

STORY: GEOFFREY MASLEN

# GETTING USED TO GETTING OLD

*Australia is an ageing society and the legal needs of the growing army of elderly are also expanding.*

There's one good thing about growing old," says the wheelchair-bound Uncle Ellis in *No Country for Old Men*. "It don't last long."

In sharp contrast to the grim situation in Texas, as described by Cormac McCarthy in his disturbing novel, growing old in Australia does last—and it is lasting for an increasingly longer time. Within 30 years, Australians aged 65 and over will comprise one in every five people on the continent while more than one in 12 will be in their 80s. A decade or so later, a quarter of the Australian population will be in the 65 and over age bracket—twice the ratio of today.

The rising number of elderly people means more Australians are likely to suffer discrimination simply because they are old. More will be subject to physical or medical mistreatment in nursing homes and hospitals, to financial abuse, and to deception and fraud by friends, family and strangers. Yet their pleas for help may be ignored by relatives and even by police who do not take complaints by the elderly seriously, claiming they are too preoccupied tackling violent crime.

"The negativity towards older Australians appears widespread and is likely to emerge in a number of different ways," says Betty Roberts of the Catholic Women's League. "When you are first treated like a silly old cow, it is offensive but after a while you just accept it as inevitable—although it does not happen to men as much as it happens to us."

Mrs Roberts' husband is an academic. She says the first time he experienced what many old-timers are familiar with—"being treated like an idiot by the bank"—he came

home in shock. But as Mrs Roberts told him: "I've been putting up with that for years."

She believes the situation is getting worse and, with the larger part of the population getting on in years, she says the elderly are deserving of more respect. "It is particularly bad in nursing homes, where people who have achieved much in their lives are treated like children—or backward children, really."

The situation is harder for the aged who end up in hospital. Dr William Silvester works at the Austin Hospital in Melbourne and says he has seen numerous examples where doctors have ignored the wishes of older patients who do not want to have treatment if they begin to lose their minds.

"If the elderly person was not competent, the doctor was being pressured by the family to treat aggressively, to provide a treatment the doctor believed was either futile or not in the patient's best interests," Dr Silvester says. "Then the patient was subjected to suffering treatment for days, weeks, months or years simply because the doctor is scared of being taken to court."

Unfortunately, there is even official age discrimination under the law: Sixty-five year-old Malcolm Burton of Perth was shocked to discover that WA's Safety, Rehabilitation and Compensation Act discriminates against workers aged 65 and over. Mr Burton was injured at work when he was 62 but three years later was told that after his 65th birthday he had no cover under workers' compensation.

"It is also my understanding that a worker injured between his 63rd and 65th birthdays is limited to 104 weeks of compensation for loss of wages resulting from the injury,"

GROWING OLD: *Within 30 years, one in five Australians will be aged over 65.*  
Photo: Jupiterimages



he told a House of Representatives committee. “The effect of this legislation is that I will lose many thousands of dollars in earnings purely because of my age.”

As Peter Slipper (Member for Fisher, Qld) has noted, an ageing Australia presents a host of these sorts of challenges for government, most obviously in relation to the provision of services. As chair of the House of Representatives Legal and Constitutional Affairs Committee in the last parliament, Mr Slipper said a key challenge would be to ensure the legal system adequately met the needs of older Australians in the same way it should for all other Australians.

In 2006, then Attorney-General Philip Ruddock asked the committee to report on the adequacy of current laws relating to the legal needs of older Australians. The committee was to investigate fraud, financial abuse, general and enduring power of attorney provisions, family agreements, barriers to older Australians accessing legal services, and discrimination on the basis of age.

Over the following months, the 12-member committee held public hearings in Canberra and all the state capitals, as well as in Buderim on the Sunshine Coast. Apart from listening to individuals and representatives from a wide range of groups during the hearings, the committee also received 157 submissions, 14 supplementary submissions and 170 exhibits.

Just before the date of the federal election was announced last September, the committee published its report—*Older people and the law*—a 268-page document with 48 recommendations. These included calls for the Australian Institute of Criminology to investigate fraud and financial abuse against the elderly, as well as proposals for state and federal attorneys-general to examine ways of standardising state laws relating to retirement villages and powers of attorney. Other recommendations were to develop a national register of those holding powers of attorney and to implement a nationally consistent approach to the assessment of a person’s mental capacity to give others the legal right to act on their behalf.

The instances quoted above of elderly people enduring the contempt of younger adults, mistreatment by the medical profession or discrimination under the law simply because of their age were among the submissions received and the personal statements made to the committee. In its report, the committee notes that unlike some other countries, there are no specific laws in Australia dealing with what might be broadly classed as ‘elder abuse’.

But it says a number of overseas jurisdictions have introduced a legal speciality—‘elder law’—particularly in America, Britain and Canada. In the United States, elder law is a major area of legal practice and most American states have their own legislation aimed at protecting the interests of older people.

As the NSW Public Trustee said in a submission: “Having lawyers specialising in elder law and devoting their practice to this area is a must for our ageing community.”

In its report, the committee notes that elder law is an emerging new field of legal specialisation in Australia, although the University of Western Sydney is the only one with a centre specialising in elder law. “While it is taught as an elective subject to undergraduate students, the university is looking at developing a course in elder law that would be suitable for legal practitioners, trust officers, basically to



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meet the demand in the community from all walks of life and within academic circles to look at issues surrounding elder law.”

The Law Institute of Victoria told the committee that interest in elder law was increasing in the profession but, as it was a relatively new field, there were few specialists and a paucity of elder law courses.

A number of the submissions argued there were specific characteristics of an older person’s engagement with the law that warranted action to ensure the elderly had equal access to it. Although not all these characteristics are unique to older people, the report says they nevertheless highlight the need for special services other than what the rest of the population might require. In particular:

- they experience high levels of “disengagement and social exclusion” and those with legal problems often have a sense of powerlessness and are unwilling to take action;
- they utilise informal sources of information and established contacts rather than seek professional advice—yet their legal needs span a broad range of areas;
- they may not recognise that they have legal rights and there is often an intersection between legal and non-legal matters; and
- older people are not a homogenous community: there are significant socio-economic and cultural differences between various groups of the elderly.

**ATTRACTIVE TARGETS:**  
*Elderly Australians with high levels of savings can be at increased risk of fraud. Photos: Jupiterimages*



The committee's report says the legal issues most often associated with older Australians, namely those involving succession planning and substitute decision-making through assigning a power of attorney to a relative or friend, are matters all Australians should be aware of and should address as early as possible in their lives. The report points out, however, that most people do not tackle these issues until later in life, if at all, and often when they do, action is taken precipitously and without proper advice.

Ms Patricia Reeve of the Council on the Ageing's Over 50s told the committee: ". . . the problem with age discrimination and the negative stereotyping, where it is strongly expressed and accepted by everyone as normal, is that it creates a fertile ground for abuse and other crimes against older people".

In the report, the committee mentions an example of one form of abuse experienced by some of the most vulnerable members of the Australian community—those suffering from Alzheimer's or other forms of dementia. It involved a son who was looking after his elderly father's financial affairs using an enduring power of attorney while also managing his father's pension under a nominee arrangement. Both the nominee form and power of attorney were signed by the father well after the family doctor said he was not competent to do so.

To collect more money, the son failed to notify Centrelink that his father lived with him and that he was renting

the father's house for a considerable profit. Centrelink discovered the situation and demanded \$12,000 from the father because of the overpayment. The son knew he would not be responsible for any debt under Centrelink legislation but he decided to leave anyway and dropped the father off at his sister's house, emaciated and with only the clothes he stood up in.

Before the Adult Guardian could get involved in the retrieval of the rent money and protecting the remaining assets, the son had sold the father's house and moved interstate.

Despite such outrageous instances, the report says in the vast majority of cases elderly people are treated properly by their families. Research also reveals that older people are less likely to be the victims of criminal activity than other segments of the population and they face far lower risks than other age groups for personal offences such as robbery, assault, sexual assault and homicide.

Similarly, risks for older people are also lower for crimes such as burglary and motor vehicle theft. As the Australian Institute of Criminology explained: "It is not old age itself which reduces the risk of crime but some of the factors associated with it; for example, the tendency to spend more time at home, to live in more secure forms of accommodation, and to not own a motor vehicle. However, some groups of older people will be more at risk than others, as is the case for all Australians."



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The institute said consumer fraud occurred more frequently than other types of crime and was more than twice as frequent as assault or theft—and 13 times more frequent than robbery. This was because many older people had significant levels of accumulated savings and investments, thereby increasing the risk of fraud.

“Older persons often have substantial assets to invest and this may make them attractive targets for investment fraud,” the AIC said. “In arranging to invest their funds, they often rely on professional advisers—lawyers, accountants and investment advisers—some of whom may act unprofessionally. Older people may also be defrauded by the activities of investment brokers, many of whom are unlicensed and unqualified.”

The Country Women’s Association of NSW told the committee that older and less mobile people tended to keep large sums of money in the house—one reason being it was more difficult to access banks or other financial institutions every week and often a fee was charged if more than a certain number of face to face transactions took place in a month. Secondly, many older people did not use electronic methods to pay bills and could keep large sums of money in the house, making them an easy target and vulnerable to fraudsters.

“No paper trail, no cheques to trace, just quick cash payment,” the CWA said, noting there was also the situation of women living longer than men. Some women, “still today”, had had little or no contact with tradesmen, cheque books, bank accounts and money in general until they found themselves widows, and then suddenly had the responsibility their late husbands had undertaken.

Perhaps the Human Rights and Equal Opportunity Commission best sums up the situation facing older Australians when it makes these points in its submission:

- Age discrimination is prevalent in Australia; widespread reports of age discrimination are not commensurate with the small number of complaints registered by anti-discrimination agencies as many [older people] are wary of making a complaint.
- The experience of age discrimination generates enormous personal distress. Older people frequently feel demeaned, rejected or ignored on the basis of age.
- There are considerable barriers to preventing age discrimination. Prejudicial stereotypes about older people form a significant part of this problem.
- On its own, Australia’s Age Discrimination Act is limited in its effectiveness in preventing the elderly being discriminated against in the community.
- There is little awareness among employers of the benefits of recruiting older people such as higher productivity, lower recruitment costs and higher retention rates.
- Older people want public education that is positive about their contribution and role, and are concerned that campaigns focusing solely on the complaints process could have a negative impact.

In the introduction to its report, the House Legal Committee says: “It is all too easy to stereotype older Australians as being frail, easily duped and in need of protection and assistance in managing their day to day affairs. While some older Australians do indeed need assistance, many are living vital, fulfilling lives, are active within their

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local communities, and are making significant contributions to Australian society.” •

The *Older people and the law* report by the House of Representatives Legal and Constitutional Affairs Committee is available at [www.aph.gov.au/house/committee/laca/olderpeople/report.htm](http://www.aph.gov.au/house/committee/laca/olderpeople/report.htm) or for more information email [laca.reps@aph.gov.au](mailto:laca.reps@aph.gov.au) or phone (02) 6277 2358.

## ADVANCE PLANNING FOR THE ADVANCING YEARS

Legal planning is a crucial issue for people with dementia and their family carers, says Anne Eayrs, national policy officer with Alzheimer’s Australia.

Ms Eayrs says Alzheimer’s Australia welcomes the *Older people and the law* report. She says the report’s recommendations, if implemented, could give people with dementia a better opportunity to protect themselves and make decisions about their own future.

“Planning is important because at some point in time the symptoms of dementia will take away legal capacity to make such things as a will, or the ability to consent to medical treatment,” Ms Eayrs says. “Approximately 50 per cent of all referrals to guardianship tribunals relate to people with dementia and most of the time the referrals are due to a lack of legal, financial and care planning.”

She notes that the report highlights the existing confusing and inconsistent power of attorney legislation across Australia and says this has very real and adverse effects on individual lives. The committee’s recommendations seek to change this by calling for uniform and consistent legislation.

“Advance planning is important for everyone and consistent legislation will make the law less complex and assist people to more easily plan for their future,” Ms Eayrs says. “The recommendations relating to education and support programs for legal planning will benefit all Australians, not just people with dementia.”

The report’s recommendations strongly endorsed by Alzheimer’s Australia include:

- uniform legislation on powers of attorney;
- a national registry of powers of attorney;
- a community education campaign; and
- ensuring that doctors and lawyers have been consulted in the advance planning process.

More information on legal planning is available at [www.alzheimers.org.au/legal](http://www.alzheimers.org.au/legal) or call the National Dementia Helpline on 1800 100 500.