

‘ASSETS FOR CARE: A GUIDE FOR LAWYERS TO ASSIST OLDER CLIENTS AT RISK OF FINANCIAL ABUSE’ AND ‘CARE FOR YOUR ASSETS: MONEY, AGEING AND FAMILY’ – STUDENT REVIEW

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I INTRODUCTION

Seniors Rights Victoria, a specialist legal and advocacy service focused on safeguarding the rights of elder Victorians and preventing elder abuse through the provision of information, support and education,¹ recently published two valuable resources entitled ‘Assets for Care: A Guide for Lawyers to Assist Older Clients at Risk of Financial Abuse’ (‘Assets for Care’)² and ‘Care for Your Assets: Money, Ageing and Family’ (‘Care for Your Assets’).³ These guides, produced with a view to increasing public awareness and understanding of elder abuse, especially in relation to financial matters,⁴ are useful aids for professionals, community members, interested parties, as well as older people themselves, to equip individuals with the skills to detect situations of potential or actual abuse, and ultimately to prevent or avoid them.

II ‘ASSETS FOR CARE: A GUIDE FOR LAWYERS TO ASSIST OLDER CLIENTS AT RISK OF FINANCIAL ABUSE’

‘Assets for Care’ is a practical guide for Victorian lawyers which is aimed at directing a lawyer’s mind to their role and duties in relation to older clients, particularly in relation to financial transactions. Like ‘Care for Your Assets’, ‘Assets for Care’ stresses the importance of safeguarding an older client’s rights and independence. The publication ultimately seeks to ensure that lawyers are aware of the possible situations of elder abuse that may arise in the common transactions which constitute their everyday legal work, and to provide tips and advice as to how to minimise these risks, act in the best interests of their older client, and remedy existing situations of abuse.

The publication outlines key matters relevant to legal professionals and their older clients in a succinct but comprehensive manner. It addresses the duties of a legal practitioner in relation to older clients,⁵ how to assess the capacity of an older client,⁶ how to recognise the vulnerability of an older person and identify incidences of undue influence or unconscionability in an older client’s relationships with others,⁷ minimising the risk of financial abuse through family agreements or other preventative measures,⁸ remedying

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¹ Seniors Rights Victoria, *Home*, Seniors Rights Victoria <<http://www.seniorsrights.org.au>>.

² Louise Kyle, ‘Assets for Care: A Guide for Lawyers to Assist Older Clients at Risk of Financial Abuse’ (Guide, Seniors Rights Victoria, 2012).

³ Louise Kyle, ‘Care for Your Assets: Money, Ageing and Family’ (Guide, Seniors Rights Victoria, 2012).

⁴ Kyle, above n 2, 5.

⁵ See *ibid* ch 2.

⁶ See *ibid* ch 3.

⁷ See *ibid* ch 1.

⁸ See *ibid* ch 4.

situations of elder abuse,⁹ and drafting substitute decision-making instruments for an older client.¹⁰

In each section of the guide, examples of common scenarios that lawyers may face when dealing with older clients are illuminated in a series of short case studies. These are followed by a list of questions and factors that a prudent lawyer should consider in such situations, and supported where relevant by case law, legislative authority, and the view of Seniors Rights Victoria as to the appropriate course of action. Concise checklists are included to guide a lawyer's mind to the key matters and act as a springboard for investigating possible risk factors of elder abuse in relation to a lawyer's own clients. Risk-minimising strategies are explored throughout, such as taking detailed instructions from a client without anyone else present,¹¹ ensuring that a client is fully informed as to their rights and legal options,¹² properly assessing a client's capacity,¹³ and encouraging proper planning and discussion between an older client and their family when drafting a family agreement.¹⁴ The guide contains recommendations to refer an older client to a social, financial or mediation service where appropriate. The resource also usefully contains a detailed sample family agreement, which lawyers may adapt for use as a pro forma to suit their own clients' needs.¹⁵

All of these components of the guide make it a valuable preliminary resource for lawyers, helping to increase general awareness of the possible abusive scenarios which lawyers may observe when dealing with older clients, and elucidating a lawyer's role in relation to these. Though much of the legal authority discussed and the community services cited are specific to Victoria, the contextual framework and general substantive issues explored, such as the tips on identifying abuse and advice on lawyers' duties, constitute essential reading for any Australian lawyer with older clients.

III 'CARE FOR YOUR ASSETS: MONEY, AGEING AND FAMILY'

Unlike 'Assets for Care', the 'Care for Your Assets' publication is largely targeted at an older audience and, therefore, the potential victims of elder abuse themselves. The compact resource addresses issues of principal importance to older individuals, such as changing residential arrangements and sharing assets with family,¹⁶ entering into residential aged care,¹⁷ lending money,¹⁸ making a will,¹⁹ and appointing substitute decision-makers.²⁰ In this sense, 'Care for Your Assets' is useful as a 'first-stop', 'go-to' resource for older people, as it explores the preliminary matters that older people should consider in relation to the above issues, contains appropriate recommendations to seek legal or financial advice for one's personal circumstances, and lists many other resources that could also be of assistance.

⁹ See *ibid* ch 5.

¹⁰ See *ibid* ch 6.

¹¹ See *ibid* 11.

¹² See *ibid* 12-13.

¹³ See *ibid* ch 3.

¹⁴ See *ibid* 32-33.

¹⁵ See *ibid* 69.

¹⁶ See Kyle, above n 3, 6-7.

¹⁷ See *ibid* 8-9.

¹⁸ See *ibid* 17-18.

¹⁹ See *ibid* 21.

²⁰ See *ibid* 19-21.

The use of a fictional continuing storyline which frames the text makes the content relatable and easy to follow, dealing with realistic scenarios and suggesting appropriate questions for older people to ask in the event that they find themselves in circumstances which are similar to the proposed scenario. The text is written with a view to preventing elder abuse and minimising the risk of other difficulties that may arise which may not be immediately evident to older persons at the time of engaging in a particular agreement or transaction. This is made clear from the types of questions raised, which address matters such as a potential breakdown in family relationships, the impact of various transactions on future Centrelink benefits, potential loss of capacity or an increase in care needs, and the proper protection of the older person's interests.

Importantly, the resource reinforces and is focused on maintaining the independence of older individuals who may enter into the various agreements or transactions discussed. For each issue addressed, a number of options are mentioned, as well as the key social and financial implications, so that the reader is encouraged to consider the alternatives and exercise their independent discretion in regards to their own situation. The reader is also frequently encouraged to talk with their lawyer, financial adviser or Seniors Rights Victoria for further advice or if assistance is required in the making of their independent decisions.

As with 'Assets for Care', although 'Care for Your Assets' was produced for a Victorian audience and cites Victorian legal authority and community services, older people across Australia would likely benefit from the substantive matters it contains.

IV CONCLUSION

In the context of an ageing Australian population, and amid evidence that the prevalence of elder abuse in Australia is significant and increasing,²¹ Seniors Rights Victoria's publications 'Assets for Care' and 'Care for Your Assets' serve an important role in educating the community about safeguarding elder rights. Both publications are valuable resources for their intended Victorian audience, but also for older people and legal practitioners across Australia more generally, as the substantive issues and factors discussed are relevant to all older persons. Such publications are necessary Australia-wide in order to broaden awareness and understanding of elder abuse in the wider community, and to ensure that the rights, interests and independence of older Australians continue to be supported and promoted.

²¹ Kyle, above n 2, 5.