



RECEIVED
20 FEB 2007
BY: LACA

Submission No. 112
Date Received

INQUIRY INTO OLDER PEOPLE AND THE LAW

CAXTON LEGAL CENTRE INC.

Caxton Legal Centre Inc.
28 Heal Street
New Farm Qld 4005
Phone: 32541811
Email: Reception@caxton.org.au

	Page
1. INTRODUCTION	
1.1 Background to this Submission	3
1.2 Caxton Legal Centre Inc.	3
1.3 Queensland's Ageing Population: client-group profile and statistics	
1.3.1 Numbers of older people	4
1.3.2 Income of older people	4
1.3.4 Older people living with disability	5
1.4 Our experience assisting older people with their legal problems	5
2. ADDRESSING THE LEGAL NEEDS OF OLDER AUSTRALIANS	
2.1 Research and data collection	7
2.2 Barriers to older Australians accessing legal services	8
3. FINANCIAL ABUSE	
3.1 Granny flat and/or living with relatives	11
3.2 Property provided by elderly parent in exchange for promises of care and support	12
3.3 Operation of electronic banking	14
3.4 Physical threats and obtaining funds/benefits	14
3.5 Forms of assistance required to assist victims of financial abuse	
3.5.1 <i>Rehousing.</i>	15
3.5.2 <i>Legal Assistance</i>	15
3.5.3 <i>Assistance dealing with Centrelink</i>	15
3.5.4 <i>Short-term Counselling and other referrals</i>	16
3.5.6 <i>Suggested considerations in relation to financial abuse</i>	16
4. FRAUD	20
5. 'POWER OF ATTORNEY' PROVISIONS	22
5.1 Overview	22
5.2 Enduring Powers of Attorney (EPA)	23
5.3 Advanced Health Directives	25
6. FAMILY AGREEMENTS	25
7. DISCRIMINATION	26
8. CONCLUSION	26
8.1 Overview	27
8.2 Recommendations	29

1. INTRODUCTION

1.1 Background to this Submission

This submission is prepared in response to an invitation issued by the House Standing Committee on Legal and Constitutional Affairs' Inquiry into older people and the law.

The terms of reference of the report are stated as follows:

"to investigate and report on the adequacy of current legislative regimes in addressing the legal needs of older Australians in the following specific areas:

Fraud

Financial abuse

General and enduring 'power of attorney' provisions

Family agreements

Barriers to older Australians accessing legal services; and

Discrimination."¹

Caxton Legal Centre Inc. is responding to these matters having specific regard to the issues raised by our own clients' experiences in this area of law.

We welcome the Commonwealth Government's decision to conduct an inquiry into this most serious issue that affects so many Australians and look forward to any further opportunity to comment on these issues.

1.2 Caxton Legal Centre Inc.

Caxton Legal Centre Inc. (the Centre) is Queensland's oldest non-profit, community-based, legal service. Established in 1976, the Centre operates free legal advice and information services, specialist legal casework services (including an advice program for seniors experiencing domestic violence), three clinical legal education programs and social work support services.

In addition, the Centre undertakes community development activities and extensive community legal education and is a well-respected publisher of several major legal works, including the *Queensland Law Handbook*, the *Lawyer's Practice Manual* and the *Incorporated Associations Manual*, as well as fifteen self-help kits. Finally, the Centre undertakes law reform activities in areas of law relevant to the community we service.

¹ House Standing Committee on Legal and Constitutional Affairs Terms of Reference.

The Centre employs 11 effective full time staff (including 6 lawyers, 2 social workers and a publications coordinator), but this will soon be increasing to approximately 19 workers due to an increase in the grant to our SAILS (Seniors Advice and Information Legal Service) program. However, the majority of our direct client services are provided by more than 200 volunteer solicitors, barristers, academics, trainee lawyers, law clerks and law students who generously give of their time in assisting the Centre to further its aim of promoting 'access to justice'.

Caxton Legal Centre Inc. (the Centre) provides approximately 7,500 referrals and legal information services each year, as well as legal advice on more than 5,000 occasions annually to both individuals and other community organisations.

The majority of our clients are economically and/or socially disadvantaged in some way and over a third are in receipt of Centrelink benefits. For many of our clients, especially our retired clients, their Centrelink benefits are their only source of income.

1.3 Queensland's Ageing Population: client-group profile and statistics

1.3.1 Numbers of older people

In 2000, Queensland had 408 000 people aged 65 years or more. This represented 11.5% of the total population in Queensland. In several areas within the South East corner of the state, the percentages were higher than 11.5%, evidencing the existence of popular retirement areas.

In 2005, the Australian Bureau of Statistics (ABS) released a document entitled *Ageing Well, Queensland, 2005* which includes data about population projections for the future make up of the Queensland population. The number of people aged 50 years and over is projected to increase from 30% of the population of Queensland in 2006 to 46% of the population of Queensland in 2051.

1.3.2. Income of older people

In the 2001 Census, 60% of Queenslanders aged 65 years and over, and 30% of Queenslanders aged between 50 and 64 years reported a weekly income of between \$120 and \$299. Of the remainder of people aged 65 years and over, 16% reported a weekly income of between \$300 and \$499. (ABS 2005).

The Ageing Well document also reveals that many older Queenslanders own their own homes. It is clear, however, that this money which is tied

up in home ownership and is not available as expendable income for older people.

1.3.4. Older people living with disability

Many older people are living with disability. The Australian Bureau of Statistics reveals that in 2003 Australia-wide 51% (8.7% of the total population) of people aged 60 years and over reported having a disability. This is much higher than the 20% of the general population (including those 60 years and over) who reported having a disability. These figures jump dramatically to 84% for people 85 and over (ABS 2003). Of those people aged over 90 years old, the disability rate is 94%. A total of 41% of all people aged 60 years and over needed assistance because of disability or old age (ABS 2003).

1.4 Our experience assisting older people with their legal problems

Caxton Legal Centre Inc. has always advised clients of all ages and we have tended to develop expertise in areas of law typically described as falling within the general arena of 'poverty law'. Our clients are typically the most marginalised members of the community and their legal needs are often a direct result of poverty. Age, health problems, lack of education and ethnicity are also recurring factors.

The centre's lawyers advise clients about an extremely wide range of legal matters, including family law, criminal law, disputes around substituted decision making, discrimination, financial abuse, neighbourhood disputes, debts and consumer complaints, property disputes, accommodation agreements, contracts, motor vehicle accidents, employment disputes, management/membership of non-profit organisations, other administrative (including Centrelink and Department of Housing) disputes and other civil law issues.

Of specific relevance to this enquiry are the issues we have identified through our work with older clients.

We have always worked with older clients but we began to formally provide targeted services for older people in 1998. This started with our generalist 'Legal Outreach For Older People' (LOFOP) service pilot program that ran for approximately 4 years. LOFOP was established under a special grant from the Queensland State Government during 'International Year of the Aged Person' in 1998 and involved one solicitor being employed to run outreach legal services at various respite services around the outer areas of Brisbane (Ipswich, Cleveland and Deception Bay) as well as in 2 other areas with high numbers of older residents – New Farm and Chermside. Sadly, despite our lobbying at

both State and Federal levels, we were unable secure ongoing funding for LOFOP after 2003 and that valuable service had to close.

Fortunately, we were able to attract funds to establish our SAILS program in 2005. Of particular significance is the fact that the workers in SAILS provide assistance specifically to elderly clients who are the victims of financial abuse and many of these clients have some level of diminished capacity. This adds an addition level of complexity to the SAILS work. These cases generally require careful consideration of the provisions of both *The Guardianship and Administration Act (Qld) 2000* and *The Powers of Attorney Act (Qld) 1998*. Accordingly, we have unique expertise in advising older clients about the issues listed in the terms of reference for this investigation.

It is worth noting that the Qld Department of Communities has seen fit to commit \$1.9million to fund a one year pilot for an older person's legal service in Brisbane (at Caxton Legal Centre Inc.), Hervey Bay, Toowoomba, Townsville and Cairns.

Approximately half our work involves civil law. Approximately 12.5% of our work over the period 1/7/03-30/6/06 has been with people over the age of 60 (ranging from 60 – 103 years of age); over 2% of our direct client work has been in the field of guardianship/power of attorney disputes, and over 75% of the referrals to our SAILS program in the 2005/2006 year have involved financial abuse against older people. Unfortunately, due to the way in which our data system operates we are unable to obtain detailed statistics on all our client matters, however, it is certainly the case that we also regularly advise grandparents about family law disputes involving grandchildren and many of our wills and estate enquiries and consumer complaints (particularly those involving services rendered by tradespersons) come from our older clients. We have also observed that many of our 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 systems abuses. The appropriate remedies for some clients often involve complex trust questions and would involve costly court litigation to resolve the problem.

In the last three years we have seen 1,047 clients aged over 60, including 652 clients between 60 and 69 years of age, 268 clients aged between 70 and 79, 111 clients aged between 80 and 89 and 16 clients aged between 90 and 97 years of age. Some clients have been assisted through home visits and our outreach programs (particularly in the oldest age range), whilst other clients have physically attended at our Centre for service.

Finally, it must be noted that because we provide advice in areas of law which are not traditionally considered commercially viable by the private legal profession, clients often approach us for advice purely because of our experience in certain areas of law. This certainly appears to be true for many of the older clients we see who seek specific advice about substituted decision making, guardianship, financial and property disputes, estate planning and related disputes.

Service providers who work in related fields with a very broad client base often also refer clients to our specialist SAILS program. Accordingly, we do see a number of clients who come from outside our disadvantaged client group – at least for an initial interview. We therefore have the opportunity to assist a socially, economically and geographically diverse group of aged clients with their various legal needs.

2. ADDRESSING THE LEGAL NEEDS OF OLDER AUSTRALIANS

2.1 Research and data collection

It is our view that further research is required in order to properly understand the issues surrounding the legal needs of older Australians. It is apparent that, due to the numerous barriers that older people are confronted with, many do not even seek to raise or identify, their legal problems, let alone attempt to obtain legal advice about their rights and options for remedying the situation. This phenomena significantly hinders the collection of data. Similarly, we have learnt that older people do not usually self identify that they have legal rights or a legal problem, as such, when older people do attend the centre they often present with issues relating to others such as family members rather than seeking assistance for their own problems. We have found that when issues of abuse are present, guilt, loss of informal care arrangements and shame are factors which contribute to the hidden nature of the problem and prevent older people expressing a need for assistance. Careful consideration needs to be given as to how better data can be obtained about this issue.

A model that could be used for research is the model of the proposed American Elder Justice Resource Center and Library, which promoters argue will be a means to provide “information for consumers, advocates, researchers, policy makers, providers, clinicians, regulations and law enforcement [and is intended to include...] a national data

repository developed to increase the knowledge base and collect data about elder abuse, neglect and exploitation.”²

ANPEA, or the Australian Network for the Prevention of Elder Abuse, which was formed to “act as a forum for sharing information about new developments, ideas and approaches in the identification, prevention and response to the abuse of older people in Australia and internationally”³ is an Australian body which could be used for a similar purpose as the American Elder Justice Resource Center and Library. .

In collecting data, special care needs to be given to ensure that minority disadvantaged groups of older people are properly included in the catchments for research and policy development. For administrative purposes, we class our older clients as those clients aged over 59 years of age, although in some circumstances, issues affecting older Australians also affect those who have opted for early retirement and those who are unable to work due to illness or other disability. Given the average life expectancy of indigenous Australians and the statistics concerning the early onset of health problems in certain Aboriginal communities, we believe that to properly identify the issues affecting older indigenous clients, a lower age limit should be used to identify their needs.

2.2 Barriers to older Australians accessing legal services

Before considering the actual legislative regimes addressing the legal needs of older Australians in the areas identified in this inquiry, careful consideration needs to be given to the barriers facing older Australians trying to access legal services.

We have noticed a number of recurring trends amongst our older clients’ behaviours, although it should also be said that some of our conclusions are informed purely by anecdotal evidence from our clients about their concerns and needs.

We have identified the following barriers:

a) Mobility Difficulties, Ill Health and Social Isolation

Many of our older clients face mobility problems due to ill health and physical frailty. Many no longer have a drivers licence and are dependent on family, carers, and friends to assist them to make appointments and to travel to and from their appointments with lawyers and other advisers. Apart from the difficulty of fitting their schedule to

² Tool Kit for Elder Justice Act Advocacy Work
www.elderjusticecoalition.com/docs/talking_points.doc

³ ANPEA’s Mission Statement

that of the person assisting them, this increased dependency makes older people more vulnerable to undue influence, bullying and elder abuse. Where older clients are living in abusive situations, where they are bullied or controlled by their carers, their carers may simply refuse to make arrangements which would allow them to get assistance – especially if they suspect the older person may be going to raise their concerns about their care with other independent parties. It should also be noted that many older clients display a dramatic loss in confidence as they age which reduces their willingness to seek legal help when they may most need it.

Older clients often experience difficulty using public transport and this can greatly diminish their independence and ability to attend to matters – such as obtaining legal advice – in a timely way. Public transport is often unappealing to the elderly outside certain hours for safety reasons, sometimes there is no available public transport or their may be long walks between transit stations and legal services. Taxis can be very expensive, depending on where clients live, and some clients need assistance getting in and out of vehicles, which they may not get from all drivers.

Another barrier caused by ill health is the fact that older clients living with chronic pain or illness seem to find it hard to sit for lengthy periods during interviews, giving rise to difficulties in both the giving of instructions to their legal representatives and the retention of the information provided. Where older clients need to take strong pain relief medications, capacity to give instructions or make decisions becomes a complex issue. This may result in a need for extra appointments and extra medical assessments, and this can make obtaining legal advice a slower and more costly process, which may prove a disincentive to such older clients pursuing legal advice or remedies.

b) Access to technology

Older clients are much less likely – when compared with the general population – to know how to use the internet or to have access to computers at home and some do not even have phones. This significantly disadvantages older clients in accessing information about their legal rights. In addition, older clients may have difficulty accessing information through printed materials and by making telephone contact with relevant information services due to failing eyesight and hearing. This, combined with mobility difficulties means that older clients become increasingly reliant on obtaining advice and gleaning information about legal issues “third hand” – that is, by asking

neighbours and family to find out answers to questions for them – and often, in turn, receive misinformation.

c) Lack of Financial Resources

As the financial reserves of older clients gradually dissipate so that their only source of income is their aged pension, their concerns about having sufficient funds to meet their living needs increases and they are either loath to spend funds obtaining formal legal advice from private solicitors or they are simply unable to afford to pay for advice – some being unable to pay even the public transport costs to get to a community legal centre.

d) Lack of Suitable Services and Facilities

There are currently real limitations on the available forms of service delivery for older people needing legal advice and assistance. Even community legal centres, which are generally considered very accessible for clients, are sometimes unsuitable for older people due to evening operating hours or a particular client's need for home visits or longer appointments than those that are usually available.

Furthermore, we have observed that older migrants (especially women) are particularly vulnerable to financial abuse but in addition to the sensitive and often complex cultural issues that block some of these clients from seeking (or pursuing) legal assistance, the practical difficulty of accessing interpreters on a regular basis is a significant barrier to justice for such clients.

Similarly, there is a real lack of expertise within the legal profession and related services generally about the law specifically affecting older people and the complex issues which might arise (for example, issues of legal capacity and an understanding about elder abuse).

The lack of free or low cost 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 is a real barrier to older people accessing legal assistance. Interpreters also need to be made more freely available. This situation needs to be remedied on an urgent basis.

3. FINANCIAL ABUSE

Key instances of financial abuse that we have encountered involve “granny flats” agreements and other agreements whereby property is provided by the elderly parent in exchange for promises of care and support. The abuse of powers by attorneys (specially discussed in

section 4) is another key problem associated with how financial abuse occurs. In a smaller number of cases that we have seen, physical violence has been used to extort money/benefits from older people – often by younger relatives.

The group of older clients most vulnerable to financial abuse appear to be those who have dementia (especially those experiencing the early onset of dementia); those who are immobile and therefore reliant on assistance from relatives/carers/associates; people from culturally and linguistically diverse (CALD) backgrounds; and others with English literacy problems.

3.1 Granny flat and/or living with relatives

A common scenario we encounter typically tends to unfold as follows: The elderly parent loses their spouse of many years. In their grief and loneliness, the adult parent and the adult child or children decide that the family home should be sold and that the elderly parent should live with the adult child.

In many cases, the proceeds from the family home are paid to the adult child to enable a granny-flat to be built and or alterations to be made to the house. This often originally occurs with the best of intentions and with genuine regard to the needs and welfare of the elderly parent.

However, in the majority of cases, the parties enter into these arrangements without a discussion around the thorny issues of what should happen in the event of changes. Most importantly, there is often no documentation evidencing even the basic main transaction. In our experience, title deeds do not reflect interests supposedly being transferred to the aged parent/s.

Following a period of disharmony and unhappiness, the elderly person may decide that they have to leave the home of the adult child.

The elderly parent now needs to re-house and to 'get on their feet' financially. Often the elderly parent has very little money available to them. The elderly parent may then ask that the adult child to reimburse them for the money that has been put into the adult child's house.

The adult child refuses to pay the money back, saying that the money for the house was a gift and can not be refunded or that the agreement has been frustrated by the actions of the elderly parent as a result of their failing health or decision to leave the house.

In some of our worst cases, older clients have also been forced to pay rent after paying to have the granny flat/enclosure established.

In some cases, the elderly parent will have managed not to have created Centrelink problems for themselves as a result of giving the money to the adult child. Centrelink does recognise many granny-flat arrangements as being legitimate and the arrangements will not impact on their Centrelink position. However, the difficulty for some clients is that Centrelink may not recognise their inability to access the money that was put into the home of the adult child.

In one particular case of which we are aware, the elderly parent had sold her house and given \$400,000 (the proceeds of the sale) to her daughter. The client was living with the daughter but when this soured, she was forced out. The daughter would not return the money to the client and the client was not willing to press through litigation for the return of the money because of the impact on the possible reconciliation with her daughter. Centrelink was not prepared to give the woman a full pension and neither was she eligible for a concessional nursing home bed. The client was virtually without means of support and homeless.

In some cases, the family is wholly intact, but problems arise where the adult child and/or his or her spouse are in serious financial difficulty and the property ends up being pursued by creditors or the trustee in bankruptcy. It becomes practically impossible for the older person to protect their interest in such situations. Similarly, sometimes matrimonial property proceedings see the aged parent investor in the family home suddenly homeless and fighting to prove that his/her financial contributions were intended to be more than a gift.

We consider that significant resources should be put into educating people about the need to secure a registered interest in the title of a property, preferably by becoming a registered part-owner (or at least by lodging a consent caveat on the property in relation to the investment/loan), when they make such granny flat investments. We also argue that the Family Law Act could be amended to provide for a simplified procedure (like the current Form 11 consent order application or like the old Section 86 agreements) whereby terms of granny flat investment/loan agreements between older people and an adult child and his/her spouse can be registered with the court and can later be relied on in any matrimonial property proceedings where there is also dispute about any alleged interest of the aged parent.

3.2 Property provided by elderly parent in exchange for promises of care and support

It is also common for the elderly parent to transfer their house or a share in their house to an adult child in exchange for promises that the adult

child will care for them in their old age. Many elderly people have an overwhelming fear of being forced from their home into a nursing home and as a result are very anxious to secure commitments from family members.

It is not unusual upon the death of a spouse for an elderly parent to make the adult child a joint tenant to their property. This occurs, without the adult child actually contributing any money to the property. The gift is often made in exchange for the vague commitment of the adult child to provide company and support to the remaining surviving parent.

If the relationship with the adult child deteriorates, the elderly parent may be forced out of their own house. A hospital admission may be the trigger for the adult child to tell the elderly parent that they cannot return home and the elderly parent is left homeless.

The legal remedy is more straightforward for an elderly person in this situation as they will still hold a legal interest in their former home. The remedies will probably include an application for the appointment of a statutory agent for sale. The litigation process is still costly and traumatic for the elderly person and until such time as the litigation is resolved, there may need to be arguments with Centrelink regarding entitlement to a pension and rental allowance. Centrelink will not accept readily that the person cannot access their interest in the home and that they are in need of rental assistance and or a pension.

Conversely, significant hardship can be faced by an adult child (who may actually also be a senior him/herself) who has foregone his/her own career and other financial opportunities to move home to care for an ageing parent. We have seen a number cases where the aged parent is aged 80-90+ and the carer adult child (aged around 60+) has agreed to take on the care role of the aged parent in exchange for a promise that they will receive an interest in the property *or* inherit it *or* can stay on in the family home. The property transfer and/or will, however, have never been finalised. Sometimes it may have been changed without the knowledge of the adult child (including occasionally in suspicious circumstances where capacity is in issue). Upon the death of the parent, the siblings or other beneficiaries swoop in to sell up the home under an intestacy or a suspicious new will or an old will that was made prior to the changed circumstances precipitating the adult child's moving home on the basis of a verbal promise of 'provision'. The only available remedy in these circumstances is a family provision claim, which is costly, stressful, time consuming and uncertain.

In part 6 below, this submission deals also with the question of family arrangements and their viability. At this point, it should be noted that

such arrangements would themselves be open to abuse and exploitation. However it is also the case that many older people express frustration at their inability to enter into legal arrangements that would see them being cared for by family members in their 'old age'. There is also potential for the exploitation of the carer relative if other family members challenge their entitlement to the share in the elderly parent's home, as explained above. There have been cases based on equitable principles of unconscionability taken by the carer relative against the elderly person or their estate where care has been provided but promises of financial reward have not been carried out.

3.3 Operation of electronic banking

We are aware of certain cases where elderly clients have provided support persons with their electronic Pins in order to help facilitate provision of grocery shopping by the relative/friend/neighbour and that person has taken money from the elderly person's account.

We consider that banks should be required to monitor large or unusual withdrawals from pensioner's accounts – by at least bringing these facts to the attention of the account holder.

3.4 Physical threats and obtaining funds/benefits

Many of the cases with which we deal often involve extremely subtle forms of financial abuse. Occasionally we also see cases where violence is overt and physical in nature and is used to obtain access to funds or other financial benefit. Though this is a State issue, we submit that all such issues should be monitored for collation of research and development of policy at the federal level.

A scenario we have encountered several times involves the elderly person being threatened into providing accommodation to a wayward grandchild/child/spouse of an adult child etc. One case involved a drug addict who refused to leave his aged relative's home and who continued to frighten the aged relative into supporting him and providing him with funds. He continued to leave used needles around the home and threatened to take revenge against his aged relative if that person tried to take any action to evict him.

In another case we have encountered, the adult child of the elderly homeowner began a relationship with a difficult person who moved into the aged person's residence, bringing along an entourage of various threatening hangers-on. Threats were made to the effect that should attempts be made to remove the person from the home, damaging conduct would ensue.

Law enforcement agencies need to be provided with more resources as well as specialist training in order to deal with such complaints in an effective and sensitive fashion.

3.5 Forms of assistance required to assist victims of financial abuse

SAILS have now been operating for over three years. It is in a unique position to assess the types of assistance required by victims of elder abuse. We submit that victims of abuse need the following:

3.5.1 Rehousing

Rehousing can be made difficult if the elderly parent has particular health matters – for example, if they need a ground floor house or unit that is close to medical facilities. It is often difficult for elderly people to find appropriate and affordable short-term accommodation. Older clients need more services such as SAILS that can assist in (a) referring people to housing services, (b) making direct enquiries about such facilities, and (c) helping with the completion of documentation required for the Department of Housing or other housing providers.

3.5.2 Legal Assistance

Older people need to be able to access legal service promptly. There is often a need for immediate negotiations to be undertaken to try to regain the elderly person's right of occupation of his/her property. Relatives may agree to the return of the elderly person when it becomes apparent that outside agencies are supporting them.

Negotiations can also assist with the recovery of belongings from the relative. Services such as SAILS are necessary to assist with applications for domestic violence orders or the referral of situations of fraud to State Police.

In the event that ongoing legal services are going to be required to address the elderly person's loss of money or property, older clients need assistance in seeking pro bono legal services. Unfortunately it is very difficult to obtain pro bono services for people. Many of the claims that arise in this area are in the nature of equitable claims and involve fairly complex litigation and firms are reluctant to take on such difficult work on a pro bono basis.

3.5.3 Assistance dealing with Centrelink

Services such as SAILS assist elderly persons to access Centrelink benefits and other government allowances. In some situations, SAILS can act as a conduit of information between the elderly person and Centrelink and

can also assist in the completion of applications to Centrelink for consideration of the hardship test. It is the experience of our SAILS' workers that Centrelink can be very difficult to engage in these types of matters and that the hardship test is applied very rarely. Services such as this SAILS service are vital for elderly clients.

3.5.4 Short-term Counselling and other referrals

Many victims of elder abuse have been subjected to a variety of forms of abuse including emotional, physical, and financial abuse. The breakdown of the relationship with the adult child often leaves them bereft and emotionally overwhelmed. Our clients are often dealing with grief, loss, guilt and depression at the same time that they are trying to deal with the legal consequences of the relevant abuse. The short-term needs of such clients can be very demanding, particularly if there are issues of borderline or fluctuating capacity to deal with.

We are able to provide some short-term counselling for clients through our SAILS team; however, extended services are necessary in order to deal with the number of clients accessing the service. At this stage, SAILS is unable to provide the long-term counselling that is badly needed by many clients, and referrals are currently made to other services. Facilities and services for long-term counselling need to be urgently made more available.

SAILS often acts as a point of call for a concerned friend or relative of an elderly person who may be at risk of abuse, and our SAILS team sometimes identifies that a matter should be referred to the Office of the Adult Guardian because the adult concerned has impaired capacity. In other situations, we refer cases to other counselling services or specialist private law firms. Facilities that can provide informed appropriate referrals are vital in this area.

3.5.6 Suggested considerations in relation to financial abuse:

There are a range of interventions available for consideration by government ranging from those involving minimal interference with the affairs of elderly people and their families to those involving high levels of intervention that could see many aspect of the older person's life falling under the scrutiny of government agencies.

Minimal Interventions

Elder abuse, particularly financial abuse, affects possibly as many as 6% of our population. It appears to us that if minimal legislative changes are made to cope with elder abuse, these interventions are likely to be

reactive rather than preventative. Some of the reactive changes that could be made include:

- **Changes to the Centrelink hardship test** to enable Centrelink to recognize victims of elder abuse and to enable greater latitude in situations where the elderly person may have been subjected to undue influence in the way they have arranged their affairs and where they meet certain other requirements. Centrelink should also undertake training to ensure that their staff is aware of the prevalence of elder abuse to enable their officers to recognise the signs. This would be particularly helpful to Financial Information Services Officers who often have contact with clients at a point at which they are considering how to structure their affairs. Centrelink has a great deal of literature regarding the deeming rules and deprivation rules. However, a great deal of the literature is written in font and format that make the information inaccessible to many elderly people. Centrelink could consider making its information easier to understand by delivering it in a way that is more readily understood;
- **Expansion of legal services for older people.** Older people find accessing legal services to be difficult for reasons of driving difficulties, ill health, frailty, and a combination of physical impairments that make using public transport difficult. SAILS is a community based legal service and its funding enables a motor vehicle to be used to make home-visits. Ideally legal services based on the SAILS model would be set up on a national basis. The legal services could provide assistance with a broad range of legal issues affecting older people including claims arising out of elder abuse. Community legal services are generally not sufficiently well-funded to enable them to manage a great deal of litigation, however, this is an area that could be undertaken by community legal services if funding were increased to deal with this level of case-work. We submit that recurrent 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 funding packages.
- **Creation of health advocates within hospitals for people over 70.** At the moment there is nothing for older people once they get into the hospital system apart from basic social work support. From our observations it seems that hospital social workers are already dealing with a huge range of issues and are chronically under-resourced. Specialist health advocates could deal with the following sort of issues:

- ensuring that the existence of advanced health directives is noted by the hospital and adequately recorded and acted upon;
- advocating for the older person in their dealings with medical staff if decisions are been made that are not in accord with their wishes;
- advocating on behalf of patients who are faced with making a move to a nursing home or other facility that they are not happy with;
- acting as a barrier between lawyers trying to gain access to patients at the instigation of relatives ;
- identifying potential situations of elder abuse and providing the patient with information that may assist them;
- providing information to patients regarding the guardianship regime;
- providing the patient with support in accessing appropriate legal support;
- identifying law reform issues that could be monitored by a nationally funded *Elder Justice Resource Centre*.

The role of such 'health advocates' would be different from the role of social workers because it would be focussed on elder law issues and protection of people over 70. Ideally the advocates would not be employed by the hospitals but by some other federal body so that they were able to operate independently of the hospital hierarchy and not forced to adopt positions as a result of pressure from medical staff. Arguably, responsibility for funding such positions already falls under the brief of the Department of Ageing.

- **Changes to the Legal Aid assets test and appropriate grants of aid.** At present, Legal Aid does not have any grants of aid that are helpful to elderly people. Currently a person having more than \$146,000 worth of equity in their home is ineligible for legal aid. This means that, even if there were available grants of aid, many elderly people who are home-owners would be unable to access legal aid. Over 70% of older Australians are reliant on a pension or other government benefit as their main means of support. They are not in a position to pay for private legal representation and yet, there is no legal aid available to them. We would suggest alteration of the guidelines of legal aid on a national basis, to enable grants of aid to victims of financial abuse. There is also a need for solicitors within legal aid to be provided with training to enable them to deal with the litigation that is common in the area of elder abuse such as equitable relief and the appointments of statutory agents for sale.

- **Greater scrutiny of transactions by banking institutions.** Banking institutions appear to be well-aware of the prevalence of financial abuse – particularly that arising through the misuse of enduring powers of attorney. However, it does not appear that banks are overly motivated to assist elderly clients who may wish to protect themselves against the risk of elder abuse. We note that there is precedent in America for the establishment by bank customers of a particular type of account under the terms of which the Bank will notify the customer of an unusual arrangement or dealing in their account. Elderly people may be prepared to pay for a banking service that enables a bank to notify themselves or some party other than their attorney or nominee in the event that there are unusual dealings in their account. It is conceivable that a customer may provide the bank with a general plan of the transactions that would take place within their account. In the event that there were unusual withdrawals not envisaged at the time that the customer provided the bank with the plan, the bank could contact the elderly person or, if the situation was serious enough, a third party or agency such as police.
- **Increased obligations on banks and lending institutions providing reverse mortgage loans.** We have found that many aged pensioners enter into loans, make gifts or encumber their homes through reverse mortgages without any knowledge of the impact on their Centrelink position and this can result in reduced or nil rates of pension or high costs on admission to age care facilities.

In our experience, older clients typically do not understand the spiralling nature of compound interest applied in reverse mortgages and by the time they realise their financial difficulties, there is nothing they can do to solve the problem. Given that banks and other financial institutions apparently lent some \$647 million dollars last year⁴ under such schemes, and these amounts are increasing dramatically each year, we recommend that it should be a requirement for any lending agency or bank dealing with transactions involving an aged pensioner to require a certificate of approval from Centrelink for transfers that are beyond a certain allowable amount per month.

We note that currently there are unreasonably high levels of charges and fees imposed by banks that are disproportionate to the services they provide – particularly where a client's only income is the Aged pension. Such fees should be restricted.

⁴ Carne Reidy Herd - Lookout 7 - Solutions for Older People April 2006

Of particular concern to us is the marketing and use of products such as Reverse Mortgages to elderly clients, without adequate information regarding the cost of the product/alternative products. Disclosure obligations associated with reverse mortgages should be made more stringent.

4. FRAUD

We have observed that older people are the victims of a wide variety of forms of financial abuse. Fraud, undue influence and unconscionable bargains, in particular, tend to form a suite of overlapping behaviours in this context and it can sometimes prove difficult to identify which cause of action should be pursued by a client. The appropriate civil remedies involve costly, time-consuming and stressful litigation. For a person in the latter stages of life, protracted court proceedings are often simply too great an impediment for them to be willing to commence action to pursue their rights. Furthermore, the burden of proof applied in criminal cases of fraud is difficult to satisfy and in our experience police are most likely to tell clients that their problem is a 'civil one' anyway. One of the major impediments to either form of claim is the fact that older clients may be unable to withstand the rigours of litigation – especially cross-examination. Failing memory, poor hearing/eyesight and other health conditions (heart problems and blood pressure etc.) make them even more vulnerable in the conduct of litigation.

There are numerous well known reported decisions relating to fraud perpetrated on older persons and we occasionally encounter quite startling stories involving fraud. For example, we are aware of one elderly person who allegedly transferred property into the name of a sex worker in exchange for ongoing care and affection. Taking steps to remedy that situation would obviously have been fraught with difficulty. We are aware of another case where it appears that a number of extended family members of an overseas-sponsored wife have fleeced an elderly vulnerable client of the majority of his life's savings and assets. Very recently we heard of a fraud perpetrated against the mostly elderly membership/management committee of a non profit organisation. In that case, an employee apparently advised the very trusting committee that sponsorship had been secured so that the organisation would not have to pay for utilities. Meanwhile the worker apparently linked a home business to the account and it appears that bills were kept from the committee's knowledge. When the worker resigned, the organisation received a large utilities bill for many thousands of dollars, which it cannot pay.

These scenarios exemplify the sort of bizarre behaviours which are typically associated with fraud. Indeed, one of the most difficult problems faced by clients is finding anyone to believe such stories.

Cases of fraud, undue influence and unconscionable behaviour often involve extraordinary fact situations and it is extremely difficult for older clients to find someone to believe them and to investigate their claims. Some clients will make initial complaints and simply give up their claims when they are fobbed off because people assume they have dementia. It is even more difficult when the clients do have some level of dementia but the fraud perpetrated against them is also itself an extreme fact situation.

Other clients have sometimes advised us of straightforward cases where they assert that their signatures have simply been forged or that their bank accounts have been accessed fraudulently etc. Fraud claims, as noted, are notoriously difficult to pursue. We tend not to hear what happens with such cases as we would normally refer serious cases of criminal fraud to the police. Situations where our clients assert that fraudulent promises were made to induce them into transferring property (typically a car or house) into another's name or where they were promised certain interests in exchange for payment (constructive trust situations) are probably more typical situations and tend to be complex and costly cases to pursue.

What is abundantly clear is that perpetrators of serious fraud generally go to extraordinary lengths to cover their deceptions.

We obviously have great concern for vulnerable sponsored wives who find themselves to be the victims of domestic violence upon arrival in Australia. However, we do also have certain concerns about the vulnerability of the aged persons sponsoring spouses and their families under immigration provisions. We consider that research should be carried out to ascertain whether or not fraud and elder abuse in relation to migration sponsorship is common and if it is, further investigation into how this problem can be addressed should occur.

Consideration could then be given to amending the Commonwealth *Migration Act 1958* to address situations where a sponsor becomes the victim of elder abuse. The problem as we see it, is that a vulnerable older person may effectively transfer all their savings/property to a sponsored wife's/husband's family under some business scam which they do not understand and may support them in obtaining residency, only to later realise that they have been duped. Once citizenship is obtained, the duplicitous family reveal their true colours and the vulnerable older person's only avenue to pursue recovery of their funds is likely to be through a costly and complex civil claim – where the legal costs may ultimately exceed the amount in issue. (A major impediment to such claims is also that it is difficult to establish an intention to be legally bound in 'family' arrangements.) The duplicitous family may have also perpetrated a fraud on the migration department but

because of the time limits involved, action cannot be taken. Some sort of investigative power should be given to the department to investigate and prosecute such cases of financial abuse involving elderly sponsors. Requirements for the making of restitution could be considered for inclusion in such a scheme.

We have particular concerns about sponsorship being undertaken by elderly people with psychiatric conditions who are vulnerable to such abuse. Careful additional screening of applications should occur where there is known history of such conditions, such as is likely to be the case with veterans suffering from post traumatic shock and other disorders. Specialist training should be given to people working with vulnerable sponsors to assist such potential problems to be identified early.

5. GENERAL AND ENDURING 'POWER OF ATTORNEY' PROVISIONS

5.1 Overview

We have found the fact that each State has different systems in this area to be quite problematic and we believe that power of attorney laws should be streamlined and unified.

But for that caveat, the introduction of Enduring Power of Attorney documents (EPAs) has, on balance, been a helpful innovation in estate planning and the proper care of persons who have lost capacity and we believe that all adults should be taught the value of such forward planning – particularly in relation to wills, EPAs and Advance Health Directives - and that such education should, in fact, begin in schools.

While we sometimes encounter abuse of EPAs, we tend to see even more problematic cases where people have never made an EPA. Family and friends in these cases suddenly find themselves embroiled in disputes with government officials at the office of the Public Trustee and the Adult Guardian and we regularly hear complaints from families who assert that their aged relative or friend had very particular views and preferences and that they are being prevented from caring for their loved one as was always intended.

If more people were educated about the value of EPAs so that they prepared them in a timely fashion and took steps to inform others about their wishes (preferably in a documented format) – and if more health providers (including hospitals) took greater care to ask questions about whether or not a patient has prepared an advance health directive and or an EPA, this should alleviate many of the problems encountered in this area of the law.

The government could run a large education campaign encouraging people to 'prepare for the future' and make available a one-off payment to all seniors of, say, \$200 (indexed) to cover the preparation by a private solicitor of an EPA. We believe that this would have a huge impact on the numbers of people preparing EPAs and that this would translate into real savings for Treasury because it would reduce disputes in the courts, the medical costs incurred by stressed older people regularly visiting their GPs and by being hospitalized after being made homeless by wayward relatives, and so on.

Such a campaign could partly be promoted through Centrelink offices, which could dispense the payment (though we believe it should not be means tested and should be made universally available). We support the same payment also being made available to all school leavers to prepare an EPA on the advent of their 18th birthday. Road and other accidents causing acquired brain injuries leave young people without EPAs in similarly parlous situations as aged people who have lost capacity, and again we believe that properly managed affairs would actually translate into savings for government in the longer term. Linking an education campaign of this type with both the youth and aged sector makes sense because it should then lead to better general awareness in the community about the need for proper estate and other forward planning.

In addition to the one-off payment for seniors preparing EPAs, the government could fund a special one off payment through Medicare of say \$100 to cover the cost of a medical assessment as to capacity, which should be prepared at the time that the EPA is prepared. Again, early proper consideration to capacity issues should reduce the potential for future arguments about this issue.

5.2 Enduring Powers of Attorney (EPA)

The SAILS program has seen many cases of financial abuse occurring through the misuse of an Enduring Power of Attorney. Again, in some instances the attorney has acted in ignorance of their obligations under the EPA. For example, in one matter a daughter used the proceeds of sale from her mother's home to buy a larger home that would enable her to care for her mother and her children under the one roof. The house was purchased in the daughter's name and not the mother's name. This occurred in the context of a family in which English was the second language. The difficulty with the situation was that the elderly mother's intentions were that her grand children would benefit from her estate, not her daughter.

Abuse through the use of an EPA generally arises as the result of the gradual 'milking of accounts' by the attorney. It can also see the

neglect of the elderly person, particularly if the attorney is also a beneficiary under the terms of the elderly person's will, with the intention of preserving or hoarding the assets of the elderly person.

Abuse can also occur through conflict transactions such as that described above.

Clearly, EPAs can be a useful tool in future planning however there are significant problems with these documents. It is also of note that each State has a different legislative frame-work giving rise to EPAs and there are also portability problems between some of the States.

Sometimes, however, despite the safeguards included in the power of attorney scheme, unscrupulous persons manage to convince a vulnerable elderly relative or associate to appoint them as an attorney – including periods after the person has actually lost their capacity - and they then misuse their position to access the elderly person's funds/property. If the money is lost through gambling or the attorney disappears, recovery of funds becomes an impossible task.

Sometimes, the abuse only occurs as the older person loses capacity. We have observed that this is particularly common in families where one adult child or relative is in dispute with siblings or other relatives and they seek to have the older person withdraw an existing power of attorney favouring another person or given 'jointly' and instead have themselves appointed as sole attorney so that they can access the older person's funds or property.

Another problem occurs when a person continues to operate under an EPA even though it has been revoked. We are aware of one case when a client revoked an EPA and although the bank was notified, tellers dealing with the withdrawal through the client's pass book were not aware of the revocation. We propose that bank systems at least should be coordinated so that all parts of a bank are aware of the revocation of an EPA.

Furthermore, despite the problems that might be raised in terms of privacy, we believe that there should be some simple cost-neutral system for the registration of power of attorney appointments and revocations, which would enable concerned persons (and the Adult Guardian and Public Trustee) to help to monitor irregular appointments or revocations.

We propose that EPA laws should be unified and a cost-neutral system for the registration of power of attorney appointments and revocations should be introduced.

5.3 Advanced Health Directives

Each State/territory has its own arrangements in terms of advance health directives. In Queensland, the AHD requires the assistance of a client's doctor in preparation of the document. There are some significant problems in this regard because doctors generally require a lengthy appointment with a client in order to complete the document and this is not necessarily covered by Medicare. We propose that Medicare should cover one or two 'long consultations' required to prepare an AHD.

6. FAMILY AGREEMENTS

As previously noted, it would be extremely helpful if there were some way to protect an elderly person's financial interests in matrimonial or defacto property proceedings and a form of registered agreements may be the way to address this issue.

The sort of family agreements that prove most problematic for our clients are the ones that involve an exchange of services or accommodation in exchange for an interest in property. On balance we consider that there should be some form of registered family agreement to protect older people's interests but careful consideration needs to be given about how such a scheme should be introduced.

If family agreements are to be introduced, state legislation – such as the *Queensland Property Law Act 1974* – needs to be amended to mirror any relevant amendments to the *Family Law Act 1975* to ensure that the older relatives of defacto and married couples are treated equally.

As things stand, the biggest problem faced by most of our clients entering into family agreements is that the terms of any purported agreement are never reduced to writing and evidence is lacking. Even if something is reduced to writing, other family members may well turn around and argue that there was never any intention for the agreement to be legally binding or the payment was a gift etc. There are also some serious problems where the time for repayment is not stipulated so that application of the common law applicable in some situations means that the time limit expires 6 years from the date of the contract. Because of the ways families tend to try to be flexible to accommodate changed circumstances and repayment difficulties, some older clients ultimately find that their generosity and flexibility has worked to their disadvantage and their claims have become statute barred. This time limit problem requires urgent legislative amendment.

We are aware of a few firms which specialize in preparing agreements documenting family loans/investments etc., but one of the biggest problems for our clients is that these agreements are usually extremely expensive. This is partly because prudent lawyers will try to ensure that elderly clients are protected from any claims that they lacked capacity when they entered into agreements and will see clients for several appointments during the preparation of the agreements and may even organise supplementary medical assessment reports which can be stored on the client's file. Because it is a specialist task, the people preparing such documents tend to be very experienced practitioners and their professional costs are high. We propose that the government should campaign to educate the public about the importance of documentation in family agreements and introduce reforms which can make obtaining agreements more accessible and affordable.

7. DISCRIMINATION

The Federal Age Discrimination Act 2004 provides remedies for people suffering from discrimination based on age. We have serious concerns that there is a lack of community awareness about age discrimination and believe that the government must do more to promote awareness about age discrimination.

The federal government should take greater steps to educate the public about age discrimination and should take particular care in terms of the development of its own policies and services by itself complying with the terms of the (Draft) Declaration of the Rights of Older Persons and the United Nations Principles for Older Persons adopted by the General Assembly on December 16 1991 – in particular Principle 7 of the latter:

“Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.”⁵

Indeed, the government should not fund other services unless such service providers can demonstrate that in the development of their services and implementation of programs and policy, they adopt the United Nations Principles for Older Persons.

8. CONCLUSION

⁵ <http://www.ilcusa.org/lib/pdf/un-rightsdeclaration.pdf> and <http://www.ohchr.org/english/law/olderpersons.htm>

8.1 Overview

It is trite to say that the number of aging Australians is growing at a rate unparalleled in Australia's history and the problem of elder abuse, exploitation and neglect - though often hidden - is a major social problem. Pru Goward estimates that by 2051 over 25 per cent of Australia's population will be over the age of 65.⁶ When combined with figures on the rise of abuse and exploitation of older Australians, this presents a frightening future for older Australians. Queensland's EPAU (the Elder Abuse Prevention Unit) noted in its December 2006 newsletter, that in the last year there was a 12% increase in the number of calls to its helpline. Enquiries about financial abuse comprised 34% of the calls; neglect 10%; physical abuse 10%, sexual abuse 1%, social abuse 3%, and psychological abuse a [staggering] 42%.⁷

Timely action by government to formulate and fund forward-thinking cross-government policy changes, preventative education programs and appropriate reforms to current laws, is required immediately.

We are aware that there are constitutional limitations on what reforms might be possible and that referral of State powers might be required. However, we consider that there is real argument for uniform commonwealth legislation regarding at least some of the laws that affect older people, including:

- more uniform power of attorney/guardianship regimes;
- family agreements;
- aged care standards and rights within our health-care system;
- financial services legislation and regulation to control aspects of financial fraud, abuse and reverse mortgages;
- Centrelink policy affecting people who have been victims of financial abuse and access to legal aid.

Elder Justice has been defined as follows:

"Elder Justice means assuring adequate public-private infrastructure and resources to prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation. From an individual perspective, Elder Justice is the right of every older person to be free of abuse, neglect and exploitation."⁸

⁶ <http://www.hreoc.gov.au/age/index.html>

⁷ EPAU Annual Report 2006.

⁸ Tool Kit for Elder Justice Act Advocacy Work
www.elderjusticecoalition.com/docs/talking_points.doc

Because of the lack of published research in the area, it is difficult to prove the serious extent of the problems we have identified. We believe that it is critically important that governments take steps to bring elder abuse into focus in the same way as has occurred with domestic/family violence and child abuse.

American congressman Peter T King and Rahm Emmanuel, who introduced the *Elder Justice Act* before Congress, stated that "victims of elder abuse are 3.1 times more likely to die at an earlier age than are non-victims.⁹ While we have been unable to access figures for similar findings in Australia, we have certainly observed that our clients tend to suffer from increasing rates of poor health once they are embroiled in the sorts of legal disputes detailed in this submission and their frail health, turn, makes them vulnerable to continuation of the abuse – something that we have no doubt translates into additional government expenditure on health, housing, social security, as well as other community services and justice costs.

We support the creation, along the lines of the American Elder Justice Act, of an office of elder justice or alternatively the expansion (and full funding) of the Australian Network for the Prevention of Elder Abuse to straddle health, community services and justice portfolios. We propose that such a national elder justice office should be created in tandem with the creation of an Ombudsman for Older Australians to deal with complaints and relevant policy issues. An elder justice office would be responsible for developing programs and policy, securing and overseeing funding, and for providing support – especially technical support for elder justice. Secure recurrent funding of such an office is integral to its creation and a coordinating national council representing stakeholders could be established to ensure that elder justice needs are being met in a representative fashion.

Elder abuse, which is currently under-researched, under-reported, under-funded and under-prosecuted, needs to be given a new focus and this could be achieved through the introduction of an Act along the lines of the *American Elder Justice Act* which provides assistance to victims of elder abuse, improved long-term care and support for at-risk elders, proper funding and resources for both preventative campaigns/activities (especially those focussing on the special needs of at-risk older people) and prosecutions of perpetrators of elder abuse.

Prosecutions depend on proper identification of cases of elder abuse and funds need to be invested into the training of geriatric health professionals and police services so that early identification of elder

⁹ Peter T Kind and Rahm Emanuel Media Release March 2006
http://www.house.gov/apps/list/press/il05_emanuel/ELDERJUSTICE_032006.html

abuse occurs and appropriate action is taken. Law enforcement services overall need to have better facility for supporting elder justice cases.

While the work of multi-disciplinary teams can have its own problems, on balance, we believe that this approach is essential when working with at risk older clients and accordingly, we submit that all relevant training and delivery programs need to be sufficiently funded to involve doctors/ social workers/counsellors with other professionals like lawyers and law enforcement officers.

Minority groups require special programs to serve the needs of their communities and this includes rural and remote communities.

The timely reporting, investigation and prosecutions of systems abuse and crimes in nursing-care/residential services needs to be improved. Criminal background checks for care workers needs to be introduced akin to the requirements of the "blue card" system for people working with children in Queensland – although this should focus on fraud and dishonesty offences as well as sexual abuse.

Whatever action is taken by the Commonwealth government in response to the findings of this investigation into the legal needs of older Australians, it is essential that older Australians should participate in the debate and that significant and sufficient funding be made available for implementation and operation of new schemes and that care is taken to ensure that any new systems introduced as a result of this review do not become unduly bureaucratized.

8.2 Summary of Recommendations

1. Comprehensive research about elder abuse and the legal needs of older Australians needs to be undertaken. A model that could be used for research is the model of the proposed American Elder Justice Resource Center and Library. Alternatively, the Australian Network for the Prevention of Elder Abuse (ANPEA) could be funded to perform this function.
2. Careful attention should be given to ensure that minority disadvantaged groups of older people are properly included in the catchments for research and policy development and a lower age limit should be used to identify the needs of older indigenous Australians.
3. Access to interpreters needs to be more readily available to ensure older Australians from CALD backgrounds can access legal assistance and remedies.

4. Funds need to be injected into the training of legal service providers and related services generally, about the law affecting older people and the complex issues arising from elder abuse.
5. 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 recurrent 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 funding packages.
6. A broad education campaign needs to be undertaken to make people aware of the need to document granny flat investments/family loans and other agreements, and of the desirability of security registered interests/caveats in such circumstances. The *Family Law Act* and equivalent state de facto property acts could be amended to provide for a simplified procedure whereby terms of granny flat investment/loan agreements between older people and an adult child and his/her spouse can be registered with the court and can later be relied on in any matrimonial/related property proceedings where there is also dispute about any alleged interest of the aged parent.
7. Banks should be required to more carefully scrutinize and monitor large or unusual withdrawals from pensioner's accounts – by at least bringing these facts to the attention of the account holder.
8. Banks and lending institutions need to have increased product disclosure obligations when providing reverse mortgage loans. It should be a requirement for any lending agency or bank dealing with transactions involving an aged pensioner to require a certificate of approval from Centrelink for transfers that are beyond a certain allowable amount per month. Bank fees for pensioners should be restricted.
9. Law enforcement agencies need to be provided with more resources as well as specialist training in order to deal with

complaints about elder abuse (especially financial abuse) in an effective and sensitive fashion.

10. The Centrelink Hardship test needs to be relaxed; their staff's needs to be better educated about elder abuse and Centrelink information needs to be made more accessible.
11. Positions for specialist health advocates should be established within all hospitals for people over 65-70
12. The Legal Aid Assets test should be changed so that aid is more readily available to victims of financial abuse and legal aid solicitors need to be appropriately trained to handle relevant areas of law.
13. Specific research should be carried out to ascertain whether or not fraud and elder abuse in relation to migration sponsorship is common and if it is, further investigation into how this problem can be addressed (perhaps by amendment to the Migration Act 1958) should occur. Department of Immigration staff working with migrants should be specially trained about elder abuse.
14. Adults and school-children should be targeted in a whole of government education campaign about the benefits of forward planning in relation to wills, Enduring Powers of Attorney and Advance Health Directives.
15. A one off payment of say \$200 (indexed) should be made available to all seniors to cover the preparation of an EPA.
16. In addition to the EPA payment the government could fund a special one off payment through Medicare to cover the cost of a medical assessment as to capacity for completion at the same time as the EPA.
17. Banks should be required to have coordinated systems so that all parts of a bank are aware of the creation and revocation of an EPA.
18. EPA laws should be unified nationally and a cost-neutral system for the registration of powers of attorney documents should be introduced.
19. Medicare should cover one or two 'long consultations' required to prepare an Advance Health Directive.

20. Time limits on suing under family agreements need to be amended to make provision for older clients to be able to sue 'out of time' in appropriate circumstances.
21. The federal government should take greater steps to educate the public about age discrimination and should take particular care in terms of the development of its own policies and services by itself complying with the terms of the (Draft) Declaration of the Rights of Older Persons and the United Nations Principles for Older Persons adopted by the General Assembly on December 16 1991 – in particular Principle 7 of the latter:
"Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations."¹⁰
22. The federal government should not fund other services unless such service providers can demonstrate that in the development of their services and implementation of programs and policy, they adopt the United Nations Principles for Older Persons.
23. Uniform law reform should be considered for power of attorney/guardianship regimes; family agreements; aged care standards and rights within our health-care system; financial services legislation and regulation to control aspects of financial fraud, abuse and reverse mortgages; Centrelink policy affecting people who have been victims of financial abuse and access to legal aid.
24. The government must take steps to bring elder abuse into focus by creating purpose-focussed legislation, a specialist research/policy unit, an Older Person's Ombudsman and specialist prosecution services. Care must be taken to ensure new services are not overly bureaucratic and that they remain accessible and affordable.

We would welcome the opportunity to appear before the Committee to address any aspect of this submission.

.....

¹⁰ <http://www.ilcusa.org/lib/pdf/un-rightsdeclaration.pdf> and <http://www.ohchr.org/english/law/olderpersons.htm>

CAXTON LEGAL CENTRE INC.