# 

SUBMISSION

Review of the Family Law System—Issues Paper (IP 48)

Australian Law Reform Commission

2018

SUBMISSION BY SENIORS RIGHTS SERVICE

**7 MAY2018**

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# About Seniors Rights Service

## Seniors Rights Service is a community legal centre that protects the rights of older people, and provides telephone advice, advocacy, legal advice and educational services to older people in NSW.

Our services are available throughout the state, including rural, regional and remote NSW, and give priority those over 60 who are socially or economically disadvantaged or vulnerable.

We provide services to older people in NSW who are disadvantaged or at risk of disadvantage. This includes residents of an aged care home or hostel or Retirement Village; victims of elder abuse or elder financial exploitation; people who have a consumer complaint; and people living in strata title residences subject to collective sale or redevelopment proposals. We also provide services to relatives or other persons of trust of an older person.

Our services are free and confidential.

We prioritise engagement with older people who are: vulnerable or disadvantaged; in regional, rural and remote locations; culturally and linguistically diverse; Aboriginal or Torres Strait Islander; lesbian, gay, bisexual, transgender or intersex.

Our **Legal Service** provides legal advice and assistance to older people in NSW. Further we offer a comprehensive referral service. We may also provide limited legal assistance for financially and socially disadvantaged older people. Advice includes: consumer rights, human rights/ elder abuse, financial exploitation, planning for later life.

Our **Retirement Village Legal Service** provides advice and assistance to residents of retirement villages (includes former and prospective residents) on issues arising from management/ operator issues in relation to the Retirement Villages Act 1999 NSW. We provides education sessions regarding residents rights under RV Act.

Our **Strata Collective Sales Advocacy Service** provides legal advice to older people who are owners of a strata unit or townhouse about any aspect of the strata renewal process.

Our **Advocacy Service** provides advocacy for recipients of all Commonwealth funded aged-care services. Our advocates: provide information; listen to your concerns; help resolve problems or complaints with aged care service providers; refer t other agencies where necessary, including the Aged Care Complaints Commissioner if issues cannot be resolved using the internal complaints systems.

Education sessions are provided regarding the rights of older people and how our organisation or partner organisations can help them and a range of other topics requested by community. We provide information provide information and promote our service at community and professional events. We visit every aged care home in NSW and speak to residents and their families, as well as staff. We also speak to home care recipients about their rights, advocacy and options of care.

# Contact Details

## The contacts for this submission are:

## Ms Charlotte Steer, Solicitor, Seniors Rights Service

## Mr Tim Tunbridge, Solicitor, Seniors Rights Service

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# Introduction

## Seniors Rights Service welcomes the opportunity to make a submission in response to the ALRC Review of the Family Law System—Issues Paper (IP 48).

Seniors Rights Service notes that the Issues Paper is structured as follows:

1. Objectives and principles
2. Access and engagement
3. Legal principles in relation to parenting and property
4. Resolution and adjudication processes
5. Integration and collaboration
6. Children’s experiences and perspectives
7. Professional skills and wellbeing
8. Governance and accountability

The submission from Seniors Rights Service addresses the questions in the first section, ‘Objectives and Principles’ and calls for increased attention to the roles of older people in the Family Law system, in relation to parenting orders, property orders and access to justice.

# Submission on Family Law

**1. Objectives and principles**

Question 1 What should be the role and objectives of the modern family law system?

Question 2 What principles should guide any redevelopment of the family law system?

Seniors Rights Service recommends that the role, objectives and principles of the modern family law system recognise the roles of all generations within a family.

## **Recommendation 1: Older Persons and Parenting Orders**

Seniors Rights Service recommends that the role, objectives and principles of the modern family law system recognise the roles of all generations within a family, noting that older persons may have complex needs in relation to parenting orders.

*Older persons may be part of extended kinship networks that involve grandparents, great-aunts and great-uncles, and those who perform these roles without strict familial ties.*

## **Recommendation 2: Older Persons and Property Orders**

Seniors Rights Service recommends that the role, objectives and principles of the modern family law system recognise the roles of all generations within a family, noting that older persons may have complex needs in relation to property orders.

*Older persons may have property interests not only between themselves as a divorcing couple, but also in relation to property interests held by their divorcing children*.

## **Recommendation 3: Older Persons and Access to Justice**

Seniors Rights Service recommends that the role, objectives and principles of the modern family law system recognise the roles of all generations within a family, noting that older persons may have complex needs in relation to access to justice.

*Older persons may have physical or intellectual disabilities that require adjustments in the delivery of family law services, including court services, and the availability of amici and legal and non-legal representatives.*

## **Case Study: Older Parents, Adult Children and Financial Entanglements**

An older woman and her husband transferred a half share of their house to their daughter and son-in-law. No money was paid for the transfer. The older couple also agreed that the Bank could use the half share of the house as security for a loan to the daughter and son-in-law, to be used for the daughter’s business. The older couple received no benefit from the arrangement.

The marriage between the daughter and son-in-law broke down and family law proceedings were started. The older couple were joined as parties.

Seniors Rights Service assisted the clients by providing advice on their legal rights, and preparing an application for a grant of Legal Aid. Legal Aid assisted the clients to recover the half share of their house from the daughter and son-in-law.