

EDITORIAL

‘Providing for quality care in later life is a key concern of Australians as they age...It will be more pronounced with the ageing of our population.’¹ This pertinent observation highlights the growing importance of caregiving and elder services in the context of a rapidly ageing Australian population, and encapsulates some of the ideas explored in the articles included in this year’s edition of the *Elder Law Review*, appropriately themed ‘Caring and the Law’.

Reflections on quality care for older people raise various philosophical and ethical questions about the nature of care, approaches to the practice of caring, and the value placed on caring by society. These issues are considered in ‘The Disability Critique of Care’, where Jonathan Herring examines the critique of the voluminous body of ethics of care literature from a disability perspective. He highlights the utility of ethics of care in challenging common understandings of legal rights and responsibilities, arguing that laws should ‘start with a norm of interlocking mutually dependent relationships, rather than an individualised vision of rights’, as is typically the case, in order to ultimately assist society to ‘uphold and maintain caring relationships’.

The significance of reciprocal caregiving relationships in the recognition of testamentary promises under family provision legislation is analysed by Malcolm Voyce in ‘Testamentary Promises, Family Provision and Family Farmers’ in the context of succession to family farms. As a result of limitations arising from family provision laws, which require the claimant to establish need and the court to consider the actions of a ‘wise and just’ testator, the author posits that courts have been prepared to recognise only the ‘shadow’, but not the ‘substance’, of testamentary promises. Instead, he contends from a sociological perspective that such ‘reciprocal understandings within the context of intergenerational exchange of labour and land’ should not be ignored.

Care is broadly explored in our Feature Article for this edition, entitled ‘Care in Australian Retirement Villages’ by Richard McCullagh, which contains a national overview of retirement village law and living from a variety of angles, including regulatory, social and financial perspectives. The care features of retirement village living are discussed, as are Centrelink carer benefits and the capacity for movement between retirement villages and residential aged care facilities where appropriate. The author highlights some benefits and drawbacks of retirement village living compared to other accommodation alternatives and argues for the likelihood of their continued popularity among, and suitability for, certain elders.

In a related piece, Sue Field reviews Richard McCullagh’s recent book *Retirement Village Law in NSW*, identifying it as a comprehensive publication and useful tool for elder law practitioners, successfully filling a void in the literature where no other book of its nature had previously been written. Sue Field also provides a review of Patricia Edgar’s ‘imminently readable and thoroughly researched book’ *In Praise of Ageing*, which identifies a number of myths and stereotypes associated with ageing and seeks to refute these myths with stories of success and achievement accomplished by people that ‘many in society would say...have “reached their use by date”’.

¹ Access Economics, ‘The Future of Aged Care in Australia’ (Discussion Paper, National Seniors Australia, September 2010) 3.

In keeping with the inclusion of updates to case law and various legal services in previous editions of this journal, Juliet Lucy discusses the latest NSW case on advance care directives, *Re JS* [2014] NSWSC 302, and its application of the principles enunciated in *Hunter and New England Area Health Service v A* (2009) 74 NSWLR 88. Imelda Dodds, the CEO of NSW Trustee & Guardian, provides an update on this government department as it approaches the fifth anniversary of the merger of the former Public Trustee NSW and the Office of the Protective Commissioner and Public Guardian, and as it celebrates its 100th year of providing will-making services to the people of NSW in 2014. Further, Lauren Adamson provides an overview of Justice Connect's Seniors Law service in Victoria, which works with the health and community sectors to assist 'vulnerable older Victorians with legal issues associated with ageing, focusing on the prevention of, and response to, elder abuse'.

Finally, this edition of the journal is the second to contain a student contribution, written on this occasion by Mary-Ann De Mestre, an Honours student in the School of Law, University of Western Sydney. She reviews the relatively recent Supported Decision Making Project conducted by the South Australian Public Advocate in the context of increased developments in supported decision-making across Australia and worldwide.

Esterina Lentini

*Guest Editor and Research Assistant to the Elder Law Review
School of Law, University of Western Sydney*