



Minister for Community Development; Seniors and Volunteering; Youth

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NA

Mr Peter Slipper MP
Chairman
House of Representatives Standing Committee
On Legal and constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

Submission No.	74
Date Received	

Dear Mr Slipper

Thank you for your letter dated 20 September 2006, which was addressed to the Hon Alan Carpenter MLA, Premier, regarding the Inquiry into Older People and the Law.

Attached is the Western Australian Government submission to the inquiry.

I look forward to receiving further information about the inquiry.

Yours sincerely

David Templeman/MLA
MINISTER FOR COMMUNITY DEVELOPMENT; SENIORS AND VOLUNTEERING; YOUTH

29 NOV 2006

Western Australian Submission

to

The House of Representatives Standing Committee on Legal and Constitutional Affairs

Inquiry into Older People and the Law

1. Fraud

The issue of the economic vulnerability of older people was highlighted in Western Australia in the late 1990s through the fraud perpetrated by a finance broker on predominantly older clients. The age of the victims was not raised as a factor, except to highlight many older people are likely to be actively involved in retirement-related investment. With "baby boomers" approaching retirement, this represents a large cohort of older investors, many of whom are likely to be comparatively uninformed on financial matters.

1.1 *Women and fraud*

While there is limited data on financial offences by the victim's age, it appears that older women enjoy a lower risk than men of fraud. This may relate to the values and attitudes of an older generation where men frequently took responsibility for finances within households. This is reflected in research which suggests that many older women contemplating retirement have relied on their husbands to handle post-retirement financial planning.

Given the greater longevity of women, this situation may lead to the emergence of a significant cohort of elderly widows with minimal exposure to financial planning. Elderly single women may represent a group in the near future that is particularly vulnerable to fraud or manipulation.

Consumer education may not be as effective as strong regulation of the finance industry in seeking to ensure the interests of this group are adequately protected.

1.2 *Department of Land Information (DLI) Administrative Mechanisms Assisting Older Persons*

The *Transfer of Land Act 1893* (TLA) contains a number of legal and administrative mechanisms that provide a measure of protection of the interests in land of older persons (and others) against fraud and improper dealings. These are as follows:

- *Registrar's Caveats*

The Commissioner of Titles has power to direct lodgement of a Registrar's Caveat on the title of land to prevent improper dealings. The power is in section 188 of the TLA. This has been used in

circumstances where it is considered that family members of an older person are potentially going to commit a fraud against the older person by improperly dealing with that older person's interest in land.

- *Registrar's Packets*

The creation of a Registrar's Packet is an administrative mechanism that enables the Registrar to monitor titles for a variety of reasons, for example when served with copies of Court proceedings, Court orders or injunctions relating to land in a particular certificate of title, or when put on notice of an alleged fraud or defect in a title.

This can be used in the case where it is suspected that family members may be attempting to commit a fraud against an older person who is a family member.

2. Financial abuse

The Western Australian Government has a strong commitment to promoting older people's rights in the development of policies, practices and services for older people. Addressing abuse and exploitation of older people is an important component of the whole-of-government Western Australian Active Ageing Strategy.

The focus of elder abuse prevention initiatives in Western Australia has been guided by the following definition of elder abuse:

A single or repeated act, or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.

The definition includes:

- Physical
- Social abuse
- Psychological abuse
- Sexual abuse
- Material or financial abuse
- Neglect

The Western Australian Government response to elder abuse, has focussed on abuse or exploitation that occurs between the older person and family and friends, that is, within the wider community.

Adopting an older person's rights based approach means any response to abuse and exploitation of older people starts with the assumption that every person is capable of making informed decisions regarding their own lives unless shown otherwise and acknowledges the complexity of family dynamics involved in elder abuse.

2.1 Service response

Currently, there are two major service responses to elder abuse:

- Advocare's Elder Abuse Prevention Program, which is funded by the Western Australian Government, provides information and advocacy for older people who are being abused, or at risk of being abused; and
- The Office of the Public Advocate which responds to all allegations of abuse, neglect and exploitation of an older person with a decision-making disability, or where it is suspected that the person has a decision-making disability.

In relation to the issue of financial exploitation by strangers, the Department for Consumer and Employment Protection provides consumer protection through legislation. The department has investigative powers and has developed a range of publications dealing with issues such as choosing a retirement village to awareness raising in relation to scams.

2.2 Defining the age of an 'older person'

Consideration needs to be given to defining an older person when developing responses to elder abuse.

The Western Australian Government defines a senior to be 60 years and over.

The Alliance for the Prevention of Elder Abuse:WA, defines 'older adults' as those aged 60 years and over and notes that this definition needs to be applied flexibly so that it does not exclude people who have experienced 'premature ageing' associated with poor health, a physical or intellectual disability, socio-economic status or lifestyle factors. This is particularly an issue for older Aboriginal adults.

The Western Australian Public Advocate's report *Mistreatment of Older People in Aboriginal Communities Project* confirms that there is no clear chronological age that can be used to identify an older Aboriginal person.

2.3 Research

International and Australian studies have found financial abuse to be the most common form of elder abuse and that people with some form of dementia or a cognitive impairment (ie a decision-making disability) are more likely to be exposed to abuse.¹

In 2002, the Office for Seniors Interests and Volunteering commissioned Curtin University's Freemasons Centre for Research into Aged Care Services to conduct research to establish baseline data on the prevalence of elder

¹ 1999 'Safeguarding the Financial Interests of Vulnerable Seniors', OPA WA

abuse in Western Australia. The research also obtained information on the relationship between seniors being abused and the people abusing them; risk factors; and desirable interventions.

The research found that:

- Female seniors were two and a half times more likely than males to experience elder abuse;
- Those 75 years or older were more likely to experience elder abuse;
- Financial abuse was the most common type of elder abuse, followed by psychological abuse and physical abuse;
- Multiple abuse was also common among older people; and
- The main perpetrators of elder abuse were adult children, spouse or defacto partners, and relatives.

Advocare Inc, the non-government agency that runs an Elder Abuse Prevention Program in Western Australia, also conducted a week-long, state-wide elder abuse telephone survey in 2002 in which older adults who had experienced abuse by family or friends, or those who have witnessed or suspected such abuse were invited to call with information. Analysis of the survey data revealed:

- The most common relationship between the alleged victims and associated alleged perpetrators of abuse was that of a parent and adult son or daughter;
- Around two thirds of cases related to financial abuse and the majority of those cases also included psychological abuse;
- Around 20% of the cases of abuse included some kind of physical abuse and approximately 20% involved social abuse; and
- It was common for the victim to experience more than one type of abuse.

During 2005, the Western Australian Office of the Public Advocate conducted research into elder abuse in Indigenous communities and research into elder abuse in culturally and linguistically diverse (CALD) communities. These research projects included a large community education component providing information about what elder abuse is and what services are available to victims of abuse and their family and friends.

Financial abuse was confirmed to be the most commonly reported type of abuse in Indigenous communities. This ranged from harassment for money on pension day and neglect by people receiving support to care for them to, in some cases, physical abuse and robbery.

The most frequent type of elder abuse reported by CALD seniors was financial abuse. A belief that assets accumulated by older people in their lifetime belonged to their children was frequently raised during forums with CALD seniors.

Responses to the reports on the research into elder abuse in Indigenous communities and culturally and linguistically diverse communities are currently being developed.

In the context of the ageing Australian population, therefore, research indicates that the number of people who will experience financial abuse is likely to increase.

2.4 Working with the banking and finance sector

In response to the research evidence that identifies financial abuse of older people as the most common type of abuse, the Office for Seniors Interests and Volunteering has commenced working with the banking and finance sector in Western Australia.

The aim is to identify ways in which the State Government can work with the banking and financial services sector to help address financial abuse and exploitation of older people.

Presenters and discussions with the banking and finance sectors have highlighted the need for better education and training in the banking and financial sectors on the purpose and utility of Enduring Powers of Attorney (EPA) and about the identification prevention of financial abuse in general. For example, it may not be widely known in the sector that under the Guardianship and Administration Act 1990, EPAs provide a much stronger legal obligation than a signatory authority. The EPA also covers the event of incapacity whereas the signatory authority does not.

In the US and Britain some banks have taken significant initiatives in addressing financial abuse by educating staff and customers. For example, in Massachusetts, Government agencies worked collaboratively to train bank employees on how to recognize and report financial exploitation of older customers. Training included information on who commonly commits financial abuse, typical scenarios of such abuse and strategies for detecting financial abuse and a model protocol for action.

Other responses by the banking sector are based on educating customers about good financial practices to prevent financial abuse.

Privacy laws impose restrictions on the roles that banks can play in preventing financial abuse. One of the strategies for addressing this has been the introduction of advanced directives by clients that specifically permitted banks to notify account holders and other name parties of any activity inconsistent with the account holder's usual banking patterns.

In WA, the Office of the Public Advocate has worked to build its relationship with the banking and financial services sector in the past, promoting the issues confronted by their clients to banks, credit unions and peak bodies, while also raising these matters in Government and key stakeholder forums.

The Western Australian Government supports implementing training strategies and protocols for the prevention of financial abuse within the banking and financial sectors (similar to those trialed overseas) and encourages public and private sector partnerships to protect the financial security of older people and people with a decision making disability.

As the banking industry is government by Commonwealth legislation, it is recognised that the Australian Government has a role to play in protecting the finances of older people from abuse and exploitation. The Western Australian Government would welcome opportunities to work with the Australian Government on this issue.

2.5 *Legislative responses to elder abuse*

The Alliance for the Prevention of Elder Abuse WA was established in 2005. The Alliance works to promote a whole of government policy framework that values and supports the rights of older people in Western Australia.

Members of the Alliance include the Public Advocate, Public Trustee, Department of Health, Office for Seniors Interests and Volunteering, Disability Services Commission, Office of the Chief Psychiatrist, Legal Aid, WA Police, and an Aboriginal representative and the non-government agency Advocare.

The Alliance has developed a three-year strategic plan. The five goals of the strategic plan are to:

- Raise community knowledge and understanding of elder abuse.
- Provide policy advice on elder abuse.
- Expand the breadth and quality of knowledge of elder abuse.
- Support provision of adequate elder abuse prevention and protection services.
- Promote professional education and training in elder abuse issues.

The Alliance is concerned with broader, systemic issues relating to elder abuse that occurs in the wider community and does not work to address the issue of elder abuse in aged care.

The Alliance has recently finalised the development of an *Elder Abuse Protocol: Guidelines for Action* to assist government and non-government agencies to develop policies and procedures and training material for use in each specific workplace. The Alliance will commence providing training to service providers early in 2007 to assist them to develop their own policies and procedures.

The Protocol includes information about various provisions within the *Criminal Code Act 1993* which can be used in certain circumstances where a legislative response to elder abuse. These provisions, although not age-specific, include actions that relate to financial abuse of an older person such as stealing, stealing Wills, concealing Wills, concealing deeds, fraud and funds held under direction.

The Alliance has recently commenced an analysis of relevant legislation in Western Australia to identify any gaps relating to the protection of older people from elder abuse.

Mandatory reporting of elder abuse is not supported by the Western Australian Government.

It is believed that mandatory reporting of elder abuse may not be a suitable policy response to elder abuse within the wider community. There is no evidence from around the world that where mandatory reporting has been implemented that it has been beneficial. There are also some practical issues which need to be considered:

- If mandatory reporting exists and it becomes a crime not to report something, then legislation needs to define what is and is not reported. How will people determine what to report (eg: should you report that your elderly neighbour has a bruise, which could have come from bumping into a table or from being bashed by a relative?).
- Who will be responsible for investigating reports and how will this be funded?
- Mandatory reporting would require reporting suspicions of abuse against a person because they have reached a certain age (which would need to be determined). This assumes they are incompetent to manage their own affairs purely on the basis of their age and has the potential to take away their rights.

2.6 New legal service

The Western Australian Government has announced funding for a new Elder Abuse Information, Support and Legal Service to provide a legal and social work service for people over the age of 60 who are experiencing or are at risk of experiencing elder abuse.

The legal service will provide legal information, advice and legal advocacy to older people experiencing abuse; crisis and short-term counselling including the development of safety plans; referral; community legal education; and education and training for service providers.

It is anticipated that the new service will commence in early 2007.

2.7 Draft National elder abuse policy framework

The April 2004 meeting of the Positive Ageing Task Force (PATF) supported the establishment of a national working group to commence a process to address cross-jurisdictional issues relating to elder abuse. Members agreed that the Australian Capital Territory, Queensland, and Western Australia PATF members would develop a draft national policy framework on elder abuse prevention for consideration by PATF, the wider community and

ultimately, relevant Australian Ministers through the Community Services Ministers' Advisory Committee (CSMAC).

With the demise of PATF in 2005, there has been no mechanism to progress the development of the discussion paper for the draft national elder abuse policy framework. Difficulties arise in progressing the issue of elder abuse prevention at the national level as there is no forum at which the various Australian Ministers who have responsibility for elder abuse meet.

The development of a national policy framework is supported by Western Australia as it has the potential to increase awareness in government and the community about the significance of the issue of elder abuse. A national framework should provide high level policy principles, guidelines and objectives while allowing discretion to develop programs and policies that meet the State's/Territory's needs and stage of development in the area of elder abuse.

The Western Australian Government is working with the community to address the issue of elder abuse. However, it is recognised that there are a number of across jurisdictional issues that should more appropriately be addressed at a national level. The Western Australian Government would welcome an opportunity to work with the Australian Government regarding the issue of elder abuse and to progress the development of the national policy framework on elder abuse prevention.

Other financial abuse issues

2.8 Consumer Credit

The Department of Consumer Protection is responsible for regulating consumer credit in Western Australia under a nationally uniform template legislative scheme referred to as the Uniform Consumer Credit Code.

In funding their retirement, asset rich, cash-poor, older people now have the option of taking out a reverse mortgage through which they can draw down on the equity in their home. While such products provide seniors with greater flexibility in funding their retirement, a number of consumer protection concerns have been raised in Australia, the United Kingdom and the United States. Reverse mortgages have therefore been identified as a complex consumer credit product which can potentially expose older individuals to financial abuse.

Of relevance is the Australian Securities and Investment Commission's (ASIC) November 2005 report titled: "Equity Release Products" which acknowledges that existing State and Federal legislation may not provide adequate protection for older Australians wishing to access reverse mortgage products.

Further, ASIC's report made the following recommendation:

That Federal and State and Territory regulators monitor closely the development of the market, consumer complaints and problems they point to and keep under review the adequacy of the regulatory structure to address them. (Page 10)

Consumer Affairs Victoria recently undertook a wide-ranging review of consumer credit matters. One of the recommendations arising from this review was that the Ministerial Council of Consumer Affairs should analyse the need for and nature of additional regulation in relation to reverse mortgages, including a prohibition on negative equity and a requirement that consumers get a comprehensive information statement on the distinctive features of reverse mortgages, such as interest capitalisation.

These recommendations are supported, particularly given the anticipated rapid expansion of the reverse mortgage market in Australia over the coming decade and the potentially serious financial implications for older consumers.

By way of a general comment, Australia's credit market is undergoing profound changes such as greater numbers of lenders; increased range of credit products; higher volume of credit flow; more aggressive marketing; and new channels of delivering credit to consumers. Many consumer credit products, including reverse mortgages, were not contemplated at the time of implementing the Uniform Consumer Credit Code in 1996.

As a result of the dynamic nature of the Australian credit market, regulation in Australia has come under considerable pressure. This has in turn called into question the adequacy and responsiveness of the current regulatory scheme. In order to provide adequate consumer protection in the area of credit, particularly for older Australians, this issue needs to be addressed in cooperation with the Commonwealth and other State and Territory jurisdictions.

2.9 Finance brokers

Older people often rely on returns from investments to fund their retirement. In the 1990's, a number of self-funded retirees lost significant money in Western Australia as a result of the improper acts of a number of finance brokers, land valuers, property developers, and others involved in the promotion of pooled mortgage investment schemes. In many cases these financial losses had a significant impact on their quality of life. Finance brokers legislation in Western Australia has since been significantly overhauled and a new code of conduct regulating the practices of finance brokers is being developed.

In addition, the recommendations of the Temby Royal Commission, which investigated the regulation of finance brokers in Western Australia, have been implemented. Western Australia now leads the nation in the regulation of finance brokers. National regulation of finance brokers is now being developed by the Ministerial Council for Consumer Affairs along lines consistent with the Western Australian model.

Furthermore, pooled mortgage investments are now regulated as managed investment schemes under the Corporations Act by the Commonwealth Australian Securities and Investments Commission (ASIC). However, the recent collapse of Westpoint Corporation and the likely resultant losses to investors (including older people) would seem to demonstrate the continued need for stronger regulation by the Commonwealth of property investment schemes generally.

The recent collapse of Westpoint Corporation has also brought into relief the role that ASIC licensed financial planners who, while allegedly chasing high commissions, directed investor funds to Westpoint, though the high risk profile of the investment may not have suited the risk appetite of older investors who rely on a steady income from their investment. It would seem that increased regulatory focus should be brought to bear on the investment advice given by licensed financial planners to ensure that it is not simply commission driven.

3. General and enduring 'power of attorney' provisions

3.1 Role of Public Advocate and the Ageing Population

The Public Advocate is an independent statutory office holder appointed by Government under the Guardianship and Administration Act 1990 to protect and promote the rights of adults with a decision making disability.

There are approximately 65,000 Western Australians who have a decision making disability. As of 30 June 2006 the Public Advocate was guardian for 256 individuals. Of these, 38% had an intellectual disability, 31% had dementia, 15% had a mental illness and 12% had an ABI.

Demand for the services of the Public Advocate is increasing, due largely to the ageing of the population, which will bring with it an estimated increase in the number of people with dementia from 17 000 in 2004 to 79 000 in 2050. People with dementia now dominate the total number of investigations and new guardianship appointments, although for ongoing appointments, intellectual disability is the prevailing condition. In some cases, the Public Advocate has been appointed as guardian for a person for more than a decade.

The Public Advocate has four main statutory functions:

- The Public Advocate conducts investigations to assess whether an administrator or guardian may be required to be appointed by the State Administrative Tribunal (SAT). In 2005/06, the Public Advocate undertook almost 600 investigations. Nearly half of these (47%) involved a person with dementia. These investigations are conducted either at the direct request of the SAT or when a member of the community raises concerns about the wellbeing of a person with a decision-making disability.

- The Public Advocate may be appointed the guardian of last resort for an adult with a decision-making disability when the SAT determines that there is a need for the appointment and there is no one else who is suitable or willing to be appointed.
- The Public Advocate also has a role in educating the community and professionals about the guardianship and administration system, including Enduring Powers of Attorney.
- The Public Advocate also advises government and works with government and non government agencies to develop appropriate policies, legislation, programs and services which protect and promote the rights of people with decision-making disabilities.

3.2 *Enduring Powers of Attorney*

The Western Australian Public Advocate regularly conducts information and education sessions about the responsibilities and complexities in the legal transfer of power of attorney from a donor to a donee via an Enduring Power of Attorney (EPA).

An EPA allows a competent person to provide authority to another to make financial or property decisions on their behalf. There are many benefits of the current EPA system in WA, for example:

- Unlike a general power of attorney, an EPA is not affected by the subsequent legal incapacity of the donor (section 105(1) of the Act).
- An EPA provides a safeguard in the best interests of the donor and the estate should the donor lose capacity to make reasoned decisions.
- An EPA provides a mechanism for continuity of management of a donor's financial and property affairs, thereby minimising immediate financial hardship if the donor's decision-making ability is suddenly impaired.
- An EPA provides the means for the donor to impose conditions or restrictions on the exercise of the power based on his or her wishes for the management of the estate.
- An EPA enables the donor to maintain confidentiality in respect of his or her financial property affairs.
- An EPA reduces the need for an application for an administration order to be made to the State Administrative Tribunal during the period of incapacity of the donor.

Despite the utility of the EPAs, however, there are concerns about their governance, particularly in terms of monitoring and review.

An EPA is essentially a private document involving an agreement between two or more people. While an EPA requires witnessing to be formalized, it is

similar to a last will and testament in there is no formal registration process required. This makes monitoring and review of EPA's difficult. However, there are certain safeguards in the current system:

- If the donor owns land and there is a likelihood of the property being sold or transferred at some stage, an original EPA needs to be lodged at the Western Australian Department of Land Information (DLI) should the donee be required to make property decisions on the donor's behalf.
- The Public Advocate advises attorneys (donees) to keep records of financial transactions made on behalf of the donor. These can be requested by the State Administrative Tribunal if it is formally inquiring into or intervening in a dispute over an Enduring Power of Attorney.
- Where a donor has assets in more than one State, the Public Advocate recommends that they complete an EPA for each jurisdiction. For EPAs executed in other States to be used in WA they must first be recognised by the State Administrative Tribunal.

It is recommended that the Committee consider utilising current Public Advocate, Guardian and Tribunal data in each jurisdiction to record the number of Enduring Powers of Attorney which have been signed, demographic information about donors and donees and any disputes arising subsequent to their enactment. This information will provide governments with improved capacity to protect the interests of older people and people with a decision making disability.

3.3 Department of Land Information (DLI) Concerns on Abuse of Older Persons through Powers of Attorney and Enduring Powers of Attorney

Powers of attorney can provide an effective way of managing older persons' affairs. The Registrar maintains a separate file of powers of attorney under section 143 of the TLA. Section 143 of the TLA provides that a proprietor of any land under the operation of the TLA may appoint a person to act for him in transferring or dealing with the land by signing a power of attorney in the form of the Nineteenth Schedule to the TLA or to the effect thereof.

The *Guardianship and Administration Act 1990* (G&A Act) (not administered by DLI) has created a new, general power of attorney form, authorising the donee(s) to do anything that the donor could legally do. An enduring power of attorney validly created under the G&A Act is effective for the purposes of the TLA as if it were in the form provided in the Nineteenth Schedule of the TLA.

The enduring power of attorney survives the subsequent legal incapacity of the donor and is invaluable in enabling the attorney to manage the affairs of a person who has ceased to have legal capacity.

There are some concerns about the operation and abuse of enduring powers of attorney by attorneys who are family members of the donor, especially in the common circumstances where the older person no longer has legal capacity and does not understand or know what is being done with their

property. This may signal a need for greater education of donors and donees in terms of the donor choosing the right attorney (ie one with complete integrity) who may be outside the family and the attorney understanding and performing their obligations under the G&A Act. The G&A Act is a portfolio responsibility of the Attorney General. However DLI staff work cooperatively with the Public Advocate and the State Administrative Tribunal in administering enduring powers of attorney.

As a protection for all attorney documents the Registrar will reject a power of attorney that does not comply with s143 of the TLA or, in the case of enduring powers of attorney, the G&A Act. Furthermore and perhaps more importantly, if a land dealing under a power of attorney is lodged for registration the Registrar checks that the power being exercised is within the attorney's powers. This has prevented some improper dealings in the past for older persons as well as the rest of the community who deal in land.

4. Barriers to older Australians accessing legal services

As mentioned above, the Western Australian Government will be funding a new Elder Abuse Information, Support and Legal Service to provide a free legal and social work service for people over the age of 60 who are experiencing or are at risk of experiencing elder abuse in 2007. The service will be cognizant of the specific needs of older people in relation to legal services and will provide a service that is accessible and relevant to their particular needs.

The establishment of this service and its service delivery specifications recognise that there are number of obstacles for older people accessing legal services. These include:²

- Their lack of confidence in their abilities to advocate on their own behalf or recognise and enforce their legal rights;
- A reluctance to take legal action on the basis that they do not want to cause trouble or complain;
- A feeling that the law/solicitors will not be able to adequately address their problems;
- Concerns about the cost of legal services;
- Difficulties in physically accessing legal services; and
- A perception that the law can be disempowering.

And that the needs of older people in relation to legal services are:

- Legal information that is clear and readily accessible – preferably through face-to-face contact, but if that is not possible, in one-on-one phone advice;
- Legal advice provided by practitioners who;

² *Access to Justice and Legal Needs*. New South Wales Law & Justice Foundation. December 2004.

- Take enough time to properly explain all the relevant information in simple terms;
- Are friendly and courteous;
- Are not too expensive and provide value for money;
- Are interested and expert in dealing with their legal problems.

4.1 Retirement villages

The Department of Consumer Protection (DOCEP) is responsible for regulating the retirement village industry in Western Australia. Currently this area is regulated through a package of legislation which is under review, with final recommendations to Government planned for mid 2007.

The legislative package comprises:

- The *Retirement Villages Act 1992*;
- The *Retirement Villages Regulations 1992*; and
- The Code of Fair Practice for Retirement Villages that is prescribed under the *Fair Trading Act 1987*.

Extensive community consultation meetings recently held with over 900 seniors in metropolitan and regional areas consistently identified that older people are having serious difficulties with obtaining affordable legal advice to assist them with understanding retirement village contracts prior to signing. The documentation is complex and often written in terms that older people find difficult to understand. DOCEP is currently considering the information gained from the consultations and will release a discussion paper in 2007.

DOCEP has a publication for consumers *So you're thinking about moving into a retirement village* which provides advice about the sort of information to seek prior to entering into contractual arrangements. However, this is not a substitute for gaining legal advice regarding contracts.

4.2 General consumer protection advice and information

In addition to strengthening the legislative regime, coordinated and ongoing national and state community information campaigns could substantially address the information needs of older people.

In Western Australia, *Wise Choice*, a publication developed by Consumer Protection, provides advice and information on a number of key areas relevant to older people such as banking, cold calling, door-to-door sales, home security, internet and mail order shopping, investments and scams. Scams often target older people who tend to be trusting and easy victims for scamsters. Consumer Protection has also developed a website called WA ScamNet which alerts people to current scams, provides details about the scams, and general information about how to identify a scam. Considerable effort is going into informing older people about scams and ScamNet and a

recently developed ScamNet Bulletin was distributed widely during Seniors Week in Western Australia.

5. Discrimination

5.1 Non Age Specific Legislation Administered by Department of Land Information (DLI)

The legislation administered currently by DLI is concerned with delivering core government services in land titling, land information and valuation, and providing systems and online services to open up access to government databases. The three principal Acts administered by DLI are the Transfer of Land Act 1893 (TLA), Strata Titles Act 1985 (STA) and the Valuation of Land Act 1978 (VLA).

The legislation is generally not age specific. It touches and concerns persons of all ages and capacity who deal in or have an interest in land in Western Australia and the Commonwealth Territories of Cocos and Keeling Islands, and Christmas Island.

5.2 Exceptions to Non Age Specific Legislation

There are two exceptions to the statement that the legislation is not age specific. These are section 6A of the STA and section 15 of the *Retirement Villages Act 1992 (RVA)* as that Act interacts with the TLA. In each case the legislation concerns 'retired persons' not 'older persons' of 65 years and older under the Inquiry's terms of reference. So the legislation is broader in affecting a wider range and larger number of persons than the Inquiry currently does.

Section 6A of the STA enables a restriction to be made by endorsement on the strata plan or survey strata plan, requiring that each lot is to be occupied only or predominantly by retired persons. "Retired person" for the purpose of section 6A means a person who has attained the age of 55 years or retired from full-time employment and is deemed to include a person who is or was the spouse or a de facto partner of such person. The purpose of this legislation is to permit the creation of retirement villages where retired persons over the age of 55 are the only persons who can purchase land and reside in the development.

Section 15 of the RVA provides that retirement villages shall only operate from land registered under the TLA. Section 15 requires that a memorial giving notice that the land is being used as a retirement village must be lodged with the Registrar of Titles (Registrar) before the registered proprietor of the land can advertise the property for sale, rent or lease or otherwise dispose of or encumber the interest in the land. The memorial is registered on the title of the affected land. The memorial is also evidence of the existence of a statutory charge against the land securing, in priority to all other encumbrances, the resident's right to a refund of the payment of a premium under the RVA.

"Retired person" for the purposes of the RVA means a person who has attained the age of 55 years or retired from full-time employment or a person who is or was the spouse or de facto spouse of such a person.

5.3 *Equal Opportunity Act 1984*

In Western Australia, the *Equal Opportunity Act 1984* promotes equality of opportunity and addresses discrimination in areas of work, accommodation, education, the provision of goods, facilities and services and activities of clubs on the grounds of sex, sexual orientation, marital status, pregnancy, race, religious or political conviction, age, racial harassment, impairment, family responsibility or family status, gender history.

The legislation is administered by the Equal Opportunity Commission which has two major roles:

- To encourage recognition and an understanding of the principles of equal opportunity; and
- To provide a means of redress to individuals who allege unlawful discrimination.

The Commission reports to the Western Australian Attorney General.