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House Standing Committee and Constitutional Affairs

NA

Inquiry into older people and the Law

24th November 2006

'be careful your 'neck' is showing
and maybe attractive to bullys'

'Confronting and Reducing elder abuse requires a multisectoral and
multidisciplinary approach'...

ref Active ageing A policy framework, World Health Organisation
2002.

Gwen Dowling

Main points

To promote elder justice by enacting an Elder Persons Justice Act which includes

- a) Bill of Rights
- b) Individual Privacy Act
- c) Freedom of Information
- d) Development of dignity impact accountability
- e) The development of privacy impact statement for individuals with regard to Legalisation and implementation.
- f) Appointment of an Commission for Elder Justice
- g) Name change from aged to elder
- h) The development of an easily accessible Elder Justice Resource Centre
- i) Easily accessible and appropriate delivery of community education for elders particularly for the underserved.
- j) The need to extend elder specialized legal representation for elders as a right and without fees.
- k) The need for Private Insurance to cover community care. Medibank Extra could be extended to cover this, with a 'a grandfather' clause for those who have been members for years.

Definitions

Elders: the term means an individual aged 60 years and over.

Elder justice: the term means maximizing their dignity levels, maximizing their autonomy from the individuals perspective, placing high value on their time, the recognised of elder's rights including to be free of abuse, neglect and exploitation.

Abuse: the term means the infliction of physical or psychological harm or deprivation of goods and services that are necessary to meet essential needs or to avoid physical or psychological harm.

Abuse can take many forms. It is not just in institutions dedicated and paid for care. It is a widespread attitude towards those who are dependant on the proactive thinking of others and elders are too often seen to be of lesser value to society, in need of discipline or punishment and highly regulated to a young and fit lifestyle, particularly if they are surrounded by those who have little or no real ethical supervision. I have read three hundreds of research documents, in planning for quality services for older people. What appears to be lacking is dignity impact studies and privacy impact studies yet. We have enviromental impact studies. Who is actually the client? Who benefits the most from the ever escalating rankism that is a present issue for our society.

Queensland University Social Worker, Deborah Settelund, Cheryl Tilse, Jill Wilson says if older people are to benefit from protective mechanisms. They need to be able to make informed choices about all the options available to them. This requires an adequate understanding of the relevant legal concepts and provisions and ability to access their value in relation to individual circumstances the ability of older people to make informed legal choices may be circumscribed, at a general level by lack of knowledge of the law and legal rights, limited access to legal services and prohibitive legal costs and ageists assumptions concerning the needs and capacities of older people ref 1

Their key points are:

- Older people increasingly are faced with legal aspects of future decisions making in the event of incapacity.
- The majority of older people lack a level of understanding ... to make informed legal choices.
- Lower income and disability are major factors associated with limited understanding of the law.
- There is need for community legal education.

As we advance in years, there are physical mental energy reduction that comes with it. Our senses deteriorate etc. Services to elders often appear to have a sense of denial about this. '60 years old is now are the new 40's and 20 years old are the new 40's. The elders are covering up their age and the young are even surgically trying to stay 20. This itself speaks of the crisis and vulnerability of being old in our society and the felt need for aged to be invisible. It says we have a society that is in a state of crisis in terms of values and identification of Australian culture as only valuing present workers and others outside this battle for legitimacy.

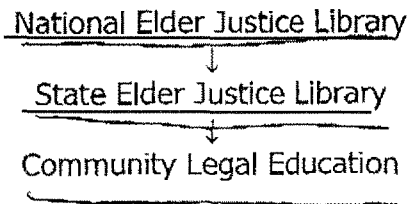
Much has been written and researched into the need for protection of elders and to bring about legislation on this issue. The problem that many people feel is that although legislation and legislators are well intentioned particularly the second Reading of the Act that is who and what intention are, the question of who actually holds the real power. Politicians or the regulators? Most people feel that Australia is governed by regulations. They ask the questions, should legislation be allowed to pass when it requires insurmountable regulations to implement it. Once regulations which are constantly changing appears to be nothing much left by the time it reaches the actual targeted person who have spend heaps of time money exhausting effort endure much indignation and rankism to try to gain access more than a once off. Yes Ministers Television Series made us laugh at the issue but in reality, it is no laughing matter at all especially when Australia is regarded as the 2nd from the bottom for being a generous spirited country, whilst there is a myth that the opposite is the case. User pay trends particularly for females living alone in low incomes will increase poverty amongst the aged and increased 'dumping of elders'

Moving to Centre stage: Community Care for the Aged over the next ten years says Further work needs to be undertaken to recommend how best to accommodate these ... without diminishing older persons capacity to live in the community with dignity and independence ref page 10 and ...

No provider currently offer community care insurance although it is understood that several insurers have considered the opportunity is a high need requiring attention.

1. The need for the development of a dignity policy. The immediate implementation and accountability processes for all government commence and non-government organisations.
2. Name change from older to elder.
3. the need for privacy laws for the protection for elders. See appendix 1.
4. the need for increased purchasing power for legitimization of a creative life in the community as opposed t the current 'waiting for God' patronising attitudes and conditions and more dignified access to generic services, eg rankism.
5. the need for increased community legal education in the NT Top End Women's Legal Centre ~~is~~ as a fine example of an organisation that could do this very effectively.
6. Also easier access to legal advocates and representation in courts.
7. Access to note-takers without fee.
8. there is a need for a clear Elder Justice Act which includes a new individual privacy protection, a Bill of Rights that does not have the necessity for massive amounts of regulations that restricts access to it and actually creates Rankism.
9. there is a need for the appointment of a Commissioner for Elder Justice.
10. the establishment of an Elder Justice Resource Centre
 - i. to develop the capacity to collect and disseminate information to consumers, families, policy makers and practitioners.
 - ii. to provide, in a user-friendly manner, information on.
 - iii. Ways
 - iv. how to avoid becoming a victim of abuse, neglect or exploitation.
 - v. advance and pro-active planning.
 - vi. establish a toll-free number for information and referrals.
 - vii. provide funding to public and non-government for elder Justice Programs which includes costs for note-takers and interpreters of Deaf.

also the Darwin Community Legal Centres specialised area



The establishment of a National Elder Library as a centralized repository for all types of appropriate material concerning training, community education technical assistance relating to Elder Justice including

- i. brochures and pamphlets
- ii. video and DVD and computer-based resources.
- iii. books
- iv. training materials

v. ensuring that materials etc are accessible to Deaf people, Blind people, financially disabled persons, institutional persons, isolated persons and language and print is readable and accessible eg with laptop computer hire etc.
the library should be well maintained with up-to-date index of materials. This should be available on the internet as well as available in printed form accessible to all members of the public at no fee.

Also this library should also identify and obtain materials relating to effective methods of conducting training and providing technical assistance including conducting training and assistance for underserved populations. Ref 3.

12. There is a real need for private insurance coverage for community care to elders.
13. there is an urgent need for registered accredited interpreters for the Deaf people and their families this service should be provided without fees.
14. there is a need to include D.V.D and computer operated on legal topics in Auslan and other languages for Living wills powers of attorney etc. Changes in law and regulators and rights for Deaf.
15. History should be compulsory subject in schools, colleges, Universities, as a means of educating as to the real heritage that elders have provided to the younger generation and also the future generations.
16. Navigating the system is difficult for elders. 'Access to Legal Advice and Services ref. Report of Elder Abuse Project Dec 2005 recommendation 11. ~~appendix-2.~~
17. Because the types and causes are varied. A community education campaign focusing the public's attention on the issue and reinforcing the message that such abuse is not acceptable would be a powerful strategy to this end. Lorden Senator Barney Cooney
18. Limited attention has been given by governments Commonwealth, State and Local to community education activities in this area. Strong support was expressed from consultation for preventative strategies including community education. Naming and ^{bringing} ~~banging~~ the problem out in the open are critical to preventive strategies and assisting older people deal with abusive behaviours. Re, executive summary Victoria Report of Elder Abuse Preventive Report Dec 2005.
19. One must not automatically blame younger people as some of the main perpetrators are the elders to elders.
20. Elders are at risk of severe isolation. Telephone is sometimes then only access to the outside world. Elders should be provided at no cost, a telephone service and viewed as a health aide to those on fixed poverty line income and in receipt of Health Care Card. This is especially so for elderly living alone. Telephone is a community education access aide.

Right to Personal Privacy

People do have a very clear expectation that they have a right to the dignity of privacy protection and it comes as a shock when it is revealed to them that no such right exists and have no power to do anything about it. Breeding ground for Rankism! And exploitation! There is currently a review on Privacy by the Australian Law Reform Commission. Issue Paper 31. (Oct 2006) makes for light reading!!!

Quotes form it:

Professor Gavison (Privacy and the limits of Law 1980-89 suggests that Privacy is a term used with many meanings.

1. it relates to the status of the term is privacy a situation, a right, a claim, a form of control.
2. relates to the characteristics of privacy. Is it related to information, to personal identity to physical access.

These have profound meaning in the lives of elders (and other disadvantaged persons) both living in the community and in institutions of care.

The Victorian Law Reform Commission issue paper (2002) says a working definition of privacy is

- not to be turned into an object or thing and
- not to be deprived of the capacity to form relationships.

One of the questions asked by the Review of Privacy issues paper 31 (page 95) is ... one issue is whether a privacy impact statement should accompany any federal state and territory government proposal to introduce legislation that impinges on privacy Does this not go to the heart of the issue as to the right to privacy for individual, their bodies, their records held by others, their space, their relationships. What is the definition of privacy? Who is the responsible level of Government for this?

The Privacy Act should be extended to cover (a) any acts or practices of individuals relating to their personal family or household affairs and especially so in the light of technological developments.

Is not the first duty of our Constitution and Parliament to protect its citizens.

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12 Robert Fuller :

*Some bodies and nobodies of Rankism
- all base*

Thank you to Jan Bary of DeafNT for typing of this manuscript.