



Federation of Community Legal Centres (Vic) Inc

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Cheryl Scarlett
Secretary of the House Standing Committee
on Legal and Constitutional Affairs
House of Representatives
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Parliament House
Canberra ACT 2600

RECEIVED
30 NOV 2006
BY: LACA

Submission No. 41
Date Received

28th November 2006

Dear Ms Scarlett

Inquiry into Older People and the Law

We appreciate the opportunity to participate in the above review.

The Federation of Community Legal Centres Vic. Inc ('the Federation') is the peak body for fifty-two Community Legal Centres ('CLC's') across Victoria, including both generalist and specialist centres. This submission has been prepared on behalf of the Federation by the Older Persons Law Task Group, in consultation with various other members of the Federation.

We would welcome any opportunity to further elaborate on our submission.

If you have any questions regarding our submission, please contact.

Yours sincerely,

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**SUBMISSION OF THE FEDERATION OF COMMUNITY LEGAL
CENTRES (VIC.) INC**

**TO THE HOUSE STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS**

INQUIRY INTO OLDER PEOPLE AND THE LAW



December 2006

This submission was prepared by the Federation of Community Legal Centres' Older Persons Law Task Group in consultation with individual member centres including Albury Wodonga Community Legal Service, Brimbank Melton Community Legal Centre, Eastern Community Legal Centre, Geelong Community Legal Service, Loddon Campaspe Community Legal Centre, Public Interest Law Clearing House and SouthPort Community Legal Centre.

Inquiries to

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The Federation of Community Legal Centres

The Federation of Community Legal Centres Vic. Inc ('the Federation') is the peak body for 52 CLCs across Victoria, including both generalist (based in geographic locations) and specialist centres (working with a community of interest, identity or area of law such as Young People, Women, Mental Health, employment law or consumer law)

Together with Victoria Legal Aid and those in the private profession that undertake pro bono legal work, community legal centres are key players and partners in the "legal aid system".

The Federation, as a peak body, facilitates collaboration across a diverse membership. Workers and volunteers throughout Victoria come together through working groups and other formal and informal networks to exchange ideas and strategise for change.

CLCs assist in excess of 60,000 people throughout Victoria each year by providing free legal advice, information, assistance, advocacy and representation, and community legal education. CLCs exercise an integrated approach combining their assistance of individual clients with preventative community legal education and work to identify and reform laws and legal systems.

CLCs provide Community Legal Education programs in local communities and across the state. Legal information strategies using IT and publications are supported and often initiated by CLCs. But ultimately these strategies cannot replace the work of centre workers and volunteers engaging with people with complex needs face-to-face in their communities.

CLCs are independent community organisations that are owned and governed by community members. They harness the efforts of a vast number of legal and non-legal volunteers. CLCs with their focus on demystifying the law are community resources that provide the opportunity for community members to engage with the justice system either individually or collectively. As such, CLCs play an important role in community strengthening.

CLCs take a multi-disciplinary approach by looking beyond the strictly legal issues and working collaboratively with other disciplines, such as health, financial counselling, housing and others.

CLCs' expertise in working with excluded communities, people with complex needs, situations and disadvantages, and newly arrived and isolated Culturally and Linguistically Diverse communities is unparalleled across the legal profession.

The day-to-day work of Community Legal Centres reflects a 30-year commitment to social justice, human rights, equity, democracy and community participation.

Executive Summary

The Federation of Community Legal Centres Vic. Inc ('the Federation') makes this submission to the House Standing Committee on Legal and Constitutional Affairs ('the Committee') with respect to its inquiry into Older People and the Law ('the Inquiry'). The Federation welcomes this opportunity to have input into the Inquiry. The Federation's submission focuses in particular on one of the Inquiry's term of reference: the barriers to older Australians accessing legal services.

As the peak body for 52 Community Legal Centres ('CLCs') across Victoria, the Federation is well placed to make this submission. CLCs assist in excess of 60,000 people throughout Victoria each year by providing provide free legal advice, information, assistance, advocacy and representation, and community legal education. CLCs' expertise in working with excluded communities, people with complex needs, situations and disadvantages, and newly arrived and isolated Culturally and Linguistically Diverse communities is unparalleled across the legal profession.

The Federation recognises older people as one such group in the community facing significant isolation, disadvantage and barriers in accessing legal services. CLCs provide extensive legal assistance to older people through their core services. A number of CLCs in Victoria have developed innovative programs for delivering legal services to older people which seek to address the special needs of older people.

CLCs work not only with individuals but also engage in important community legal education and law reform activities, playing a vital role in identifying systemic legal issues affecting older people and advocating for legal change to meet the legal needs of older people.

In 2005, the Federation made a submission to the Victorian State Government's Elder Abuse Prevention Consultation which outlined the need for a specialist CLC to meet the needs of older persons in Victoria and discussed the program design implications for a specialist CLC for older people based on the characteristics of older persons' engagement with the law and legal systems.

In May 2006, the Victorian State Government announced a range of initiatives to target elder abuse and to improve access to justice for older Victorians, including the establishment of a specialist CLC for older people.

In line with the consultation conducted in 2005, we believe that the specialist older persons' CLC will build on the existing infrastructure of CLCs to better resource the work of CLCs across Victoria in providing legal assistance to older people and to forge partnerships across other community organisations that provide services to older people such as in the health and welfare sector. The specialist older persons CLC will also further the work being done by CLCs in investigating the adequacy of current legislative regimes in addressing the legal needs of older Australians and advocating for legal change to meet those needs.

The Federation notes the submission of our member centre Loddon Campaspe Community Legal Centre to this Inquiry and our strong support for that submission.

We look forward to working with the Committee to further opportunities for improving access to justice for older people in Australia.

CLCs and Older People

There is significant interest and expertise within CLCs with regard to the community of older persons, as illustrated in the case studies referred to below. Many CLCs see possibilities for expanding reach to this community through the development of innovative and targeted community-based programming.

Service Study 1- SouthPort Community Legal Centre

The majority of clients at the SouthPort Community Legal Centre (South Melbourne) are older persons. Over time SouthPort CLC has developed an expertise in the area of older persons' law and in community education and service delivery for this community. SouthPort CLC offers a home based service for the frail elderly during the day and in the evening runs "road shows" through aged care facilities. They also visit public housing estates and offer a legal service in a safe setting. SouthPort CLCs community education sessions cover topics such as discrimination, elder abuse, accommodation and property issues, debt and financial issue, wills, power of attorney, funerals, organ donation and family law issues.

Service Study 2 – Loddon Campaspe CLC

The Loddon Campaspe CLC established the Older Persons Legal Program in May 2006. A two year pilot funded by philanthropic trusts, the OPLP has appointed a 0.8 solicitor to provide casework, community legal education and policy / law reform for older people. The program has focused on developing partnerships to provide services to older people in their communities. Outreaches have been established in partnership with Bendigo Community Health Service in Eaglehawk, Castlemaine & District Community Health Service in Castlemaine, and Bendigo Health Care Group at the Bendigo Base Hospital.

A panel of pro bono private solicitors has been brought together to extend the capacity of the outreaches and engage the private profession in elder law issues.

Community legal education workshops on issues affecting older people are being held throughout the region and specific information sheets developed. The program is also working with the Bendigo Division of General Practice to facilitate a seminar series for local health and legal professionals in early 2007 on end of life decision making and capacity. The program has partnered with LaTrobe University Bendigo Law School to undertake research into consumer credit issues for older people in rural Victoria with funding from the Victorian Consumer Credit Fund. The program is also establishing a dialogue with the Bendigo Bank to discuss policies & protocols in relation to financial abuse of older people.

Service Study 3 – Geelong Community Legal Service

Since mid 2003 Geelong Community Legal Service (GCLS) has run a final year law subject elective each semester. Known as the Student Clinic the students from Deakin University, under the supervision of the Principal Lawyer see clients and do ongoing casework. The program aims to give students experience in real legal practice in addition to their academic training, prior to their going out into the legal workforce.

GCLS believes that those on low incomes or in receipt of Centrelink benefits should have the same opportunities as the general community who can afford private solicitors. We wanted to provide a service that gave everyone the security of having a current Will and Powers of Attorney regardless of their financial situation and in a way that was not intimidating to the clients.

We incorporated part of this work into our clinic and through offering this service have become aware of many other issues older clients have. These include financial abuse, physical abuse, guardianship and administration issues and other problems with family members. Through the clinic we are able to gain the trust of the clients who then feel comfortable discussing their other problems with our general solicitors who can continue to advise and act for them if necessary as part of our ongoing casework program.

To help older persons who cannot get to our office in Geelong, we have taken the clinic to various outreach locations at Legacy, neighbourhood centres, and a community health clinic in our region. We intend to continue and expand this part of the program. The interaction between the young students and the older clients has been very positive with many clients saying they feel they have made a real contribution to the students obtaining their degrees. We believe that the clinic provides students with an appreciation of the many problems faced by older persons and hope they will be better able to identify and understand these problems once they are employed as lawyers in both the private profession or the community sector.

Service Study 4 – Albury Wodonga Community Legal Service

The Albury Wodonga Community Legal Service is a generalist legal centre which provides assistance to older people through its general advice service. In addition, the centre also provides community legal education specifically for older people on Wills and Powers of Attorney on request. In addition, the centre is currently undertaking a research study into the legal needs of older persons in the Wodonga area which will be completed in early December. It is expected that the results of the service study will inform further service provision by the centre.

Service Study 5 - Public Interest Law Clearing House (PILCH)

PILCH is a non-profit, independent legal service based in Melbourne. PILCH coordinates the provision of pro bono (without fee) legal assistance, primarily to people located in Victoria, through four pro bono legal assistance schemes, which operate from the PILCH office:

- Public Interest Law Clearing House Scheme (PILCH Scheme);
- Victorian Bar Legal Assistance Scheme (VB LAS);
- Law Institute of Victoria Legal Assistance Scheme (LIV LAS);
- HPLC; and
- HRLRC.

The PILCH Scheme, VB LAS and LIV LAS (the Schemes) receive, assess and refer requests for pro bono legal assistance to the private legal profession.

The Schemes only provide assistance where applicants meet a means test, where their matter has legal merit, and where legal assistance is not available from another source (eg, legal aid or a community legal centre).

The PILCH Scheme has an additional criterion. It only refers public interest matters to PILCH members. Public interest matters are:

- legal matters for non-profit organisations with public interest objectives or
- individuals' matters where that matter raises an issue which requires addressing for the public good and
- affects a significant number of people, not just the individual
- is of broad public concern, or
- impacts on disadvantaged or marginalised groups.

HPLC is funded by the Department of Justice and donations from a law firm and a corporate legal department. HPLC provides civil, administrative and some summary criminal legal services at crisis accommodation centres and welfare agencies. Legal services are provided by volunteer lawyers from PILCH member law firms and corporate legal departments.

The HRLRC, a joint initiative of PILCH and Liberty Victoria, is an independent community legal centre. The HRLRC aims to promote human rights in Victoria and Australia, particularly the human rights of people that are disadvantaged or living in poverty, through the practice of law.

PILCH has identified through its strategic planning process both the unmet need for older people and the potential for harnessing pro bono support for meeting this need. ~~Some of the case work identified through PILCH are set out in Annexure A.~~

Service Study 6 – Blue Mountains / Elizabeth Evatt Community Legal Centre

The Blue Mountains CLC has a focus on older women and family violence and in 2005 published a training and resource package entitled "Home is where the hurt is." Funded by the Law and Justice Foundation of NSW, the package is an essential tool for workers in health, aged care, welfare, domestic violence and legal organisations in both government and non government sectors working with older women and family violence.

Service Study 7 – Eastern Community Legal Centre

Eastern Community Legal Centre, covering six municipalities in Melbourne's East, provides a broad range of legal services across the full age range. The Centre sees a large proportion of older clients, with 11% of clients aged over 65.

Many of these clients present for assistance with wills, relying on our volunteer-based wills service. This often raises other issues such as guardianship, powers of attorney and related areas of law. Beyond this, older clients often have other legal issues, including consumer and debt, neighbourhood disputes and issues within their accommodation.

The Centre also undertakes community development and community legal education projects, often with older clients as a focus. Both the Centre's staff and numerous volunteers are continually looking to improve our services for all clients, particularly older people.

Elder Abuse and the Justice System

It is clear that there are justice dimensions – both criminal and civil - in respect of Elder Abuse. It is also clear that there are both gaps in and barriers to delivery of legal education and service to this community such as¹:

- Physical inaccessibility
- Financial inaccessibility
- Social isolation
- Technological barriers
- Inappropriate and limited service delivery (eg. Night appointments)
- Lack of free or low cost legal services which provide a broad range of service delivery modes, including home, hospital and nursing home visits, outreach services, telephone and face to face services, advice to carers and community legal education.
- Lack of expertise regarding issues specifically affecting older people.
- Lack of interest by some legal practitioners in older clients
- Potential conflict of interests when legal practitioners for older people are arranged by family members
- Lack of availability of legal aid for civil disputes
- Lack of resources in community legal centres to tailor their services to the needs of older people.

The growing percentage of older people in our community makes it imperative for the justice system to find new ways to meet the needs of older persons.

In determining appropriate justice system responses, it is important to analyse and respond to the characteristics of older persons' engagement with the law and legal systems. The characteristics outlined below have been sourced from a range of literature as well as the experiences of CLC workers.

¹ Munro, R (2002) *Legal Outreach for Older People Program, Worker Reflections and Recommendations*, Caxton Legal Centre (Qld); and also Law and Justice Foundation of NSW (2004) *The Legal Needs of Older People in NSW*

Characteristics of older persons' engagement with the law and implications for legal service delivery

1. Older people experience high levels of disengagement and social exclusion. With respect to legal problems, there is often a sense of powerlessness and lack of willingness to engage.
 - Programs that are developed to meet the needs of older people must be careful not to entrench powerlessness. Community awareness/education and service delivery activities could in itself be a powerful tool for building independence and dignity. Community-based responses provide opportunities for older people as a community to govern programs aimed at meeting the needs of older people. Furthermore there are vast volunteer resources that could be harnessed to carry out program activities of a funded core. For example, there could be support from a team of retired lawyers forming a team of volunteer community legal educators ready to do outreach in the community. Volunteering opportunities are a vital tool for overcoming social isolation and for empowering engagement with the law. Volunteers can significantly enhance the program reach.
 - Pro bono partnerships with community managed services can extend services. Services which link in with existing services already accessed by older persons lend themselves well to outreaches staffed by pro bono lawyers. This model has been developed in Australia by the PILCH Homeless Persons' Legal Clinic. Pro bono partnerships also provide opportunities for learning and exchange between older and younger generations of lawyers and other professionals.
 - Community legal education and legal services provided for older people, by older people, would provide a resource that older people as a community could relate to and be proud of. Such an approach would assist in shifting attitudes of older people as helpless.
 - Renewal of community management and membership of such a service over time would ensure that the organisation remained reflective of and responsive to the new issues and preferences of future generations.
 - Community managed programs could provide the independence and infrastructure necessary for the strengthening of older people as a community and for their participation in law and legal system reform.
 - Often older people are reluctant to exercise their legal rights. Particularly older women, who may feel that they do not want to make a fuss or upset anyone. In addition to obtaining help with identifying their legal problems, older persons often need careful and detailed explanations of the options available to them and the consequences. Care must be taken to assist the older person to reach a decision and not to take control or responsibility for the older person's legal problems, thus perpetuating their powerlessness.

2. Older people utilise informal sources of information and established contacts

- It is crucial that there is an understanding of how older people access information and services. A range of studies and practical experience demonstrates that older people utilise informal sources of information and established contacts.² Workers of the Caxton Legal Centre's Legal Outreach for Older People Program observed³:

"Older people do not receive information about services through glossy brochures, but through word of mouth, from other service providers, local papers and newsletters."

And further that:

"Older people will be more likely to access service that are provided in their community, particularly when associated with a well-known and established community organisation (eg. Senior citizens centres)"

- The Law and Justice Foundation of NSW's report, *Legal Information Needs of Older People* provides:

"There is general agreement on which information provision strategies are most effective: face-to-face methods are recommended by older people and by providers. These should be supplemented by printed information. In addition, local newspapers, presentations, radio (particularly talkback radio), telephone information services, and television are recommended."
- There is strong evidence that outreach models of service delivery would be most suitable to respond to the way in which older people access information and services. Such models seek to meet the target group where they already congregate and in places where they already have a level of comfort and trust. Such models do not require a person to identify that they have a legal problem, simply chatting about other non-legal issues may then lead to identification. Having a lawyer who is highly accessible provides opportunities for people to enquire about an issue even if they are unsure of the legalities or to seek advice before taking action (eg. before signing a consumer contract).
- CLCs commonly employ outreach models in partnership with other community organisations. Outreach might be conducted on a regular basis eg. Tuesday morning outreach at an over 50s Leisure Centre or a Senior Citizen's Centre; or an activity basis eg. providing a community legal education talk at a community health centre support group for older people who have experienced elder abuse.
- In the experience of the Caxton Legal Centre and Victoria's South Port Community Legal Centres and models of services specialising in elder law in some overseas services, home visits are a crucial access to justice measure and

² For example see National Office for the Information Economy, *Older Australians Online* 2002. Available at http://www.npie.gov.au/projects/access/Connecting_Communities/older_aust.htm

³ Monro, R, above #, 16

an integral part of the daily service delivery (see Office for the Aging, Brooklyn, New York)

- An outreach model can work well with volunteer and pro bono support that is coordinated out of the funded core. A funded model supplemented by volunteers could increase the number of locations where outreaches are conducted.

3. Older persons' legal needs span a broad range of legal areas.

- It is very difficult for one unit or centre to have the expertise necessary to meet the full range of legal needs experienced by older people. Accordingly, partnerships must be developed between CLCs (the full range of specialists), Victoria Legal Aid (full range of specialist areas), and volunteers/pro bono legal services (with expertise in areas often not covered in the legal aid system such as property law, wills and estates, superannuation).

4. Older people may not self-identify that they have legal rights. In addition their presenting issue may not be their only issue (legal or non-legal).

- Justice responses in this area must work in a multi-disciplinary framework. There is a high degree of overlap between legal and non-legal issues (eg. health, disability, financial counselling) particularly in relation to elder abuse. In this regard, the South Port Community Legal Centre notes the following dimensions to Elder Abuse:
 - Neglect
 - Physical abuse
 - Financial abuse
 - Psychological abuse
 - Sexual abuse
- Partnerships between legal service providers and other professions will provide greater opportunities for professional identification of legal issues. An example of CLCs' work in this regard is in the area of family violence where local centres work closely with community health centres, family violence and sexual assault agencies, financial counsellors and housing agencies to solve problems for individual clients but also to address systemic issues.
- Legal problems for the elderly include, social security, housing, healthcare, consumer credit, finance, wills and estates, guardianship and administration, superannuation, powers of attorney and end of life decisions. Many of these legal needs are identified as legal problems by elderly people themselves. Social workers and financial counsellors can be trained and develop working relationships with legal services to increase accessibility to appropriate specialist legal services for their clients.
- Incorporating non-legal advocates (such as social workers or case managers) into legal centres can foster a multi-disciplinary approach which is particularly important

and useful to this client group. This has been successful in some overseas models. However, our administrative tribunal systems are not as accessible to non-legal representatives as some in the US where many non-legal advocates appear at tribunal hearings for the elderly.

- Training of lawyers to undertake this specialist work especially if they are volunteers or pro bono lawyers is vital to ensure that the lawyers can respond appropriately to the needs of older people in identifying and acknowledging their legal problems and developing confidence and skills to tackle them.

5. There is often an intersection between legal and non-legal issues.

- While some problems presented by older persons may have a legal remedy, a non-legal response may be more appropriate. For example, an intervention order to resolve a dispute between an older person and a family member will resolve the issue but may create further problems in terms of isolation or alienation from the wider family group. In such a case, negotiation, general advocacy or round table discussions may be more useful.
- As part of the process of empowering and supporting independence of older persons, the advocate, lawyer or support worker should provide the older person with both legal and non-legal options for resolving their problems and help the older person to make their own decision.
- Justice responses should not work in a legal vacuum with clients simply being referred on to other agencies where there is no easy legal answer. Consideration should be given to broad advocacy eg. with health service providers, housing agencies etc. A similar advocacy approach has been established by CLCs with respect to women in prison. In this program, trained volunteer non-legal advocates work with women in prison to assist them to navigate a range of areas.

6. Issues of elder abuse and other legal issues faced by older people are not just about the individual.

- Our society is rife with systemic discrimination and poor attitudes towards older people. Such issues require a systemic response.
- There is a need to focus on more than just legal education and service delivery. There is also a need to focus on reform of laws, application of laws and legal systems to accommodate the needs of older persons.
- Accordingly the integrated service delivery model employed by CLCs is highly appropriate. This model makes connections between:
 - Advocacy – in the broadest sense of the word
 - Advice and representation and appropriate referral
 - Community legal education
 - Community engagement, development and community strengthening activities

- Law and legal policy and system reform – research, awareness raising among policy and decision makers (lobbying) and action.
 - All these aspects are interconnected and support each other. A current working example of this concept in action is YouthLaw, the young person's CLC, which is collocated with FrontYard Youth Services.
 - Awareness-raising needs to be directed to service providers, professionals and decision makers who are developing and providing services and programs as well as making policy about older people. A strong advocacy presence led by older people is required.
- 7. Older people are not a homogenous community. There are significant socio-economic and cultural differences.**
- There needs to be a commitment to meeting the needs of the diversity of older people – CALD, indigenous, rural and regional and older persons with disabilities.
 - Justice system responses to older people have to be flexible and responsive to the multifarious needs of older people.
 - Specialist CLCs are experienced in working with multifarious communities eg. Women, Young people, indigenous people. Such communities create difficulties with categorisation. For example, care should be taken with applying any form of means tests to identify those who will have access to services. Despite having money, members of these groups may be disadvantaged by community attitudes, lack of financial independence, or family violence.
 - Because of the complexity of needs, partnership with a wide range of other specialist services is vital and should include Indigenous, CALD and disability communities and organisations.
 - A diverse volunteer base can go a long way to making links between services and diverse communities.

Conclusion

Models for meeting the justice needs of older people should take into account the characteristics of older persons' engagement with the law and the implications for legal service delivery of these characteristics as explored above. The implications of the characteristics of older people for program service delivery include that the program is:

- Driven and controlled by older people
- Collaborates and partners with other community organisations
- Harnesses volunteer and pro bono potential (both of older people themselves and others)
- Can operate in a broad range of legal areas
- Addresses legal and non-legal needs and takes a multi-disciplinary approach
- Utilises outreach, home visits and other appropriate service delivery models.
- Looks to broader advocacy and not just strictly legal advocacy (eg. housing, welfare, disability)
- Attacks systemic issues by not only working with individuals but also by community legal education, policy and program development and law reform.
- Ensures that the full diversity of older people are considered – rural and regional, CALD communities, Indigenous communities and people with disabilities.

Models for delivering legal services to older people could comprise of a comprehensive community-based specialist service (either in one location, a network across the state or a combination of both). There are opportunities for co-location and/or partnering with community organisations that are meeting other needs of older people (analogous to YouthLaw youth legal service which is collocated with FrontYard Youth Services).

The community-based specialist service could develop links with the current infrastructure of CLCs to provide well-structured, planned and organised delivery of community legal education and outreach services to the older persons' community.

Models for legal service delivery to older people which take into account the characteristics of older people as a group will best address the significant barriers that older people face in accessing legal services.