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House of Representatives Standing Committee on Legal and Constitutional Affairs
Department of the House of Representatives
Parliament House
P O Box 6021
CANBERRA ACT 2600

Dear Ms Caulfield

Thank you for your email of 23 May 2007 enclosing the proof transcript of the evidence given at the hearing. We are pleased to have the opportunity of answering the additional questions raised by the Committee.

The Public Trustee's replies to questions arising from the older people and the law inquiry are set out below.

QUESTION 1:

In your submission you indicate that elderly people in remote areas or those who experience mobility problems are not able to access legal information and services. You suggest that this could be overcome by an outreach service offering staff who are specialized in dealing with elder law issues (p. 4).

• *Would you be supportive of a team approach whereby a solicitor and a social worker worked together?*

RESPONSE:

There are currently many sources of information available to the elderly or community centres: Law Access, Seniors Information Service, and related websites for accommodation issues. While remote areas have access to all these services face to face advice would be enhanced if an outreach service provided a supportive team comprising both a social worker and a solicitor. Both have links to community centres (legal and other) from which referrals can be facilitated. Many of the problems faced by the elderly have an underlying social, housing or financial context. A social worker is trained to be aware of services to assist an older person resolve a wide range of problems.

2.

What is required is an efficient multi-disciplinary team to co-ordinate personal or telephone response providing advice, not just information. The team would need to include local or regional representatives from specialist agencies such as Centrelink (including its financial counselling service), Aged Care Assessment Teams, lawyers, Financial Planners, Public Trustee etc who can link to an escalation of advice where necessary. It is not always possible for face to face advice as this is costly.

All team members would also need to be cognizant of the social needs and communications barriers that can arise when in contact with ethnic and aboriginal cultures, and languages that might act as a deterrent to older people seeking legal assistance.

By way of analogy, the NSW Guardianship Tribunal uses a team approach in relation to its hearings. Three members sit at each Tribunal hearing. The three members are usually chosen from the legal and medical professions assisted by a layperson. Such a combination has proved of value to the Tribunal. So, a team comprising a lawyer and social worker could be very effective in assisting older people.

The Public Trustee in NSW has regional branches at Lismore, Broken Hill, Armidale, Port Macquarie, Newcastle, and Wollongong. The Public Trustee staff have training in certain elder law issues and are able to work in conjunction with ACAT, other government and charitable agencies, DADHC, Centrelink, Guardianship Tribunal, Office of Protective Commissioner and the Public Guardian to inform older people of legal issues pertaining to wills, powers of attorney, enduring guardianship and capacity. Because of the Public Trustee's contact with many older people, staff are able to report to various other organizations if abuse or legal needs become obvious.

There may also be the opportunity of utilizing the skills of clerks of the local courts who are agents of the Public Trustee. The Public Trustee provides training to the clerks to make wills, powers of attorney and enduring guardianship. Clerks are also trained to understand capacity issues.

• *What kind of specialist training would these people require?*

RESPONSE:

The team members should have detailed knowledge of issues surrounding older people. The issues are set out below and it is these issues in which team members should be trained:

1. Substitute Decision Making
 - support through enduring powers of attorney
 - enduring guardianship
 - advance care directives

3.

2. Accommodation Issues
 - retirement villages
 - aged care facilities
 - reverse mortgages
 - granny flats
 - family agreements
3. Financial Issues
 - superannuation
 - Centrelink payments
 - estate planning
 - business succession
4. The Services Offered by Government and Non-Government Bodies
5. Succession law

Team members should also have in depth knowledge of societal and psychological aspects associated with the ageing process.

• *Will access issues become less of a problem as those who are more technologically able enter old age?*

RESPONSE:

As stated above, although information is currently available, it is access to advice which is more the issue.

This question is based on the assumption that all older people will have the financial resources to afford the technology and are interested in learning or able to use it efficiently. Many older people live on government pensions and are unable to afford the technology that is expensive to use and run. The equipment is expensive to purchase, but becomes very quickly outdated and it is necessary to frequently upgrade. Additionally there is the cost of internet access.

Many older people have not had the opportunity to learn and use the technology. There is an expense associated with attending courses to learn the technological skills. Although it should be noted that there are aged-groups who are forming internet-clubs catering to their demographic needs and interests in accessing and using this technology.

For a certain proportion of older people access to the technology through their local libraries, which are now all internet based, and other community groups is possible.

As the younger generations age reliance on this technology will be common-place. However amongst the current aged population there will be a proportion of people who are not familiar with technology and will not have the interest in learning its use.

4.

Consideration must also be given to the existing problems in rural areas with telecommunications problems (such as internet-service providers offering a range of consumer choices for access, the technical support for computer hardware repairs, etc).

Face to face advice is in some circumstances helpful especially if a person is suffering diminished capacity, such a person is unlikely to have the capabilities to negotiate the complexities of new technology. More importantly, it is the discussion(face to face) or on the telephone) which gets to the real issues needing advice and direction. Sifting through information on the webpages can be frustrating to people wanting reassurance and a more immediate solution to their particular problem.

QUESTION 2:

You note that in relation to family agreements, some form of legislation may be required to assist in the interpretation of and providing a solution for both formal and informal agreements (p 6)

• *Would you expand on what kind of legislation you had in mind and what form it might take?*

RESPONSE:

Such legislation would stipulate basic requirements just as set out in any piece of legislation enacted to regulate dealings between parties and protect the vulnerable from exploitation. For example the legislation would contain provisions relating to the following:

1. the legislation should be in very simple plain English
2. issues agreed upon by the parties
3. consideration.
4. form of agreement
5. enforceability
6. mediation including when to mediate and where
7. termination
8. tribunal/court review
8. costs

It may be necessary to ensure that related legislation specifically picks up the impact of family agreements. Such legislation includes Family Law Act, and the various State based Succession and Family Provision Acts.

QUESTION 3:

Throughout the submission you cite education as an important solution for overcoming legal issues facing the elderly.

- *Would you expand on and highlight the kinds of education programmes you envisage?*

RESPONSE:

Education could take various forms:

1. Interactive programmes, which could be conducted through organizations such as CPSA and other such organizations, targeted to older persons. The programmes envisaged would be similar to those conducted by Ms Sue Field for the CPSA and funded by the NSW Law & Justice Foundation Grant. Ms Field conducted these seminars for CPSA members in regional areas of NSW.
2. Use of print media such as brochures widely disseminated through pharmacies, doctors surgeries, Commonwealth Bank (where pensions are paid), and other organizations dealing with older people.
3. Educational packages that have been designed by professional and experienced people who deal with older people. Such educational packages can then be used by solicitors, ACAT members, social workers, medical people and others when presenting talks to other professionals and members of the public. The educational packages will be common to all users and so the information presented will be consistent and uniform and can be easily used by all presenters.

In respect of planning ahead for personal and financial management, this is in fact being currently implemented in NSW at the initiative of the State Government through DADHC and its Planning for Later Life Forum. Representatives from the Department of Health, Office of the Protective Commissioner and Public Guardian, NSW Guardianship Tribunal, Public Trustee and NSW Law Society are pooling resources to prepare standard training materials for the purpose of being used by them to address other organizations and members of the public. Additionally an inter-agency protocol exists addressing elder abuse. Specific training materials for each agency are to be prepared to enable staff to deal with issues faced by older people such as financial and physical abuse, how to detect it and how and when to report the abuse and options to remedy the abuse.

4. Education could also be produced on CD/DVD. Mass production of discs is inexpensive and could be produced in English and migrant languages. Federal and State Governments could both contribute to the cost of production. The disc could be mailed out free to older people on the mailing lists of Centrelink and Veterans Affairs.

Various state bodies already do have many education programmes running. For example Public Trustee staff present free talks to various community groups on powers of attorney, wills and capacity issues. The Public Trustee NSW sponsors the Elder Law

Chair at UWS. Ms Field lectures in Elder Law at UWS and in addition to her teaching tasks travels widely presenting seminars at various groups such as Lions, Probus, church groups, retirement villages etc on elder law issues. Ms Field also travels widely giving talks on elder law and elder issues to legal practitioners.

Whoever takes on the responsibility of education programmes should liaise with and educate the following groups/individual/s organizations:

1. religious groups own and run nursing homes, hostels and retirement villages it is important that information and education be disseminated amongst such groups.
2. local libraries as they are a distribution point for public notices whether by their notice boards or the librarians themselves who are information technicians.
3. local government authorities which all have seniors liaison persons.
4. service providers to older people such as meals on wheels, ACAT, mobile libraries, all government and non-government organizations (and their peak bodies) that deal with older people.

Either or both Federal and State Governments could organize radio and television campaigns similar to the Violence Against Women ads. The ads would announce that if a citizen knows an older person who is suffering abuse they should contact a given phone number. A service could be established to take the calls and assist those who are reported as suffering abuse.

Continuing legal education programmes are a good way of educating legal practitioners.

Continuing Education Programmes offered via the universities, TAFE and WEA should be developed. However these require individuals or groups taking the initiative to approach the university, TAFE and WEA with a programme and ascertain if there is sufficient interest from the public to run it.

Approach could also be made to community radio networks, independent TV stations such as Channel 31 in Sydney, which have programmes specifically aimed at older people (UWS sponsored), all other radio stations, to raise awareness to the issues and problems facing older people. These forms of communication are also an excellent way of announcing programmes being run around the state especially in regional/country areas. It could also be suggested that older people form groups for the purpose of asking speakers to address them.

It is important to note that there are two types of demographics: those already old and those who will next join their ranks i.e. the baby boomers. Any kind of communication/education should cater to the different audiences.

Also it is important to target women's groups particularly as more women than men survive into old age. Feminism has not hit all migrant communities so it cannot be assumed that all baby boomer women will be prepared for older people's issues.

It is noted that the Commonwealth Government set up the Financial Literacy Foundation in 2005. The Foundation website contains very helpful information that could be expanded upon in relation to financial issues faced by older citizens. It is certainly a resource that would be useful to other agencies whose staff work with older people. The Foundation's trainers and educators may be linked in with these other agencies.

• *Who would be best responsible for initiating these programs? Should they be under the auspices of one body?*

RESPONSE:

The issues are common around Australia and there would be many advantages if the framework for education could be set nationally. It would then allow the respective Federal and State bodies to collaborate for content.

Possible suggestions for the management of educational programmes are:

1. As already indicated above the NSW State Government has already initiated through DADHC and its Planning for Later Life Forum representatives from the Department of Health, Office of the Protective Commissioner and Public Guardian, NSW Guardianship Tribunal, Public Trustee and NSW Law Society to plan and compose an educational programme.
2. Elder Law at UWS has as its focus, consultancies, research, education and training in respect of older persons and the legal issues affecting them as such Elder Law at UWS could be an appropriate body to be responsible for the co-ordination of such programmes.
3. The Law Society in each state and territory could set up an elder law specialist group. The members of the group together with lecturers from all the universities may be able to initiate and manage such programmes.

QUESTION 4:

Your submission calls for a one-stop-shop where various forms of legal assistance and information can be obtained (p. 10). You note other states already have this type of assistance in place.

• *Why has NSW not implemented such a program?*

RESPONSE:

We cannot comment on why NSW has not implemented such a program, this would be a government initiative.

- *Have the one-stop-shops in other states been successful?*

RESPONSE:

Ms Sue Field advises that QLD had the Legal Outreach for Older Persons but state funding ceased and it was some time before the programme reconvened on a much smaller scale. It was only last year that the state government committed funding for several regional areas so it is too early to evaluate but informal feedback is that yes it has been successful.

The Southport Legal Centre in Victoria has been operational for some time and combines legal and health services and does appear to have been extremely successful.

- *How will this service overcome mobility issues? Would you envision an incorporated outreach program?*

RESPONSE:

Some mobility issues could be overcome by providing a freecall 1800 number to address rural and regional issues. Also the QLD model of setting up discrete centres in various geographical locations would assist. Such centres could be attached to community legal centres or local government authorities which all have seniors liaison persons.

In addition consideration could be given to an expansion of the pro bono services offered by corporate law firms who have the finances and resources to provide assistance on elder law issues such as these firms do for other areas of law.

- *Expand on the types of services that might be available at one of these centres?*

RESPONSE:

The Advocacy Centre for The Elderly (ACE) in Toronto, Canada is an example of such a centre. It is a community based legal centre for low income senior citizens. It receives its funding through Legal Aid Ontario.

ACE runs files, has a telephone advice system and represents clients in court. ACE also engages in law reform activities and community legal education.

- *Will the centres help overcome elderly reluctance to engage in the legal system?*

RESPONSE:

Yes if they are multi-disciplinary.

However we acknowledge that while a one-stop shop is the ideal and it certainly would be effective in city and major regional areas it may not workable for outlying and smaller towns. Australia is a vast open country and many small communities are a considerable distance from larger towns. Resources would be severely stretched by the establishment of a one-stop shop in multiple and remote locations. A more practical and attainable solution for remote areas may be for the existing community legal centres to be a referral centre to other state and federal bodies who can then respond to the older person with information or advice. There is a need for a collaborative approach by existing state and

federal bodies pooling resources such as indicated in paragraph 2 of our response to the Committee's Question 1. Much of the response to people in isolated areas would of necessity be done by telecommunication devices.

People have no hesitation attending community legal centres as they do not charge fees. This is especially important for older people who lack financial resources. Thus if the

various state and federal bodies linked in with the community legal centres and there was referral from the centres back to these bodies this may overcome any reluctance older people feel in seeking assistance.

Can you expand on the specific problems created by a lack of cross-jurisdictional recognition on powers of attorney arrangements?

RESPONSE:

Lack of cross-jurisdictional recognition is becoming less of a problem as more states and territories move to amend their legislation to address this issue. The ACT's new Powers of Attorney Act 2006, for example, came into force in recent days. However, there remain a few anomalies such as in WA where a donee of a POA created in another jurisdiction must apply to the State Administrative Tribunal for an order recognising that instrument in WA.