



National Legal Aid Secretariat  
GPO Box 9898  
Hobart TAS 7001  
Executive Officer: Louise Smith  
t: 03 6236 3813  
f: 03 6236 3811  
m: 0419 350 065  
e: [louise.smith@legalaid.tas.gov.au](mailto:louise.smith@legalaid.tas.gov.au)

The Secretary  
Standing Committee on  
Legal and Constitutional Affairs  
House of Representatives  
Parliament House  
Canberra, 2600

22nd December 2006

Dear Sir/Madam,

**Re: Inquiry into older people and the law**

About National Legal Aid (NLA)

NLA represents the Directors of each of the 8 State and Territory Legal Aid Commissions. NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal and State and Territory legal systems; or
- Obtain adequate information about access to the law and legal system

Inquiry Terms of Reference (ToR)

"To investigate and report on the adequacy of the current legislative regimes in addressing the legal needs of older Australians in the following specific areas:

- Fraud;
- Financial Abuse;
- General and enduring 'power of attorney' provisions;
- Family agreements;
- Barriers to older Australians accessing legal services; and
- Discrimination."

The definition of "older" for the ToR is stated to be 65 years and over.

Our response below first sets out an "executive summary" including the services we provide, the issues which we perceive relate to the provision of legal aid services to older people, and some suggested recommendations to address the issues. Following the executive summary, please find a list of attached documents and the background which informs the summary.

Our response is primarily addressed to dot point 5 of the Terms of Reference "Barriers to older Australians accessing legal services".

### **Executive Summary & recommendations**

Commissions provide a range of legal services to people in Australia. Many of these services, such as telephone and face to face legal advice, minor assistance (eg help drafting a letter), duty lawyer assistance, information and referral services and community legal education, are free of charge, not means tested, and generally available to the community including to older people. Other services provided by Commissions being grants of legal assistance, primary dispute resolution services, and legal representation, can be accessed by older people subject to them meeting requirements which are generally applicable to everyone and are contained in funding agreements between Commissions and Governments.

Whilst Commissions endeavour to assist as many older people as possible, this is a growing demographic placing increased demands on existing services. We also anticipate a shift in the overall nature of the services required of us because of the growing demographic.

There are at least two types of barriers to us better meeting the needs of older people. These are:

1) limited funding to Commissions and the requirements of funding agreements including means and merits testing and priorities and guidelines for granting legal assistance. These result in Commissions making most grants of legal assistance in family law where children are involved and/family violence is a factor and criminal law where a person's liberty is at risk. Our experience is that the areas of legal need for older people are more likely to be in civil law and less likely to be in the areas of family and criminal law. The means test also has a low threshold for assets. This does not take sufficient account of the financial position of those with very modest savings including older people in that situation;

2) barriers of a more personal nature to some older people accessing existing services, such as one or more of the following factors:

- declining health and mobility
- disability
- ethnicity
- gender
- geographical location and social isolation; and
- lack of awareness of services.

### **Recommendations**

**1. That Governments fund Commissions to restore civil legal aid programs which will enable the civil law legal needs of older people to be addressed, (see ALAF paper attached to this submission).**

**2. That Governments fund Commissions to provide specialised "older persons legal advocates", with expertise in the area of the legal needs of older people.**

- 3. That Governments fund Commissions to provide outreach services to older people.**
- 4. That Governments fund Commissions to provide specialised community legal education initiatives aimed at raising community awareness of the services available to older people.**
- 5. That to the extent that the legal needs of older people are not known that Governments fund research into the type and extent of their needs.**
- 6. That the Legal Aid Means Test be expanded and funding provided to Commissions accordingly.**
- 7. That funding be provided to Commissions so that Commissions can expand their "Minor Assistance"/ "Brief Services" programs incorporating a relaxed means and merit test.**

#### Attachments

1. Commonwealth Legal Aid Priorities
2. NLA Statistics: Applications by Age 2004-2006
3. Proposal for the "Restoration of a National Civil Legal Aid Scheme" (ALAF)
4. Commonwealth Legal Aid Civil Law Guidelines

#### Background

##### Demographics

NLA understands that currently there are 2.6 million Australians aged 65+ years. These numbers are now escalating, and will continue to do so as the baby boomers, in Australia born 1946-65, enter this group from 2011. Preceding the boomers, this year there will be approximately 70,000 more persons at age 65+ than last year; for the next two years there will be approximately 73,000 more *each year*, and the following year the increment will rise to 90,000. From 2011 the annual increment in numbers over age 65 will be in the vicinity of 135,000 every year for at least the following two decades.<sup>1</sup>

##### Legal needs of older people

NLA suggests that the legal needs of older people can be described conceptually as:

- An appropriate range of easily accessible legal services, irrespective of disability, ethnicity, gender, geographical location or other personal situation.
- The provision of alternatives to litigation.
- Assistance for meritorious litigation for those who are financially disadvantaged.
- The provision of effectively integrated services.

##### Areas of legal need for older people

NLA's experience of the areas of legal need for older people is consistent with the research findings of the New South Wales Law And Justice Foundation's Report on "The legal needs of older people in NSW, 2004", ie that older people are generally more likely to have civil law issues than criminal or family law issues.

---

<sup>1</sup> Dr. Natalie Jackson, Senior Lecturer in Social Demography, University of Tasmania

Those areas of legal need specified in the ToR for this Inquiry are considered to be civil law matters, except to the extent that fraud may be charged against an older person, and family agreements might be interpreted to include matters arising under family law (eg Family Law Act 1975, Child Support Legislation etc).

#### Legal aid "Regimes"- Commission Enabling Legislation and Funding Arrangements

Each Legal Aid Commission is established under State or Territory legislation and is statutorily charged to provide "legal aid" or "legal assistance". Commissions are funded by the Commonwealth and State or Territory Governments for this purpose. The terms "legal aid" and "legal assistance" refer to grants of financial assistance for legal representation and a range of legal services including legal representation. These services are referred to in more detail below.

Receipt of limited funding by each Commission for the purposes of providing legal aid or assistance is contingent upon that Commission entering into a funding agreement/s with the Commonwealth and the respective State or Territory Government. Current agreements with the Commonwealth are due to expire on the 31st December 2008, unless extended or earlier terminated pursuant to the terms of the agreements. The usual negotiations about the detail of agreements to follow the current agreements are likely to begin in early 2007.

Other legal organisations and individuals also provide legal aid services to the community, including older people. These organisations and individuals include the Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS), and members of the private profession performing work for clients in receipt of a grant of legal assistance from Legal Aid Commissions or who are providing pro bono assistance. There is also a range of other organisations/agencies and individuals providing legal services to the public some of which require payment or have conditions attached. Many members of the private legal profession also provide pro bono services to the public.

CLCs are funded by the Commonwealth Government through the Attorney-General's Department. Many CLCs also receive funding from their respective State or Territory Government. Except in South Australia, the ACT and the Northern Territory, the Legal Aid Commissions are responsible for program management of the CLCs on behalf of the Commonwealth. In some States, Legal Aid Commissions also program manage state funding to the CLCs. In South Australia the funding is administered by the South Australian Justice Department. In the ACT and the Northern Territory the program is administered by the Commonwealth.

The CLCs primarily provide advice and/or information and referral, community legal education, law reform and depending on the Centre some case work services. Some CLCs provide specialist services, such as disability discrimination, tenancy, welfare rights, women's, and environmental defenders, legal services. Many CLCs offer after hours free advice sessions which are staffed by volunteers from the private profession and from Commissions. This enables access to face to face legal advice by people who would not otherwise be able to attend legal offices during business hours.

CLCs and Legal Aid Commissions work co-operatively in each jurisdiction to maximise services available to the community.

The ATSILS are funded by the Commonwealth Government. They are funded to provide legal services to indigenous people, including older people, pursuant to funding contracts. ATSILS and Commissions work co-operatively to maximise the provision of services.

#### Legal Aid Commission services

Commissions provide assistance to as many people as possible to help them with their legal problems. They do this through a mix of legal information, telephone and face to face advice, minor assistance, and representation, provided from head offices in capital city locations and regional offices in various metropolitan and rural locations.

- Legal Representation

This involves representation by a lawyer provided either upon a grant of legal assistance being made to a person by a Legal Aid Commission, or by “Duty Lawyers”.

- Grant for legal assistance

The lawyers who represent people upon a grant of assistance being made are from the in-house legal practices of the Legal Aid Commissions or are members of the private profession to whom the grant of legal assistance from the Commission is assigned. Whether a grant of legal assistance is made will depend on available funding and an application of the relevant guidelines. Clients may have to make a contribution to the cost of legal representation. This will depend on the nature of the matter and the applicant’s means.

- Duty Lawyers

Duty lawyer services are provided by the in-house practices of LACs or private practitioners retained by Commissions for the purpose. Duty lawyers attend at many Courts to provide advice and to assist unrepresented people with restraint orders, to seek remands, apply for bail and/or present pleas in mitigation. They are frequently called upon by the Judges and Magistrates to assist people who are appearing unrepresented. Duty lawyers also attend some registries of the Family Courts. In some jurisdictions, duty lawyers also attend Mental Health Tribunals. Duty lawyer services are generally provided free of charge.

- Primary Dispute Resolution (PDR) services:

Grants of legal assistance for PDR (generally in family law) are also made. Grants for PDR will usually be made before any grant of aid to commence legal proceedings except if PDR is not appropriate in the circumstances of the case. As for other grants of legal assistance, contributions for PDR services may be payable.

Other services:

The following services are generally provided free of charge and are not means tested:

- Telephone and face to face legal advice
- Minor assistance services (eg letter drafting)

- Legal information and referral services, including publications and other resources for public and worker use.
- Community legal education.

#### Grants for legal assistance

The Commissions are required by their respective funding agreements to apply priorities and guidelines to applications for grants for legal assistance.

For example, the Commonwealth Legal Aid Funding Agreements set out the Commonwealth Legal Aid Priorities at clause 6 of the Agreements (a copy is *attached* to this submission). The Commonwealth Legal Aid Priorities specify that they "set out the Commonwealth Law Matters that Litigation Services and PDR services may be provided for by the Commission under Grants of Legal Assistance." The provision of services for a Commonwealth priority is "subject to any relevant terms, conditions and limitations imposed by the Commonwealth Legal Aid Guidelines on the provision of such assistance under a Grant of Legal Assistance." The Commonwealth Legal Aid Guidelines are contained in Schedule 3 to the Agreements.

The Commonwealth Legal Aid Guidelines generally require Commissions;

- (a) to ascertain that each application received for a grant of assistance for legal representation falls within the guideline relevant to the Commonwealth Law matter type for which assistance is sought, and
- (b) to apply a means test to the application, and
- (c) to apply a merit test to that application, and
- (d) to grant legal aid in accordance with the prescribed Commonwealth "priorities".

If a Commission does not have sufficient funds to satisfy demand, then aid may be refused on the basis of competing priorities.

Generally most grants of legal assistance for "Commonwealth cases" are family law cases (excluding domestic violence and child care and protection matters which are generally "state law based"), and most grants of legal assistance for "State cases" are criminal law cases, as the majority of criminal law matters are "state law based". Grants of legal assistance for civil law matters (both Commonwealth and state law based") are more likely to be limited, as a result of funding limitations, guidelines and the need to prioritise matters.

#### Barriers to older people accessing legal services

The overarching issue for older people accessing legal services is likely to be cost. For those unable to afford the cost of the legal services they require, the issue is not only about their personal capacity to access legal services but about funding agreements and whether legal aid organisations are funded so that they can deliver the services required.

As mentioned above the areas of legal need for older people are most likely to be in civil law. The Commonwealth funding cuts to Legal Aid Commissions announced in 1996 (\$33.16 million per annum from 1997/1998) involved the cessation of Commonwealth support for matters arising under State and Territory laws, even where the applicant in those matters was a "Commonwealth person". The result was

that Commissions were required to prioritise spending in the areas of family law where children were involved, family violence, and criminal law where people's liberty was at risk. Civil law services beyond information, advice, referral, and community legal education therefore suffered significant cut backs in all Commissions, with most Commissions being forced to abandon their "civil law programs".

- Legal information, advice and referral services

Older people use Commission services to access information, advice, and referral services about a range of legal matters including civil law matters such as those referred to in the ToR and others like housing, neighbour and boundary issues, consumer affairs, wills and estates, minor traffic matters, etc

Barriers to some older people using these services are likely to include disability, distance, ethnicity, language, gender, social isolation, and/ lack of awareness of services.

- Grants of legal assistance and legal representation

The extent, beyond the provision of legal information, advice and referral services, to which Commissions are currently able to assist older people who contact the Commission about their legal problems will depend not only on capacity in the older person but also on an application for a grant of legal assistance being made to the Commission which passes tests of; matter type, available funding, means, and merits.

Whilst Commissions either already do assist applicants to complete the legal aid application form (so as to maximise the chances of a successful application) or are in the process of working towards providing this assistance in all circumstances to the extent possible, the availability of such assistance is of no benefit if the Commission has insufficient funds given competing priorities to provide the service or the matter is outside funding guidelines.

The statistics for applications for legal assistance to Commissions by age for 2004-2006 are *attached* to this submission<sup>2</sup>, but reflect that older people comprise only a very small percentage of overall applicants to the Commissions. This is a likely reflection of the reality that the current agreements and funding regimes result in most representation services being provided in matters arising under family and criminal law<sup>3</sup> and that these are areas less likely to be the areas of legal need for older people.

Once it has been determined that an application for a grant of legal assistance falls within a matter type set out in the Commonwealth Legal Aid Guidelines, and there is available funding, then the Guidelines require means and then merits testing in nearly all cases.

Matter type Guidelines- the areas of law specified in the ToR and other civil matters  
Commissions are not able to meet the extent of legal need which exists. As indicated above this is particularly so for civil law, which includes most of the ToR for this

---

<sup>2</sup> "Other" indicates where gender was not specified

<sup>3</sup> Other statistics relating to applications for grants of legal assistance and funding to Commissions can be accessed from the NLA website at [www.nla.aust.net.au](http://www.nla.aust.net.au)

inquiry. It is for this reason that the Australian Legal Assistance Forum (ALAF) comprising the Law Council of Australia, the National Association of Community Legal Centres, the Aboriginal and Torres Strait Islander Legal Services, and NLA have endorsed in principle a proposal for the Restoration of a Civil Legal Aid Scheme. *Attached* please find the proposal document which was endorsed by delegates at the National Pro bono and Access to Justice Conference 2006 for advancement to the Commonwealth and State and Territories Attorneys-General. This document also contains some detail of the history which has produced the current funding situation.

Provided all other tests are passed, the Commonwealth Civil Law Guidelines result in Commissions being most likely to be able to assist older people with regard to veteran's law (applicants are not means tested), Commonwealth benefits appeals, and equal opportunity and discrimination cases. A copy of the Commonwealth Civil Law Guidelines is *attached*.

In relation to each of the areas specified in the ToR, and provided all tests (referred to in more detail below) are passed, we make the following general comment:

- Fraud

An older person who was a victim of fraudulent activity may possibly have an action for damages. Under the Guidelines a civil law action for damages or property could be funded "if the action was likely to be successful, and a conditional costs or similar agreement could not be reached with a private legal practitioner, and the applicant was unable to obtain assistance from another source." A combination of the conditional costs component of this guideline and the merits ("prudent self-funding litigant test") test would be likely to result in a refusal for most applications of this type.

The Trade Practices Act 1974 (Commonwealth) prohibits corporations, in trade and commerce, from engaging in conduct which is unconscionable (s51AB), misleading or deceptive (s.52), false or misleading (s.53). Consumer protection is identified as Commonwealth priority but there is no guideline specific to consumer protection matters. In our experience older people can become prey to a range of predatory practices which fall short of fraud, but leave people considerably financially disadvantaged. This is particularly the case with the supply of goods for household improvement with connected consumer credit arrangements. For example traders take advantage of older people's concerns about security and provide a range of products at inflated prices with associated credit at high rates of interest. Taking cases in this area would not satisfy the "prudent self funding litigant" test imposed by the Commonwealth because although the amounts are very significant to older people, they would not warrant litigation. Currently some Legal Aid Commissions are able to provide extended minor assistance to older people in cases such as this, conducting negotiations on their behalf, but not all commissions have the capacity to provide this service.

Another area which falls short of fraud but where older people are subject to significant exploitation is in relation to housing and accommodation. Many older people live in retirement villages, which are regulated in each state and territory. In our experience the current regulatory regimes do not draw an appropriate balance



between the rights of residents and scheme operators and in many cases scheme operators blatantly abuse their power. This is because residents, having sold their homes to get into a village are increasingly vulnerable in the private rental market. They are concerned to maintain secure accommodation suited to their needs, and therefore are reluctant to challenge unfair and exploitative practices within villages despite inadequate repairs, inappropriate use of residents' funds and bullying and intimidating behaviour by scheme operators.

The difficulty which older people have is that they may be the victim of fraud (or financial exploitation) by an individual (family member, acquaintance etc). Often by the time the fraud is discovered the money has been dissipated leaving the person with no real redress.

Cases of fraud referred to the police are likely to be investigated and prosecuted if there is a reasonable likelihood of securing a conviction. Orders upon conviction often involve restitution, although the offender may not be able to make restitution.

Older people who commit frauds and who make an application for legal assistance are likely to receive a grant of aid provided that they meet the means test. Social security fraud is the most common type of Commonwealth fraud. We have some experience of representing older people who have been charged with "fraud" and who have been imprisoned as a result. The Legal Aid Commission of New South Wales has made a submission to you about this.

Another potential issue that will impact on older people including financially disadvantaged older people, is the protection of private retirement income. Increasingly older people are expected to depend on private retirement income rather than Government pensions. This brings increased risks and difficulties for older people in managing their retirement savings. It is arguable that the Commonwealth Government should fund services, including legal services, to assist people to manage and protect their retirement savings.

- Financial Abuse

See above re possible causes of action against the "abuser". Where the abuse constitutes an offence against the criminal law it may be prosecuted by the police.

Emotional abuse is often tied into financial abuse and may be capable of redress by way of restraint order depending on the circumstances and applicable legislation.

Where capacity exists in a State or Territory to investigate issues relating to abuse by a person exercising a power of attorney, older people may still be reluctant to complain because they are dependant upon the attorney for their living arrangements and daily household help.

- General and enduring 'power of attorney' provisions

Experience from Commission information, advice, and referral services is that powers of attorney are a significant area in which people require assistance. Whilst some Commissions may be able to assist where a cause of action has arisen, eg by the donee exceeding his power resulting in a claim for damages, many callers are seeking

assistance about making a power of attorney but are unwilling or unable to pay a private practitioner to assist them. Legal Aid services in this regard are limited.

- Family agreements

If family agreements relate to financial agreements amongst families, redress will depend on possible causes of action - see above.

To the extent that "family agreements" might be interpreted to include matters arising in family law the Commonwealth Legal Aid Guidelines provide:

By Guideline 12.2 "Limitations on assistance for matrimonial home dispute" a Grant of Legal Assistance may only be made to an applicant if at the time of making the application, a one half-share of the equity in the property does not exceed 200,000 (or another amount agreed between the Commonwealth and the Commission for the purpose of the guideline) and the applicant is also seeking the resolution of another related family law matter by the Court, or the Commission decides that is is appropriate to make a Grant of legal Assistance to the applicant "because of his or her personal circumstances."

For this Guideline to apply to most older people they will need to be able to establish "personal circumstances" such that the Commission is able to decide it is able to grant legal assistance. This is because older people are less likely to be seeking resolution of related family law matters (it being likely that any children are older and not the subject of a dispute). Significant additional funding would be required if the "resolution of another related family law matter" criteria was to be deleted so as to remove the need for the applicant without such related family law matters to establish "personal circumstances". There are of course, applicants who are not older people, but who do not have children, who must also establish "personal circumstances" under this guideline to be prima facie eligible for a grant of legal assistance.

#### Grandparents and extended family members

Older people who have family law matters involving children (eg grandchildren) may be granted legal assistance for those matters on the basis of the same Guidelines and Priorities as anyone else. The Attorney-General's Department and National Legal Aid are however, currently working on a draft project brief to enhance access in appropriate circumstances by grandparents and other extended family members (who may be older people) to Commission family dispute resolution services where they are neither the applicant nor the respondent for a grant of legal assistance. This will depend on the pro-active screening of applications for the appropriate involvement of grandparents and extended family members in each case.

- Discrimination

Commonwealth Legal Aid Guideline 4 "Equal opportunity and discrimination cases" states that the Commission may make a Grant of Legal Assistance for an equal opportunity or discrimination case "if there is a strong prospect of substantial benefit being gained by the applicant for assistance and also by the public or a section of the public in relation to the matter". NLA's view is that in so far as the Guideline requires a strong prospect of substantial benefit" being gained not only by the applicant but by a section of the public it is unreasonably restrictive. Additional funding would be required if the restriction was to be removed.

### Funding and Means and Merits testing

Having "passed" the matter type guidelines, applicants for aid in such matters would then need to pass means, merits, available funding and Commonwealth Legal Aid Priorities "tests". These will mean that many applications, particularly in the civil law area, will be refused. Some detail about means and merits tests follows:

#### Means Testing

Means testing will assess both the income and assets of the applicant. The income and assets of any person financially associated with the applicant will also be assessed (eg: a spouse, parent or trust providing financial support to the applicant). The means test excludes a large percentage of the population from qualifying for legal assistance. It is clear however that many people who presently do not qualify under the Means Test are not able to afford the services of private lawyers to conduct their cases or at least not able to do so without undue hardship. An increase in funding so as to enable the easing of the means test would result in more people qualifying for legal aid.

A particular issue for older people is that they often own their own homes and the equity in the home may preclude them from receiving a grant of legal assistance because it puts them outside the assets test although they are often likely to be eligible for aid on the income test. A low income can make the prospect of taking a mortgage to finance legal action a frightening prospect. This is likely to be more so for many older people by reason of their age and state of health.

Even if a person is eligible on means for a grant of legal assistance an equitable charge over any property is likely to be required as a condition of a grant of legal assistance. A contribution (which can be up to the full amount of the cost of the legal proceedings) may be recovered by the Commission when the applicant eventually sells the property.

Another concern is the group of financially disadvantaged people, including older people, who have no home, no income other than the pension, and yet are disqualified by the legal aid assets test which has a very low threshold for assets other than a home. For example an older person living in caravan with less than \$20,000 in savings and no other assets would be disqualified under the current assets test. The issue of the disparity of eligibility between those whose only asset is some equity in their home, and those whose only asset is, eg cash, has been a vexed issue for the Commissions for some time now. Very generally the issues are discrimination against those whose only asset is not their own home, a concern that a home is an asset that should have special consideration (and noting that an equitable charge is usually applied and those who have been granted assistance with an equitable charge often repay the full cost of the legal case when the home is sold), and limited legal aid funding.

#### Merits testing

The test to be applied in Commonwealth matters has 3 elements:

- the chances of the proposed legal proceedings being more likely than not to succeed; and,

- the ‘ordinarily prudent self-funding litigant’ would risk his or her own funds in undertaking the proceedings proposed; and,
- the costs involved in providing legal assistance are warranted by the likely benefit to the applicant, or to the community.

Tests for matters arising under State law are similar in principle to the Commonwealth test.

Because the amounts of money in dispute in many cases, including those involving older people, are relatively small, these cases are unlikely to satisfy all aspects of the merit test for casework funding. This leaves people without any assistance beyond advice and minor assistance. The expansion of “Minor Assistance” or “Brief Services” programs with a relaxed means and merit test would allow Commissions to spend limited time assisting people, including older people, to negotiate and resolve a range of legal issues without recourse to litigation. In many consumer areas there are national external dispute resolution schemes (banking and other finance provision, telecommunications, insurance, superannuation, privacy etc). Many people require assistance to gather and present the facts of their cases so as to be able to access these schemes and resolve a range of common consumer disputes. Some additional funding to Commissions to provide this assistance in Commonwealth consumer issues would greatly assist older people, many of whom may face personal barriers to gathering and presenting facts by reason of age.

#### Other relevant matters

- Civil disbursement funds

Presently some of the unmet need is met by private practitioners prepared to pick up the work on a speculative basis, sometimes with access to disbursement only funds. There are however, many people whose cases are not sufficiently attractive for a private practitioner to pick them up.

- Low legal aid fees

Low fees paid to private practitioners performing legal aid work (necessitated by insufficient funding) is causing practitioners to withdraw from legal aid work.

- Rural, regional and remote areas:

Some rural, regional and remote areas do not have many legal aid practitioners. This is a reflection of an ageing population, with older practitioners ceasing to practice and closing their businesses, and low legal aid fees are also considered to be a factor. Various strategies have been implemented to address these issues but services to all people, including older people, in rural, regional and remote areas will continue to present a challenge for Commissions. Strategies have included funding of placements of younger practitioners in private practices, outreach services, and the establishment of new offices, as necessitated by the local conditions.

#### Conclusion and recommendations

The area of law in which Commissions are least able to presently provide full legal services is civil law which includes most of the ToR of this Inquiry. Given a combination of the expected enormous increase in the numbers of people at older ages over the approaching years, the existing research into the legal needs of older people

which shows civil law is their most likely area of need, and our experience, we anticipate increasing demand over coming years for an expansion of our civil law services. It will not be possible for Commissions to meet this demand without funding adequate for the purpose and funding agreements which support the delivery of the required services.

We suggest that the following recommendations would address the need which we perceive:

1. That Governments fund Commissions to restore civil legal aid programs which will enable the civil law legal needs of older people to be addressed, (see ALAF paper attached to this submission).
2. That Governments fund Commissions to provide specialised "older persons legal advocates", with expertise in the area of the legal needs of older people. This initiative would resource each Commission with one/more experts with specialised skills who could act as a resource for other practitioners.
3. That Governments fund Commissions to provide outreach services including home visits to older people. With an increasing ageing population it can be expected that there will be increased demand for "home visits" (by reason of personal incapacity as discussed above).
4. That Governments fund Commissions to provide specialised community legal education initiatives aimed at raising community awareness of the services available to older people.
5. That to the extent that the legal needs of older people are not known that Governments fund research into the type and extent of their needs.
6. That the Legal Aid Means Test be expanded and funding provided to Commissions accordingly.
7. That funding be provided to Commissions so that Commissions can expand their "Minor Assistance"/ "Brief Services" programs incorporating a relaxed means and merit test.

Further information

Please do not hesitate to contact us should you require further information.

Yours sincerely,



Bill Grant, OAM  
Chairperson  
National Legal Aid