




Legal Aid ACT

care for your assets
money, aging and family



This guide is about **the things that are important to everyone**
– family relationships, money and a place to live.



Legal Aid ACT

Legal Aid ACT helps people in the ACT with their legal problems. We provide free initial advice and assistance on criminal, family, and civil matters, and ongoing assistance to people who cannot afford a private lawyer.

Street Address:

2 Allsop Street Canberra City ACT

Postal Address:

GPO Box 512 Canberra, ACT 2601

Phone: [02] 6243 3436

Email: opals@legalaidact.org.au

Website: www.legalaidact.org.au

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Supported by:



ACT
Government

If you don't speak English...

Translating and Interpreting Service (TIS) National 131 450

www.tisnational.gov.au

To access an interpreter immediately, call TIS. Tell the operator the language you speak, and the name and phone number of the organisation you wish to contact. Telephone interpreting is a free service that operates 24 hours a day/seven days a week.

Centrelink multilingual phone service 131 202

[www.humanservices.gov.au/
individuals/information-in-your-
language](http://www.humanservices.gov.au/individuals/information-in-your-language)

Centrelink's multilingual phone service lets you speak to someone in your own language. Service in some languages is available by return call. If Centrelink is unable to speak your language, they will use a telephone interpreter service to help you.



Can this guide help someone you know?

Older people often don't seek advice when they are considering a change to their living or housing arrangements. Sometimes this is because they don't know who to ask, and because their issues are so personal.

Please help your older friend, neighbour, client or family member to access the information in this guide and to contact support agencies such as the Older Persons ACT Legal Service (**OPALS**) on **(02) 6243 3436**.



Is this guide for you?

This guide is about the things that are important to everyone – family relationships, money and a place to live.

Many older people choose to move in with family members so they can get the care they need as they get older. These arrangements often work well for everyone involved, but at OPALS we know things can take a turn for the worse. Unfortunately, it is usually the older people who suffer the consequences and this is often avoidable.

This guide is for you if you are thinking about:

- selling your home and giving the money to someone who has agreed to care for you in return
- moving in with a relative or having a relative move in with you
- transferring property to a close relative or friend
- giving or lending money to someone.

The guide will help you think through the possible personal and legal outcomes of any new arrangements before you make changes. It provides information and lists services that offer confidential advice. This guide will also help you if you have already made any of these changes.

This guide provides general information only and is not intended to provide legal advice. If you need legal advice about your circumstances please contact OPALS at Legal Aid ACT. Our number is (02) 6243 3436.

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If you need information or assistance with your financial situation please contact Care Financial Counselling on 1800 007 007.

Have you already made an arrangement that involves a property transfer?

If there is a disagreement about a property transfer, it is important to get legal advice as soon as you can. The law has time limits for certain types of legal action. If you delay getting advice, you may lose the chance to take steps to protect any legal interest you may have.



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About the Older Persons ACT Legal Service—OPALS

The Older Persons ACT Legal Service (OPALS) is a specialist service within Legal Aid ACT which aims to provide legal assistance to older people in the ACT. This can include issues involving elder abuse, enduring powers of attorney, guardianship and financial arrangements with family members. In addition, OPALS will provide appropriate referrals to other services as required.

We are a confidential legal service, and we will not take any action without your consent first. We are able to assist you by advocating on your behalf with your family or services, through letters or if necessary through mediation and court proceedings. We are very flexible with how we provide our service and understand that a legal issue does not always mean that you need to end up in court.

Please note, while we are able to provide limited advice about wills and estates, we do not assist in drafting or preparing wills.

If you or someone you know is experiencing elder abuse, or needs legal advice about a major change to their living or financial arrangements, contact **OPALS on (02) 6243 3436** or by email, **opals@legalaidact.org.au**

Looking after your relationships and your property

It is not uncommon for older Australians to transfer part or all of their interest in their own property to a family member in exchange for care. Sometimes people will even sell their own property and then give the funds to their family in exchange for care. If you are considering these options, it is very important that you:

- think carefully, especially about how it will affect your relationships
- talk to all those involved including other family members
- talk to someone independent and get expert legal and financial advice (see ‘Do you need a lawyer?’ on page 30)
- understand how it will affect your pension, tax and future aged care fees and charges
- protect your interests – for example, by having a family agreement (see ‘What is a Family Agreement?’ on page 19)
- put alternatives in place in case things go wrong.





It is important to take your time and not feel pressured to make a decision.

You have the right to make your own decisions rather than have other people impose choices and decisions on you.

You may be able to achieve the results you want without such a dramatic change.

If you are being pressured to move, sign documents, or make new financial arrangements, or if someone close to you is helping themselves to your money, talk to someone as soon as possible.

Talking to someone

Just sitting and talking with family, friends or a service provider can help you to organise your thoughts and priorities. Make a list of your concerns to discuss with someone such as your case manager, your doctor or a lawyer from OPALS.

OPALS will:

- listen to you
- explain how you might be affected now and in the future by an assets for care arrangement
- outline how to protect your interests
- help you find ways to resolve your concerns
- support you in taking the time you need to make these important decisions.

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You may also need independent financial advice about how the proposed arrangements could affect you, and about alternatives.



Talking with family

Families often suggest these arrangements because they are concerned about an older person's future security and because family members trust each other.

This means that if you have doubts or concerns about what has been proposed, it can be very difficult to raise them and discuss them openly with your family.

Yet because these kinds of arrangements involve such significant risks, it is vital to learn about and discuss with your family what effect any arrangement might have on everyone. If potential problems are not talked about, you might be putting the good relationships you have now at risk.

It will help if you explain that talking through the proposal in detail is in everyone's interests.

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Give examples:

- if you do move in with your family, what if there is a future serious illness to deal with?
- what if your dog won't be allowed in their garden?
- what if your daughter/son and their partner get a divorce?

Sometimes it can help to involve an independent third party, such as a professional mediator, to help run a family discussion (See 'Who can help with working towards a family agreement?' on page 21).

Terry's story Part 1

Terry is thinking about moving in with his son...

Terry is 73 years old and lives independently in a unit he owns, but a recent bad cold has left him feeling frail and less able to cope on his own.

Terry and his four children have begun to consider options for his future such as community care, residential aged care or Terry moving in with one of them.

Ben, one of his sons, suggests Terry sell his unit and lend part of the proceeds to Ben and his wife to build an extension to their home where Terry will live. Ben says he will provide his father's daily care. Terry's other children feel anxious about this and see part of their inheritance going to Ben.

Terry is cautious. He wants to know more about how this new arrangement would work. He decides to move temporarily to his son's house until he feels better.



Things you need to know about sharing assets with family

Families sometimes provide for the care of an older family member into the future by using the older person's savings or money from the sale of their home to:

- build a flat or bungalow for the older family member to live in
- renovate or extend a family member's home to make room for the older family member
- pay off a family member's mortgage
- buy a new house where the family can all live together.

Or sometimes a family member moves in with the older person and cares for them; and in return they are given part or sole ownership of the property.

These are all called 'granny flat' arrangements by Centrelink.

If you are considering any of these arrangements, you need to think through how it will work in practice, and get advice on the following:

- can you get your money back if things change?
- can you claim a property interest or be compensated later for what you contribute?
- how can you make it clear that your contribution is not a gift?
- what changes will be needed to your and other family members' wills?
- how will it affect your pension and tax?
- if you move into aged care later on, what effect will the granny flat investment have on your aged care costs?

Centrelink has special rules on assessing granny flat interests. If you pay no more than a 'reasonable' amount for your 'granny flat interest', it should not affect your pension entitlement.

Giving away money or other assets ('gifting') can affect your Centrelink payments. 'Gifting' more than what Centrelink allows may reduce your pension entitlement and affect the government assistance you receive for aged care accommodation fees.

Centrelink also recommends you put your 'granny flat' arrangement into writing. Information and guidance are available from Centrelink's Financial Information Service (see 'Where to get help' on page 32).

Recommended resources

Centrelink information about Assets (including Gifting) visit: www.humanservices.gov.au/customer/enablers/assets

Centrelink information on 'Granny Flats' visit: www.humanservices.gov.au/customer/enablers/granny-flat-right-or-interest





Terry's story Part 2

But Terry's daughter wants him to move into aged care...

Terry goes back to his own home feeling well and rested. His other children are unsure about the proposal for Terry to move in with Ben and his family, and how it might affect things.

Terry's daughter Grace wants him to go into aged care where he will be safe and secure. His other children agree, and think he should just transfer the ownership of his home evenly amongst them all.

Grace has been talking to friends about aged care arrangements and costs. She tells Terry they should find out how much he will have to pay for his accommodation.

Things to think about if you are considering residential aged care

Entry into residential aged care is based on an assessment of your care needs by an Aged Care Assessment Team, which is a free service. To arrange an appointment call 1800 200 422. If you have been assessed as eligible for residential care, you need to consider:

- do you feel ready to move into an aged care facility?
- how will it affect your quality of life?
- are you concerned about your safety if you remain living at home?
- are there alternatives that will let you stay at home?

You have the right to stay at home with support and not be pressured into moving to a residential aged care facility if it is not what you want.

You may also need to get some information about the financial aspects of moving into aged care:

- what are the costs?
- does owning your own home affect aged care accommodation arrangements?
- will you need to sell your home to cover accommodation costs?
- are there other options?
- how will it affect your pension entitlement, accommodation costs and future finances if you move into aged care but keep your home?
- what are the tax implications of the different options?

You can contact My Aged Care on 1800 200 422 for information about services to help you stay at home, as well as on aged care facilities and costs.

You can also discuss these questions and options with a Financial Information Service Officer at Centrelink on 132 300.

You may also need independent financial advice from a financial planner. See 'Where to get more help' on page 32.

Recommended resources

The Aged Care Guide provides information on various living options and financial information. For more information visit:

www.agedcareguide.com.au



Terry's story Part 3

Terry and his family think about a family agreement.

Terry's health declines and he needs more support.

Terry loves all his children and knows they have his best interests at heart. He feels he cannot please all of them and do what is best for himself. He needs help to think things through but is reluctant to discuss these personal issues with a lawyer.

Instead, Terry goes to his club to talk about it. The men there share his background and understand his feelings. At their suggestion, Terry visits the local community centre. They put him in touch with the Older Persons ACT Legal Service (OPALS).

After discussing everything with the OPALS lawyer, Terry decides to sit down with his family to discuss what is possible, and to work towards a Family Agreement.



Family agreements

What is a family agreement?

Your family member's offer to care for you and give you a home in exchange for money or property can be made into a formal, written Family Agreement that records the detail of arrangements between all parties.


Why is it important to put your agreement in writing?

Writing down your agreement shows that all parties intend to comply with it, and it makes clear the terms of the agreement. Then, if the arrangement goes wrong, it is easier to resolve any disagreement. It also makes it clear that your contribution of money or property is not a gift.

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Start with an in-depth family discussion

Discussing what everyone wants and how the arrangement will work in practice is a necessary first step towards drawing up a workable formal agreement. Making sure everyone understands what is proposed will also help avoid future conflicts. The discussion should involve everyone likely to be affected by the decision, not just the parties subject to the agreement.



Every family is different.

You and your family will have additional or different questions and issues that have to be worked through.

You also have to work out and agree on the structure and financial elements of the agreement.

OPALS can help you consider these issues and advise on the legal and social implications.

OPALS can assist older people whose living and care arrangements with family have led to loss of their home or money, even without any formal transfer of money or property being involved.

Some of the more serious issues can involve:

- adult children moving in, with problems such as addiction or debt
- older people who are frail or vulnerable and dependent on another person for care
- overprotective children making decisions for their parents
- neglect or inadequate care.



Who can help with working towards a family agreement?

You may feel unsure or vulnerable in negotiations about your current and future living arrangements and reluctant to talk about property and money. Family members will often have very different and strongly felt points of view, and can also be overprotective, making your own concerns about your current and future needs even more difficult to express.

OPALS can help to order your thoughts, guide your early conversations with family and advise you on how you may wish to negotiate with them. You can also go to your own lawyer for this advice and guidance.

Other services can also help you discuss these complex issues with family (see 'Where to get help' on page 32)

If, after discussing everything, you and your family decide that you want to go ahead with the proposed arrangement, it is important to get legal advice on whether your interests are protected and to have a lawyer with expertise in the area prepare the written agreement for you.

Take your time to consider all the details of any agreement. You might need independent financial advice, as well as legal advice, to understand tax and Centrelink implications for instance. It might also affect other decisions that you need advice on, such as any changes to your will.

Family agreement checklist

Working through this checklist with your family before you move in together can help to avoid problems in the future and protect your interests.

What should you consider first?

- ☐ Is everyone prepared to be bound by the agreement?
- ☐ How will the agreement affect other family members?
Try to involve everyone who might be affected
- ☐ Do you need to draw up a new will?
- ☐ Do other family members need to change their wills?

Roles and responsibilities

- ☐ What care will be provided and by whom?
- ☐ What respite is there for carers?
- ☐ What arrangements will there be for holidays?
- ☐ What household tasks such as cooking and cleaning will you have to do or share?
- ☐ Will you be expected to look after grandchildren?

How much privacy and independence will you have?

- ☐ Will you have access to a car, or be able to be driven when you need to go out?
- ☐ Will you be able to have a social life separate from the family's, including having visitors?
- ☐ Will you have a separate mail delivery, telephone or internet access?
- ☐ Will you be able to have a pet?

What are the likely expenses?

- ☐ How will the cost of food and utilities be shared?
- ☐ What will the family agreement cost to prepare?

What if there are problems?

- ☐ How will any disputes be resolved?
- ☐ What if someone breaks the agreement?

What of the future?

- ☐ What will happen if your care needs increase?
For example, because of health problems such as stroke, incontinence, loss of mobility, dementia
- ☐ Does the agreement contain a process for regularly reviewing and amending the arrangement, or for ending it? For example, what if your adult child and carer divorces their partner, becomes bankrupt or ill? What if you re-partner or marry?



Do you need support to keep living in your own home?

There are services available to help you keep living at home even if you need care. They include low-cost home help, personal care services and nursing services, along with respite services or day programs that provide transport and outings.

Talk to your doctor, your local community health centre or aged services staff about accessing these services. You may need to be referred for an aged care assessment to qualify for some services.

Aged Care Assessment Team

Assessment helps determine the right level of care for you and whether you are eligible for government-funded assistance. Assessment can give you a greater variety of choices such as a home care package, residential respite care or residential care in an aged care home.

Having an aged care assessment does not mean that you have to use any of the services you are eligible for, but simply informs you about services you are able to access if you want them.



Do you need help to deal with a family member?

You may already be sharing your home with and/or being cared for by a relative or a friend. Are they:

- not caring for you properly?
- taking your money?
- making you pay for their bills and food?
- abusing you physically or in other ways?

There are things that can be done to stop this. There is also advice and support available.

If you find yourself in this situation, OPALS and other community agencies can offer confidential advice and help with:

- ways to make your money more secure – for example, arranging with your bank or through Centrepay to pay bills
- aged care and other housing alternatives
- finding ways to improve your security and safety at home
- developing strategies to deal with a problem family member
- linking you to other support agencies
- referring you to specialist services for a family member's drug and alcohol abuse, gambling or mental health issues.



Stopping financial or other abuse

OPALS can advise on action to stop other people accessing your bank accounts, or making transactions and decisions relating to your money and property without your consent. In some cases they may be able to get back money or property for you.

They can also help you get a court order (a Family Violence Order) that protects you from an abusive family member by placing restrictions on the person's actions and movements. The court may also make an Order that this person be removed from your house if your safety requires this.

If you would like to talk about this or think you might need a Family Violence Order, contact:

- Older Persons ACT Legal Service (OPALS), (02) 6243 3436
- Domestic Violence and Personal Protection Unit, Legal Aid ACT (02) 6207 1874
- Domestic Violence Crisis Service (DVCS) (02) 6280 0900
- your case manager, if you have one.

These services can arrange interpreters if needed.

Changing Centrelink nominee arrangements

A family member can arrange to be appointed as an older relative's nominee. Sometimes family members collect their relative's Centrelink payments without permission. If you want to cancel a nominee arrangement, you can do this at any time by calling Centrelink on 132 300.

More information on the nature of nominees, their responsibilities and how to appoint or remove somebody from that role can be found online at: www.humanservices.gov.au/individuals/online-help/centrelink

Lending money

You may want to help other family members by giving or lending them money. It is your right to do so, but be careful not to put your home, your financial security or your future wellbeing at risk.

A gift or a loan?

It is important to be clear about whether you intend money to be a gift or a loan. If the money is a gift, you are unlikely ever to recover it if you change your mind later on. If you lend money to a family member or friend and you intend for them to repay it, it is important you record this in writing. Before gifting or lending money to a family member or friend, it is best to obtain independent financial advice.

Gifts and loans can also affect your Centrelink payments. For more information on this, visit the Centrelink webpage on gifting: www.humanservices.gov.au/individuals/enablers/gifting




Using your home to raise money for family

Older people sometimes agree to act as guarantor for a son or daughter's personal or business loan, using their own home as security. Or they agree to mortgage their home, giving a family member the use of the money on the understanding that that person will make the loan repayments. Or sometimes people use reverse mortgages, using home equity as security, or home reversion schemes selling a percentage of the future value of a property.

Each of these options have potentially severe legal and financial implications and risks, and you need to consider:

- what are the costs?
- how will it affect your current and future finances?
- how will it affect your pension entitlement?
- what are the tax implications?
- what will happen if your family member does not repay the loan?



If you are arranging to borrow money from a bank or other financial service provider for the benefit of a family member, or to guarantee a bank loan for them, you should get independent legal advice first and make sure you understand the bank's terms.

If you are being pressured to borrow money or guarantee a loan for a family member, or to give or lend them money, talk to OPALS.

Banks and other financial institutions have lending responsibilities. A loan should not be allowed if you cannot meet the repayments and the bank is relying on your home as security.






Recommended resources

The Australian Securities & Investments Commission's MoneySmart website includes information around taking out loans with family or friends: www.moneysmart.gov.au/borrowing-and-credit/borrowing-basics/loans-involving-family-and-friends

The Australian Bankers' Association provides in-depth fact sheets into financial abuse and its prevention: www.ausbanking.org.au/customers/financial-abuse-prevention

For more support around using your home to secure finances you can also contact the Consumer Law Centre of the ACT on (02) 6143 0044.



Do you need a lawyer?

Seeing a lawyer doesn't mean you don't trust your family. A lawyer can help you better understand any arrangements you make and talk to you about your options.

A lawyer can:

- help you understand what the arrangement will mean
- help protect your money and property
- try to get back any money or property you have lost
- talk to you about your will and suitable powers of attorney
- help you protect your safety if that is an issue.

A lawyer can also put into writing any agreement you and your family make to share financial and living arrangements.

A lawyer should give you independent legal advice that is suitable for you and your circumstances. Your family members need to get their own independent legal advice.





The lawyer should:

- find out what you want
- organise an interpreter if needed, to make sure the advice is independent, it is better not to use a relative as your interpreter
- make sure you hear what is being said and that you can read any paper work they give you
- be satisfied that you fully understand your situation and the advice they give you.

Lawyers have to tell you about their charges before they start work, and you can negotiate how and when you will pay. Remember, legal advice now may help you avoid losing money later if things go wrong. If you are not satisfied with your lawyer, you can change them.

OPALS at Legal Aid ACT has lawyers who can help you. The ACT Law Society can also help you find a lawyer with expertise in this area.

Where to get help

Emergency '000'
information in the person's
own language
(www.triplezero.gov.au)

**Older Persons
ACT Legal Service
(OPALS)**

(02) 6243 3436

**9:00am–4:00pm
Monday to Friday
opals@legalaiddact.org.au
www.legalaiddact.org.au**

**OPALS is a specialist
service within Legal Aid
ACT which provides
free legal assistance to
older people in the ACT.**

1800 RESPECT

1800 737 732

www.1800respect.org.au

National sexual assault,
domestic and family violence
counselling service.

ACT Law Society

(02) 6274 0300

www.actlawsociety.asn.au

Phone for a referral to a
lawyer in the ACT.

Canberra Community Law

(02) 6218 7900

www.canberracommunitylaw.org.au

Free community legal
service in the ACT.

Canberra Multicultural Community Forum

(02) 6262 7060

www.cmcf.org.au

Represents the common
interests of the Canberra
multicultural communities.

Carers ACT

1800 242 636

www.carersact.org.au

Free services and programs to help carers including information, counselling, workshops, referrals to other services and supports.

Care Financial Counselling

1800 007 007

www.carefcs.org

Free financial counselling service in the ACT.

Centrelink

132 300

www.humanservices.gov.au

Information about pensions, retirement, carers, disability. Centrelink's Financial Information Service (FIS) can help you understand the effect on your pension and aged care fees. You can make inquiries anonymously but any information you provide is not confidential.

Centrelink Multilingual Call

131 202

Centrelink's multilingual phone service lets you speak to someone in your own language.

Conflict Resolution Service

(02) 6190 7100

www.crs.org.au

Provides mediation services in the ACT.

Consumer Law Centre of the ACT

(02) 6143 0044

www.carefcs.org/consumer-law-centre-act.html

Free legal advice on consumer credit (mortgages, loans etc), debt recovery, banking, simple contracts, and consumer protection.

COTA (ACT)

(02) 6282 3777

www.cotaact.org.au

COTA ACT is the peak organisation for all issues relating to older Canberra citizens, seniors, those of mature age and their families.

Domestic Violence Crisis Service

(02) 6280 0900

www.dvcs.org.au

24 hours / 7 days

Provides a variety of services from crisis intervention to community education.

Dementia Australia ACT

1800 100 500

www.dementia.org.au

Represents the interests of people living with dementia and those that care for them.

Financial Planning Association of Australia

www.fpa.com.au

Find a planner tool to help locate an advisor in your area.

Lifeline

131 114

www.lifeline.org.au

24 hours / 7 days

Support in a crisis and suicide prevention.

Money Smart

1300 300 630

www.moneysmart.gov.au

Helping people make money decisions.

My Aged Care and the Aged Care Assessment Team

1800 200 422

www.myagedcare.gov.au

Gives information and help to access aged care services.

Assists frail, older people and their carers identify what care will best meet their needs.

Public Advocate of the ACT

(02) 6205 2222

www.hrc.act.gov.au/public-advocate

Support around administration of Enduring Powers of Attorney to protect the welfare of vulnerable people.

Public Trustee and Guardian

(02) 6207 9800

www.ptg.act.gov.au

Free Will service for pensioners, and competitive pricing on advice around Wills and Powers of Attorney.

Relationships Australia

Elder Relationships Service

(02) 6122 7100

www.relationships.org.au

Counselling and mediation service to support families who need help negotiating complex issues related to ageing.

The ACT Disability, Aged and Carer Advocacy Service (ADACAS)

(02) 6242 5060

www.adacas.org.au

Provides help and support to people with disabilities, the elderly and their carers.

Translating and Interpreting Service (TIS) National

131 450

www.tisnational.gov.au/

24 hours / 7 days

To access an interpreter immediately, call TIS. Tell the operator the language you wish to speak, and the name and phone number of the organisation you wish to contact. Telephone interpreting is a free service.

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Further information, including any updates, is available at seniorsrights.org.au

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Images courtesy of unsplash.com

This publication is intended as a guide to the law and should not be relied on as legal advice. While every effort has been made to ensure this information is as up-to-date and accurate as possible, the law is complex and constantly changing. Legal Aid ACT disclaims all liability for errors or omissions of any kind, or for any loss or damage, in whole or in part, arising from any person relying on any information in this publication. This publication includes references to external websites. Legal Aid ACT does not control and accepts no liability for the content of those websites or for any loss or damage arising from the use or reliance on those websites.

Legal Aid ACT is committed to preventing elder abuse, through the provision of advice, services and education. We understand that many older people choose to move in with family. While those arrangements often work well, when things go wrong the older people suffer consequences that are usually avoidable.

LEGAL AID FACT SHEET — 31 OCTOBER 2018
CARE FOR YOUR ASSETS: MONEY, AGING AND FAMILY



IF YOU NEED HELP PLEASE CALL

[02] 6243 3436

**FREE LEGAL ADVICE AND
SUPPORT SERVICES**

Legal Aid ACT