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Submission to the House Standing Committee on Legal and Constitutional Affairs

Inquiry into Older People and the Law

A submission by the

 Ioddon campaspe
community legal centre

30 November 2006

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The Loddon Campaspe Community Legal Centre
is a program of the Advocacy and Rights Centre Ltd

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1. Summary

The Loddon Campaspe Community Legal Centre based in Bendigo is one of 52 community legal centres currently operating in Victoria. It is a generalist community legal centre. It is also a rural / regional / remote community legal centre, servicing six local government areas including Greater Bendigo, Mount Alexander, Macedon Ranges, Central Goldfields, Loddon and Campaspe.

The Loddon Campaspe Community Legal Centre is the newest rural and regional centre in Victoria having received ongoing funding from the Victorian government in July 2005. The report "Access to Justice in the Loddon Campaspe Region: demonstrating the need for a Loddon Campaspe Community Legal Centre" was launched in May 2004 as part of the community campaign to establish the centre. This report reveals a high level of disadvantage in communities across the Loddon Campaspe region.

Community Legal Centres play a unique role in providing accessible, appropriate local service delivery to older people including legal casework, community education and law reform work. There is significant interest and expertise within CLCs in regard to older people's legal issues, with older people making up a significant percentage of community legal centres client base.

The day to day experience of community legal centres is affirmed by the Law and Justice Foundation of NSW 2004 report: *Access to Justice and Legal Needs: The Legal Needs of Older People in New South Wales*. The report identified many obstacles for older people in accessing legal services including technological barriers, lack of awareness of where to obtain legal assistance, lack of appropriately communicated legal information, high costs of legal services, lack of interest by some lawyers in elder law. The report identified a lack of specialised legal services for older people, particularly in rural, regional and remote areas.

The Loddon Campaspe Community Legal Centre undertook a survey of agency staff working with older people in Bendigo and Maryborough in September and October 2005 to assess how legal services should be delivered to older people in the Loddon Campaspe region. The results are consistent with the findings of the Law and Justice Foundation NSW Report 2004:

- Older people experience a range of (predominantly civil) legal issues.
- Barriers to legal assistance include lack of transport, insufficient finances, health and hearing difficulties, use of legal jargon, feeling overwhelmed by seeking legal assistance if haven't done so in the past.
- Service models for older people should include outreach services in local communities, partnerships with local community agencies and groups, community legal education to raise awareness of issues and options, legal services that specialise in older people's legal issues, legal assistance and education in simple terms.
- There is a need for a free community legal service dedicated to serving the legal needs of disadvantaged and vulnerable older people in Victoria.
- Face to face legal assistance in rural centres or at outreach locations in rural and regional areas is the preferred service delivery mode for older people. Face to face assistance in Melbourne and internet based services are not supported for older people.
- Community legal education is needed on a broad range of legal topics.

In response to the legal needs of older people, the Loddon Campaspe Community Legal Centre has established the Older Persons Legal Program, a two year pilot funded by philanthropic trusts and with a 0.8EFT solicitor position. The Older Persons Legal Program commenced in May 2006 and aims to increase access to justice for older people by specialising in legal issues that affect older people and by breaking down barriers that older people face in accessing the law.

The program has focused on developing partnerships to provide services to older people in their communities. Outreaches have been developed in partnership with the Castlemaine and District Community Health Service, Bendigo Community Health Service (Eaglehawk), and Bendigo Health Care Group at the Bendigo Base Hospital. A panel of pro bono private solicitors has been brought together to extend the capacity of the outreaches and engage the private profession in elder law issues.

Community legal education workshops on issues affecting older people are being held throughout the region and specific information sheets developed. The program is also working with the Bendigo Division of General Practice to facilitate a seminar series for local health and legal professionals in early 2007 on end of life decision making and capacity. The program has partnered with LaTrobe University Bendigo Law School to undertake research into consumer credit issues for older people in rural Victoria with funding from the Victorian Consumer Credit Fund. The program is also establishing a dialogue with the Bendigo Bank to discuss policies and protocols in relation to financial abuse of older people.

The Loddon Campaspe Community Legal Centre and the Older Persons Legal Program has assisted approximately 166 older clients¹ since July 2005. The case studies attached show the breadth of legal problems that we assist with: elder abuse, capacity, administration and guardianship, family property agreements, powers of attorney, family violence, consumer credit issues. It is often through providing initial information or advice about a will or power of attorney that a client becomes more comfortable and issues of elder abuse are revealed.

Following an inquiry into elder abuse, the Victorian Government announced in May 2006 funding for a specialist community legal centre for older people. The new centre will provide general legal education and advocacy services and support the capacity of existing community legal centres to address the legal needs of older people. Given the increasing population of older people, the barriers to justice which older people face and preferred models of service delivery the new specialist older persons legal centre will build on the infrastructure of existing CLCs to better resource the work of CLCs across Victoria in providing legal assistance to older people. Partnerships with community organisations, particularly in the health and welfare sector will be key to ensuring accessible and local assistance. The Older Persons Legal Program is already developing partnerships, trialling models and rolling out new projects within local communities in the Loddon Campaspe region.

¹ Older clients are clients 60 years and over plus Aboriginal and Torres Strait clients 45 years and over.

2.1 Introduction to Community Legal Centres

Community legal centres are independent, community based organisations that provide free legal advice and assistance, community legal education, community development and law reform work to their local communities. Centres assist people who would otherwise be unable to access justice – people on low incomes or social security benefits; people from culturally and linguistically diverse backgrounds; people with complex and disadvantaged needs.

The first community legal centres were established in the early 1970s by local communities concerned about access to justice issues and legal needs of the poor. These communities campaigned for government funding to establish local community legal centres. Governments recognised the legitimacy of the community needs and provided recurrent funding for these community legal centres. The number of community legal centres has continued to grow in much the same way, with local communities identifying legal needs and campaigning for funding, and governments providing recurrent funding to those communities.

While community legal centres respond to local community needs and are thus diverse in character, they share a common commitment to access to justice and to the following principles:

- being accessible to clients – in terms of affordability, location, opening hours, language and atmosphere;
- adopting a holistic approach to service provision, and providing an integrated range of services;
- emphasising a preventative approach, through placing a high priority on community legal education;
- involving clients and community groups in defining and resolving their legal problems;
- transferring skills on an individual and group level, and building the capacity of the communities in which they work to effectively address their legal needs;
- tackling the structural causes of legal needs and problems, rather than simply treating the symptoms; and
- giving community members the opportunity to participate in the management of the centres, and implementing a variety of mechanisms to ensure they are accountable to their communities.²

There are both generalist and specialist centres: generalist centres provide a range of services to people in their local geographic region, and specialist centres provide services to particular client groups with special needs (including women, indigenous people, young people) or on particular areas of law (including mental health, employment, consumer and tenancy). There is currently no specialist service dedicated to the needs of older people.

Community legal centres provide free legal advice and assistance in family, crime, civil and administrative areas of law in matters affecting people in their everyday life – family breakdown, domestic violence, housing, credit and debt, fines, neighbourhood disputes, motor vehicle matters, social security problems etc. Centres seek to empower clients in defining and resolving their legal problems.

Community legal centres have a focus on early intervention and prevention strategies and run community legal education programs, facilitate law reform activities and undertake community development work. Thus they seek systemic changes to increase access to justice.

Local communities are involved in community legal centres on a number of levels: on committees of management; as volunteers in centres; through partnerships and networks with community groups and agencies.

² National Association of Community Legal Centres, *Doing Justice: Acting together to make a difference*, August 2003

2.2 Strengths of Community Legal Centres

Community legal centres play a unique and vital 'mixed model' of legal services delivery.³

*"The report [of the implementation advisory group on the review of the community legal services program in Victoria] highlights the valuable contribution that community legal centres provide to the community. They should be supported in that work and encouraged to expand to areas of need"*⁴.

While a hallmark of community legal centres is their flexibility to expand into areas of need, they are much more than 'gap fillers'. In over 30 years of operation, they have developed specialised expertise and a unique mode of service delivery that is particularly well suited to meeting the complex legal needs of the diverse communities that form Australian society.⁵

While community legal centres provide legal assistance in most areas of law, nationally, they most commonly provide assistance in the areas of family law, housing, credit and debt, neighbourhood disputes, motor vehicle matters, social security problems and other administrative law issues. The legal matters that are handled by CLCs in large numbers on a daily basis fall into areas of law that are not always taught in law schools nor often practiced by the large legal firms (with the exception of some family law).⁶

*"The needs of CLC clients do not fit well with legal training and the legal experience of most lawyers. They are most usually about the little but important things of everyday life. This is 'Community Law' and community legal centres are the experts"*⁷.

In addition to providing this particular expertise in community law, CLCs are centres of innovation in legal service delivery. Their numerous volunteer lawyers and paid staff work together to produce high quality outcomes for both individual clients and society as a whole.⁸

*"The CLC method of service delivery is.... a unique and highly effective system. It is a sophisticated approach which acts in the long term to change individual legal problems into solutions which wider groups can access"*⁹.

CLCs operate not only in partnership with their local community, but also in partnership with many private practitioners and legal aid lawyers who volunteer their time, expertise and energy to the work of the centres. Through these partnerships, centres actually leverage extra resources into the system through attracting and organising substantial volunteer labour. This makes centres extremely cost effective and repositories of good will, enabling effective service provision beyond the scope of services that are unable to attract volunteer support.¹⁰

³ National Association of Community Legal Centres (August 2003) *Doing Justice: Acting together to make a difference*, page 12.

⁴ Media release: Attorney General, The Hon Daryl Williams, 1 June 2001

⁵ Ibid, page 12.

⁶ Ibid, page 12.

⁷ Ibid, page 12.

⁸ Ibid, page 12.

⁹ The Wright Consultancy (1997) Report of the Review of Community Legal Centre Funding, Queensland.

¹⁰ National Association of Community Legal Centres (August 2003) *Doing Justice: Acting together to make a difference*, pp 12-13.

2.3 Community Legal Centres and Older People

There is significant interest and expertise within CLCs with regard to the older person's and the law. A significant percentage of community legal centre clients are over the age of 60 years. Many community legal centres see the possibility for expanding reach to older people through the development of innovative and targeted community based programming. The Older Persons Legal Program at the Loddon Campaspe Community Legal Centre is one example of a generalist CLC developing a specific program for older people.

We recommend that the Committee consider the unique role of community legal centres in providing innovative, face-to-face and appropriate service delivery to clients including casework services, community legal education and law reform work.

In March 2005 the Victorian Government initiated the Elder Abuse Prevention Project. The Loddon Campaspe Community Legal Centre and the Federation of Community Legal Centres (Vic) made submissions to that inquiry which outlined the role that community legal centres play in meeting the legal needs of older persons and discussed the program design implications for a specialist CLC for older people based on older peoples engagement with the law and legal systems.

In May 2006, the Victorian Government announced a range of initiatives to target elder abuse and to improve access to justice for older Victorians including the establishment of a specialist CLC for older people that will provide general legal education and advocacy services and support the capacity of existing community legal centres to address the legal needs of older people. The Loddon Campaspe Community Legal Centre is engaged in dialogue with the Federation of Community Legal Centres and other key players about the establishment of this new centre, particularly in relation to rural and regional needs.

3.1 Loddon Campaspe Community Legal Centre

A community campaign to gain government funding for a local community legal centre resulted in the establishment of the Loddon Campaspe Community Legal Centre (LCCLC). The LCCLC was initially funded by philanthropic trusts as a two-year pilot service in October 2004, and then by the Victorian government as a permanent service from 1 July 2005.

The key activities of the LCCLC are:

- ❖ Legal information, advice and casework services
- ❖ Community legal education
- ❖ Law reform and policy work

Legal information is provided on an ad hoc / as needs basis to clients accessing the service. It includes simple referral information and the provision of information resources.

Legal advice is provided in four key fora:

Night Service: A night service will operate once per week. This will be the key service delivery vehicle for legal advice, harnessing the skills of local practitioners and para-legal volunteers (principally from the La Trobe University Law Faculty). The service commenced in October 2005.

Telephone Advice: A telephone advice service operates twice per week, with each session being for three hours duration.

Bendigo Day Service: A day service will operate on an appointment basis.

Outreach Day Service: An outreach day service operates at two locations on an appointment basis. The service will be offered in three locations in 2006/07 and four in 2007/8.

Community legal education is provided / facilitated by the Community Legal Education worker. Solicitors also participate in Legal Education, as coordinated by the community legal education worker.

Law reform and policy work is shared between the Solicitors and the community legal education worker.

3.2 Legal Need in the Loddon Campaspe region

As part of the community campaign for a government funded local community legal centre the Advocacy & Rights Centre Limited (in partnership with EASE (Emergency Accommodation and Support Enterprise) and Loddon Campaspe Centre Against Sexual Assault published the report *Access to Justice in the Loddon Campaspe Region: Demonstrating the Need for a Loddon Campaspe Community Legal Centre* in May 2004. This report provided the foundation for the establishment of the LCCLC.

The Loddon Campaspe region covers a large area in northwest Victoria including six local government areas: Macedon Ranges, Mount Alexander, Central Goldfields, Greater Bendigo, Loddon and Campaspe. The region has an estimated population of 205,825 – approximately one sixth of regional Victoria's total population.

A socio-economic analysis of the Loddon Campaspe region reveals a high level of disadvantage in communities across the region.

Jesuit Social Services has undertaken two reports which identify a high level of socio-economic disadvantage entrenched in local geographic communities in the Loddon Campaspe region. *Unequal in Life* (1999) identified 16 postcodes in the Loddon Campaspe region ranked in the top 100 for social disadvantage. *Community Adversity and Resilience* (2004) identified that 50% of postcodes in the Loddon Campaspe region ranked in the bottom 5 quintiles for disadvantage. Many of these disadvantaged postcodes are clustered: for example, all postcode areas in the Central Goldfields Local Government Area ranked in the bottom 5 quintiles for disadvantage. The level of disadvantage is reinforced by the ABS Index of Relative Socio-economic Disadvantage (1996), which identified Central Goldfields Local Government Area as the most disadvantaged Local Government Area in country Victoria.

An analysis of individual socio-economic indicators (which are indicative of legal need and lack of access to justice) show that communities in the Loddon Campaspe experience multiple disadvantages: low household income; high unemployment; low education levels; high percentage of single parent families; significant family violence, sexual assault and child abuse issues; high youth suicide rate; high psychiatric treatment rate; high proportion of people living with a disability; shortage of transitional, public and private rental housing; and a constant flow of criminal offences and court work.

A survey of legal need in the Loddon Campaspe region found that 100% of community agencies surveyed would refer clients to a Loddon Campaspe community legal centre; they estimated that in total they would refer over 4000 clients each year. More than half of the agencies said that they currently see clients for whom there is no appropriate referral. Agencies see clients with a large range of legal issues over the course of a year, with family violence being the most prevalent issue, followed by debt and credit, consumer and tenancy, family law, intervention orders and disability/mental health.

Agencies highlighted the barriers to justice experienced by their clients: unjust laws, complex and disadvantaged needs, financial barriers, legal aid restrictions, low education and confidence levels, conflict of interest; need for specialist legal knowledge, concern about confidentiality, need for community understanding of complex and disadvantaged needs, limited legal assistance available from local community agencies, distance/transport, and border issues. These barriers to justice were highlighted by case studies provided by agencies based on their clients' experiences.

More than three-quarters of community agencies also identified a need for community legal education initiatives; professional training and support; and justice, advocacy and law reform. Agencies demonstrated community concern about justice issues by identifying a broad range of issues of relevance to local communities. In particular, poverty and access to basic social, economic and legal rights were raised as significant issues.

3.3 The Legal Needs of Older People

In December 2004 the Law and Justice Foundation of New South Wales published a seminal research paper entitled *Access to Justice and Legal Needs: The Legal Needs of Older People in New South Wales*. This research has underpinned the development of the Older Persons Legal Program at LCCLC.

Legal Services

The report identified that many of the obstacles for older people in accessing legal services reflect characteristics of the current cohort of older people including, a lack of awareness of

their legal rights, a lack of confidence in enforcing those rights, a reluctance to take legal action, and a perception that the law is disempowering and cannot solve their problems.¹¹

“General barriers relating to the ability to access legal information and advice services which were identified during this research include:

- *technological barriers, particularly for telephone and web based services*
- *a lack of awareness of where to obtain legal information and assistance*
- *a lack of appropriately communicated legal information*
- *the high cost of legal services*
- *a lack of interest by some legal practitioners in older clients*
- *potential conflict of interests when legal practitioners for older people are arranged by family members.*

Barriers for older people in accessing existing legal services which were identified during the research include:

- *difficulties in accessing legal aid, including restrictive eligibility tests*
- *a lack of availability of legal aid for civil disputes*
- *lack of specialised legal services for older people, particularly in rural, regional and remote areas*
- *lack of resources in community legal centres to tailor their services to the needs of older people.*

Older people’s needs in terms of legal service delivery include:

- *legal information that is clear and readily accessible, preferably through face-to-face contact*
- *legal practitioners who provide explanations in simple terms, are friendly, courteous, inexpensive, expert in dealing with older people and do not require the older person to exercise a lot of self-help.*

Many service providers and older people alike expressed the view that there was a gap in service provision to older people, particularly to older people who cannot afford private solicitors.”¹²

In its conclusion, the report identified a commonly recurring theme regarding access to legal services by older people namely, that older people are often reluctant to complain about issues affecting them.¹³ Given older people’s distrust of the legal system and limitations of the law in addressing their legal problems sufficiently, there is a danger that the legal needs of older people may be largely hidden from legal and non-legal service providers, courts, tribunals, and complaint handling bodies”¹⁴.

To address these issues, the report suggests that a specialist legal service for older people could provide a valuable resourcing role for generalist legal services across New South Wales regarding issues for older people and methods of effective service delivery to older people.¹⁵

¹¹ Op cit, xvi.

¹² Op cit, xvi – xvii.

¹³ Op cit, xxxvi.

¹⁴ Op cit, xxxvi.

¹⁵ Op cit, xxxvi.

Elder abuse

In relation to the specific issue of elder abuse, the report identified numerous forms of elder abuse, identified the problem of under reporting the incidence of elder abuse, identified effective responses to elder abuse and identified key issues for legal practitioners in dealing with elder abuse matters.¹⁶

The report found that elder abuse could include:

- *“financial abuse (e.g. abuse of power of attorney, theft, pressure to change their will or to become guarantors)*
- *psychological abuse (e.g. social isolation, verbal abuse, treating them like children)*
- *physical abuse, including violence, physical restraint and neglect*
- *sexual abuse*
- *neglect (e.g. inadequate food, shelter, clothing, medical care/assistance, hygiene, medication)*
- *multiple abuses.different kinds of abuse occurring at the same time or on a continuum within a single relationship of trust.*

There is also variation in the nature of the relationships within which abuse of older people may occur, including those with adult children, spouses, other family members, friends, carers or institutions.”¹⁷

Elder abuse was found to be under-reported because of a lack of community and professional awareness and understanding of the problem.

Other barriers to reporting abuse include:

- *ignorance of services which may assist*
- *isolation of victims, resulting in lack of access to assistance, and continuance of the abuse due to lack of scrutiny*
- *fear of retribution or of being institutionalised*
- *shame of being abused by people they should be able to trust, and fear of jeopardising important relationships with family or friends*
- *health professionals may lack procedures for addressing abuse.*

The report found that the most effective responses to elder abuse have been those that focus on empowering the victim and emphasise an interdisciplinary partnership approach between the domestic violence and aged care sectors¹⁸.

The report identified the following strategies to assist lawyers in their dealings with older clients who may be victims of abuse:

- *“taking older people seriously when they raise the issue of abuse*
- *ascertaining the true wishes of their older clients, by seeing the older client by themselves and by using interpreters where appropriate*
- *supporting older people to be medically assessed for legal capacity, as this may forestall future conflicts about their wishes*
- *understanding the risk factors indicating elder abuse and the legal*
- *options for preventing and addressing elder abuse.”¹⁹*

¹⁶ Op cit, xxx-xxxi

¹⁷ Op cit, xxx

¹⁸ Op cit, xxxi.

¹⁹ Op cit, xxxi

3.4 Older Persons Legal Program

The *Access to Justice* report clearly established significant unmet legal need and significant disadvantaged populations in the Loddon Campaspe region. Indicators of significant disadvantaged populations include high unemployment, low income, low education completion and a high proportion of people living with a disability. It is believed that many of these indicators of disadvantage can be coupled to the fact of significant and isolated populations of older people in rural, regional and remote areas.

The Loddon Campaspe CLC established the Older Persons Legal Program in May 2006. A two year pilot funded by philanthropic trusts, the OPLP has appointed a 0.8 solicitor to provide casework, community legal education and policy / law reform for older people. The program aims to increase access to justice for older people by specialising in legal issues that affect older people and by breaking down barriers that older people face in accessing the law.

The Program provides free legal assistance for people 60+years, community legal education specific to older people, professional education and support, research and policy / law reform.

Areas of Law

The Program is developing expertise in areas of law that particularly affect older people, including:

- Accommodation (hostels, nursing homes, retirement villages, tenancies)
- Aged discrimination
- Elder abuse (financial, psychological, physical, sexual, neglect)
- Family care agreements / property disputes
- Consumer issues (banking, credit and debt, superannuation, insurance, dispute with a trader)
- Grandparenting
- Health (advance health directives, access to health services, patient rights)
- Welfare issues – social security and veterans affairs
- Wills, Powers of Attorney, Guardianship and Administration

Legal Assistance

The Program acknowledges the characteristics of older people's engagement with the law and seeks to provide services that:

- are face to face,
- are based in the local community,
- adopt a multi-disciplinary approach,
- are in the best interests of the older person, and

- take a least restrictive approach.

The program has focused on developing partnerships with other organisations to provide services to older people in their communities. Research shows that older people are more likely to access services that are located in their local community at familiar and accessible sites.

The program has established outreaches at the Bendigo Community Health Service in Eaglehawk and the Castlemaine & District Community Health Service in Castlemaine. These community health services are hubs within their local communities and are already accessed by disadvantaged older people. The location of the outreaches in the community health centres also acknowledges the convergence of health, social and legal issues for many older people.

The program has also established an outreach at the Bendigo Base Hospital in partnership with the Bendigo Health Care Group and a panel of pro bono private solicitors. There are a number of reasons for establishing this outreach:

- Older people with health issues, limited mobility and limited financial capacity are particularly disadvantaged in being able to seek legal assistance or access justice.
- Older people admitted as patients present with a convergence of health and legal issues that require a collaborative approach. A collaborative approach would provide the opportunity for lawyers and social workers to work together to build on knowledge and expertise.
- Provision of legal advice and assistance not only helps a patient resolve legal issues, it has been shown to have important health benefits.
- Opportunity to build upon the important work that has been done by the social work department at Bendigo Health Care Group on abuse of older people.

The program has developed the outreach in partnership with the social work team at Bendigo Health Care Group. A panel of pro bono private solicitors has been convened to extend the reach of the outreach service and to provide professional education and development for private solicitors in the area of elder law.

Social workers or other health professionals refer a matter to the OPLP and the OPLP then organises for a pro bono panel solicitor to attend the patient on the same or next day if required. The majority of cases involve preparing wills and powers of attorney. However, where elder abuse issues are identified the OPLP will then take on that matter. The outreach also involves training and professional exchange for social workers, health professionals and solicitors.

In addition to the formal outreaches, the OPLP also makes appointments for clients at our Bendigo office and will travel to see clients throughout the region.

Community Education

The program is developing community legal education materials on a range of issues affecting older people: elder abuse, wills, powers of attorney, guardianship / administration, grand parenting, family care agreements, consumer law issues. Workshops on issues affecting older people are being held throughout the region and specific information sheets developed on specific areas of law.

Professional Education & Support

The program is working with the Bendigo Division of General Practice to facilitate a seminar series for local health and legal professionals in early 2007 on end of life decision making issues.

Research

The program has partnered with LaTrobe University Bendigo Law School to undertake research into consumer credit issues for older people in rural Victoria with funding from the Victorian Consumer Credit Fund. This research will be conducted in 2007 with recommendations as to community legal education strategies and policy / law reform issues.

Policy & Law Reform

As a community legal centre working with disadvantaged and marginalised communities it is our aim to represent the legal needs and issues for disadvantaged older people in law reform and policy debates. In particular our casework and legal education enables us to talk from experience on many law reform and policy issues.

We have established a Banking Project to look at banking policies and protocols in relation to financial abuse of older people. We are currently undertaking research and establishing a dialogue with the Bendigo Bank.

As a two year pilot project, we are documenting the legal needs of older people living in regional and rural areas to ensure that sufficient attention is paid to their unique needs in the provision of dedicated elder law services.

4.1 Case studies – Older Persons Legal Program

Case Study 1 (Capacity, Elder Abuse, Administration/Guardianship, Family Property Agreement)

LCCLC assisted a gentleman from a small rural town who had become embroiled in County Court proceedings about the ownership and possession of his home.

The gentleman (a disability support pensioner in his early sixties) relocated with his wife and his elderly mother (in her early eighties) to the residence several years ago. The mother was the sole registered owner of the property but had given the Certificate of Title to our client on the understanding that he could live in the house for the rest of his life. They remained living together until the mother fell in love with a local man and remarried.

This marriage caused a major breakdown of relationships and, after the mother relocated to live with her new husband, County Court proceedings were initiated by the mother to have her son removed from the home.

The husband attempted to have the son's utilities (power, electricity, gas) cut off and his Centrelink payments suspended in an attempt to get him out of the home.

Our client was extremely concerned that the County Court proceedings were not the will of his mother but that she was being overborne by her husband. He also had concerns that she was being abused by her husband.

Our client had a small claim to recover his equitable interest in the home on account of various home improvements that he had financed. He had sought assistance from numerous private legal practitioners but none would act on a speculative basis given the small size of his claim.

Our client had not filed a Defence and Counter Claim to the Writ leaving him exposed to claim for Judgement in Default.

LCCLC assisted the man to enter negotiations through his mother's solicitor. During the course of negotiations evidence came to light which put into question the mother's capacity. The Mother's solicitor was adamant that his client had capacity. Concerns of elder abuse persisted.

LCCLC advised that the matter could not be settled unless it was demonstrated that the mother had capacity. LCCLC requested the production of an assessment by the Aged Care Assessment Service which would clarify the issue of capacity. It was argued in the alternative that a litigation guardian should be appointed to conduct the litigation on behalf of the mother.

Production of the assessment and the appointment of a litigation guardian were both refused. Because LCCLC felt that the settlement may be vulnerable if it was later demonstrated that the Mother did not have capacity at the time of executing the settlement, we recommended filing an application with the Victorian Civil and Administrative Tribunal for the appointment of an Administrator. Because of the ongoing concerns of abuse we also recommended the appointment of a Guardian.

Concerned that Judgement may be entered by the mother, LCCLC arranged for a local firm to provide pro bono assistance to draft a holding Defence and Counterclaim. This was filed at the same time as the VCAT application was made.

Approximately one week later LCCLC was informed that on the same day that the VCAT application was filed by LCCLC, the Bendigo Health Care Group had independently filed an application for the appointment of an Interim Guardian. BHCG had no knowledge of our client's application but were so concerned about the risk of emotional and physical abuse by the husband to our client's mother that they felt an urgent order was necessary.

The VCAT applications were joined and, consistent with our client's application, State Trustees and the Office of the Public Advocate were appointed as Administrators and Guardians respectively. The Husband was excluded from playing either of these roles.

LCCLC is continuing to represent our client to resolve the County Court matter with State Trustees through negotiation.

Case Study 2 (Power of Attorney, Guardianship & Administration)

LCCLC was contacted by a woman who had travelled from northern New South Wales to care for her elderly mother who had suffered multiple strokes. Unfortunately the mother had not executed a Power of Attorney or Enduring Power of Attorney document, and the daughter was unclear about what her role should be. A solicitor from LCCLC visited the elderly woman in her home to discuss her options. It was immediately evident that the woman was unable to communicate clearly, notwithstanding the fact that she may have been able to understand the advice provided. LCCLC wrote the elderly woman recommending she attend her General Practitioner to obtain a referral to a Geriatrician to assess either her capacity or ability to communicate with the assistance of aides. It was determined that the woman's capacity was doubtful, and on that basis, LCCLC provided advice to the daughter regarding the process for the appointment of a Guardian and Financial Administrator through the VCAT.

Case Study 3 (Family Care Agreement, Elder Abuse)

LCCLC was contacted by the grandson of an elderly woman who was concerned about her financial relations with one of her sons. As the woman was in hospital at the time, having suffered a fall, LCCLC contacted the hospital and spoke to the elderly woman, establishing that she had transferred part of her interest in her home to her son on the understanding that he would 'look after her'. The woman instructed that she was pressured by her son to effect the transfer and that if she did not, she would be abandoned by him and left to fend for herself on her rural property. During several lengthy discussions with the client a LCCLC solicitor advised a range of options, including obtaining the file from the solicitors who represented the woman at the time so as to confirm whether she was advised against making the transfer. The woman decided not to proceed further with her enquiries.

Case Study 4 (family violence, family law)

LCCLC was contacted by an elderly woman who had left her abusive husband on the pretence of visiting family. The woman had been married for eight years and her husband had become verbally and physically abusive to her. Even while on holiday her husband had continued to abuse her daily over the telephone. A LCCLC solicitor advised the woman about how to apply for divorce and property settlement, how to apply for an intervention order and to tailor the orders to apply to her own circumstances, contacting the police to safely recover her possessions from the house and about the law of wills and estates.

Case Study 5 (consumer credit)

LCCLC was contacted by a social worker at a local hospital on behalf of an elderly woman whose husband had died 6 years earlier leaving her with a consumer credit debt of \$1,000. The woman normally lives in a caravan park, is on a pension and has no assets. The social worker was concerned that the debt was causing considerable anxiety to the woman and negatively impacting on her health. LCCLC contacted the consumer credit provider and organised for a waiver of the debt based on financial hardship.

4.2 Survey - delivering legal services to older people in the Loddon Campaspe region

In order to gain insight into needs at a local level, the Loddon Campaspe Community Legal Centre conducted a survey of agency staff, based in Maryborough and Bendigo, who come into contact with older people as part of their day-to-day work. This survey was conducted in September and October 2005. Although not comprehensive by any means, staff and agencies surveyed were from a wide range of health, accommodation and community services, and included:

The survey was devised with a view to assessing how legal information, advice and casework services should be delivered to older people in the Loddon Campaspe region, what types of legal issues are frequently encountered, how the issue of elder abuse could be addressed, the value of community legal education to older people and agencies working with older people, and the role of law reform on issues impacting older people.

We consider that the responses to the survey, detailed below, are consistent with the findings contained in the report of the Law and Justice Foundation of New South Wales: *Access to Justice and Legal Needs: The Legal Needs of Older People in New South Wales*.

Accordingly we recommend that the Consultation Committee consider the following responses in identifying measures to address the legal needs of victims of elder abuse who reside in rural, regional and remote areas.

Survey Responses

Legal problems

Respondents were asked to identify what sort of legal problems or issues were experienced by their older clients. They responded:

Legal Problems or Issues	Total Responses
Powers of Attorney	6
Wills	6
Guardianship.	5
Financial problems	4
Accommodation	4
Abuse of guardianship & power of attorney	2
Centrelink / welfare rights.	2
Criminal matters	2
Administration of estates	2
Estate disputes	2
Vulnerability to exploitation - particularly financial/consumer credit contracts.	2

Family law (ranging from grandchildren's well-being, through general law / justice issues to alcohol/drugs).	2
Entitlements and access to services	2
*Aboriginal elders are regarded with respect and younger people go to them for advice.	1
Accommodation for units & body corp. info.	1
General advocacy regarding any/all legal matters including local government issues.	1
Assistance regarding dealings with family members.	1
Capacity issues	1
Employment	1
Property and succession issues.	1
Funerals	1
Public tenancy matters.	1
Relationship issues.	1
Dealing with the State Trustees.	1
Transport Accident Commission matters.	1
Taxation assistance.	1
Suffering threatening/intimidating conduct. eg. by dementia patients.	1
Workcover.	1

Legal Services

Respondents were asked what legal services (if any) were accessed to try and resolve the issues of older clients. The responses were:

Legal Service	Total Responses
Private Lawyer	8
Victoria Legal Aid	7
Community Legal Centre	1
Other Community Organisation	8
Legal or government body eg Office of the Public Advocate, Ombudsman, Court, Law Institute of Victoria	8
Other	

Legal Referrals

When respondents were asked whether they see older clients with legal issues for which there is currently no appropriate referral, six responded no and five responded yes.

Issues faced when unable to access appropriate legal assistance

Respondents were asked to identify issues faced by their clients if unable to access appropriate legal assistance. The responses were:

Issue	Total responses
Costs for private legal assistance, possible financial difficulties, possible financial hardship	6
Live with/put up with the problem, making do, compromised living circumstances	4
Stress and anxiety	3
Hopelessness, behavioural change	2
Relationship problems if approaching family members for assistance	2

with issues	
Accommodation problems	1
Dying intestate	1
Inability to appropriately convey concerns and complaints	1
Isolation	1
Lack of financial protection from unscrupulous operators	1
Vulnerability / inability to exercise control over their affairs	1
Loss of grandchildren	1
Neighbourhood disputes escalating unnecessarily	1
None	1

Barriers faced by organisations in finding legal assistance

Respondents were asked to identify what issues or barriers faced by their organisation in trying to find legal assistance for older clients. The responses were:

Issues or Barriers	Total Responses
Lack of government supported or underwritten access to legal practitioners. Lack of organisations able to cope with referrals.	4
Bedridden patients / client mobility problems.	2
Clients not feeling empowered to be able to take control. Consequently they might refuse assistance offered.	2
Legal aid is not available.	2
Conflicts of interest, where existing services like community health & hospital social worker are representing another person. Especially in small towns where services are limited.	2
Accessing a Justice of the Peace	1
None	1

Barriers faced by older clients in accessing legal assistance

Respondents were asked to identify what issues or barriers their older clients face in trying to access legal assistance. The responses were:

Issues or Barriers	Total Responses
Lack of transport	4
Insufficient finances	3
Use of legal jargon	2
Hearing & health difficulties	2
Lack of knowledge	2
Lack of mobility	2
Feeling overwhelmed by seeking legal assistance if they haven't done so in the past.	3
Most community services are based in Bendigo.	1
Lack of advocates.	1
No telephone.	1
Pride; people are reluctant to access services and reveal their difficulties.	1

Effects of living in Rural and Remote areas

Respondents were asked what effect (if any) living in rural and remote areas had on their older client's capacity to deal with their legal issues. They responded:

Effects	Total Responses
No public transport.	6
Geographical isolation.	3
Transport difficulties generally.	5
Uncooperative families	2
Higher costs to access services.	2
A lot of assistance has to be provided by telephone, which is not necessarily efficient.	2
Outreach services are not funded enough to provide outreach effectively.	1
Some services don't have free call telephone numbers and clients often don't have the telephone on or cannot afford telephone calls.	1
Issues of physical access / mobility (including difficulties in merely answering the door visiting home services).	1
Isolation	1
Lack of support.	1
The need for additional advocacy to compensate for the effects of living rurally.	1
Being out of touch with services.	1
Less availability to monitor the situation from a health service perspective. Difficulties in travelling, no public transport available, often can't ask family to assist as they may be the reason for needing help.	1
Disempowerment.	1
None.	1

Improvements to legal services generally

Respondents were asked to identify how legal services could be improved to resolve the legal issues of older clients. They responded:

Ways to improve services	Total Responses
Legal education around rights & issues, awareness campaigns.	4
Visiting services, visiting rural towns.	4
Asking older people how they would like to be accessed.	2
Basic information on rights & legal issues.	2
Going to older people.	2
Marketing & promoting regular outreach days & sustaining it to gain community acceptance.	2
Provide specialist services for older people.	2
A local reference point would be great. Clients could gain knowledge and confidence improving their ability to get more from legal system.ie not be overwhelmed & intimidated.	1
Accessibility.	1
Assistance with transport if it is not otherwise available.	1
Clear and concise language in documents.	1
Co-ordination of transport.	1
Providing a locally based legal service with the ability to outreach through local neighbourhood houses in smaller communities i.e. able to travel or operate out of smaller community centres at times or on a needs basis as triggered by a call to the centre by an older person	1

requiring assistance.	
Looking outside the box for referrals. Eg; people in small towns look out for each other and if an older person is unwell (eg psychologically) we'd find out from concerned neighbours.	1
Make the service culturally appropriate to indigenous people, especially elders.	1
Promoting areas of law of specific interest to older people.	1

Improvements to legal assistance for victims of elder abuse

Respondents were also asked to identify how legal services could be improved to better assist people suffering elder abuse. They responded:

Ways to improve services	Total Responses
Providing people with knowledge about their rights, and providing advocacy and legal assistance.	4
Access to educational material.	3
Arrange a community meeting of all age groups (excepting elders) at the local Aboriginal cooperative, and conducting community consultations.	2
Build a partnership with a community group involved in providing assistance needs to the older person to allow the community group to contact the legal service for follow up with the older person (e.g. a personal visit to explain what legal services can be used for, to conduct an assessment of the older person's well being, and provide advice for that person to instigate changing their circumstances should they so choose.	1
More integrated delivery through information to health professionals.	1
Publicizing the service through local newsletters.	1
Access to social workers.	1
This is a difficult issue because if the person is competent, they often will refuse assistance. If they are not competent, then usually after investigation, an application might be made to VCAT or a referral to OPA.	1
Working with the Police.	1
Worker education.	1

Free, dedicated legal services for disadvantaged or vulnerable older people

Respondents were asked whether a free legal service dedicated to serving the legal needs of disadvantaged or vulnerable older people is needed in Victoria.

All twelve respondents answered yes. One respondent added that the Office of the Public Advocate had limited staffing and could only provide limited assistance – thus necessitating a more comprehensive service to older people. No respondents answered in the negative.

Basis for a free, dedicated legal service

Respondents were asked to identify why such a service was needed. Responses included:

“Clients would have access to information targeted to their specific needs.”

“It doesn't need to be a whole dedicated CLC, but there needs to be a clinic on Community Legal Education, done by a local CLC.”

“Financial difficulties restrict people pursuing some matters.”

“It would be easier to target assistance, to inform this group, and the issue of cost would at least no longer be a barrier.”

“There is currently a lack of free, accessible legal services.”

“The majority of indigenous people and elders cannot afford fee for service.”

“Such a service is not available at present. The needs of the elderly are important and the population is ageing.”

“Older people are vulnerable because of their financial position, being on set incomes or pensions.”

“There’s so much of it [elder abuse] going on than what people think. If you look behind the presenting issues (eg;drinking, social isolation) you’ll find legal issues and abuse issues.”

Delivery of dedicated legal services

Respondents were asked how legal services should be delivered to their older clients in the event that a service was established. They responded:

Service delivery	Total Responses
Outreach	3
Service provided from a local outlet (e.g. Bendigo), with the opportunity for outreach (e.g. every 2 nd Tuesday at Axedale community centre with ability for personal visits if referred by home helpers, personal carers, community nurses etc.) Also, to provide an outline of service provision and provide contact numbers for ease of reference by clients.	2
Advertising in local papers.	1
An appointment based service on designated days.	1
Presence at a Doctor’s surgery.	1
Flexibility	1
Home visits	1
Mail outs	1
‘Out of the norm’ networks which foster and draw on community cohesion.	1
Phone services	1
Posters	1
Regular, sustained face-to-face advice.	1
There would need to be a range of options, including home visits if possible or a shop front service	1
Visiting agencies and speaking individually with clients	1

Service delivery modes for older clients

Respondents were asked to rate the value of a range of service delivery modes for the provision of legal services **to their older clients**. On a scale of 1 to 5 (1= least valuable and 5= most valuable) the responses were as follows:

Service Delivery Mode	1	2	3	4	5
<i>Face to Face legal assistance in Melbourne</i>	12				
<i>Face to face legal assistance in rural centres</i>	1	2			9
<i>Face to face legal assistance in outreach locations in</i>		1	1	1	9

<i>rural and regional areas</i>					
<i>Telephone legal information and advice</i>		1	1	3	6
<i>Internet based legal information / resources</i>	7	1	1		1

A number of conclusions can be made based on these responses. First, face-to-face legal assistance in Melbourne for clients located in rural or regional areas received the lowest possible rating. Second, face-to-face legal assistance in rural centres or at outreach locations in rural and regional areas was highly valued. Third, the provision of telephone legal information and advice received significant, although not overwhelming support. Lastly, internet based legal information and resources also rated very poorly as a service delivery mode.

Service delivery modes for staff and workers

Respondents were similarly asked to value of a range of service delivery modes for the provision of legal services **for staff and workers** regarding the legal needs of older clients. On a scale of 1 to 5 (1= least valuable and 5= most valuable) the responses were as follows:

Service Delivery Mode	1	2	3	4	5
<i>Face to Face legal assistance in Melbourne</i>	10		1		
<i>Face to face legal assistance in rural centres</i>			2	1	8
<i>Face to face legal assistance in outreach locations in rural and regional areas</i>			1	2	7
<i>Telephone legal information and advice</i>	1			1	7
<i>Internet based legal information / resources</i>		1	2	1	5

A number of conclusions can also be made based on these responses. As for older clients, face-to-face legal assistance in Melbourne for staff and workers in rural or regional areas received the lowest possible rating. Again as for older clients, face to face legal assistance in rural centres or at outreach locations in rural and regional areas was highly valued, and, the provision of telephone legal information and advice also received significant, although not overwhelming support. Lastly, in contrast to older clients, internet based legal information and resources received significant, although not overwhelming support. The fact that this last service delivery mode was considered more valuable for staff and workers than for older clients is indicative of the fact that staff and workers are more likely to be literate with information technology and thus better able to access internet based resources.

Referrals to a dedicated service in the Loddon Campaspe region

Respondents were asked whether they would refer clients to a specialist older person's legal clinic operated by the Community Legal Centre if one was established in the Loddon Campaspe region. All twelve respondents answered that they would.

Volume of referrals

When asked to estimate the number of such referrals per annum, the total number of referrals from the twelve respondents was 247.

Community Legal Education

Respondents were asked whether the provision of legal education on particular topics of interest to older clients or workers would be valuable. Nine respondents answered yes, with no responses in the negative.

Topics identified for legal education included:

- *Advance health directives*
- *Powers of attorney*
- *Guardianship*
- *Wills and estates*
- *Aged accommodation*
- *Body corporate issues*
- *Social Security issues*
- *Consumer issues*
- *Dealing with the Department of Human Services*
- *Duty of care*
- *Essential services*
- *Funerals*
- *Guardianship*
- *Hostels*
- *The legal system*
- *Legal aid*
- *Legal financial issues*
- *Dealing with Local Government*
- *Privacy matters*
- *Physical restraint in residential facilities*
- *Service legalese*
- *Superannuation*
- *VCAT*

One respondent also commented that legal education should be targeted at younger but mature audiences (for example people in their mid to late 50s), who are yet to reach old age and encounter the many issues associated with old age.

Law Reform

Respondents were asked whether the law be reformed or improved in any way to better protect the rights and interests of older people?

While six respondents answered yes, others demonstrated some difficulty in considering the notion of law reform, the remaining respondents answering:

“Don’t know to what degree if any we should be regulating them further?”

“Not sure. I think recent changes to Guardianship legislation has given older people more options for future planning.”

“Don’t know.”

Role of dedicated service in law reform

Respondents were then asked that if they thought that the law should be reformed or improved in any way to better protect the rights and interests of older people, should the specialist older person’s legal service play a role in agitating for, and assisting older people to agitate for, such reforms?

Eight respondents (being two more than answered yes to the need for law reform / improvements in the law), answered yes. No responses were in the negative.

Relevant stakeholders, interest groups, organisations, associations or individuals for future consultation

Respondents were asked to identify stakeholders, interest groups, organisations, associations or individuals should be consulted with when designing and implementing legal services for older people.

The following responses were received:

- Aboriginal cooperatives
- Aboriginal elders
- The aged themselves
- Aged care advocacy groups
- Aged care assessment services
- Aged care services
- Carer Support Services
- Church groups
- Community / Neighbourhood houses.
- Community information centres.
- Family & community members.
- Government agencies.
- Health services.
- Local governments
- Office of the Public Advocate
- Legal departments of financial institutions.
- District Nurses, Hospitals, Social Workers
- Police
- Neighbourhood watch groups
- Police
- Probus
- Public tenant groups
- Regional HAC and medical professionals.
- The RITCH program
- Returned Services Leagues (RSLs).
- Salvation Army
- Senior Citizens
- Housing Action for the Aged
- Department of Human Services