useful starting point at the local level. This is important because service provision for older people involves a very diffuse range of agencies affiliated with local councils, state and federal governments and private service providers.

6.2.1 Challenge ageism and promote autonomy of older people

Broader conceptions of ageism and the pervasive paternalistic view that older people do not have the ability to be autonomous or make reasoned decisions for their own wellbeing need to be challenged. This problem stems from an attitude that if the services are provided, individuals should be free to access them at their discretion. This market model which places the onus on the older person to seek help does not acknowledge the many barriers older people experience in seeking help, while risking placing further dependence on children and other close family relationships to manage their legal and financial affairs.

Whole of society effort and campaigns that promote independence, and independent support and advice for older people are needed, specifically in locations that are remote or have high proportions of people experiencing social and financial disadvantage. These can be targeted through greater ongoing synthesis of disparate publicly available data sets about the experiences of ageing and the legal problems commonly faced by older people.

6.2.2 Increase digital literacy and adapt services to ensure accessibility

Access to and use of technology was repeatedly identified as a factor limiting older people's access to legal assistance, and a problem that can further reinforce a culture of individual responsibility and help-seeking. Local initiatives can enhance access to and knowledge about digital and mobile technology for older people. However, this is best done through specialist communication agencies or on a national level, given the scope of these problems is not confined to the Geelong region. Challenging ageism can

also occur through recognition that technological solutions are not necessarily appropriate responses to the problems faced by older people.

6.2.3 Increased state and federal funding for community legal centres to integrate and target their services

Recognising that co-location and interagency cooperation are central to identifying and responding to many legal and related problems facing older people is crucial. This also requires understanding that social problems are often the key sign of more profound legal problems or elder abuse. While BCLS is well placed to work with several agencies in the Geelong region to expand its existing interagency partnerships, recurring funding and simplified service provision systems are needed at state and federal levels. This is because many services older people need are not covered in existing funding arrangements and performance indicators. This broader structural issue requires greater public and political awareness, given the consistent views of stakeholders and survey respondents that simplified and targeted forms of help needed for older people.

6.2.4 More proactive inter-agency education initiatives to prevent civil law issues

While greater training of service professionals to recognise problems facing older people is needed, community legal education with older people is also a helpful way of encouraging independence and recognition of potential problems that can escalate into abuse. This includes pre-retirement legal planning, and actively targeting the next generation of older people as the broader population ages. Improving financial literacy, legal planning and providing educational tools that target current and future generations of older people can all help to offset the potential for civil law problems to escalate into more complex problems. All legal and social services dealing with older people have a stake in developing a proactive response to these issues, with the assistance of older people themselves.

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LEGISLATION

Guardianship and Administration Act 1986 (Vic)

Medical Treatment Planning and Decisions Act 2016 (Vic)

Powers of the Attorney Act 2014 (Vic)

8 APPENDICES

Appendix 1: Tables containing breakdown of BCLS CLASS data

Table a) - Number of BCLS Services and Clients identified as Aboriginal and Torres Strait Islander aged 50+ July 2017-June 2020

2017-2018		2018-2019		2019-2020	
Total No. services and clients		Total No. services and clients		Total No. services and clients	
Aboriginal and Torres Strait Islander 50+		Aboriginal and Torres Strait Islander 50+		Aboriginal and Torres Strait Islander 50+	
Services	Clients	Services	Clients	Services	Clients
7	4	5	5	6	4

Table b) - Total BCLS Services Delivered to Clients and Older People, July 2017-June 2020

2017-2020 financial years			2017-2020 financial years	
Total no. of services delivered to all full clients by service type			Total no. of services delivered to older people by service type (% of total services delivered)	
Service type	No. of total services	No. of total clients	Aged 60+	Aboriginal and Torres Strait Islander aged 50+
Court/Tribunal	438	321	36 (9%)	3 (0.7%)
Duty Lawyer	2114	1274	146 (7%)	3 (0.2%)
Legal Advice	3909	3142	534 (14%)	9 (0.3%)
Legal Task	1113	688	64 (6%)	n/a
Other Representation	1132	977	238 (21%)	3 (0.3%)

Table c) - Three Most Common Legal Problems Experienced by Older People

Legal problems	2017-2018	2018-2019	2019-2020	Total no. of services
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	Total No. services per problem type delivered to clients Aged 60+ at time of service	Total No. services per problem type delivered to clients Aged 60+ at time of service	Total No. services per problem type delivered to clients Aged 60+ at time of service	over three year period (% of total legal assistance services delivered to older people)
Domestic violence protection orders and Domestic/Family Violence	87	95	120	302 (30%)
Wills and Powers of Attorney	65	71	75	211 (21%)
Traffic and vehicle regulatory offences (including motor vehicle accident and road traffic and motor vehicle regulatory offences)	22	46	53	121 (12%)

Table d) - Number and Proportion of BCLS Clients Reporting Key Indicators of Disadvantage

Priority indicator	Clients Aged 60+ (% of total older clients)	Aboriginal and Torres Strait Islander aged 50+ (% of total clients)
Family Violence	155 (21%)	6 (47%)
Disability	164 (22%)	10 (77%)
Financial disadvantage	689 (92%)	13 (100%)

Table e) - Proportion of BCLS Clients Receiving Social Security Benefits

Social Security Benefit	Clients Aged 60+ (% of total older clients)	Aboriginal and Torres Strait Islander aged 50+ (% of total clients)
Age Pension	330	N/A

	(45%)	
Disability Support Pension	90 (12%)	8 (62%)
Newstart Allowance	52 (7%)	3 (23%)
Carer Payment	17 (3%)	N/A

Table f) - Geographic Breakdown of BCLS Clients, July 2017-June 2020

Local Government Area	Clients Aged 60+ (% of total older clients)	Aboriginal and Torres Strait Islander aged 50+ (% of total clients)
Greater Geelong	494 (66%)	9
Colac Otway	35 (5%)	0
Surf Coast	28 (4%)	0
Queenscliffe	3 (0.4%)	0
Unknown	82 (11%)	1
Outside of Barwon region catchment	49 (7%)	2

Table g) - Profile of BCLS Case Files Involving Older People reviewed for research

Area of law	Evidence of abuse <i>financial, emotional, physical, sexual or social/neglect</i>	Priority community indicator: ie. Aboriginal and Torres Strait Islander, disability, Centrelink, financial disadvantage, family violence, CALD background, regional or remote	Barriers in accessing service noted on file	How did they access our service?
Fines	Financial	Regional Centrelink payment	None noted	Belmont office

		Financial disadvantage Family violence		
Other Civil – how to request information from government agency	No	CALD background Centrelink payments Financial disadvantage	No email or access to a computer	Belmont office
Guardianship for adults, Wills/probate power of attorney Family or domestic violence order	Financial – adult child seeking advice on behalf of parent suspected of experiencing elder abuse	Centrelink Disability Financial disadvantage Family violence	None noted	Norlane outreach
Credit and debt owed by client	Financial and emotional abuse	Family violence Regional Financial disadvantage	None noted	Corio outreach
Guardianship	Financial – adult child seeking advice on behalf of parent suspected of experiencing elder abuse	CALD Centrelink Financial disadvantage Regional and rural	No computer or email No written English	Belmont office
Other Civil – property dispute	Potential financial abuse	Centrelink Regional	None noted	Belmont office
Wills/probate guardianship/tr usteeship	Financial	Mental health and disability Centrelink Family violence Regional	Disability No mobile phone or computer/email Aged Care provider denied access to legal service due to mental capacity	Outreach

Appendix 2: Tables containing breakdown of available Barwon region demographic data

Table i. Overview of ABS SA2 Area data from Barwon region

Local SA2 area	SEIFA Index (Quintile)	People aged 65 years and over (%)	Age pension (%)	Persons who provided unpaid assistance to a person with a disability (%)	Persons with a disability (%)	Persons who have need for assistance with core activities (%)	Total born overseas (%)	Aboriginal and Torres Strait Islander Population (total)
Lara	3	13.5	9	11.2	19.6	4.7	15.3	315
Corio/Norlane	1	16.2	12.1	12.9	31.9	8.1	22.6	650
North Geelong	2	21.6	16.5	12.6	22.9	7.5	26.5	168
Geelong West	3	15.7	9.5	12.4	20.9	5.2	14.9	174
Geelong	3	17.3	9.9	11.9	22.4	5.8	17.4	136
Highton	5	16.6	8.3	12.1	18.4	3.7	17.9	113
Newtown	5	17	6.7	13.4	14.9	3.8	13.3	79
Belmont	3	19.1	12.7	12.1	24.6	6.9	15.2	134
Grovedale	4	15.3	11.2	11.9	15.2	6.7	14.5	287
Newcomb	1	22.7	17.6	13.4	28.6	9.3	13.4	234
Leopold	3	19.6	12.9	13.4	20	5.6	12.6	155
Clifton Springs	3	23.4	16.9	13	24.1	5.8	13.8	164
Portarlington	2	36.6	23.8	14	33.1	8	15.7	79
Pt Lonsdale/Queenscliff	5	39.3	18.1	14.2	25.5	6.1	10.9	17
Ocean Grove/Barwon Heads	5	17.4	9	12.7	19.1	4.1	11.4	183

Torquay	5	15.2	7.7	10.8	12.5	3	12.3	156
Lorne/ Anglesea	4	28.5	12	13.0	19.9	4.5	11.0	26
Otway region	3	25.6	12.8	13.3	23.7	4.4	15.6	48
Colac	1	22.1	15.6	12.2	25.3	7.9	7.4	177
Colac region	3	21.6	10.4	4	20.3	12	8.6	71
Winchelsea	4	18.8	8.9	13.2	16.7	4.7	8.8	46

Table ii. Breakdown of data from Safe Steps - older people accessing services July 2020 to June 2021

	No. clients	No. contacts
Non- Aboriginal and Torres Strait Islander, 60 or older, from G21 postcodes	9	68
Aboriginal and Torres Strait Islander, 45 or older, from G21 postcodes	6	20
45 or older, from G21 postcodes	7	22
TOTAL	22	110

Appendix 3: Questions used in stakeholder interviews and focus groups examining civil law needs of older people

We used an open ended question schedule that was adapted to ensure each interview dealt with the specific expertise of the key stakeholder. The working list involved the following 16 questions.

1. What agency do you work with and how does your work relate to older people?
2. How do you and/or your service define older people? What types of disadvantage/problems do they seem to experience based on your knowledge / activities in the region?
3. Based on our definition were you aware of the scope of civil law? How does our definition reflect key aspects of legal need that you see in your role?
4. What does available data you are aware of say about the nature and extent of the legal or civil law needs of older people?
5. How are legal problems facing older people currently identified in your service? (probe this in relation to different agencies and their expertise)
6. Without using names, describe some common scenarios you can think of where older people might have benefited from legal assistance.
7. If you think there are barriers in identifying circumstances involving legal need, what are they and how can we improve on them?
8. What do you think are the barriers that older people experience in identifying legal and civil law problems and accessing appropriate help?
9. Are there particular target areas of legal need that require more focus in the region and/or your own organisation?
10. What advice/suggestions can be provided to improve community awareness of your own services and relevant legal services for older people?

11. What do you think is needed to provide greater awareness of available legal services for older people in your organisation?
12. How might cross agency communication help to maximise effective and targeted responses that improve service delivery to older people in the region?
13. How might Community Legal Centres improve their service delivery for older people?
14. What types of information do you think are needed to improve service delivery to help older people deal with legal problems in this region?
15. How can we prevent harm or risks to older people in this region with greater interagency cooperation? How can current methods cooperation be made more effective?
16. In light of the issues we have discussed, do you have any more comments or issues you feel are relevant in helping us understand how to better support older people in this region? How might these issues help with promoting greater awareness of the civil law needs of older people in the Barwon region.

Appendix 4: Overview of community sector survey questions

Overview of definitions

The below definitions were provided to respondents as part of the community sector survey:

- Older Person: For the purposes of this research, an older person is defined as over the age of 60 or over the age of 50 if they identify as an Aboriginal or Torres Strait Islander.
- Civil Law: is defined as anything that is non-criminal.

Civil Law Problem	Example
Family Violence Intervention Orders	<i>assisting someone who needs protection from a violent or abusive family member</i>
Personal Safety Intervention Orders	<i>assisting someone who is being harassed by someone other than a family member</i>
Disputes with Neighbours	<i>helping someone with a disagreement with their neighbour about fences, noise or trees</i>
Housing and Tenancy	<i>providing advice about evictions, breaking leases or access bonds.</i>
Credit, debt & financial issues	<i>advice about options when being chased by a debt collector</i>
Child Support	<i>help with making an application for child support payments</i>
Parenting Arrangements	<i>support to create a parenting plan for children after a separation or divorce</i>
Separation & Divorce	<i>helping a client to understand divorce laws</i>
Property Settlements	<i>providing advice on laws of dividing assets such as property after a divorce</i>
Employment Rights	<i>providing support when someone is concerned that they are being underpaid</i>
Wills	<i>assistance in preparing a Will</i>
Car Accidents	<i>helping a client with options if they have a car accident and don't have insurance</i>
Centrelink	<i>assistance with accessing the age pension</i>
Consumer Rights	<i>helping someone who may have been impacted by a scam.</i>
Fines & Infringements	<i>help to get a fine waived rather than being put on a payment plan</i>

Overview of Survey Questions:

1. What type of non-legal service do you work for?
2. Based on your experience, what percentage of users of your service would be over 60 years of age (or over 50 for Aboriginal and Torres Strait Islanders)?
3. Has a community member presented with a civil law problem at your service?
4. What do you think are the top three most common legal problems experienced by older people in the Barwon region?
5. Has an older person ever told you about concerns they had with:
 - a. a scam (e.g. over the telephone or email)
 - b. finances -not being able to afford basic living expenses
 - c. disputes with family about money
 - d. abuse or family violence (e.g. physical, psychological, neglect, etc.)
 - e. housing or living arrangements
6. If you said 'yes' to any of these issues in Question 5, did you consider these concerns to be a legal issue?
7. If an older person came to you with civil law concerns, how confident would you be in directing them to the correct services?
8. Would professional development or training to identify civil law problems be useful in your current role?
9. Where do you currently look for information relating to civil law issues? (Tick all that apply)
 - a. Google or Internet Search
 - b. Brochures or Information Booklets
 - c. Asking a manager or other work colleague
 - d. Asking someone in your professional network
 - e. Family or Friends
10. Do you provide any information or services related to helping older people understand their civil law rights? This could be info sessions, guest speakers, brochures or handouts, or referrals to agencies.
11. This question asks you to respond to a case study: Bob is an 85-year-old man with early onset dementia. His wife passed away suddenly and due to care reasons has had to move in with his daughter, Sarah. They are estranged and don't have a great relationship. Sarah has been appointed financial POA and medical decision maker. Sarah has started taking his money without his permission and spending it on her gambling habit. Bob mentioned in passing that he can't afford to pay his phone bill and feels disconnected from his friends since his phone has been cut off. If Bob came to you for assistance, where would you direct him?
12. To what extent do you feel the following factors make older people more vulnerable to experiencing civil law issues?
 - a. Social isolation
 - b. Mobility issues
 - c. Declining health
 - d. Experience of family violence
 - e. Geographic location (i.e regional or rural community)
13. In your view, to what extent do older people experience the following challenges when trying to access legal help?
14. In your opinion, which of the following challenges do Aboriginal and Torres Strait Islander communities face when trying to get legal help? Please rank in order of seriousness (1 being most serious)
 - a. Availability of appropriate services

- b. Knowledge of where to get legal help
 - c. Discrimination
 - d. Digital Literacy
 - e. Lack of awareness of legal rights
 - f. Language or Cultural Barriers
15. In your opinion, which of the following challenges do Culturally and Linguistically Diverse (CALD) communities face when trying to get legal help? Please rank in order of seriousness (1 being most serious)
16. In your opinion, which of the following challenges do Lesbian, gay, bisexual, transgender, queer, intersex, asexual (LGBTQIA+) communities face when trying to get legal help? Please rank in order of seriousness (1 being most serious)
17. In your opinion, which of the following challenges do Regional or Rural communities face when trying to get legal help? Please rank in order of seriousness (1 being most serious)
18. Do you have any additional comments on how to best support the legal needs of older people?
19. What is your age?
20. What is your gender?
21. Where is your usual residence or place of work?
22. How long have you lived and/or worked in the Barwon region? (If both, whichever is longest?)

Appendix 5: Selected breakdown of questions and responses from community sector survey results

Civil law issues that stakeholders are observing in their work

Answer choices	Responses	
No, I have never had an older person tell me about any of the above concerns	22.2%	6
A scam	66.7%	18
Finances – not being able to afford basic living expenses	59.3%	16
Disputes with family about money	33.3%	9
Abuse or family violence (e.g. physical, psychological, neglect, etc.)	33.3%	9
Housing or living arrangements	51.9%	14
Other	11.1%	3
Total Respondents: 27		

Confidence in Directing an Older Person to an Appropriate Service

Answer choices	Responses	
Extremely confident	22.2%	6
Very confident	22.2%	6

Somewhat confident	33.3%	9
Not so confident	18.5	5
Not at all confident	3.7%	1
Total		27

Information Sources on civil law issues

Answer choices	Responses	
I don't ever look for information on civil law issues	22.2%	6
Google or internet search	63.0%	17
Brochures or information booklets	33.3%	9
Asking a manager or other work colleague	44.4%	12
Asking someone in your professional network	33.3%	9
Family or friends	18.5%	5
Other	14.8%	4
Total Respondents: 27		

Key Factors Contributing to Civil Law Problems for Older People

	A great deal	A lot	A moderate amount	A little	Total	Weighted Average
Social Isolation	45.5% 10	31.8% 7	22.7% 5	-	22	1.77
Mobility issues	45.5% 10	31.8% 7	22.7% 5	-	22	1.77
Declining health	59.1% 13	36.4% 8	4.6% 1	0	22	1.45
Experience of family violence	36.4% 8	13.6% 3	36.4% 8	13.6% 3	22	2.27
Geographic location (i.e. regional or rural community)	50.0% 11	36.4% 8	9.1% 2	4.6% 1	22	1.68

Challenges Older People Face in Obtaining Legal Assistance

	Very Likely	Likely	Neither	Unlikely	Total	Weighted Average
Social Isolation	54.6% 12	45.5% 10	-	-	22	1.45
Knowing which service to contact	87.0% 20	8.7% 2	-	4.4% 1	23	1.22
Transport or mobility	52.4% 11	38.1% 8	9.5% 2	-	21	1.57
Digital literacy	81.8% 18	13.6% 3	4.6% 1	-	22	1.23
Perception that legal services are expensive	68.2% 15	31.8% 7	-	-	22	1.32
Affordability of private lawyers	78.3% 18	17.4% 4	-	4.4% 1	23	1.30

Appendix 6: Overview of questions from BCLS Staff interviews

- *How does BCLS define an 'older person'? What is this definition based on?*
- *How does BCLS define elder abuse? If there is not an explicit definition, what legal definition does it fall under?*
- *Does BCLS collect specific information regarding elderly people in comparison to other groups? If so, what kind of data?*
- *What are the key legal issues facing older people?*
- *What do you believe to be the most concerning civil law needs for elderly people? In terms of prevalence, severity of the problem etc.*
- *How does elder abuse present in clients? Are there any signs that are generally present in victims of elder abuse?*
- *Should 'elder abuse' be it's own separate classification in BCLS data or is it embedded into the legal problems that are faced by elderly people? Why?*
- *What problems arise in identifying legal problems experienced by elderly people? Are the current services that are provided sufficient in dealing with these issues?*
- *How often does potential elder abuse cases come up in your work?*