



Submission to the Law Council of Australia

The Justice Project Consultation

**Prepared by
COTA Australia**

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COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have around 30,000 individual members and more than 1,000 seniors' organisation members, which jointly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

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Introduction

COTA Australia congratulates the Law Council of Australia for undertaking this important project into impediments facing disadvantaged Australians in access to justice.

Although COTA does not specialise in legal matters, we are pleased to provide brief comments from our standpoint as a peak organisation representing the interests and rights of older Australians.

Response

The Justice Project Consultation Paper on Older Persons provides fulsome coverage of the issues facing older Australians attempting to access legal institutions and recourse to justice. We concur with the findings under each of the key consultation questions in the Executive Summary of the Consultation Paper on Older Persons and highlight a few key issues.

Diversity and intersectionality

The consultation documentation for the Justice Project correctly highlights issues of diversity and intersectionality within population groups, such as older Australians. It is essential that this concept is fully integrated in to the analysis and responses developed in the Justice Project.

COTA agrees that targeted approaches through outreach and appropriate gateways into specialised or mainstream legal services is a highly effective way of supporting older people to access justice mechanisms. Clearly, the legal needs and status of all older people will overlap to some extent, particularly when recourse to justice is sought in cases where age is a defining component of the transgression, such as elder abuse or age discrimination. Acknowledgement of the justice needs that are relevant to all older people is a welcome development.

However, while targeting to the older age group is a highly valuable and important start, it will increase in effectiveness if the needs of specific segments of the older population are understood and responses to these are purpose-built. Examples of this include addressing the particular legal needs of:

- older Indigenous Australians;
- people from culturally and linguistically diverse backgrounds (especially where English is not their first language and where their lives before living in Australia may have involved significant trauma, such as refugees);
- older LGBTI people; and
- regional, rural and remote older Australians, who already experience poorer service access across many areas of need.

To achieve the best outcomes for older people, it is essential that outreach and pathway

programs are resourced to engage the diversity of older Australians in the community. It is also essential that specific resources are made available to other specialist services such as Aboriginal and Torres Strait Islander and multicultural legal services to target the justice needs of and provide support for the older members of those communities.

Elder Abuse

COTA welcomes the prominent inclusion in the Consultation Paper of elder abuse as a significant legal issue for older Australians.

The increased recognition in the community of elder abuse and its impacts highlights the need for:

- a national, consistent legal framework for elder abuse;
- a National Plan to address elder abuse; and
- clarified pathways and sources of support for vulnerable older people wanting to access justice in response to elder abuse.

COTA Australia also endorses the comments on elder abuse in the submission made to the Justice Project by Seniors Rights Victoria (SRV), a program of COTA Victoria¹. To recap, SRV's main points are:

- court processes in financial and property claims relating to elder abuse consistently demonstrate lack of recognition of the context of family violence, resulting in significant harm to the older person;
- robust safeguards and support must accompany any mediation process proposed to address elder abuse; and
- funding constraints impact severely on the ability of specialist elder abuse services such as SRV to deliver the multi-disciplinary approach needed to properly support clients.

The Justice Project is in a good position to champion a response to this harmful and potentially growing form of violence against older people.

Digital Exclusion

COTA Australia is a member of the broad-based, newly-established Australian Digital Inclusion Alliance (ADIA). We are supporting this effort and are engaged in advocacy around digital access on a number of policy fronts because of the high rate overall of digital exclusion of older Australians.

We are pleased to see the acknowledgement in the Consultation Paper of digital exclusion as an issue for a proportion of older people and the potential detriment to this group as legal services

¹ Senior's Rights Victoria, Submission to the Justice Project: Older Persons Consultation Paper. 26 September 2017 <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/JP%20Submissions/S44%20-2017%2008%2028%20-%20Seniors%20Rights%20Victoria.pdf> (6 October 2017)

and information increasingly move online. COTA wishes to reinforce this message.

Research confirms that age is a significant factor in digital literacy and online engagement.^{2,3,4} The Australian Digital Inclusion Index (ADII) has ranked Australians aged 65 years and over as the most digitally excluded age group (42.9, or 13.6 points below the national average).⁵ Significantly the inclusion gap between this group and younger Australians has been steadily widening since 2015.⁶ Further, the level of online engagement reduces in the older age cohorts⁷ and women are more digitally excluded than men in older age^{8,9}.

It is also essential to note that there is a proportion of older Australians who have never accessed the internet. This proportion increases across the age cohorts, and at the current oldest ages it is unlikely that there will be changes in this situation other than at the margins. ACMA research in 2014-15 estimated 1 million adult Australians had never accessed the internet. Seventy one percent of offline adults were aged 65 years and over. Only eleven percent of Australians aged 65-69 years had never accessed the internet, but this proportion increased to 42 per cent of those aged 80 years and over.¹⁰

COTA argues strongly that exclusion from or second-class service in access to legal information and delivery because of lack of internet access would constitute a discriminatory penalty. Access to justice for many people currently in older age will require appropriate, sustainable and adequately resourced legacy systems, including face-to-face, phone and paper based communications (at no extra cost to the person). At the same time attention should also be given to ensuring that online access is as user friendly and assistive as possible for people who have limited digital experience.

Access to Legal Aid

In a time of severely shrinking funding for legal aid services, calling for an additional, hitherto excluded group of people to be allowed access to free legal support might be viewed as

² Thomas, J, Barraket, J, Wilson, C, Ewing, S, MacDonald, T, Tucker, J & Rennie, E 2017, *Measuring Australia's Digital Divide: the Australian digital inclusion index 2017*, RMIT University, Melbourne. p 14

³ Aust Post Digital Participation A view of Australians online behaviours

⁴ ABS 8146.) – Household Use of Information Technology, Australia 2014-15 accessed at www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0 on 13 Sept 2017

⁵ Thomas, J, Barraket, J, Wilson, C, Ewing, S, MacDonald, T, Tucker, J & Rennie, E 2017, *Measuring Australia's Digital Divide: the Australian digital inclusion index 2017*, RMIT University, Melbourne.

⁶ Thomas, J, Barraket, J, Wilson, C, Ewing, S, MacDonald, T, Tucker, J & Rennie, E 2017, *Measuring Australia's Digital Divide: the Australian digital inclusion index 2017*, RMIT University, Melbourne.

⁷ ABS 8146.) – Household Use of Information Technology, Australia 2014-15 accessed at www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0 on 13 Sept 2017

⁸ Thomas, J, Barraket, J, Wilson, C, Ewing, S, MacDonald, T, Tucker, J & Rennie, E 2017, *Measuring Australia's Digital Divide: the Australian digital inclusion index 2017*, RMIT University, Melbourne p14

⁹ Australian Communications and Media Authority (ACMA) Research snapshots *Digital lives of older Australians* 4 August 2016 accessed at <https://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Digital-lives-of-older-Australians> on 21/9/17

¹⁰ Australian Communications and Media Authority (ACMA) Research snapshots *Digital lives of older Australians* 4 August 2016 accessed at <https://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Digital-lives-of-older-Australians> on 21/9/17

implausible. However, that is exactly what COTA argues for in regard to those older Australians who are currently denied access to legal aid, despite meeting the income means test, because they own the home in which they live.

Around 63% of people over 65 rely on the Age Pension as their primary source of income¹¹. Historically the low level of the pension has been set to reflect a high home ownership profile among older Australians, accompanied by a public housing safety net. Consequently, the Asset Test in the Age Pension continues to exclude the primary home.

Housing security is essential for basic wellbeing for very many older Australians. The equity release market is as yet very underdeveloped in Australia and accessing capital in the housing asset in a way that maintains housing security is not available. The upshot of refusing low-income older Australians access to legal aid if they own a home is that they either must self-represent or take extreme steps to access capital in the home, such as its sale or remortgaging. These desperate responses serve neither justice nor the social good.

The Consultation Paper cites the argument made by ACT Legal Aid for a relaxation of the means test in legal aid to allow older people access to support in particular circumstances such as elder abuse. The Paper goes on to give a case study of another extreme situation where a grandparent carer needed legal support but was denied legal aid because she owned her home, yet did not have the income to pay for private legal representation.¹² COTA is aware that this is a quite common situation and has resulted in cases of severe financial deprivation for grandparents who feel they have no choice but to sacrifice their financial welfare for the interests of grandchildren. The unwillingness to relax the legal aid means test even in these severe cases represents a substantial failure of justice.

Conclusion

COTA commends the Law Council of Australia for undertaking the Justice Project and for recognising the vulnerability experienced by many older Australians in achieving access to justice, based on a range of intersecting disadvantages.

We would be pleased to discuss this further with the Justice Project team.

Ends

¹¹ The Law Council of Australia, The Justice Project: Legal Issues Facing Older Persons Infographic. <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Toolkit/Older%20persons%20Infographic.pdf> (6 October 2017)

¹² The Law Council of Australia, The Justice Project: Older Persons Consultation Paper, August 2017. P8 <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Older%20Persons.pdf> (6 October 2017)