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Australian Government  
Attorney-General's Department

Secretary

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NA

Ms Cheryl Scarlett  
A/g Committee Secretary  
House of Representatives Standing Committee on Legal and Constitutional Affairs  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Dear Ms Scarlett

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

I refer to the current inquiry being conducted by the House of Representatives Standing Committee on Legal and Constitutional Affairs (the Committee) into older people and the law (the Inquiry). The Inquiry's terms of reference provide that the Committee may investigate and report on the adequacy of the current legislative regimes in addressing the legal needs of older Australians. This Department administers an extensive array of legislation and services on behalf of the Australian Government. This submission addresses those areas of the Department's responsibilities which may be relevant to the Inquiry: age discrimination, power of attorney provisions, fraud, access to legal aid, and the recent family law reforms.

### ***Age Discrimination***

The Australian Government believes that people of all ages should be able to participate fully in the Australian community and condemns discrimination in all its forms, including discrimination on the basis of age. This Department administers the *Age Discrimination Act 2004 (ADA)* which prohibits age discrimination in many areas of public life, including employment, access to goods, services and facilities, administration of Commonwealth laws and programs, education and requests for information. The ADA contains a number of exemptions which are designed to balance, to the greatest extent possible, the principle that people of all ages, including older Australians, should be able to participate in the community with the legitimate need to take age into account in some circumstances. The exemptions cover those areas where the Government's view is that the use of age-based distinctions achieves a legitimate purpose such as superannuation, insurance and credit, taxation and social security laws, and some health programmes.

### ***Power of Attorney***

A 'power of attorney' refers to the unilateral grant of authority by a donor for someone else to act on their behalf. A power of attorney can either have a general/ordinary authority, such as

instructing someone to sell an asset or operate one's affairs for a fixed period of time, or an enduring authority, which survives the loss of individual physical or mental capacity.

The ability to grant a power of attorney may be an important aspect of making arrangements for the management of one's future affairs, particularly for anyone suffering from a degenerative disease or disorder. With an increasingly mobile population, both donors and donees of powers of attorney should be confident of the validity of these instruments interstate.

However, there is different and sometimes conflicting legislation governing the execution and operation of powers of attorney in each State and Territory. Formal requirements (such as registration) also differ which can result in powers of attorney made in one jurisdiction not being recognised in another.

The Standing Committee of Attorneys-General (SCAG) has previously considered the issue of mutual recognition of powers of attorney and endorsed draft provisions for the mutual recognition of powers of attorney. Progress was discussed at SCAG meetings during 2006. New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory have implemented legislation in accordance with the draft provisions. This means that powers of attorney executed in any of these jurisdictions will be recognised and effective in the others. The Australian Government continues to encourage the remaining jurisdictions to adopt the mutual recognition provisions as a priority.

### ***Fraud***

Fraud is increasingly a crime unconstrained by geographical or jurisdictional boundaries. The development of new technologies has increased the opportunities for fraud and made the prevention, detection and investigation of fraud more challenging both for the public and private sectors. If left uncontrolled, fraud can undermine government revenues and the provision of services.

The legislative regime for fraud is primarily the responsibility of State and Territory governments. This Department is responsible for coordinating fraud control policy and reporting in Australian Government bodies and works closely with the Australian Federal Police on all fraud control issues. However, the Department does work with other Commonwealth, State and Territory government agencies to promote a holistic approach to crime prevention in the areas of financial and Internet fraud.

The Department is not aware of any issues in the area of fraud that would be particularly relevant to the Inquiry.

### ***Access to Legal Aid***

Older persons can access legal aid through legal aid commissions and community legal centres in the same way and under the same conditions as other members of the community.

#### ***Legal Aid Commissions***

The Australian Government funds legal aid commissions in each State and Territory to provide

assistance for matters arising under Commonwealth laws. Legal aid commissions provide legal information and advice, including assistance with forms, duty lawyer services and grants of assistance for legal representation.

Information and advice services are generally free of charge. Grants are provided in accordance with Commonwealth priorities and guidelines. Eligibility is subject to income, assets and merits tests, and a contribution towards the cost of the matter may be required. Table 1 sets out the number of applications for grants of assistance for legal representation approved in 2005-06 by age.

**Table 1: Approved legal aid applications by age for all Commonwealth law types in 2005-06**

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	TOTAL / % of all applications
0 - 19	1,761	861	1,149	313	476	238	77	47	4,922 13.12 %
20 - 29	2,920	2,494	2,674	657	1,032	631	201	161	10,770 28.72 %
30 - 39	3,225	3,559	3,131	917	992	631	286	175	12,916 34.44 %
40 - 49	1,455	1,685	1,290	396	413	251	144	73	5,707 15.22 %
50 - 59	466	544	359	105	119	75	35	21	1,724 4.60 %
60 - 64	109	80	88	28	24	9	8	5	351 0.94 %
65 and over	338	467	179	31	26	15	12	8	1,076 2.87 %

Assistance with court appearances for those who are not eligible for a grant of aid is available through duty lawyer services provided by commissions, including for family law matters in registries of the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia.

Grants of legal assistance for family law matters are available to non-parents, which includes grandparents, who are significant to the care, welfare and development of a child, or if it is considered to be in the child's best interest. Such grants are available in proceedings relating to parenting orders if there is a dispute about a substantial issue and either:

- i) participation in family dispute resolution has not resolved the dispute
- ii) the other party has refused or failed to attend family dispute resolution, or
- iii) participation in family dispute resolution is impractical or inappropriate.

Legal assistance may also be granted for the preparation and filing of consent orders if all the parties involved agree, the commission considers that formal court orders are necessary and the applicants for assistance cannot obtain appropriate legal assistance from any other source.

### *Community Legal Centres*

Community legal centres (CLCs) are independent and community managed non-profit services which provide a range of assistance on legal and related matters to people on low incomes and those with special needs. There are 128 Commonwealth funded CLCs across Australia.

These centres provide assistance across a wide range of legal issues including, for example, family law, tenancy and consumer rights law. Some services are specifically funded by the Commonwealth to deal with particular issues or clients.

CLCs funded by the Commonwealth under the Community Legal Services Program are required to provide services which meet the program objectives, one of which is to assist people, individually or collectively, as well as the community overall. Assistance is directed towards people who experience some form of systemic or socio-economic barrier to accessing legal services and/or whose interests should be pursued as a matter of public interest. Older people who meet this criterion are entitled to access legal services under this program.

Nationally, the following assistance has been provided by CLCs to people over 50 years of age:

- In the age group 50-64, CLCs saw 98,753 clients during the period 2000-01 to 2005-06, with an average of 19,750 clients per annum.
- In the age group 65 and over, CLCs saw 45,917 clients during the period 2000-01 to 2005-06, with an average of 9,183 per annum.

**Table 2: Percentage of Clients seen by CLCs by Age Group for 2000-01 to 2005-06**

Age Group	2000/01	2001/02	2002/03	2003/04	2004/05	2005-06
Under 18	2%	2%	2%	2%	2%	2%
18-34	28%	28%	29%	29%	24%	24%
35-49	28%	28%	30%	31%	27%	27%
50-64	11%	12%	13%	13%	12%	13%
65 & over	5%	5%	6%	6%	6%	6%
Not disclosed	25%	25%	21%	18%	29%	28%

### *Family Law Reforms*

Changes have been made to the *Family Law Act 1975* (FLA) to provide better recognition of the important role that grandparents, relatives and members of extended families play in children's lives. The FLA has been amended so that the court has the ability to consider children's relationships with grandparents in determining what is in a child's best interests. The changes acknowledge that spending time with grandparents can provide children with a number of benefits, including an understanding of who they are and where they come from. A healthy relationship with grandparents or relatives can also give children someone to talk to and confide in. Where there is a healthy relationship between children and their grandparents, the changes make it easier for grandparents to remain involved in the lives of their grandchildren. It should be noted that involvement from grandparents is on a voluntary basis. Relationships between grandparents and their grandchildren can be considered in parenting arrangements, agreements or disputes that follow family breakdowns.

In July 2006, 15 Family Relationship Centres opened in various locations around Australia. Over the next two years, the Australian Government is setting up an additional 50 new Family Relationships Centres in cities and towns across Australia. These Centres are a source of information for families at all stages, including people starting relationships, those wanting to make their relationships stronger, those having relationship difficulties and those affected when families separate, such as grandparents. The Family Relationships Advice Line (1800 050 321) and Family Relationships Online <[www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)> have also been established. The Advice Line is a national telephone service which provides advice and referral on family relationships and post-separation parenting issues, while Family Relationships Online provides an online gateway to information and resources about the family law system including information about services for separating families. Both services are for anyone who is affected by family relationship or separation issues and difficulties, including grandparents.

I understand that the Committee plans to conduct public hearings early in 2007. Once specific concerns are identified by the Inquiry, officers from this Department may be able to assist the Inquiry by providing further information.

Yours sincerely

Ian Govey  
Acting Secretary