

**THE ADEQUACY OF EXISTING FINANCIAL PROTECTIONS FOR
QUEENSLAND'S SENIORS**

**SUBMISSION BY
TOWNSVILLE COMMUNITY LEGAL SERVICE INC.**

TO:

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Recommendations

Recommendation A The Committee recommends Government investigate how ageism and its various manifestations impact on older persons in Queensland and how ageism can be addressed through an integrated statewide plan of education and awareness. This plan should include other elements described by this submission.

Recommendation B The Committee recommends the Government implement recommendation 12 of the Domestic Violence Taskforce Report:¹

(12) The Queensland Government includes specific elements in the communication strategy (see Recommendation 18) that target elder abuse, and where to go for support.

Recommendation C The Committee investigates the enactment of laws dealing with financial exploitation. These laws could include a range of provisions including criminal sanctions, civil remedies, and preventative strategies and reporting obligations.

Recommendation D The Committee recommends the Government implement recommendation 11 of the Domestic Violence Taskforce Report:²

(11) The Queensland Government commissions a specific review into the prevalence and characteristics of elder abuse in Queensland to inform development of integrated responses (see Chapter 7) and a communications strategy for elderly victims of domestic and family violence (see Chapter 6).

Recommendation E The Committee articulate that is meant by financial decision making in the context of the Government's own constitutional and legislative powers.

Recommendation F Relevant contexts of financial decision making should be considered from the perspective of systemic and legislative practices that regulate, supervise, substitute, support of protect decision making by older persons.

Recommendation G The Committee recommends that financial literacy be included in any education and awareness campaign arising out of this Inquiry.

Recommendation H The Committee investigates ways to improve the competence and financial literacy of substitute decision makers appointed under law in Queensland.

- Recommendation I The Committee recommend the Government implement relevant recommendations in *Older Persons and the Law and Equality, Capacity and Disability in Commonwealth Laws*.
- Recommendation J The Committee investigates options for protective structures in Queensland, including expansion of the SLASS program to other community legal centres in Queensland.
- Recommendation K The Committee recommend the development of an education and awareness campaign to improve older persons' resilience to internet and telephone scams, internet and identity fraud and improve older persons' internet safety generally.
- Recommendation L The Committee investigates mandated screening and awareness training for service providers in areas of financial exploitation including the cultural and gendered dimensions. This should include development of a consistent, contemporary screening tool.
- Recommendation M The Committee investigates what proactive measures should be taken by financial services and related services in order to reduce risk of financial abuse and exploitation.
- Recommendation N The Committee investigates a system of mandatory reporting of financial abuse by relevant service providers and look at the potential advantages and disadvantages to older persons and others in Queensland.
- Recommendation O The Committee investigates a system of whistleblower protections for reporting of financial abuse by individuals in public and private sectors.

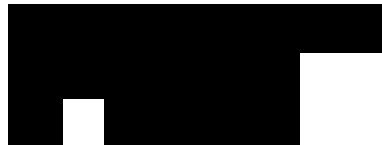
Background

1 Townsville Community Legal Service Inc. (TCLS) is a community-based, non-profit legal centre. TCLS was established in 1991 as a voluntary service and funded by the Commonwealth in 1992. TCLS currently receives funding from the Queensland and Commonwealth Governments.

2 TCLS was invited to respond to the terms of reference.

3 The contact person for this submission is:

Bill Mitchell, Principal Solicitor
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4 TCLS is funded by the Queensland Government to provide a Seniors Legal and Support Service (SLASS):

<https://www.qld.gov.au/seniors/legal-finance-concessions/legal-services/>

5 TCLS notes the terms of reference of this Inquiry as follows:

- *The current levels of financial literacy of seniors and how that can be improved, for example by education programs;*
- *What support and advice is available to assist seniors with their independent financial decision-making;*
- *Online and internet based vulnerabilities and the prevalence and vulnerability of seniors to scams;*
- *Agencies and organisations that provide advice and support to seniors requiring financial protection;*
and
- *The role of the financial sector in ensuring adequate safeguards for seniors in relation to financial decision-making.*

6 The overall theme of the Inquiry is protection of seniors (hereafter older persons) from financial exploitation. The terms of reference lack clarity as to where the Committee seeks to focus its attention.

7 Despite this, we contend that the issues of ageism, elder abuse and exploitation are all-pervasive and affect all areas of financial decision-making. Therefore a proper consideration of these issues is warranted irrespective of the scope of the Inquiry.

Ageing Queensland

8 Like all jurisdictions, Queensland faces the “inescapable demographic destiny” of ageing.³

~25 years:

- Our population of older persons trebles over the next 25 years, compared with the previous 25.⁴
- The number of those aged 100 years or more rises from 430 in 2006 to 6,500 in 2031.⁵

~40 years:

- The median age of Queenslanders rises from 36 to 43.⁶

~50 years:

- Queensland’s population is projected to increase to almost 10 million: One quarter (24.2%) of the population will be aged 65 years or older, up from 14.0% in 2014. 6.0% will be aged 85 years or older, up from 1.7% in 2014.⁷
- The number of persons 65 years or older is anticipated to increase by about 1.8 million persons — an increase roughly equivalent to the current population of Brisbane, Ipswich and Logan combined.⁸
- In 2014, there were around 90 babies for every centenarian. By 2061, projections suggest there will be 6 babies for every centenarian.⁹ The number of those aged 100 years or more rises from 430 in 2006 to 6,500 in 2031.¹⁰

9 Older persons in Australia have a poverty rate 2.5 times the OECD average, principally caused by income inequality.¹¹

10 In Queensland three-quarters of older persons had weekly income of less than \$600.¹²

Ageism

11 Ageism is the underlying cause of abuse, mistreatment and exploitation of older persons.

12 Ageism is nuanced and contextual. First defined by Butler, it has been reshaped many times.¹³ It includes:

... Negative or positive stereotypes, prejudice and/or discrimination against (or to the advantage of) elderly people on the basis of their chronological age or on the basis of a perception of them as being 'old' or 'elderly'...¹⁴

13 Common manifestations of ageism include:

- Stereotyping (default elder stereotypes: incompetence, illness, and irrelevance);
- Prejudice (Benevolent or Hostile);
- Discrimination, harassment and vilification;
- Abuse, exploitation, neglect and violence.

14 Each of these impacts on older persons' financial lives. The way older persons are treated in financial matters can range from benevolent prejudice (such as the imposition of negative stereotypes and assumptions) through to outright financial abuse. These manifestations are reflected in individual attitudes and systemic practices.

15 Older persons are a distinct population merely distinguished from the rest of the population by their age.¹⁵ Ageism grows from what older people allegedly "are" (descriptive stereotypes) and "should be" (prescriptive beliefs). Contemporary research into measuring ageism via prescriptive beliefs uses "intergenerational resource tensions".

16 Prescriptive beliefs are centered around assumptions that older persons should be:

- Facilitating active, intergenerational *succession* of enviable resources (e.g., retiring from jobs, ceding wealth);
- Limiting passive *consumption* of shared resources (e.g., minimizing healthcare dollars, expediting highway traffic); and
- Avoiding symbolic youth *identity* resources (e.g., social networks, popular music, fashion).¹⁶

17 Research by the federal Age Discrimination Commissioner in 2013 uncovered how deeply rooted ageist attitudes are in Australia.¹⁷

18 Ageism and age discrimination were found to be widespread and regularly experienced and negative stereotypes permeated all aspects of our society.¹⁸

Recommendation A

The Committee recommends Government investigate how ageism and its various manifestations impact on older persons in Queensland and how ageism can be addressed through an integrated statewide plan of education and awareness. This plan should include other elements described by this submission.

Recommendation B

The Committee recommend Government implement recommendation 12 of the Domestic Violence Taskforce Report:¹⁹

(12) The Queensland Government includes specific elements in the communication strategy (see Recommendation 18) that target elder abuse, and where to go for support.

Financial Exploitation

19 Financial exploitation (also called financial abuse) is a subset of elder abuse and a consequence of ageism.

20 It is “the illegal or improper use or withholding of an older person’s or vulnerable adult’s funds, property, or assets”.²⁰ It affects ~ 5% of older Australians.²¹ As few as one in twenty five cases may be reported.²² One recent US study estimated losses of 2.9 Billion annually.²³

21 It includes aspects of undue influence in a legal sense.²⁴

22 Financial decision-making is the “home ground” of financial exploitation. Any system of financial decision-making for older persons must have a parallel system of protections against abuse.

23 Some of these systems are already in place such as are contained in the *Powers of Attorney Act 1998*, *Public Guardian Act 2014*, *Guardianship and Administration Act 2000*.

- 24 Additionally, some federal laws provide protections such as the inalienability of age pension in the *Social Security Act 1991*.
- 25 Financial exploitation often involves the misuse of legal power or authority through documents or processes, family agreements, wills, contracts, property transfers, powers of attorney, health directives, or guardianship orders.
- 26 The majority of perpetrators are caregivers or family members. It is a sad but simple equation: those most likely to care are also most likely to abuse.
- 27 Some argue that financial exploitation falls into 3 types:
- Crimes of occasion;
 - Crimes of desperation; and
 - Crimes of predation.²⁵
- 28 Risk factors for victims include age, gender, frailty, cognitive impairment, dependency, and mental illness, lack of social support, substance abuse, fear and low income.²⁶
- 29 In cases involving family members, enabling factors include:
- the financial needs/conditions of other family members, and
 - the prevailing sense of entitlement by family members to the assets of the older person.²⁷
- 30 The personal circumstances of family members are enablers, such as mental health alterations, drug and alcohol dependence, gambling and speculative activities, marital discord etc. This list is far from exhaustive.
- 31 Additionally contextual circumstances such as economic downturn like the Global Financial Crisis can aggravate incidence.²⁸
- 32 Prosecutions for financial exploitation rarely occur. When they do the Courts tend to highlight the vulnerability of older persons.²⁹ Whether this has the requisite deterrent effect is unclear. We submit any deterrence value is undermined by the scarcity of legal action.

33 No specific laws exist in Queensland to address financial exploitation. This includes the offending conduct, preventative, ameliorating and remedial actions.

Recommendation C

TCLS recommends the Committee investigate the enactment of laws dealing with financial exploitation. These laws could include a range of provisions including criminal sanctions, civil remedies, preventative strategies and reporting obligations.

The Local Picture

34 TCLS is part way through a file audit of 600 closed SLASS files, building a picture of elder abuse (including financial exploitation) within our local community.

35 The first 300 files have provided important initial data on elder abuse and exploitation. Some of these initial findings are worth reporting here.

36 82% of cases within the 300 case files involved financial exploitation. This validates the research that says that financial exploitation is among the most common forms of elder abuse.

Who are Victims of Abuse

37 The results of the audit have only had the shallowest analysis at this stage. Research clearly shows that victim profiles differ depending on type of abuse. Thus far, our research aligns very closely with the accepted research findings in the field.

38 Women clients (59%) outnumbered men (41%).

39 The top three age cohorts were:

- 65 – 69 (14%)
- 70 – 74 (19%)
- 75 – 79 (21%)

40 55% identified as having a disability. 22% did not have a disability. 23% of clients did not record a disability status. This mirrors ABS reports that while one in five Australians (18.5% or 4.0 million persons) reported having a disability in 2009,³⁰ older persons had a far higher rate with 40% of those aged 65-69 years and 88% of those aged 90 years and over.³¹

- 41 Most elder abuse clients self referred to SLASS (30%). Followed by referrals from legal centres (18%), family (14%), not stated (14%), government services (9%), community services (8%), other (4%) and Police (3%).
- 42 Initial contact was made by 80% of clients themselves. Family accounted for 12% of initial contact with the service. Community services made initial contact for 8% of occasions.
- 43 These two data sets are important because older persons have proven to be a difficult cohort to target for provision of support services in elder abuse. Additionally, studies suggest that older persons do not readily or frequently self report elder abuse.³²
- 44 It appears that when a strong message is sent through effective media, older persons will self refer and make contact with support services.
- 45 SLASS services have used a range of innovative media and publicity campaigns to draw attention to their services including adverts inside and outside buses, televisions ads, performance art, flash mobs and elder friendly merchandise. SLASS services also regularly attend senior's halls and clubs, expos, senior's community events and older specific community networks.
- 46 Most clients (93%) were low-income earners. Medium income earners (1.5%) and High income earners (0.5%) were not a significant portion. 92% of SLASS clients received a government pension or benefit as their source of income. Only 6 clients earned an income (2%) and 16 did not state their source of income (6%).
- 47 Both of these data sets are also important because they highlight that assumptions around abuse coalescing with wealthy elders may not be accurate.
- 48 Whilst SLASS services are referred wealthy clients who are victims of elder abuse, they are likely to refer these clients to private legal practitioners. It would be more accurate to view financial exploitation as potentially affecting all older persons rather than just those with greater means.

Who are Perpetrators of Abuse

- 49 As with victims, perpetrator profiles differ with context.

50 So far our findings mirror those in the field. Factors common in the field of study include personality traits, victim/perpetrator relationship, financial or housing dependence, substance abuse, social stressors and mental illness.³³

51 Men were the dominant perpetrator (33%), closely followed by women (27%). Businesses also featured prominently as perpetrators of abuse (23%).

52 Where age of the perpetrator was recorded (12%) the most common age group was 31 – 40 years (15 people; or 44% of 34 files).

53 The five most common perpetrator relationships (to clients) were:

Relationship	Total	%
<i>Service provider</i>	94	32
<i>Daughter</i>	40	14
<i>Son</i>	28	9
<i>Neighbour</i>	28	9
<i>Professional</i>	21	7

54 77% of all clients did not live with their alleged abuser. The remaining clients (23%) did live with their alleged abuser.

55 Where clients were living with the abuser the most common type of dwelling was a shared house (48%). This was followed by ‘Other’ (32%) and includes independent living units, nursing homes and boarding houses. Duplex living and granny flats were the third most common living arrangement (8% each). Followed by ‘adjoined living arrangement’ and ‘room in private residence’ (3% each).

56 Looking into the profile of perpetrators, trends included:

Social Background	Total	%
<i>Consumer complaint</i>	127	43
<i>History of family conflict</i>	47	16
<i>Dependent on senior</i>	44	15
<i>History of abusing others</i>	43	14
<i>Shared living situation</i>	41	13
<i>Mental Health Issues</i>	25	8

57 Dependency (in some form) on the victim was a common thread.

58 These so called “parasitic abusers” were often adult children or grandchildren. This mirrors trends from international studies.

- 59 Less common perpetrator demographics included: gambling (3%), Centrelink debt (1%), history of child abuse (1%), criminal history (1%) and workplace discrimination (<1%).
- 60 Mechanisms used by perpetrators included:
- Isolation;
 - Creating a siege mentality;
 - Fostering dependence;
 - Creating a sense of powerlessness;
 - Creating fear and vulnerability; and
 - Keeping the victim unaware.³⁴

Types of Abuse

- 61 The categories and subsets of abuse were drawn from existing definitions within the field of elder abuse research.
- 62 **100%** of cases involved a form of **psychological or emotional abuse**. The three most prevalent types of psychological and emotional abuse were harassment (23%), intimidation (21%) and disrespect (16%).
- 63 **82%** of cases involved **financial exploitation**. The three most prevalent types of financial abuse were overcharging for services (14%), deception (9%) and undue influence in change of will (7%).
- 64 **69%** of cases involved **verbal abuse**. The three most prevalent types of verbal abuse were swearing (16%), name-calling (14 %) and terrorising / menacing (11%).
- 65 **25%** of cases involved **physical abuse**. The three most prevalent types of physical abuse were destruction of personal property (8%), punching (4%), and slapping (3%).
- 66 **13%** of cases involved **fraud** acts including consumer fraud (6%), home repair fraud (5%) and general fraud (2%).
- 67 **7%** of cases involved **systemic abuse** including ageism (4%), age discrimination (3%) and age stereotyping (1%).

- 68 **7%** of cases involved **institutional abuse** including neglect (3%), aggressive staff (2%) and lack of care (1%).
- 69 **3%** of cases involved **sexual abuse** including rape (4 cases/1%), forced sexual acts (2 cases/0.5%) and sexual comments (1 case/0.3%).
- 70 **1%** of cases involved **abandonment** including abandonment at home (3 cases/1%) and leaving an elder at hospital (1 case/0.4%). Nil cases were recorded for leaving an elder at a nursing home.
- 71 Importantly the data shows that financial exploitation commonly occurred concurrently with other types of abuse, particularly psychological and emotional abuse, verbal abuse and physical abuse. Given this, the data tends to validate the understanding that financial exploitation does not occur within a vacuum.
- 72 US research indicates that hybrid financial abuse is more likely to be perpetrated by family members or caregivers whereas pure financial exploitation or abuse is more likely to be perpetrated by non family members.³⁵

Recommendation D

The Committee recommend the Government implement recommendation 11 of the Domestic Violence Taskforce Report.³⁶

(11) The Queensland Government commissions a specific review into the prevalence and characteristics of elder abuse in Queensland to inform development of integrated responses (see Chapter 7) and a communications strategy for elderly victims of domestic and family violence (see Chapter 6).

Financial Decision making

- 73 Financial decision-making is a very broad notion. We take it to include any decisions about financial matters, present or future.
- 74 Financial decision-making is defined in some legislative contexts. For example, the list of “financial matters” in the *Powers of Attorney Act 1998* at Schedule 2, Part 1:

1 Financial matter

A financial matter, for a principal, is a matter relating to the principal’s financial or property matters, including, for example, a matter relating to 1 or more of the following—

- (a) *paying maintenance and accommodation expenses for the principal and the principal's dependants, including, for example, purchasing an interest in, or making another contribution to, an establishment that will maintain or accommodate the principal or a dependant of the principal;*
- (b) *paying the principal's debts, including any fees and expenses to which an administrator is entitled under a document made by the principal or under a law;*
- (c) *receiving and recovering money payable to the principal;*
- (d) *carrying on a trade or business of the principal;*
- (e) *performing contracts entered into by the principal;*
- (f) *discharging a mortgage over the principal's property;*
- (g) *paying rates, taxes, insurance premiums or other outgoings for the principal's property;*
- (h) *insuring the principal or the principal's property;*
- (i) *otherwise preserving or improving the principal's estate;*
- (j) *investing for the principal in authorised investments;*
- (k) *continuing investments of the principal, including taking up rights to issues of new shares, or options for new shares, to which the principal becomes entitled by the principal's existing shareholding;*
- (l) *undertaking a real estate transaction for the principal;*
- (m) *dealing with land for the principal under the Land Act 1994 or Land Title Act 1994;*
- (n) *undertaking a transaction for the principal involving the use of the principal's property as security (for example, for a loan or by way of a guarantee) for an obligation the performance of which is beneficial to the principal;*
- (o) *a legal matter relating to the principal's financial or property matters;*
- (p) *withdrawing money from, or depositing money into, the principal's account with a financial institution.*

75 A similar list exists in the *Guardianship and Administration Act 2000*.

76 The list of decisions above gives a useful guide to the scope of potential areas of relevance for the Inquiry.

77 An important question for the Committee is what influence the Queensland Government has to review and change (if needed) existing financial decision making arrangements for older persons, for example: the way decisions makers are supported, how processes are regulated and supervised, when decision making becomes substituted or supported, how they can be protected etc. Many areas of relevance are federal responsibilities.

Recommendation E

The Committee articulate that is meant by financial decision making in the context of the Government's own constitutional and legislative powers.

Recommendation F

Relevant contexts of financial decision making should be considered from the perspective of systemic and legislative practices that regulate, supervise, substitute, support or protect decision making by older persons.

Financial Literacy (TOR 1)

78 Financial literacy has been defined as ‘[t]he ability to make informed judgements and to take effective decisions regarding the use and management of money’.³⁷

79 There is no doubt that financial literacy is a contributing factor to financial abuse. What factors contribute to ‘the ability to make informed judgements and to take effective decisions.’

80 The psychodynamics of exploitation³⁸ are legion.

81 The initial outcomes of our file audit validate the contributing factors to abuse and exploitation are complex and layered.

82 According to our data the three (3) primary factors underpinning elder abuse in Townsville SLASS clients include:

- Being unaware of legal rights (71%);
- Being unaware of help options (70%); and
- Being female (57%)

83 Strong secondary themes underpinning elder abuse cases include:

- Psychosocial factors (32%) for example: death of a spouse, family dynamics, relationship breakdown;
- Being unaware of social justice options (30%) for example: advocacy assistance, court support, referrals to outside community organisations; and

- Dependence on the abuser (17%) for example: carer support, assistance with activities of daily living, housing, affection/social connection.

84 The data showed the multifactorial nature of abuse. Additional factors included:

- Financial stress (15%)
- Abuser dependent on elder (14%)
- Family conflict (14%)
- Social isolation (13%)
- Family conflict (12.5%)
- Mental illness (12.5%)
- Loyalty to abuser (11%)
- Assets involved (10%)
- Ageism (9%)
- Death of a spouse (8%)
- Cognitive impairment (victim) (6.5%)
- Domestic violence (6.5%)
- Physical disability (victim) (6%)
- Carers stress (5%)
- Co-dependent relationship (5%)
- Institutional conditions (4%)
- Substance abuse (carer) (3%)
- Personal problems of carer (3%)
- Homelessness (2%)
- Divorce (2%)
- Living arrangements (overcrowding) (2%)

85 The House of Representatives Standing Committee on Legal and Constitutional Affairs made a range of observations in its 2007 report “Older People and the Law”.³⁹

86 Many of the recommendations have in-principle agreement from the Government but are as yet unimplemented.⁴⁰

87 The Committee noted:

2.129 *The Committee believes that ensuring people have the skills necessary to manage their finances effectively and avoid being defrauded is central to the prevention of financial abuse. The Committee supports the proposal for a national financial literacy program for older Australians. In addition to providing targeted financial advice, such a campaign should inform older people of*

the processes by which they can seek recourse after abuse has occurred and the regulatory bodies who have the power to investigate and prosecute misleading and deceptive practices. ⁴¹

88 The recommendations included:

Recommendation 8 (paragraph 2.130)

The Committee recommends that the Australian Government, in conjunction with states and territories, continue to fund and develop national initiatives to promote financial literacy particularly among older people and those approaching retirement age. ⁴²

Recommendation G

The Committee recommends that financial literacy be included in any education and awareness campaign arising out of this Inquiry.

Substitute decision-makers

89 The financial literacy of substitute decision makers is of crucial importance.

90 The system of appointment of attorneys only requires a willingness to act, rather than any competence to comply with the requirements of diligence,⁴³ avoiding conflict,⁴⁴ exercise of investment power,⁴⁵ record keeping,⁴⁶ separation of property.⁴⁷

91 The simple fact of the matter is most substituted decision makers are unaware of their obligations and responsibilities.

92 The consequences for failing to comply are serious and can include compensation⁴⁸ and criminal prosecution. Obviously the consequences also include detriment to the principal. These arrangements can also lead to discord between family members, friends, supporters etc.

93 Agencies with statutory roles inevitably owe duties to principals and are not in a position to assist Attorneys or Administrators with advice, especially if it involved a question about possible failure to comply with statutory duties. In some cases the attorney ends up unwittingly incriminating themselves over a breach of their obligations under law.

Recommendation H

The Committee investigates ways to improve the competence and financial literacy of substitute decision makers appointed under law in Queensland.

Support for Financial Decision Making (TOR 2 & 4)

94 What support and advice is available to assist seniors with their independent financial decision-making.

Decision Making Structures

95 TCLS commends the recent report *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124, 2014) in respect of how supported decision-making can be approached in a contemporary manner.

96 TCLS supports the review of Queensland laws proposed by the ALRC.⁴⁹

97 These recommendations are consistent with the stated recommendations of the Queensland Law Reform Commission.⁵⁰

98 Further in line with the *Older Persons and the Law* report recommendations 16 through 29 should be considered in light of the Queensland's Government's ability to drive improvements to the powers of attorney, advanced health directive, guardianship system.

99 In respect of matters where older persons are required to obtain independent legal advice, options are generally limited to paid advisers such as lawyers and accountants. Free legal assistance providers are generally not in a position to provide certificate advisory services given the time consuming and potentially risky nature of those services.

Recommendation I

The Committee recommends the Government implement relevant recommendations in *Older Persons and the Law* and *Equality, Capacity and Disability in Commonwealth Laws*.

Protective Structures

100 Just as important as supports to make decisions are the protections within the system.

101 In other jurisdictions community resources include:

- Adult protective services;
- Ombudsman;
- Specialist law enforcement and emergency services;
- Multi-disciplinary response teams (public and community);
- Elder abuse specialists; and
- Training and education professionals.⁵¹

102 Currently in Queensland, programs like the Seniors Legal and Support Services and the Elder Abuse Prevention Unit provide advise to older persons about their rights and options in respect of personal circumstances. Their roles are synergetic and cooperative. EAPU tends to act as a frontline provider of information whereas SLASS programs respond on the ground.

103 The work of SLASS program has had bipartisan support since inception because of the important role it plays in assisting vulnerable and abused seniors.

Recommendation J

The Committee investigates options for protective structures in Queensland, including expansion of the SLASS program to other community legal centres in Queensland.

Online and Internet Vulnerabilities (TOR 3)

104 Seniors can be vulnerable to online and Internet fraud and scams.

105 ABS data shows older persons are less likely to receive a scam via email or internet but were more vulnerable to telephone, fax or sms.⁵²

106 Older persons were most likely to suffer scams in the Jobs and investments, unexpected money, unexpected prize, threats and extortion categories.⁵³

Recommendation K

The Committee recommend the development of an education and awareness campaign to improve older persons' resilience to internet and telephone scams, internet and identity fraud and improve older persons' internet safety generally.

Role of the financial sector (TOR 5)

- 107 There is a significant role for the financial sector⁵⁴ in ensuring adequate safeguards for seniors in relation to financial decision- making.
- 108 Areas of concern were canvassed in 2007 report “Older People and the Law”⁵⁵ and subsequent Government response.⁵⁶ Other national institutions have undertaken thematic research. ⁵⁷ Principal measures needed include preventative, ameliorating/mitigating and responsive measures.

Identification & Awareness

- 109 Identifying abuse and exploitation is fundamental. Service providers should implement education, training and induction programs wherever institutional safeguards should exist.
- 110 Awareness is high in some sectors but disparate or disputed definitions have hampered a proper understanding of the scope of financial abuse.
- 111 Preventative measures must address the risks of intergenerational money management, whereby those most trusted to care for another’s decisions and money are most likely to exploit that trust.
- 112 Research notes the common examples to be guarded against:
- ...Poor or no accountability procedures, particularly for cash payments and loans; family members taking over the use of an asset without a compensatory contribution; problems reclaiming contributions made to a granny flat when needed; coercion and intergenerational pressure and misuse of Enduring Powers of Attorney*⁵⁸
- 113 Existing preventative measures include those set out in the *Powers of Attorney Act 1998* but numerous gaps have been identified with the system.
- 114 Screening older persons for financial exploitation is a valuable approach when a structured protocol has been developed.⁵⁹ As far as we are aware, no statewide screening processes exist.
- 115 There is an identified need for cultural competency in the area of financial abuse.⁶⁰ CaLD community leaders and religious leaders have a significant role to play in education, awareness of reporting.⁶¹

Recommendation L

The Committee investigates mandated screening and awareness training for service providers in areas of financial exploitation including the cultural and gendered dimensions. This should include development of a consistent, contemporary screening tool.

116 There is significant support to look at formalizing family agreements to limit or ameliorate their potential for financial abuse.⁶²

117 There is also an unexplored issue of whether the financial sector should require the implementation of family agreements in addition to independent legal advice before implementing financial decisions by family members that might pose risks of financial abuse, for example remortgaging, refinancing, reverse equity loans etc.

Recommendation M

The Committee investigates what proactive measures should be taken by financial services and related services in order to reduce risk of financial abuse and exploitation.

Service Providers' Obstacles

118 Research has shown that policies and procedures within institutions that care for older adults on a long-term basis can identify those at risk of abuse. For example, non-payment or partial payment of bills where an older person has adequate income are strong indicators of possible financial abuse.⁶³

119 Service providers do encounter difficulties including:

- Difficulty in detecting abuse in the first place;
- Understanding what abuse and exploitation is;
- The need for consent from the older person with capacity or consent from a family member if the older person had cognitive impairment before providers could take action;
- The risk that the family member would withdraw the client from the service if action is taken;
- A lack of resources to deal with such a complex issue; and

- Service providers had no protection from legal action by family members.

Mandatory Reporting

- 120 The absence of mandatory reporting is a significant difference between the Australian and American response to abuse and exploitation. Mandatory reporting would require those mandated to report confirmed or suspected cases of exploitation.⁶⁴
- 121 Currently the obligations are constrained by who and what is subject to reporting. The idea is controversial given the likely need to implement an adult protective services regime like the US.
- 122 Reporting has also been said to potentially disadvantage cultural and linguistically diverse communities and aboriginal communities.⁶⁵
- 123 In Queensland, the Office of the Public Guardian⁶⁶ has this role where mandated by order⁶⁷ or circumstance.⁶⁸ This is limited to adults with impaired capacity and is not a proactive role.
- 124 The high value placed on older people's ability to be self-determining and the reluctance to view older people as vulnerable or excessively needy has led to strong opposition to the development of mandatory reporting and/or other protective legislation to address the financial abuse of older people.⁶⁹
- 125 Where reporting exists, examples of those mandated to report include:
- Care custodians;
 - Health practitioners;
 - Welfare agents;
 - Law enforcement officers;
 - Emergency services officers;
 - Human societies and animal control officers;
 - Environmental health and municipal health inspectors;

- Financial services officers.

Recommendation N

The Committee investigate systems of mandatory reporting of financial abuse by relevant service providers and look at the potential advantages and disadvantages to older persons and others in Queensland.

Whistleblower Protections

126 Whistle-blower protections can also be a strong tool in the prevention of abuse and exploitation.⁷⁰

127 Recent research indicates that our whistle-blower laws are comprehensive with respect to the public sector but absent or not comprehensive for the private sector.⁷¹

Recommendation N

The Committee investigate a system of whistleblower protections for reporting of financial abuse by individuals in public and private sectors.

Townsville Community Legal Service Inc

Friday, May 8, 2015

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- ¹ Special Taskforce on Domestic and Family Violence in Queensland, Not Now, Not Ever, Putting an End to Domestic and Family Violence in Queensland. Domestic and Family Violence in Queensland.
- ² Ibid.
- ³ The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, Older people and the law, September 2007, Canberra, page vii.
- ⁴ Queensland Treasury, Office of Economic and Statistical Research Demography and Planning, Population projections to 2031: local government areas, 2011 edition, Queensland Treasury, Office of Economic and Statistical Research Demography and Planning, Queensland Government population projections to 2056: Queensland and statistical divisions 2011 edition.
- ⁵ <http://www.qgso.qld.gov.au/products/reports/qld-seniors/qld-seniors-2013-14.pdf>.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Ibid.
- ⁹ Ibid.
- ¹⁰ Ibid.
- ¹¹ United Nations, Department of Economic and Social Affairs, Population Division (2013) *World Population Ageing 2013*. ST/ESA/SER.A/348, p. 72.
- ¹² Queensland Treasury, Office of Economic and Statistical Research, Census 2011, Older Queenslanders, p.3.
- ¹³ Wilkinson J and Ferraro K, Thirty Years of Ageism Research. In Nelson T (ed). *Ageism: Stereotyping and Prejudice Against Older Persons*. Massachusetts Institute of Technology, 2002.
- ¹⁴ Iversen, T.N., Larsen, L. & Solem, P.E. (2009). A conceptual analysis of ageism. *Nordic Psychology*, 61, 4-22.
- ¹⁵ Frédéric Mégret, 'The Human Rights of Older Persons: A Growing Challenge' (2011) 11 *Human Rights Law Review* 37, p.3.
- ¹⁶ Susan T. Fiske* and Michael S. North, A prescriptive intergenerational-tension ageism scale: Succession, identity, and consumption (SIC), *Psychological Assessment*, Vol 25(3), Sep 2013, 706-713.
- ¹⁷ Australian Human Rights Commission, Fact or fiction? Stereotypes of older Australians, 2013.
- ¹⁸ Ibid.
- ¹⁹ Special Taskforce on Domestic and Family Violence in Queensland, Not Now, Not Ever, Putting an End to Domestic and Family Violence in Queensland.
- ²⁰ Bendix, J. (2009). Exploiting the elderly. *Registered Nurse*, 72(3), 42-44, 46.
- ²¹ Darzins, P., Lowndes, P., & Wainer, J. (2009). *Financial abuse of elders: A review of the evidence: Protecting Elders' Assets Study*. Melbourne, Australia: Monash University, Faculty of Medicine, Nursing and Health Sciences.
- ²² Sherif Soliman and Jason Beaman, One Piece of the Puzzle-Financial Exploitation and Elder Abuse, Chapter 2 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.20.
- ²³ Robert Roush and Aanand Naik, Screening Older Patients for Risk factors Associated with Financial Exploitation, Chapter 5 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.53.
- ²⁴ Adam Fried, Franklin Mlemud, Page Ulrey, Financial Exploitation: The Legal Perspective, Chapter 8 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.94-95.
- ²⁵ Sherif Soliman and Jason Beaman, One Piece of the Puzzle-Financial Exploitation and Elder Abuse, Chapter 2 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.29.
- ²⁶ Arifa Abid, Natalie Kayani, Aileen Jencius, Financial Abuse of the Elderly: Risk Factors Chapter 4 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.41.
- ²⁷ Setterlund, D., Tilse, C., Wilson, J., Mccawley, A., & Rosenman, L. (2007). Understanding financial elder abuse in families: The potential of routine activity theory. *Aging & Society*, 27, 599-614.
- ²⁸ Dhruvodi Mukherjee PhD (2013) Financial Exploitation of Older Adults in Rural Settings: A Family Perspective, *Journal of Elder Abuse & Neglect*, 25:5, 425-437.
- ²⁹ *R v Hawkins* [2011] QCA 322.
- ³⁰
- ³¹ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4446.0Main%20Features42009?opendocument&tabname=Summary&prodno=4446.0&issue=2009&num=&view=>
- ³² Ibid.
- ³³ Ronan Factora, Barriers to recognition, Chapter 3 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.31.
- ³⁴ Arifa Abid, Natalie Kayani, Aileen Jencius, Financial Abuse of the Elderly: Risk Factors Chapter 4 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.41.
- ³⁵ Ibid, p.25.

- ³⁵ Sherif Soliman and Jason Beaman, *One Piece of the Puzzle-Financial Exploitation and Elder Abuse*, Chapter 2 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.21.
- ³⁶ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever, Putting an End to Domestic and Family Violence in Queensland*, pp.
- ³⁷ Australian Security and Investments Commission.
- ³⁸ *Ibid*, p.24
- ³⁹ The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law*, September 2007, Canberra.
- ⁴⁰ Government Response to House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law*, undated.
- ⁴¹ *Ibid*.
- ⁴² *Ibid*.
- ⁴³ *Powers of Attorney Act 1998*, section 66.
- ⁴⁴ *Powers of Attorney Act 1998*, section 73.
- ⁴⁵ *Powers of Attorney Act 1998*, section 84.
- ⁴⁶ *Powers of Attorney Act 1998*, section 85.
- ⁴⁷ *Powers of Attorney Act 1998*, Section 86.
- ⁴⁸ *Powers of Attorney Act 1998*, Section 106.
- ⁴⁹ Recommendation 10-1.
- ⁵⁰ Queensland Law Reform Commission, *A Review of Queensland’s Guardianship Laws*, Report No 67 (2010) i, rec 4–1.
- ⁵¹ Georgia Anetzberger, Farida Ejaz, Ashley Bukach, David Bass, *Next Steps: Documenting and Accessing Community Healthcare Resources*, Chapter 6 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, pp.83-87.
- ⁵² <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/52AC59E2C8D7108ECA257B8E001AA33D?opendocument>
- ⁵³ http://www.canberra.edu.au/cis/storage/Scams%20report_FINAL.pdf
- ⁵⁴ The financial sector appears to be referring to a broad group in society often called financial services. Financial services are regulated by the federal Government (including via the *Corporations (Commonwealth Powers) Act 2001*) but the Queensland Government does indeed regulate a range of services.
- ⁵⁵ The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law*, September 2007, Canberra.
- ⁵⁶ Government Response to House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law*, undated.
- ⁵⁷ *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124, 2014).
- ⁵⁸ Valerie Margaret Adams PhD, Dale Bagshaw PhD, Sarah Wendt PhD & Lana Zannettino PhD (2014) *Financial Abuse of Older People by a Family Member: A Difficult Terrain for Service Providers in Australia*, *Journal of Elder Abuse & Neglect*, 26:3, 270-290, DOI: [10.1080/08946566.2013.824844](https://doi.org/10.1080/08946566.2013.824844)
- ⁵⁹ Robert Roush and Anand Naik, *Screening Older Patients for Risk factors Associated with Financial Exploitation*, Chapter 5 in *Aging and Money – Reducing the risk of financial exploitation and protecting financial resources* (Ronan Factora Ed), Humana Press, 2014, p.57.
- ⁶⁰ Lana Zannettino PhD, Dale Bagshaw PhD, Sarah Wendt PhD & Valerie Adams PhD (2015) *The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia*, *Journal of Elder Abuse & Neglect*, 27:1, 74-89.
- ⁶¹ *Ibid*.
- ⁶² Recommendation 30, The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older people and the law*, September 2007, Canberra.
- ⁶³ Bond, J. B. Jr., Cuddy, R., Dixon, G. L., Duncan, K. A., & Smith, D. L. (1999). *The financial abuse of mentally incompetent older adults: A Canadian study*. *Journal of Elder Abuse & Neglect*, 11 (4), 23–38.
- ⁶⁴ Shannon McDermott (2008) *The Devil is in the Details: Self-Neglect in Australia*, *Journal of Elder Abuse & Neglect*, 20:3, 231-250, DOI:10.1080/08946560801973077.
- ⁶⁵ http://www.eapu.com.au/uploads/research_resources/Mandatory_Reporting_Position_Statement_MAR_2_006-EAPU.Pdf
- ⁶⁶ *Public Guardian Act 2014; Guardianship and Administration Act 2000*.
- ⁶⁷ The Public Guardian has jurisdiction over adults where appointed by a Court or Tribunal: *Public Guardian Act 2014*, section 12(1)(e), (f), (g).
- ⁶⁸ The Public Guardian has some inherent powers to investigate: *Public Guardian Act 2014*, section 12(1)(a), (b), (c), (d).
- ⁶⁹ Lana Zannettino PhD, Dale Bagshaw PhD, Sarah Wendt PhD & Valerie Adams PhD (2015) *The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia*, *Journal of Elder Abuse & Neglect*, 27:1, 74-89.
- ⁷⁰ *Ibid*.
- ⁷¹ <http://transparency.org.au/wp-content/uploads/2014/06/Action-Plan-June-2014-Whistleblower-Protection-Rules-G20-Countries.pdf>