

CLIENT NEWS

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LEGAL CHECK-UP JUST AS NECESSARY

People should undergo a regular legal check with their lawyers in much the same way they visit their doctors, according to an elder law expert.

Australian research revealing 25 per cent of people will suffer dementia after the age of 85 reinforces the need for legal guardians to help elderly people manage their affairs.

Sorting out legal affairs includes planning prospective accommodation, nominating carers and arranging someone to manage financial matters.

Office of the Public Advocate principal legal officer Phil Grano said legal health checks were critical as people faced becoming dependent on others in old age.

“Don’t just go into these things with love as your only currency,” Mr Grano said.

In his role as chair of the Elder Law Section for the state’s peak body for solicitors, the Law Institute of Victoria, he has found elderly people often feel vulnerable as their dependence on external assistance increases over time.

“They might feel trapped and too afraid to stand up for themselves if they are relying on support from their family or neighbours to provide food and other necessities,” he said.

Mr Grano’s advice is to appoint a trusted person to act on your behalf to make medical and financial decisions.

A guardian can make decisions about living arrangements, while an administrator is responsible for handling financial matters. A case goes before the Victorian Civil and Administrative Tribunal if no measures are in place, which Mr Grano warned might prove daunting for many people.

If a person suffers a medical condition that impacts their capacity to make decisions for themselves, the legal responsibility falls to a primary carer, spouse or relative.

Mr Grano urged people to take action now and avoid creating a bureaucratic nightmare for loved ones when life goes awry.

“It is fairly common for people to not have things in place simply because they didn’t realise it would be a problem,” he said.



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“It means it can lead to in-fighting and fractures in some families as people disagree as to what should happen.

“Or it could mean that it will be a lot slower process to get things done when you may want things to happen quickly.”

The worst case scenario is elderly people being exploited by family members or people they thought they could trust.

Mr Grano said victims could seek help from Senior Rights Victoria, a community legal centre dedicated to providing legal advice and support for elderly people if they felt under threat.

“There have been cases where one family member starts isolating them from the rest of the family so there is no scrutiny,” he said.

“And the person might be in thrall of their ‘carer’ and not even realise the rest of the family has been scared off and so then they get fleeced.”

He recommends people seek comprehensive legal advice while in good mental and physical health and review their powers of attorney and other legal matters on a regular basis.

“People are not just looking for legal solutions,

they are looking for life-accommodating solutions,” Mr Grano said.

“If you start planning for your old age and thinking that you may have significant periods where you may be in moderately poor health and reliant on others, you need to decide who you will live with, who is going to help you out and who you can trust.”

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LAW AND ORDER POLL BALANCE



RICHARD JUPE

Lawyers' groups are joining forces to help inform Victorian voters about key legal issues during the upcoming state election campaign.

The Smart Justice coalition of legal and community organisations will be helping turn the spotlight on issues including the criminal justice system, law and order, and sentencing in the lead-up to the 27 November poll.

Smart Justice spokesperson Hugh de Kretser said some lawyers felt the public was not well served by "election-fuelled law and order debates".

"We are concerned that the public may only hear one side of the argument during the heated election period – that more police, new offences and tougher sentences are the way to tackle crime," Mr de Kretser said.

"We want to inform the public about what works, what is cost-effective and how we can

SMART THINKING: Smart Justice spokesperson Hugh de Kretser.

reduce crime without violating Victorians' human rights."

The coalition seeks to enhance the safety of all Victorians by promoting understanding of criminal justice policies that are effective, evidence-based and compliant with human rights.

It will produce 16 fact sheets on topical criminal justice issues, from mandatory sentencing to prisons and supporting victims of crime.

The Smart Justice coalition is led by the Federation of Community Legal Centres and supporters include the Law Institute of Victoria, the Victorian Bar, Liberty Victoria, the Victorian Council of Social Service, Salvation Army, Anglicare Victoria, Victorian Alcohol and Drugs Association and the Youth Affairs Council of Victoria.

For more information, visit www.smart-justice.org.au.

TEAM APPROACH WORKS

A rising number of lawyers are now gaining successful outcomes away from the courtroom through collaborative practice.

In collaborative practice, the emphasis is on negotiation rather than litigation.

Lawyers work with their clients and other professionals in a "win-win" relationship designed to settle disputes fairly.

While still in its infancy in Australia, international research reveals that settling matters collaboratively returns a 95 per cent success rate.

Proponents here say resolving legal disputes outside the courtroom not only saves time and money, but ensures clients' needs remain paramount.

Collaborative lawyers practising in Australia say this advocacy style of law is far more rewarding as they deal with empowered clients happy to pay their legal bills.

In rare cases when negotiations break down, parties must seek alternative legal representation if they choose to take their



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cases to court.

The Law Institute of Victoria's Collaborative Law Section is campaigning for more lawyers and other professionals to train as collaborative practitioners.

Collaborative Law Section facilitator Tony Cinque said psychologists, financial planners, accountants and other professionals could all

play a part in helping clients settle disputes favourably.

He said collaborative law was mainly used in family law, but also presented attractive opportunities in commercial and civil litigation, as well as settling estate claims.

"The defining essence of collaborative practice is the focus on what is important to the client by reaching outcomes that meet their needs and goals," Mr Cinque said.

Former LIV president Cathy Gale pioneered the introduction of the alternative approach to dispute resolution in Australia five years ago.

The veteran Family Court lawyer was inspired by the success collaborative practice had been enjoying in North America and Europe for 20 years.

"Collaborative practice is much more rewarding work for the lawyer because they have much happier clients who feel they have been heard and empowered," Ms Gale said.

SLOW PATH TO RECOVERY FOR FIRE SURVIVORS



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Red tape, dodgy builders and neighbourhood disputes are still causing headaches for Black Saturday survivors struggling to rebuild their lives, according to a legal advisory body.

Set up to provide on-the-spot legal assistance to people who lost loved ones and property during the February 2009 Victorian bushfires, Bushfire Legal Help continues to help resolve complex insurance claims and development delays.

Fencing and boundary disputes, local council wrangles and questionable building contracts are among the major concerns people are still facing 18 months on from the tragedy that claimed 173 lives and destroyed thousands of homes.

And emotional scars have taken a toll amid reports of family breakdowns and substance abuse and, at a community level, disputes over new facilities and rezoning issues.

Victoria Legal Aid (VLA) information services manager Karen West said there were still people who felt they were physically or mentally unable to resolve things, even though the nature of the enquiries in the past few months had changed and the number of calls had dropped away.

On the insurance front, Ms West said all except the most complex claims had been resolved.

Now it's things like people being unable to get council building issues resolved, meaning a lot of building is yet to commence in the fire-affected communities.

"There are problems with building contracts because people are a bit more vulnerable and

at risk of being exploited by a builder taking advantage of them," Ms West said.

"Resolving fencing and boundary disputes can also be complicated when one of the parties can't be tracked down."

Her comments reinforce the findings of a new report calling for legal assistance to be included as a vital component of natural disaster emergency services.

The Bushfire Legal Help report, released in June, concluded that legal help was just as critical as emergency health, housing and counselling for people struggling to resolve the longer-term legal problems created by major emergencies.

In the immediate aftermath of Black Saturday, people needed help dealing with identification, wills, estates, housing and tenancy, insurance, property law and family issues.

A legal advice hotline fielded more than 2000 enquiries and provided ongoing legal assistance and resources to more than 800 Victorians affected by the bushfires.

The report found the nature of the legal problems extended well beyond the immediate issues as communities faced rebuilding, new government planning processes, and the need for assistance with participation in the 2009 Bushfires Royal Commission. It found early intervention in these issues was critical to prevent family and relationships dissolving, particularly in respect to finances.

"Speedy resolution of financial, employment, housing and rebuilding problems can help avoid a downward cycle into unemployment, debt and financial hardship," the report stated.

"The provision of legal assistance should

be recognised in emergency management arrangements within Victoria and across Australia, as timely and efficient resolution of legal issues will ultimately assist government by limiting the burden on other social and health-related resources."

The report argued funding should be allocated as much towards legal assistance as other conventional emergency relief programs such as housing, welfare, relief services and health care.

"The Bushfire Legal Help partnership has demonstrated the need for funding to be allocated at both the state and national level, so that the provision of legal services to resolve everyday problems is available to the same extent as other emergency management services in a crisis situation (such as relief centres, housing, health and medical services)," the report said.

"Lessons learnt from the Bushfire Legal Help experience also point to the need for legal assistance services to be integrated into existing and future emergency response plans, so that stronger collaboration can be developed with other services such as local councils and health and welfare agencies."

For more information about Bushfire Legal Help, go to www.bushfirelegalhelp.org.au/. The Bushfire Legal Help fact sheets are available at <http://bit.ly/bCRG8g>.

You can also call Victoria Legal Aid on 1800 113 432 to get free advice and referral to ongoing help from legal aid and community legal centres.

IN PURSUIT OF EXCELLENCE

The drive and commitment among women lawyers was honoured as part of a biennial awards ceremony held in May.

The 2010 Women Lawyers Achievement Awards night recognised the rising number of female lawyers who are increasingly ranked among the best legal minds.

The Victorian Women Lawyers (VWL) and the Women Barristers' Association (WBA) present the awards every two years to female lawyers who have demonstrated professional excellence and paved the way to success for other female lawyers.

Victorian Solicitor-General Pamela Tate SC and barrister Jane Dixon SC won awards in the experienced practitioner category, while advocate and author Simone Cusack won the "rising star" award.

Muslim Legal Network member Fatoum Souki took out the 2009-2010 VWL Community Justice Award for her commitment to issues related to women and justice.

In presenting the awards, Court of Appeal president Justice Chris Maxwell acknowledged it took a long time for a woman to be appointed a Supreme Court judge in Victoria.

Ms Dixon's trail-blazing career began in 1984 when she became the first woman to practise in criminal law before signing the Bar Roll in 1988, being appointed as Victoria's first female Solicitor-General in 2003 and a Senior Counsel (SC) in 2006.

She also instructed in high-profile criminal cases, including the Russell Street bombing, and taken the lead in encouraging Indigenous Australians to practise law as well as helping establish Bushfire Legal Help.



PETER GLENANE

Ms Tate has also enjoyed a prestigious career, from becoming a barrister in 1991 to being appointed SC in 2002 and, in between, helping implement the findings of the landmark 1998 Victorian Bar Equality of Opportunity for Women report.

She attributed her success to strong mentorship.

"I have been very fortunate in my short career to benefit from mentorship by some of Australia's leading lawyers. This mentorship

LEADING THE WAY: Winners at the 2010 Women Lawyers Achievement Awards function, Fatoum Souki, Pamela Tate SC, Jane Dixon SC and Simone Cusack.

has helped me to develop my legal skills and knowledge," Ms Tate said.

VWL convenor Astrid Haban-Beer said it was critical to recognise both leaders in the law and female lawyers showing early promise as a way to encourage other women to join the profession.

For more information, please contact: