

Submission No.....71.....
Date Received.....

NH RECEIVED  
01 DEC 2006  
BY: LACA

**SUBMISSION**

**TO THE INQUIRY INTO OLDER PEOPLE AND THE LAW**

**BY THE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL**

**AFFAIRS**

**PARLIAMENT OF AUSTRALIA HOUSE OF REPRESENTATIVES**

**BY**

**ADVOCARE INCORPORATED.**

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Date: 22<sup>nd</sup> November 2006

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## **1. SPECIFIC ISSUES OF THE INQUIRY ADVOCARE INCORPORATED ADDRESSES IN THIS SUBMISSION.**

Advocare's submission will address three of the specific issues of the inquiry that are directly in the scope of the organisation's work, as follows:

1. Financial Abuse;
2. General and enduring 'power of attorney' provisions;
3. Barriers to older Australians accessing legal services.

## **2. ADVOCARE INCORPORATED'S INTEREST IN THE INQUIRY.**

Established in 2000, Advocare Inc., a community based, not-for-profit organisation, is funded by the Australian Government Department of Health & Ageing and the Western Australian Department of Health, through the Home and Community Care (HACC) program.

Advocare's vision is that: all people are able to exercise their rights to achieve optimal well-being. Advocare's mission is: to enable individuals and the community to promote and protect the rights of older people and people receiving community care services.

Potential clients include residents of aged care facilities, recipients of Community Aged Care Packages and HACC services and people who are victims of elder abuse. Advocare promotes the rights of these people through individual advocacy and systemic advocacy. As part of their systemic advocacy, Advocare provides information and education to these groups and the community at large.

Central to Advocare's practice is the Universal Charter of Human Rights (1947) ([www.humanrights.org.au](http://www.humanrights.org.au)). Advocare's practice principles are:

- vulnerable people have the same human, legal and consumer rights as all people;
- clients are capable of making their own decisions, unless proven otherwise;
- clients are believed;
- client's rights are best supported by working co-operatively with family/friends, carers and care workers.

When there is impaired decision making capacity, and when there is conflict between relatives about the client's best interests, Advocare refers the matter to the Office of the Public Advocate or

encourages the service provider involved in their care to apply for appointment of a substitute decision maker.

Advocare currently conducts four programs and one project:

- **National Aged Care Advocacy Program (NACAP)** provides advocacy, information, education and referral for people who are residents of aged care facilities and people who are recipients of Community Aged Care Packages (CACP's) and Extended Aged Care in Home (EACH) Packages
- **Home and Community Care (HACC) Program** provides advocacy, information, education and referral for people accessing HACC services.
- **Elder Abuse Prevention Program (EAPP)** provides advocacy, information, education and referral for older people who are, or could become, victims of elder abuse from family and or friends.
- **Aboriginal Advocacy Program (AAP)** provides culturally specific information and education to Aboriginal people regarding access to HACC services and advocacy for those services.
- **Alliance for the Prevention of Elder Abuse (APEA WA)** has been operating since February 2005. This project is designed provide a co-operative framework for Western Australian government services who deal with issues of elder abuse in WA. The Alliance Project Officer operates from the Advocare Inc. Offices.

For the past six years Advocare Inc. has been central in the activities of the residential and community aged care sector in Western Australia and in supporting victims of elder abuse. In the past four years we have received over 6,000 calls mainly from older Australians and their carers in relation to access to services and abuse of older people. In addition we have provided advocacy assistance for over 4,000 older people. The common theme in many of the cases managed was the inability of these individuals to access legal recourse to their complaints and issues.

### **3. ISSUES FOR THE INQUIRY**

#### **3.1. Financial Abuse**

In September 2002, Advocare conducted a two week long state wide Elder Abuse Telephone Survey. The results are found in the report entitled “Advocare’s Speak-Out Survey (SOS) on Elder Abuse”. This research provided much needed empirical evidence clearly indicating the existence and the nature of this problem in Western Australia. The survey revealed 99 cases of elder abuse by family and friends. Two thirds of the cases related to financial abuse as defined by the United Nations, Economic and Social Council (2002). Risk factor associated with financial abuse included family conflict, financial stress and physical dependence on the perpetrators of the abuse. The abuse of substances and alcohol by perpetrators was also a contributing factor. The types of financial abuse found in our research included;

- Stealing from older peoples bank account, pressuring for a loan, or taking cash;
- Pressuring an older person to change their Will, fraudulently changing a will, withholding a person’s Will (concealing a legal document);
- Abusing the role of appointed power of attorney or enduring power of attorney (See issue 3.2- General and enduring ‘power of attorney’ provisions, p.6);
- Selling, transferring or taking control of an older persons house without due consideration of their freedom of choice;
- “Freeloading” off an older adult (e.g. Living off them without financially contributing);
- Stealing or pressuring an older adult to hand over possessions.

It is evident that these financial abuses are all criminal acts under the Western Australian Criminal Compilation Act 1913 (Sections 338, 373 and 379) and include stealing, fraud, financial exploitation and undue pressure. Despite being criminal acts they are rarely reported (See issue 3.3 – Barriers to older Australians accessing services, p.6) Further details of this research can be found in the “Advocare’s Speak-Out Survey on Elder Abuse Report” available from Advocare Inc.

### **3.2. General and enduring 'power of attorney' provisions.**

Of the 1,289 calls to Advocare between November 2005 and October 2006, 177 were specifically in relation to the abuse of powers of attorney and enduring power of attorney. In addition, Advocare's staff provided information and referral about 'powers of attorney' in the context of about half of the total number of cases (556 cases). Abuse of powers occurs when attorneys take advantage of the older person for their own benefit or for others benefit, or by falsely representing an older person as not having capacity.

The main problems are associated with:

- The ease of obtaining a general or enduring power of attorney; with any person able to fill out forms and obtain a signature from a vulnerable person without anyone else knowing.
- The lack of a system of registration of powers of attorney means that it is difficult for those who find themselves acting for the vulnerable older person, to identify who may be acting on the person's behalf.
- The lack of a monitoring system of powers of attorneys and consequent lack of accountability means that there is an increase in the likelihood of abuse.

### **3.3 Barriers to older Australians accessing legal services**

Many of Advocare's clients would benefit from the involvement of legal services in their issues.

Barriers for our clients accessing these services include:

#### **Older people**

- The lack of knowledge of some older people about how legal services can assist them to resolve their issues;
- The lack of confidence or even fear experienced by some older people of approaching legal services for assistance;
- A substantial numbers are unable to afford to pay for legal services; particularly representation in court;
- Lack of experience by some older people in utilizing technologies that may assist them with information and support such as the internet.

## **Legal services**

- Eligibility criteria for Legal Aid Services that excludes many older people;
- Lack of services particularly in rural and regional areas;
- Lack of interest in older people's issues;
- Failing to consider that family members acting on behalf of older people may have a conflict of interest;
- Failure to use appropriate language when communicating or documenting the issues for older people.

The same barriers to accessing legal services also apply to accessing police services. This in part, explains why older people will not report the crimes associated with financial abuse and the abuse of general and enduring powers of attorney.

## **4. RECOMMENDATIONS**

### **4.1. Financial Abuse**

- The provision of community education about financial abuse and ways to prevent this from occurring and what to do if there is a suspicion, or have evidence, of it occurring;
- Targeting of this type of education to people prior to retirement age;
- Targeting financial and banking sector with relevant education.

### **4.2. Powers of Attorneys**

- Community education about the legal responsibility of being an attorney;
- Education be provided to those who take on the responsibility of being attorneys;
- Establishment of a register of powers of attorney documents, and a body that can oversee complaints and where necessary can investigate complaints;
- A system for the annual reviewing of financial transactions undertaken by donees of enduring powers of attorney, such as is in place for Guardians & Administrators.

### **4.3. Barriers to Legal Services**

- Specialist legal services be developed for older people and their interests;
- Information about legal issues for older people is disseminated in simple and culturally relevant language.

## 5. CONCLUSIONS

Advocare Inc. is well placed to recognize the gaps in legislation in relation to protecting the interests of older people. The above recommendations will advance the empowerment of older people in relation to asserting their rights under the law.

### References

1. Faye, B. & Sellick, M. (2003) *Advocare's Speak-Out Survey on Elder Abuse*.
2. United Nations, Economic and Social Council (2002) *Abuse of Older Persons: Recognizing and Responding to Abuse of Older Persons in a Global Context*. Commission for the Social Development acting as a preparatory committee for the Second World Assembly on Ageing: New York.
3. W.A. Government (1998) *Criminal Code Act Compilation Act 1913*. W.A. Government.
4. [www.humanrights.org.au](http://www.humanrights.org.au).