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Inquiry Secretary  
House of Representatives Standing Committee  
on Legal and Constitutional Affairs

BY: LACA

## **Inquiry into Older People and the Law**

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Dear Dr Horne

I write to the committee which is inquiring into the position of the Aged and the Law in Australia.

I write from a position with a wide-ranging perspective on the legal treatment of the aged across Commonwealth and State boundaries and also the interaction between Commonwealth and State agencies in their management and care of these older people.

### **OVERVIEW**

I was a DSS (now Centrelink) auditor in 1995 when that department performed an audit of DSS Aged and Disability Pension payments to various State Public Trust Offices including the NSW Office of the Protective Commission (OPC).

My comments to your committee originate from the findings of that audit. They have been reinforced since then by my experiences in dealings with the NSW Office of the Public Guardian (OPG) and the NSW OPC.

I submit that the NSW OPC is deliberately operating in breach of the following Commonwealth legislation:

1. The Social Security Act and the Social Security Administration Act.
2. The Veterans Affairs Act.
3. The Family Law Act.
4. The various Taxation Acts.
5. Various Health Acts

The State Public Trust Offices in all states tested, most especially the NSW OPC, are not Treasury funded by their various states and this is the reason that they deliberately flout Commonwealth legislation.

Adherence to Commonwealth legislation would limit their revenue raising ability. They must raise their own operating costs (including salaries) from fees levied on their clients. Fees are levied on mundane transactions such as receipt and disbursement of pension payments. The NSW OPC also receives a special fee on the sale of real family assets such as the sale of a matrimonial home. They also set up "Savings Accounts" from the Commonwealth pension payments, irrespective of the fact that the aged or disabled person will have a pension for life and never need a substantial savings account. Pensions are designed to be consumed to support the day-to-day existence of the recipient with dignity, not to be used as savings; especially where this forced saving places the recipient below the poverty line.

## **BACKGROUND (from DSS Audit 'Third Party Payments' October 1995)**

The audit was a minor audit which expected to find nothing. We were shocked to discover that in all states tested, 100% of our sample population was incorrectly paid their pension entitlement. DSS had assumed that State government organizations would abide by the relevant laws and regulations and they would report not only the exact assets and income but also report as variations occurred, so that DSS could pay pensions accurately.

The so-called 'part rate' pensioners were chosen as the sample group for audit testing as this is the payment group most responsive to fluctuations in payment due to minor changes in either their asset or income levels.

The audit in NSW for example, found that every pensioner tested had both the assets and income levels incorrectly recorded by DSS. When I questioned the NSW OPC, their representative, stated, "that since they did not have the resources to comply with the DSS Act they deliberately ignored it". We did not test for any further non compliance, as we were informed by the NSW OPC that compliance with relevant Commonwealth legislation was not a priority for their organisation. We could have tested for other payment criteria (ie. the correct rate of rent assistance, the actuality of home ownership or the occurrence of error in the full rate pensioner group). This was not done as it was obvious that the system of accurate reporting and accurate payment of entitlement was completely compromised.

Additionally, the NSW OPC seemed unaware of the DSS taper rate in pensions, so that the audit team concluded that there might well be a sizable number of people under the financial control of the NSW OPC who were eligible for a DSS pension but who had never had that eligibility tested by the NSW OPC making a claim on DSS for a pension.

In my subsequent dealings with Centrelink pensioners managed by the NSW OPC I have never found a case where the management was accurate in obtaining the correct Centrelink entitlement.

Centrelink \*(and DSS previously) are not prepared to obtain justice or the legally mandated income support for their most disadvantaged clients by enforcing the application of their own legislation. The problem is ignored both by the respective state and Federal agencies.

## **BREACHES OF COMMONWEALTH LEGISLATION**

### **1 The Family Law Act 1974 (as amended)**

NSW and all other states (except WA) gave to the Commonwealth jurisdiction for all family law matters with the creation of The Family Court of Australia (FCA) in 1974.

When the NSW OPC takes responsibility for a married person, they divide the matrimonial property (including selling the family home and all other assets), apportioning to each party 50% of the total assets.

It is my understanding that this action is illegal for each of the following 5 reasons:

- 1) The NSW OPC (which was till recently a part of the NSW Supreme Court) has no jurisdiction in family law matters.
- 2) The NSW OPC has never made application to the FCA for cross vesting rights to make FCA decisions.
- 3) The parties are still lawfully married so there can be no division of matrimonial property.
- 4) No cognizance is taken of any FCA guidelines on the division of matrimonial property.
- 5) No cognizance is taken of any prenuptial agreements that the parties may have entered into before marriage.

## **2 The various Taxation Acts (as amended)**

I believe that the NSW OPC is in breach of the various Tax Acts in two ways.

- 1) The NSW OPC regularly sells property and places the whole of the amount into their trust accounts. They make no declaration to the ATO about capital gains tax on these sales.
- 2) I believe that they make no statement of income on the earnings of the trust accounts to the ATO for any person under their control. No financial statement which I have seen has any record of payments to the ATO.

Considering that the NSW OPC manages about \$2 billion in the various trust accounts (mainly from the sale of property), this represents considerable fraud on the Commonwealth by an arm of the NSW Supreme Court.

## **3 The various Health Acts and policies on home care.**

The Commonwealth government has a policy of home care for aged so that they can be cared for by family or home care workers. The NSW OPC finds it more convenient to kidnap elderly people from their relatives care and place them in nursing homes and not inform their relatives of their location. This makes the relatives and the person easier to handle and easier to strip them of their assets.

## **4 Centrelink and DVA Pensioners**

The NSW OPG and the NSW OPC operate in the same way for pensioners from either the Department of Veteran's Affairs and for those from Centrelink. They ignore their legal obligation to inform the two relevant Commonwealth organisations of their customer's circumstances and to manage their customer's affairs with the Commonwealth:

- 1) Assets and income are not accurately declared to the Commonwealth so that the correct rate of pension can be paid by the Commonwealth.
- 2) Rent payments including nursing home fees not accurately declared so that the correct rate of rent assistance cannot be paid by the Commonwealth.
- 3) Opportunities to maximize their pension payment and their overall financial situation by retaining ownership of their home are not considered. The OPC deliberately invalidate the pension by selling the home and moving the pensioner from home owner to non homeowner status. The NSW OPC do this firstly to obtain their fee on sale of the home, secondly to maximise the managed assets in their trust account and thirdly to sell at auction the family heir looms in the home.
- 4) Not applying for a pension on behalf of their clients. Some NSW OPC clients may have an entitlement to a part pension because of their diminishing assets or diminishing income. However the NSW OPC seemed unaware of the Pension cut in amounts and the asset and income levels that trigger the start of a part pension.
- 5) Reducing fees on incoming and outgoing transfers by having the Commonwealth organize to pay the nursing home fees directly from the pension without charge to the pensioner. However, this would deprive the NSW OPC of fees on receipt of the pension and fees on payment of the nursing home board.
- 6) Centrelink and before that DSS had a policy on the residual of the pension that should be made available to the pensioner for comfort items such as hairdressing, clothes, cosmetics and outings. The NSW OPC withholds all moneys to pensioners so that they are degraded by poverty with no pocket money.
- 7) The NSW OPC institutes a "Savings Account" for all pensioners irrespective of the fact that most Aged and Disabled pensioners will remain pensioners for the rest of their life. This deprivation into their pension often forces them below the poverty line whilst accumulating cash in their "Savings Account" which will build up till after their death.

The NSW OPG and the NSW OPC regularly set aside existing guardianship and financial management arrangements so that they can firstly steal the person and then appropriate their assets. Many elderly and disabled people have workable guardianship and financial management arrangements in place at the time that they are taken over by the NSW OPG/OPC. They either live in their own dwelling, live with relatives (usually children) or are in nursing homes.

They care nothing for the person or for Commonwealth law. They need to recruit new victims constantly and to devour their assets and pension income to fund their organizations and salaries.

The growth in the number of elderly Australians, the rise in life expectancy, the growth in senile dementia will all contribute to an exponentially growing number of the most vulnerable Australian in danger of becoming another stolen generation.

**Elderly Australians and the disabled need to have laws enacted to allow them appoint a perpetual guardian and to appoint a perpetual financial manager. These laws should be such that they cannot be overturned by rapacious state government organizations.**

**I am prepared to be and would welcome the opportunity to be subpoenaed by your committee at any time to be questioned, under oath, by you.**

Mr John Mayger

A handwritten signature in black ink, appearing to read 'J. Mayger', written in a cursive style.

Attachment A

DSS Discussion Paper Sept 1995 National Audit Third Party Payments  
Hardcopy Only

Attachment B

DSS internal discussion of the Third Party Payment Audit Report Dec 1995  
Hardcopy Only