



OFFICE OF THE
PUBLIC ADVOCATE

Submission to the Consultation paper – Community Education and Older Persons' Legal Service

13 April 2007

**Contact: Dr Janine Bush
Manager, Policy and Education
Office of the Public Advocate
Ph: 9603 9567
Email: janine.bush@justice.vic.gov.au**

Contents

Summary of Recommendations	3
Introduction	6
Single Integrated Service	6
Timelines	7
Terminology	7
Service – composition	8
Service – scope, outcomes and functions	9
Scope of the service	10
Legal advice and assistance	11
Professional education / secondary consultation	12
Awareness raising and community education	13
Target groups and issues	14
Research	15
Supporting local area networks	15
MOU / protocols – OPA and the proposed service	16

Summary of Recommendations

The attached submission contains a series of recommendations in response to the consultation paper released by the Office of Senior Victorians on the Community Education Service and the Older Persons Legal Service.

This section is a summary of those recommendations.

Single Integrated Service

1. That the Older Persons Legal Service and the Community Education Service are established as a single integrated service on the condition that the purpose of the two service components are stated explicitly.

Timelines

2. That the proposed timelines for the tender process are extended to allow due consideration of the issues emerging from the consultation.

Terminology

3. That the term 'abuse' must be used to reflect the issue of abuse experienced by older people.
4. That the objectives of the two components of the combined service are clearly articulated and inform the name of the service.

Service – composition

5. That the service is established as a body independent from government.
6. That the service is established by a larger organisation with a complementary role and the capacity to provide infrastructure and administrative support for the service.
7. That there is an MOU between the Office of Senior Victorians and Victoria Legal Aid to ensure collaboration, consistency and complementarity in the setting of goals and targets in the funding agreement of the service.

Service – scope, outcomes and functions

Scope of the service

8. That the specific focus and scope of the service is explicitly stated in the purpose / objective of the service.
9. That strategic directions are developed for all individual functions of the service to further clarify the scope.

Legal advice and assistance

10. That the anticipated legal component of the service is clearly articulated as a function of the service prior to the tender process.
11. That the legal function of the service includes legal assistance.
12. That the service is not established as a body that is responsible for direct intervention in cases of suspected abuse.
13. That the legal needs of older people experiencing abuse are identified and inform the legal services of the combined service.
14. That within its legal functions, the service has an identified role in making recommendations for law reform.

Professional education / secondary consultation

15. That the 'appropriate response' to elder abuse is determined prior to undertaking any professional education.
16. That any professional education undertaken is targeted to relevant groups of health & community services and other relevant professions (police, legal practitioners, local government, etc).
17. That there are staged timelines for the implementation of a professional education strategy.
18. That the service has a key role in secondary consultation.

Awareness raising and community education

19. That protocols and response mechanisms are developed prior to any community education campaign.
20. That a staged community education campaign is pursued.
21. That in the early stages of the service, raising awareness of the issues is the focus of any community education undertaken.

Target groups and issues

22. That a definition is provided to clarify who comprises 'older people in their own home.'
23. That a rationale is provided for targeting the identified groups of older people and strategies identified for responding to these groups.

Research

24. That the service informs the development of a data collection system to create an evidence base to assist in understanding the extent of the issue in Victoria.

Supporting local area networks

25. That the service plays a critical role in informing the development of protocols and coordinating this process.
26. That the service identifies and clearly articulates what its scope for involvement in the development of protocols and codes of practice in responding to elder abuse.
27. That the key agencies that need to participate in the development of protocols are identified and local area networks are mapped.

MOU / protocols – OPA and the proposed service

28. That an MOU between OPA and the proposed service is established to ensure clarity in the roles of the two services in their advice and information functions.

Introduction

The Office of the Public Advocate (OPA) welcomes the current attention to the issue of abuse of older people in the Victorian community. OPA has long advocated for the attention of government to this issue and congratulates the Office of Senior Victorians for its commitment to older people experiencing abuse.

The proposal to establish both a community education service and an older persons' legal service to address elder abuse is a key strategy that OPA has recommended in the past. Hence, this is a proposal strongly supported by OPA.

To ensure the effectiveness of this strategy, it is critical that any service/s established to respond to older people experiencing abuse has a clear purpose and objective. Furthermore, when service providers in health and community services alongside the wider public become aware there is a service to respond to elder abuse, it is vital that the new service has the capacity (both internally and across the service system) to meet the expectation created within the community. The key to achieving this will be clear boundaries in regard to the responses the service will provide – that is, a scope that is clearly articulated and a strategic focus to the operations of the service.

This submission by OPA provides comments in response to the March 2007 consultation paper released by the Office of Senior Victorians. The key points raised here include:

- Single integrated service
- Timelines
- Terminology
- Service – composition
- Service – scope and key functions
- MOU / protocols – OPA and the proposed service/s

Single Integrated Service

OPA supports the preferred model stated on page 2 of the consultation paper that the delivery and operations of the Older Persons Legal Service and the Community Education Service are undertaken as a single integrated service on the condition that the purpose of both services are made explicit. Will they have the same purpose? Or with the scope of the legal service be different from the education service? That is, will the scope of the legal service extend beyond the issue of elder abuse?

The comments in this submission, therefore, are made in the context of the proposed development of a single integrated service – and reference is made to 'the service' in the same vein used in the consultation paper.

Recommendation

1. That the Older Persons Legal Service and the Community Education Service are established as a single integrated service on the condition that the purpose of the two service components are stated explicitly.

Timelines

As indicated above, to ensure that the service is well positioned to adequately respond to elder abuse, it is critical that the service's purpose, capacity to meet its purpose and its strategic focus are given adequate consideration prior to its establishment.

The proposed timelines between consultation on the service, developing the tender specifications and starting the tender process are notably tight.

OPA has some concerns that these tight timelines may not provide the necessary time to adequately consider the composition of the service and its key functions. In order to develop a service that provides the best possible response to older people experiencing abuse, thorough consideration is essential.

Recommendation

2. That the proposed timelines for the tender process are extended to allow due consideration of the issues emerging from the consultation.

Terminology

Section 5 of the consultation paper raises issues relating to the definition of 'elder abuse' and the use of the term 'prevention' to define the activities of the service.

There are two issues in relation to terminology. Firstly, what terminology should be used to define the issue of abuse of older people? Secondly, what should the name of the combined service be? The first question is discussed in this section.

In regard to the name of the service, until the scope and purpose of the two components of the service is clarified, determining a name for the service will be difficult. As mentioned in the section on the 'Single Integrated Service' – there is a lack of clarity regarding the extent to which the objectives of the two services are the same (ie. are they both focused on elder abuse?). Alternatively, if the legal service seeks to address broader issues than elder abuse, how will this be articulated in the service objectives? And how will it inform the name of the service?

OPA is of the view that the use of the term 'abuse' is critical. While it appreciates the sensitivities around stigmatisation, the risk of a sanitised label is that it will dilute the program which very directly arose from the need to address elder abuse. If the proposed terminology of rights were used, then it may well transpire that these are expressed to encompass pensions, housing health care, etc, rather than the right to protection and security. What is needed is a willingness by society to recognise that elder abuse exists, that it is unacceptable and will not be tolerated within the community. The service will be a key agent in promoting recognition of the issue.

In regard to the use of the term 'elder' – this raises some significant concerns in view of the proposed target groups. Given that 'elder' has specific meaning in some CALD communities and in the indigenous community and that both these groups have been identified as key targets (page 5) – there is some cause to consider the

use of this specific term. At the same time, however, it is important to balance the possibility of abandoning the term 'elder' with international recognition of the term 'elder abuse'. To assist in making a decision, thought might be given to the rationale underlying the term to be used. Is it most important to ensure local relevance and acceptance of the term (particularly within CALD and Indigenous communities)? Or is it our goal to create synergy in our terminology with the broader, international movement to address the issue globally? OPA is not strongly committed either way. Is there anything to be gained from looking at how other countries with indigenous communities have approached the issue of terminology?

The use of the term 'prevention' to define the activities of the service is only problematic if 'intervention' (or tertiary prevention) is not clearly embedded within the service. In the health sector (and particularly health promotion), prevention refers to primary, secondary and tertiary prevention. The World Health Organisation provides the following definition of prevention:

Approaches and activities aimed at reducing the likelihood that a disease or disorder will affect an individual, interrupting or slowing the progress of the disorder or reducing disability. Primary prevention reduces the likelihood of the development of a disease or disorder. Secondary prevention interrupts, prevents or minimises the progress of a disease or disorder at an early stage. Tertiary prevention focuses on halting the progression of damage already done.

This definition is consistent with the definitions provided on page 4 of the various interventions the service will engage in.

As outlined further below, however, the actual interventions that the service will undertake are not clearly articulated in the consultation paper – particularly in regard to the provision of legal assistance. Is the service goal to focus on prevention?

In considering the name of the service, it will be important to ensure that the name is not too long and convoluted and that it reflects the objective of the service accurately. We could be at risk of a name with seven or more words and no identifiable acronym – eg. Older Persons Abuse Prevention and Legal Rights Service (OPAPLRC).

Recommendations

3. That the term 'abuse' must be used to reflect the issue of abuse experienced by older people.
4. That the objectives of the two components of the combined service are clearly articulated and inform the name of the service.

Service – composition

The consultation paper does not address the issue of the service composition in any detail – apart from the note on page 2 that 'the preferred model for the delivery and operation of both services is a single integrated service'. As indicated above, OPA supports the preferred model and the operation of the service under one management structure.

Unfortunately, however, this leaves unanswered a range of issues relating to the governance structure of the service. Will it sit in government or independently?

If the service sits independently of government, it will possibly be accepted more readily by the broader health & community service sector. Furthermore, the service would have greater capacity to provide independent advice and to publish research findings.

If the service sits independently, however, some consideration needs to be given to whether it will stand alone or be auspiced by a larger body.

There are some specific issues to be considered if the service is to stand alone. Firstly, will there be expectations about the governance structure and the composition of the Board? A standalone service would need to develop a constitution and its own infrastructure. It would also need to undertake a range of activities to comply with the *Incorporated Associations Act*. Secondly, OPA has significant concerns regarding the resources that a standalone service will necessarily devote to management and administration and, more generally, to the financial viability of the organisation.

Regardless of the structure of the service, however, the need for the service to be managed and to comply with a range of administrative expectations will remain and form a significant part of the service.

The proposed funding arrangements also provide potential challenges for the future of the service – in particular, for setting strategic direction and clarity of purpose & scope. With two funding bodies proposed, will there be an MOU between the Office of Senior Victorians and Victoria Legal Aid to ensure collaboration, consistency and complementarity in the setting of goals and targets in the funding agreement of the service? Will there be mechanisms in the event that agreement cannot be reached between the two funding bodies?

These issues relating to the composition of the service are significant to its future success and it is critical that they are determined prior to the development of tender specifications.

Recommendations

5. That the service is established as a body independent from government.
6. That the service is established by a larger organisation with a complementary role and the capacity to provide infrastructure and administrative support for the service.
7. That there is an MOU between the Office of Senior Victorians and Victoria Legal Aid to ensure collaboration, consistency and complementarity in the setting of goals and targets in the funding agreement of the service.

Service – scope, outcomes and functions

Sections 6, 7 and 8 of the consultation paper focus largely on the proposed operations of the service.

In giving thought to the service functions, it is useful to consider a case example and how the proposed service might be placed to respond.

A person from a south European background calls to express concerns about his aunt, a widow in her 80s. She has no known disability, but has a reasonable degree of wealth. She is living with her younger brother. She is no longer seen going out shopping or visiting or going to the church. A friend has told the caller that she visited and thought the woman looked thin and said that she is mainly confined to her own room and does not eat with the rest of the family. The caller has tried telephoning her, but the brother does not put the calls through and refuses to discuss the aunt with him. The caller claims that the brother is 'big' in his local church and that the priest has said that there is nothing to worry about – but the caller does not believe him.

What can the caller do? What advice could the service provide? What capacity would the police have to intervene? Will there be expectations on the service to intervene in these types of situations? Does the current criminal and civil legislative framework provide any protection for older people in such circumstances?

One of the significant gaps in the paper is its failure to provide a sense of how the service will actually deal with situations of abuse. While it makes reference to providing an 'appropriate response' to elder abuse, it does not indicate what that service response might actually involve. In suggesting an integrated, whole of government response, the proposal does not provide any context to suggest which agencies will hold responsibility in the broader systemic response to the issue.

In this section, the following components of the service are addressed:

- Scope of the service
- Legal advice and assistance
- Professional education and secondary consultation
- Awareness raising and community education
- Target groups and issues
- Research
- Supporting Local Area Networks

Scope of the service

The consultation paper outlines a broad range of functions that the service will undertake and be responsible for.

The range of functions and the potential outcomes to be achieved by a service of only 5.5 EFT is potentially unrealistic. The capacity of the service will, to some extent, be dependent on the governance structure (ie. whether it is auspiced or a standalone service). Regardless of its composition and structure, however, the focus of the service will need to be clarified.

Some of the strategies to narrow and define the specific focus of the service are implicit in the consultation paper. They include:

- focus on secondary consultation and prevention activities with a minimal focus on providing interventions
- target groups – with some identified
- setting priorities – yet to be identified
- research clearinghouse role as opposed to undertaking research

In spite of these suggestions, the scope of the service remains very broad. Without some narrowing of its scope, the service may not have the capacity to achieve its goals.

OPA supports the proposal that strategic directions are developed for each of the service functions. This should not be limited to some functions, but extended to all areas of the service's responsibilities. This strategic direction will assist in clarifying the extent of the service's ambitions in relation to its functions.

Obviously, a broader strategy for the service that integrates strategies for each of the proposed functions of the service will be critical.

Recommendations

8. That the specific focus and scope of the service is explicitly stated in the purpose / objective of the service.

9. That strategic directions are developed for all individual functions of the service to further clarify the scope.

Legal advice and assistance

The proposal for the legal service component of the service is unclear and appears limited in its scope. Comprising 2.0 EFT of the 5.5 EFT, the legal service function of the combined service is a significant component of the service. It is a notable omission, therefore, that no specific function relating to the legal response has been outlined in Section 8.

In Section 8, there is reference to the telephone advisory service referring individuals or groups to the older persons' legal service. Yet, in the outline of the service provided in Section 2, particularly Points 2.1 and 2.4, it does not appear that legal assistance is envisaged as a component of its functions.

What will the function of the legal component of the service look like? Will it provide legal assistance? Will it have the capacity to make law reform recommendations? It is critical that the anticipated legal functions of the service are defined prior to the tender process.

Generally within Legal Aid a distinction is made between education, advice and assistance (meaning actually taking up a case and working on it). Yet there is nothing in the consultation to indicate the service will provide legal assistance.

On page 5 (in the second paragraph) there is a reference to referrals being made from the legal service to established community legal centres and legal practitioners. This seems to suggest that the service itself will not provide the assistance. Rather it appears that the intention is that this will be a centre of specialist expertise that can provide secondary consultation. While there is merit in this idea, it does need to be recognised that it is doubtful whether community legal centres would have the necessary expertise to deal with the issues brought by older people. In a number of centres the continuity of staff makes the maintenance of expertise difficult. If the legal service were to provide training, there is no guarantee that the learnings from that training would be maintained on an ongoing basis in that CLC.

Issues about older persons are not seen as mainstream law. There might be difficulty, therefore, in adding on to an already overloaded general practice (which is, in effect, what most CLCs are).

OPA is of the view that the provision of legal assistance is an important function of the service. Yet while it might provide assistance in relation to individual cases, the service should not seek to be the body that provides the direct intervention in cases of suspected abuse.

On page 8, the paper refers to the combined service being able to 'respond more effectively to the legal needs of older people'. Have these legal needs been identified? There needs to be greater clarity about what the priorities are. Do we define legal needs of older people simply as being the needs of anyone over a certain age? Do we define it as those specific problems or issues that only affect (or predominantly affect) persons over a certain age? Or do we define it more specifically around issues relating to elder abuse? It is important to ensure that the service does not become so diluted in its expertise that it does not adequately address the issues that gave rise to this initiative.

The consultation paper refers to the possibility of securing pro bono legal assistance and volunteer support for the service. In order to pursue this strategy, the service would need to be an NGO. Relying on pro bono assistance to provide the legal assistance the service considers necessary could be a significant risk if a relationship (through protocols) were not established. The possibility of this needs to be determined prior to any tender specifications are developed that do not include legal assistance by the service itself.

The consultation paper does not make any indication that the legal component of the service will be in a position to engage in making law reform recommendations. In view of the relatively new area of focus – it would appear that this might be a significant function of the service.

Recommendations

10. That the anticipated legal component of the service is clearly articulated as a function of the service prior to the tender process.
11. That the legal function of the service includes legal assistance.
12. That the service is not established as a body that is responsible for direct intervention in cases of suspected abuse.
13. That the legal needs of older people experiencing abuse are identified and inform the legal services of the combined service.
14. That within its legal functions, the service has an identified role in making recommendations for law reform.

Professional education / secondary consultation

One of the key issues that OPA has identified in earlier submissions is limitation of current health and community services to respond to older people experiencing abuse. In particular, OPA identified the following:

- the limited skill and capacity of workers to respond to situations where an older person is experiencing abuse
- the lack of service responses to ensure appropriate follow up when an older person at risk of abuse has been discharged from a hospital admission
- the lack of interagency relationships to enable improved responses to situations of abuse experienced by older persons.

OPA supports the need for the service to undertake a role in educating services and building capacity in the service system to respond to older people experiencing abuse.

This is potentially a major undertaking that the small service will not have the capacity to achieve without setting clear target groups. While important to build capacity in the service system, a training program for professionals would require a major commitment of resources. OPA supports the need for a specific strategy for professional / service provider education that outlines what the service actually intends to achieve with its small staff team. Targeting specific groups of health and community professionals that have involvement with older people would be essential.

Without a clear understanding of what an 'appropriate response' to elder abuse is, however, there is little to be gained from providing education. Furthermore, service providers and their workers are currently experiencing 'training fatigue'. In a context of integrated responses and whole of government approaches, workers are increasingly expected to become expert in a range of areas, including mental health, alcohol & drugs, housing & homelessness, child protection, family violence. Clarity about the options available to service providers in responding to elder abuse would therefore be critical.

The service should have a significant role in providing secondary consultation to service providers who are seeking advice on how to respond to situations of abuse of older persons.

Recommendations

15. That the 'appropriate response' to elder abuse is determined prior to undertaking any professional education.
16. That any professional education undertaken is targeted to relevant groups of health & community services and other relevant professions (police, legal practitioners, local government, etc).
17. That there are staged timelines for the implementation of a professional education strategy.
18. That the service has a key role in secondary consultation.

Awareness raising and community education

Again, the importance of a clear strategic direction for how community awareness raising is approached needs to be articulated before the service is tendered.

The consultation paper suggests is that community education could be provided by using the media to raise awareness of 'the issue'. Prior to any community awareness campaign, it is critical to agree on how 'the issue' will be defined. If there is

resistance to using the term 'abuse' – this will present significant challenges in how to approach community education.

In earlier submissions on elder abuse, OPA has recommended that a staged community awareness campaign is critical. Notably, OPA has argued that a community education campaign could only occur following a process of capacity building and professional education amongst health and community sector service providers.

It is critical that any community awareness campaign does not raise expectations in the community that a situation of elder abuse will be responded to if there is no adequate structure in place to provide that response. It is vital that the necessary protocols (with police and other relevant bodies) and response mechanisms are in place prior to any community awareness efforts being undertaken.

Recommendations

19. That protocols and response mechanisms are developed prior to any community education campaign.
20. That a staged community education campaign is pursued.
21. That in the early stages of the service, raising awareness of the issues is the focus of any community education undertaken.

Target groups and issues

OPA supports the intention to identify priorities for targeting the response to the abuse of older people. This is critical in view of the limited resources available to the service.

In doing so, however, it is important that a clear rationale is identified which indicates why those specific groups have been targeted. There also needs to be clarity in the target groups identified.

In the second paragraph of Section 7 the primary target audience is stated to be older people living in their own homes. Firstly, a definition needs to be provided to clarify who comprises the target group 'older people living in their own homes'. At first glance it appears too narrow. Does it include older people living with their families? Is it older people living independently of aged care facilities? Secondly, what is the rationale for selecting this group of older people as the target group? Is it because this group have no access to any protections against abuse, whereas residents of aged care facilities have some protections via the Health Services Commissioner?

OPA supports the targeting of those older people most vulnerable to abuse. The paper states that this group is generally 'those who are experiencing most disadvantage'. The four categories of older people identified as at greater risk of abuse appears reasonable. Further explanation of the particular risks these groups face would be useful in developing a further strategy.

On page 5 (para 2), CALD and Indigenous communities are also identified as potentially vulnerable to elder abuse and important to target – yet they're not mentioned in Section 7.

Recommendations

22. That a definition is provided to clarify who comprises 'older people in their own home.

23. That a rationale is provided for targeting the identified groups of older people and strategies identified for responding to these groups.

Research

In addition to the suite of functions that the new service will provide, research appears a logical and complementary addition. In view of its limited resources, however, this would add significant pressure to the service.

The concept of a clearinghouse is a useful one – yet, with the small staff team of 5.5 EFT that will also undertake professional education, provide telephone advice, raise community awareness, provide a legal service and support local area networks, it is difficult to envisage how it will also act as a research clearinghouse and maintain a current and up-to-date resource base.

While it could take time to secure, the function may well be better performed by another service or a university. If this were to happen – a relationship between the elder abuse service and the clearinghouse would be critical.

On the other hand, in view of the lack of evidence of elder abuse, a key task for the service might be to inform the development of a data collection system that will create an evidence base to assist in understanding the extent of the issue. This could involve coordinating (or advocating for) a working party that might include the police, hospitals & health services and relevant community services. This would be in addition to the collection of evidence that the service itself would undertake through the telephone advisory service and any legal case work provided.

Recommendation

24. That the service informs the development of a data collection system to create an evidence base to assist in understanding the extent of the issue in Victoria.

Supporting local area networks

The issue of older people experiencing abuse is one that involves intersections across a broad range of service types – including the police, hospitals and health services, community welfare services, courts, legal practitioners and local government. Improving the networking across this plethora of services is critical in addressing the issue of elder abuse.

There will be a need for the development of protocols between those agencies involved in responding to elder abuse. The service could be well positioned to provide the coordination of this key function of an integrated systems response to elder abuse. The service has a critical role in supporting existing networks and helping to develop new local area networks. Are existing local area networks different from primary care partnerships (PCPs)?

As a statewide service, however, the extent to which the service will have the capacity to provide meaningful input to local networks across Victoria needs consideration.

The local area networks that might be useful to tap into include the 33 PCPs across the state and the 77 local councils which have a range of different network meetings on different issues. This is a significant number of existing local area networks – and mapping what currently exists and is relevant to the issue of elder abuse is a potentially significant body of work.

This plethora of local area networks further indicates the need for a clear strategy in how the service might be involved in supporting the coordination of any protocols. Indeed, the service might be better placed to support the development of protocols from a statewide, central perspective. This would be a useful strategy to engage key bodies in the development of protocols, such as the police and health services. Following the lead of the family violence sector in the development of codes of practice and protocol development would be advisable.

Identifying the service seeks to achieve in the context of developing local protocols and which services need to be involved is critical.

Recommendations

25. That the service plays a critical role in informing the development of protocols and coordinating this process.

26. That the service identifies and clearly articulates what its scope for involvement in the development of protocols and codes of practice in responding to elder abuse.

27. That the key agencies that need to participate in the development of protocols are identified and local area networks are mapped.

MOU / protocols – OPA and the proposed service

As emphasised at the start of this paper, OPA strongly supports the development of the proposed service to respond to elder abuse.

Through the telephone advice service that OPA provides in relation to guardianship and administration and related matters, the issue of older people experiencing abuse is raised frequently by callers to the service.

OPA anticipates a close working relationship between the services it provides and the functions of the proposed service.

To ensure that both services provide the most effective response to older people experiencing abuse, OPA is of the view that an MOU between the two services will be important. An MOU will assist in preventing the overlapping of functions and creating clear protocols for referral across the services in relation to situations of elder abuse. An MOU will also assist to clarify the role of both OPA and the service and the different, yet complementary, functions they offer to older people experiencing abuse.

Recommendation

28. That an MOU between OPA and the proposed service is established to ensure clarity in the roles of the two services in their advice and information functions.