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House Standing Committee on Legal and Constitutional Affairs

**Inquiry into older people and the law**

**Submission**

MR. CHAIRMAN.

Members of the Committee. Ladies and Gentlemen. Good morning.  
My submission will be brief. But of great importance.

1 My name is John Campbell Howard. I live in Brisbane. I am a retired roadbuilder and excavation contractor, subdivider and builder. Some years ago, I made a significant contribution to Australian Agriculture by the invention of a fertiliser loader for aerial topdressing.

2 My submission deals with aspects of fraud, financial abuse, barriers to older Australians accessing legal services and discrimination.

3 I seek to relate to the Committee, a story or two, which illustrate that the law has to be changed for the benefit of older people. The assets of older persons are very much at risk. For instance, in the July 2007 issue of *The Senior*, Queensland Edition, the front page story of recent financial collapses reports the Chairman of the Australian Securities and Investments Commission, Mr Tony D'Aloisio, as saying, amongst other things, "..... there was currently \$8 billion invested in products like those marketed by the three collapsed entities, but that represented only 1.4 per cent of the \$523 billion in debt securities held by Australian households and small super funds."

4 Older people and their assets have to be protected legally at every level. When their finances are depleted, they cease to be socially positive; they become a burden on the social security dollar. They spend their time in trying to recover what they have lost instead of making a positive contribution to the social and cultural fabric of their country. A waste of effort, if ever.

5 I set out to be a self-funded retiree, but now exist on the age pension - a burden on the public purse, having been dispossessed of my home, my business and my assets by either the breach of fiduciary duty, incompetence, false and misleading advice, or constructive, if not actual fraud by a number of Lawyers.

6 For reason of being rear ended when stopped at a red traffic light, I have medical conditions that make me a disabled person under both state and federal law. To date, I have **NOT** received one cent in compensation.

7 I sought financial advice and was caught up in one solicitor's mortgage scam here in Brisbane as a direct result. There were thousands of other persons, both borrower and lender caught in these schemes. I can recall that at the time, it was published that total funds of \$3 billion were at risk. I have not seen a figure put on actual losses. Where I and others relied on a lawyer to prepare and prosecute our legal claims in the courts and where those lawyers managed to screw things up, the High Court says, we will protect the lawyers.

8 The decision in the High Court in *D'Orta-Ekenaike v Victoria Legal Aid* [2005] HCA 12, may well have suited that particular case, but as a precedent it does not assist persons such as others and myself in obtaining justice. The majority held, on the basis of finality to proceedings, that both barristers and solicitors had immunity from suit in both court work and work preparatory for court and had so for some time. Kirby J dissented, citing no such immunity existed in England, United states of America, Canada, the European Union, Singapore, India or Malaysia (at para 211).

9 To be blunt, the High Court will not assist you when your lawyer gets it wrong. Nor will any other Court for that matter. The law has to be changed for the benefit of the people. It will have to be by statute to change the present case law. There may well be precedent for that. I call upon this House (of Reps) Committee to do its utmost to bring about the change.

10 One of the barriers to older Australians accessing legal services is their lack of funds after they have been fleeced. Go to most any lawyer and he will say something like this - "put \$5,000 in my trust account and I will have a look at your matter". The victim has no chance of even getting to first base. Even if they become a self-litigant.

11 From personal experience, There is a perception that there are biases against self-litigants on the part of both the Judges and the lawyers. Indeed, the Chief Justice of Queensland does not suffer self-litigants (see his remarks on the internet under Queensland Courts). But the fact of the matter is that victims feel they have to become self-litigants to attempt to obtain justice. They have no funds to instruct solicitors and barristers. In money terms, a typical case can cost anything from \$10,000 to over \$100,000.

12 All of the above means that the ordinary Australian is discriminated against when attempting to recover at law. But as any Judge will tell you, you can only have justice according to law. In this matter, the law should be changed and enshrined in statute. We are Australians and the law should apply equally. It must be a just law.

13 I have written of the above from personal experiences, from the experiences of others and from private study and where nessary, can be verified from documents.

Jojin C Howard