

MEETING OLDER PERSONS' LEGAL NEEDS IN NSW

BACKGROUND PAPER

Introduction

This paper has been prepared by the National Pro Bono Resource Centre ('the Centre') to provide a background for parties interested in discussing the legal needs of older persons in NSW and how they might be met through specifically targeted resources and services. The paper deliberately focuses on access to legal services for older persons but acknowledges that their legal problems need to be addressed in a wider context which includes the role of education, law enforcement, addressing technological barriers to accessing legal information and effective methods of communication with older persons.

The Centre has prepared this paper and convened the roundtable meeting in accordance with its role of brokering relationships between communities in need and legal service providers.

Legal needs of older persons

Legal needs of older persons are often complex and can cross over many legal areas. They are further complicated by additional obstacles that beset many older people such as diminished mental capacity, intimidation and medical problems.

The sorts of law-related issues faced by older persons, their families and carers can include:

- Age Discrimination
- Elder Abuse
- Consumer Rights
- Employment and Retirement
- Estate and Financial Planning
- Family Law (including family care agreements and custody of grandchildren)
- Guardianship
- Healthcare
- Housing (including retirement villages, nursing homes and tenancies)
- Pensions and Superannuation
- Wills and Powers of Attorney

A detailed study of the legal needs of older people in NSW was undertaken by the NSW Law and Justice Foundation in 2004. The results were published by the Foundation in its report *Access to Justice: The legal needs of older people in NSW (Dec 2004)*.

The above law-related issues involve both Commonwealth and State laws and many require quite specific legal knowledge and expertise. The Commonwealth, and the States, through budget allocations, fund legal aid, community legal centres (CLCs) and the Aboriginal and Torres Strait Islander Legal Service which provide legal services to members of the community which of course include older persons.

In NSW the Aged-care Rights Service provides advocacy for the residents of Commonwealth funded hostels and nursing homes, self-care retirement villages and recipients of in-home aged care in NSW but it is not a legal advice service. Other

generalist CLCs in NSW provide legal advice but have limited resources and many are limited to serving particular geographic areas.

The Legal Aid Commission of NSW provides services mainly in the areas of criminal and family law and also provides civil law services from most of its offices. While the Commission does not grant aid for all civil law matters and it does have a means and merit test, the Commission's Board has recently approved developing proposals to target older persons as a priority client group. Activities to give effect to this Board decision are well underway.

Current Commonwealth parliamentary inquiry into older people and the law

The House of Representatives Standing Committee on Legal and Constitutional Affairs is currently undertaking an inquiry into older people and the law. The definition of 'older' Australians adopted in this inquiry is that of persons aged 65 years or older. Its terms of reference require it to report on the adequacy of current legislative regimes in addressing the legal needs of older Australians specifically in the areas of fraud, financial abuse, powers of attorney, family agreements, barriers in older persons accessing legal assistance, and discrimination. The Committee has received 112 submissions from individuals and organizations, many of which are available at <http://www.aph.gov.au/house/committee/laca/olderpeople/subs.htm>. As part of the inquiry, a series of public hearings is being conducted. Public hearings will be held in Sydney on 14 and 15 of May 2007.

Queensland

The Queensland Department of Communities has committed \$1.9m to fund a one year pilot for older persons' legal services in Brisbane (at Caxton Legal Centre), Hervey Bay, Toowoomba, Townsville and Cairns with funds to flow from April 2007.

The Seniors' Advocacy Information and Legal Service (SAILS) was initially set up in 1998 by Caxton Legal Centre, Queensland's oldest non-profit community based legal service with a 'Legal Outreach for Older People' service established under a special grant from the QLD State Government.. The service was set up to protect and advocate for older persons who are at risk of becoming victims or are victims of domestic (non-spousal) violence. It provided both a social worker and a solicitor to offer advice and, in some cases, limited counselling and legal representation to older persons in abusive or potentially abusive environments. The service ran for 4 years but ceased when it was unable to obtain further funds

Caxton now employs 11 effective full time staff (including 6 lawyers, 2 social workers and a publications coordinator), but this is soon to increase to 19 workers with the additional funding under the new one year pilot scheme. However the majority of its direct client services are provided by more than 200 volunteer solicitors, barristers, academics, trainee lawyers, law clerks and students. The majority of Caxton's clients are economically and/or socially disadvantaged in some way and over a third are in receipt of Centrelink benefits.

Many of the older clients' legal problems tend to be multi-layered in nature and often involve a mixture of questions relating to estate planning, social security entitlement, capacity concerns and substituted decision making, undue influence, other forms of abuse and exploitation, family law, property issues and 'system abuses'.¹

¹ Submission from Caxton Legal Centre to the House of Representatives Legal and Constitutional Standing Committee Inquiry into Older persons and the Law, December 2006.

A relevant recommendation made by Caxton Legal Centre to the current House of Reps. inquiry is that:

Funds need to be injected into making sure that there are sufficient free or low cost (long term) counselling and legal services which are able to provide a broad range of service delivery modes including home visits, outreach services, telephone and face-to-face services, advice to carers and community legal education to older people accessing legal assistance or dealing with Centrelink. We submit that federal funds should be made available to establish specialist community legal centres for the aged and that specific funding for litigation positions should be included in such funding²

Victoria

In March 2005 the Victorian Government announced an inquiry into the abuse of elderly people in Victoria. Two of the key recommendations of that inquiry were that a community based legal service and an elder abuse prevention unit be established. In June 2006, the Victorian Minister for the Aged announced that the government would provide \$1.25 million to establish a dedicated legal and advocacy service for older persons in the Department of Justice. “As well as offering a service to older people and their families, staff will train lawyers in the 31 generalist community legal centres, 24 specialist and 14 legal aid offices on the issues facing older Victorians”.³ The Centre understands that \$300K has been provided to Victoria Legal Aid and \$300K to Department of Victorian Communities to establish these two services.

The Minister said in the media release that a “partnership would be formed with the existing 69 Victorian Community legal centres and legal aid offices to create a pool of specialist lawyers trained in the legal issues facing older people.”

At the Loddon Campaspe Community Legal Centre based in Bendigo, the Older Persons’ Legal Program is a two year pilot project which began in May 2006. It is funded by Philanthropic trusts with a 0.8EFT (equivalent full time) solicitor position. Emphasising an older person’s need for face to face consultation, it has focussed on developing partnerships with community organisations. Some outreach centres have been established to provide free legal advice and information on a number of legal issues including: accommodation, aged discrimination, finance and consumer issues, elder abuse, family agreements, health and welfare issues, wills, and more. A panel of pro bono private solicitors has been brought together to extend the capacity of the outreaches and engage the private profession in elder law issues.

Stakeholders/Interested parties in NSW

This doesn’t purport to be an exhaustive list but aims to include key organisations that have a strong interest in this issue.

Department of Ageing, Disability and Home Care (DADHC)

DADHC is the department in charge of support and services for older persons, those with disabilities and their carers. The Office for Ageing, created in 2002, is located within this department and their main task is to anticipate, advise and implement the necessary government changes needed to accommodate an ageing population.

Legal Aid NSW

The Legal Aid Commission of NSW is established under the Legal Aid Commission Act 1979 of New South Wales and is an independent statutory body. It provides legal

² <http://www.aph.gov.au/house/committee/laca/olderpeople/subs/sub112.pdf> at p.6.

³ Media Release from the Minister for Aged Care 15 June 2006, “Dedicated Legal Service to support Older Victorians.

aid and other legal services to disadvantaged people. It provides free legal advice and minor assistance at its head office in Sydney as well as at 20 regional offices, numerous advice clinics located in various metropolitan and country centres and specialist services. Legal Aid may also provide grants of legal aid for representation in many civil, family, criminal, administrative law, mental health and veteran's matters. For most services clients must meet means and merit tests. Also clients usually have to pay some money towards the cost of their case.

Public Trustee

The Public Trustee was established in 1913 and has 19 branches throughout New South Wales providing services such as making wills, creating and managing trusts and providing attorney services. Administration fees for these services are set by the Government.

Benevolent Society

The Benevolent Society is a NSW based charity that works with women, children, families, older people and communities across NSW. The Society strives to support and assist older persons (and their families) to maintain independent living and to continue to be active within their communities. Resources on the Society's website include literature on social issues facing older persons as well as advice for carers and family members.

Centre for Elder Law – University of Western Sydney (UWS)

The UWS, through its Centre for Elder Law, is one of only two universities in Australia teaching the subject Elder Law. It published the *Elder Law Review* in 2004 and 2005 raising awareness within the Australian legal community of legal issues faced by older persons and is examining the feasibility of developing a program for legal practitioners⁴.

Combined Pensioners & Superannuants Association (CPSA)

CPSA was established in 1931 to advocate for the rights of pensioners in New South Wales. CPSA provides pensioners, superannuants and low-income retirees with information and advice and acts as an advocate for its constituents on a variety of issues. They have produced fact sheets for the public on matters such as health, funerals, aged care and income security and are aware of the need for legal services for older persons. CPSA auspices the Park and Village Service (PAVS) and the Older Persons Tenants' Service (OPTS) that advocate on behalf of residents of parks and manufactured home estates. It provides training, resources, advocacy and information on the rights and responsibilities of residential park residents, public & private tenants and older tenants.

Combined Community Legal Centres Group (CCLCG) in New South Wales

Community legal centres throughout New South Wales provide free advice and information as well as legal education on a variety of issues that affect older persons. The peak body of CLCs in NSW is the Combined Community Group of CLCs. Particular centres that have significant client bases of older persons are The Elizabeth Evatt Community Legal centre and the Disability Discrimination Legal Centre.

NSW Law & Justice Foundation

The NSW Law and Justice Foundation is an independent statutory body working to improve access to justice in NSW, particularly for socially and economically disadvantaged people. In 2004 the Foundation, as part of its Access to Justice and Legal

⁴ NSW Ministerial Advisory Committee on Ageing submission to the House of Representatives Legal and Constitutional Standing Committee Inquiry into Older Persons and the Law. 5 December 2006, p. 5.

Needs Study published *The Legal Needs of Older People* which examined the barriers older persons face in obtaining legal assistance to resolve legal issues. The Foundation places an emphasis on research and producing plain English materials.

NSW Young Lawyers

NSW Young Lawyers is a division of the Law Society of NSW. It works to heighten awareness of the issues faced by the disadvantaged and to match the personal and professional skills of members with volunteer opportunities throughout the community. In April 2006 the Community Services Committee of the NSW Young Lawyers published *Older People & the Law*, providing the seniors of New South Wales with a plain English guide to legal services and issues in the state.

The Aged Rights Care Service (TARS)

TARS is a community legal centre advocating for the rights of residents in Commonwealth funded care for the aged (hostels, nursing homes, in-home care, etc.). Information fact sheets and booklets regarding aged care issues are available through its website (www.tars.com.au).

Office of the Public Guardian and Office of the Protective (Financial) Commissioner

Both these offices exist within the NSW Attorney-General's Department and, whilst not specifically concerned with older persons, have many elder clients. The Office of the Public Guardian exists to promote the rights and interests of people with disabilities through the practice of guardianship, advocacy and education. The Protective Commissioner provides financial management services for people who are unable to manage their own affairs due to disability.

National Pro Bono Resource Centre
2 April 2007

Possible Issues for Discussion

(Comments by Sue Field from UWS Elder Law)

Identifying the legal need of older persons

Key areas of immediate need?

- The provision of a legal service specifically targeting older persons who cannot, for financial reasons, access legal advice and are therefore denied access to justice.
- Assistance at local courts (note Tasmanian Magistrate's Project on accessibility of courts for older persons))

How are the legal needs of older persons different from others?

- As we age we have less time to recoup financial losses occasioned either by mismanagement or abuse, we often also have insufficient financial resources and mental and emotional stamina to seek the services of a solicitor to address the situation. Sometimes the situation may only require simple advice or in more severe cases legal proceedings may be called for, however, without access to free legal advice the older person remains in ignorance of their rights and remedies. Many of the situations that arise cannot be dealt with solely by legal intervention and the collaboration of lawyers with social workers is essential. Equally, as we age some issues become more pressing, ie estate planning and substitute decision making.

Identifying existing services in NSW, their areas of operation and their limitations.

- TARS is really the only service available and their mandate is essentially restricted to accommodation agreements pursuant to the ACA and contracts pursuant to the RVA. CLC's do offer a service but this is not specifically catering to the needs of older persons and training would be required. The Legal Aid Commission is looking into this area. Elder Law at UWS remains the only centre in Australia devoted to the legal needs of older persons but cannot provide advice.

What are the ways that existing services can work better together?

- The proposed meeting on 2 May is an excellent opportunity to find out what is happening and to look at forming a central body (clearing house) so that there is central agency that collates all the information on all the existing (and proposed) legal services for older persons.

Does NSW need a new dedicated legal service for older persons and if so, what is the way forward?

- Most definitely and such a centre should be combined with a community health centre (see Southport Community Legal Centre model). The Centre should also offer the services of a social worker and financial planner. There should be face to face consultations and a telephone free call number for country people. Students who have undertaken, or are enrolled in, the subject elder law could perhaps then undertake placements at the centre.