FPQS Inquiry
Sub. 003

SUBMISSION ON THE ADEQUACY OF EXISTING FINANCIAL PROTECTION FOR QUEENSLAND'S SENIORS

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ABOUT Council on the Ageing (COTA) Queensland

COTA Queensland provides the Seniors Peak service to the Queensland Government and is a state based organisation committed to advancing the rights, needs and interests of Queenslanders as they age. We aim to help create a more just, equitable and caring community in which older people are actively involved and empowered and have access to appropriate support, services and care.

COTA Queensland bases our policy principles on the World Health Organisation (WHO) policy pillars of Health, Security and Participation.

The work of the COTA Federation, which comprises eight State and Territory and our National Policy and Advocacy arm, COTA Australia is guided by five main policy principles:

- Maximising the social, economic and political participation of people as they age;
- Promoting positive views of ageing, rejecting ageism and challenging negative stereotypes;
- Promoting sustainable, fair and responsible policies;
- Protecting against and redressing disadvantage; and
- Protecting and extending services and programs that are used and valued by people as they age.

COTA's current policy and advocacy focus is on:

- aged care reform;
- cost of living pressures;
- energy;.
- health;
- housing and homelessness;
- transport;
- retirement incomes; and
- social participation (including age discrimination and human rights).

EXECUTIVE SUMMARY

This submission by the Council on the Ageing (COTA) Queensland responds to the Queensland state government inquiry on the financial independence of Queensland seniors. This document focuses largely on people aged 65 and over, due to this group approaching an age where financial security in retirement is foremost in their minds, but also because of personal and life factors that are more likely to affect this group's financial independence than younger age groups. COTA welcomes the Queensland government's initiative to hold this inquiry and looks forward to working with your government in the future on these and other issues that affect seniors.

Whilst there is considerable literature and commentary on financial security issues that affect seniors, such as superannuation, scams and financial institutions, there has been much less on the role of state governments in Australia. Yet, state governments play a vital role in seniors' everyday life, such as protecting their consumer rights through to policing against fraud and other suspicious activity, including online and in-person scams. Indeed, we outline in this submission some examples of regional and state governments in Australia and overseas taking an active role in helping seniors to make informed financial decisions. We argue that the measures the Queensland government could take to protect seniors' financial security can be achieved by using similar practices and strategies.

COTA Queensland is also aware that state governments work closely with other levels of government and make a valuable contribution to national policy. In light of financial losses made with the collapse of some financial institutions in Australia we therefore welcome the invitation in your terms of reference to discuss the role of these institutions in protecting seniors' financial interests. We encourage the Queensland state government to explore all avenues to protect senior's financial security and trust this document makes a positive contribution in this area.

Highlights in our recommendations to the Queensland government include:

- Consideration of a consumer protection guide and internet resource modelled on 'Savvy Seniors' by the South Australian government,
- Implementation of a public education campaign, with close media collaboration, to inform seniors on how to guard themselves against internet fraud and other scams,
- Consideration of the 'FirstStop' telephone and internet housing and finance information referral service in the United Kingdom as a model for Queensland seniors,
- The state government to work closely with the Australian Federal government to institute practical regulations for financial and investment services.

1. INTRODUCTION

This document covers a range of topics related to seniors and financial security. As requested, the points and recommendations in the following submission are made in response to the terms of reference for the inquiry: adequacy of existing financial protections for Queensland's seniors.

2. DEFINITIONS

Financial security – refers, in the following, to an individual's personal financial and physical assets, and their movement, in relationship to their assessment of how secure they are and how it affects their welfare and freedom to make choices.

Senior – alternatively referred to as 'older', the term senior refers to those aged 65 and over. The Australian Human Rights Commission (AHRC, 2012) suggests that this group should be regarded differently to younger age groups because, in the context of financial security, they are disproportionately more likely to be the victims of certain types of financial crimes. Barr, 2007 and Lowndes, Darzins, Wainer, Owada and Mihalcic (2009, p.10) also suggest that financial issues that affect those aged 65 and over are more likely to be hidden than younger groups, because of their living arrangements in, for example, residential aged-care facilities, where problems can be hidden by complex paper trails. Moreover, people in this age group also have very few opportunities to recover from a adverse financial situation than younger people (AHRC, 2012).

2. LEVELS OF FINANCIAL LITERACY AND IMPROVING SENIORS' FINANCIAL LITERACY

As with other jurisdictions, there is currently a lack of detailed knowledge on the extent of financial literacy among seniors and the population generally in Queensland. However, a survey by the ANZ Bank, conducted in Australia, may point to general levels of financial literacy. The survey results were largely positive and suggest that older people differ somewhat to younger age groups by being more aware of the amount they have in their bank account, and having an above average knowledge on financial planning, choosing banking 'products', staying informed and being more in financial control (ANZ, 2011, p.64). However, the study found that this usually correlated with an individual's education levels. There is also evidence that a key factor in financial literacy and financial safety is the ability to gather information from informed media and personal networks. These sources of information can prepare people to deal with scams, which can change at a rapid pace by entrepreneurial criminals who regularly seize opportunities to scam through what can appear to be legitimate sources. Timeliness of information is also important. For example, many people are now aware of telephone scams such as individuals pretending to represent the software company Microsoft claiming to have detected a virus in an individual's computer (see: http://www.scamwatch.gov.au/content/index.phtml/itemId/792165). Non-computer scams can include chain mail and people making false representation on peoples' door-step, such as making false claims of being a tradesperson. People who are socially engaged are more likely to hear about these scams soon after they appear. However, scammers rapidly adapt to new situations, and information about these scams through the media often need time to properly educate individuals who are physically or socially isolated.

Although the ANZ survey suggested that senior Australians have a good general understanding of financial matters, this does not prevent them from financial abuse. Some research suggests that mature age people are more susceptible to scams, such as high-pressure telephone sales and scams through the internet (see next section). Their exposure to telephone scams may increase as scammers increasingly gather information on individuals through social networks on the internet, exposing them to scams associated with retirement and superannuation.

> **Recommendation 1** – COTA draws attention to the "Savvy Seniors" program developed by the (South Australian) Department of Consumer and Businesses Services. In addition to a telephone service where individuals can call the department for advice, the service offers seniors holistic, plain language booklets on a range of topics, ranging from consumer rights through to detecting scams and cyber protection (see: http://www.cbs.sa.gov.au/assets/files/ savvy_seniors_aug_2014.pdf). We recommend the Queensland government consider a similar service to Queensland seniors.
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> **Recommendation 2** – COTA recommends that the Queensland State government work closely with the print and electronic media to inform the public on detected scams. The print media especially could be an important source of information to seniors because many people in this age group do not have access to a computer and the internet and prefer to read newspapers.

3. SENIORS' INTERNET AND ONLINE VULNERABILITY TO SCAMS

Whilst cyber security is largely a federally regulated domain in Australia, there is a role for state governments to be actively involved in protecting seniors from cybercrimes, for example, on-line scams that pose a threat to individuals' financial security. Harfield (2012, p.28), referring to Australian and New Zealand Policy Advisory Agency, defines cybercrime as:

- Crime directed at computing and communications technologies themselves, such as unauthorised access to, modification or impairment of electronic communications or data; and

- Crime where the use of the internet or information technology is integral to the commission of the offence, (sometimes referred to as technology enabled crime) such as online fraud (including Internet or email scams), online identity theft, online child exploitation and online intellectual property infringement

Seniors are increasingly using technologies such as computers and smart-phones for shopping online and staying in touch with family and friends through social media networks, such as Facebook. They are also now being encouraged to interact with Government through these devices. With many seniors first becoming exposed to computers in their 40's through work and younger family members, there is now a growing and exponential number of people in this age group who are becoming enthusiastic users of digital technologies. Their general knowledge of technology as a group, therefore, is increasing as computer-age people move into the senior age group. However, some evidence suggests that knowledge gaps can arise with retirement, potentially increasing their exposure to cybercrime.

The Australian Human Rights Commission (AHRC, 2012, p.3) argues that cyber security for seniors is an emerging human rights issue and that governments must make every effort to ensure that older Australians are able to exercise their right to take part in a digitized society. The commission notes from evidence provided by the Australian Institute of Criminology that older Australians especially, have difficulties managing their online security and people over the age of 65 are 'more likely to be victims of online financial fraud than any other age group' (2012, p.4). This group is also more likely to fall victim to scams such as lottery scams and may become more exposed to other kinds of scams because of age-related changes, such as a changing financial and superannuation situation, and changing psychological and social circumstances (2012, p.37).

> **Recommendation** – An obvious position to start from, to combat cybercrime against seniors, is educating this group on the different types of cyber scams and how to guard this group against it. Education of cyber crimes and prevention can cover knowledge gaps for those with only a basic knowledge of computers and other smart devices. COTA recommends that the Queensland State government consider supporting a program of education for seniors to reduce this vulnerability.

4. AGENCY AND ORGANISATIONAL SUPPORT FOR SENIORS – FINANCIAL PROTECTION

A major concern that can deleteriously affect seniors' financial independence is financial elder-abuse. There has been overseas recognition that while seniors are no more vulnerable than younger people to financial abuse, the effects are likely to be more profound, because older people are less able to recover losses through employment or from other sources.

Although defining this type of abuse has been problematic, Victoria Health (2012, p.7) provides a useful holistic description: '*the Illegal use, improper use or mismanagement of a person's money, property or financial resources by a person with whom they have a relationship implying trust*'. As with other kinds of elder-abuse, financial abuse has been difficult to detect, due to factors such emotional dependency on the abuser, threats by the abuser, physical difficulty accessing a telephone, obscure paper trails and misreporting by other family members. This type of abuse can include, but is not limited to, those listed in figure 1 (adapted from Lowndes et al. 2009, p.9).

Figure 1. Types of financial elder-abuse

Theft	Misappropriation of or misuse of money, property, assets	Exerting undue influence to give away assets or gifts
Putting undue pressure on the older person to accept lower-cost lower-quality services in order to preserve more financial resources to be passed to the beneficiaries on death	Carrying out unnecessary work and/or overcharging for services / misuse of powers of attorney / denial to access funds	Failure to repay loans
Living with the older person and refusing to contribute money for expenses	Forging or forcing an older person's signature	Promising long-term care in exchange for money or property and then not providing the promised care
Getting an older person to sign a will, contract or power of attorney through deception, coercion or undue influence	Abusing joint signatory authority on a blank form	Getting an older person to be a guarantor for a loan where the benefit of the loan is for someone else without sufficient information or knowledge to make an informed decisions

Statistics on financial abuse of seniors in Australia that do exist are either guesstimates, such as Wainer's, Darzins', Owada's (2010) claim that around 5 percent of reported elder-abuse cases are related to finances or assets, or are dated, such as

Crosby's, Clark's Hayes' Jones' and Lievesly's (1991) report which claim that of the 4.6 per cent of seniors who are abused 16 percent are abused materially or financially – an effective rate of 0.72 percent (Crosby et al., 2008, p.15). In the case of Queensland Crosby et al. (2008, p.16) point to a study by Tilse et al. which found that:

> ' ... The results of a mail survey completed by 159 Aged Care Assessment Team (ACAT) members, allied health professionals and other persons working with older adults reported that 86 per cent of ACAT respondents and 70 per cent of other respondents indicated that they had concerns about the misuse of an older person's assets at least once, and 80 per cent of ACAT respondents and 57 per cent of other respondents indicated they had such concerns more than once.'

COTA Queensland regularly hears anecdotal accounts of seniors whose finances are accessed by a designated Power of Attorney. Queensland seniors have access to a number of government and non-government resources to assist those who believe they may be experiencing elder abuse (Queensland Department of Justice, 2012). However, there is growing recognition that the best way to prevent financial abuse from occurring in the first instance is through pro-active measures such as public education and providing easy to access information services (Lowndes et al. 2009). There is also recognition overseas that seniors need easy access to services to help individuals see through the often complex maze of investments that can trap them into bad investments, which Lowndes et al. (2009, p.9) refer to as 'prevention through optimal management.' For example, the UK now has a part-government sponsored service 'FirstStop' (http://www.firststopcareadvice.org.uk/further-financial-advice.aspx) which provides British seniors an easy to access service, either by telephone or the internet, where they can ask for advice or referral to an independent financial advisor. These independent financial counsellors can advise individuals on matters such as 'financial products' and other investments.

> **Recommendation 1** – COTA suggests that the UK's 'FirstStop' service provides an excellent model with helping seniors on housing and financial matters. FirstStop is also dedicated to helping seniors in other ways that make it a worthy model, such as a one-stop-shop for finding eldercare, accommodation and assisted living services.

> **Recommendation 2** – That a public education campaign about the correct and proper use of Enduring Powers of Attorney be undertaken.

5. SUPPORT AND ADVICE AVAILABLE TO ASSIST SENIORS TO BE FINANCIALLY INDEPENDENT

COTA supported the repeal in proposed amendments in the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014Bill* to remove section 'g' that requires advisors to demonstrate that they are 'acting in the best interest of their clients'. Whilst most consumers may assume that advisors are acting in their best interests, events such as the Storm collapse show this is not always the case. COTA's Submission to *Inquiry into Streamlining of Future of Financial Advice Bill 2014 (Subsection 961B92) of the Corporations Act* also lists the seven steps that a provider has to take to show they meet this requirement, which were not mentioned for amendment or repeal in the proposed bill. COTA maintains that section 'g' of FOFA provides an important consumer protection as it covers situations which do not neatly fit into the six preceding steps. To restate COTA's *Submission to Inquiry into Corporations Amendment (Streamlining of Future of Financial Advice Bill 2014*: If this last step were to be removed the other six steps become a "tick a box" checklist and weaken the requirement for advisors to reflect in an overall sense on the advice they are giving and whether it would as a whole be considered in the client's best interest.

Scaled advice

COTA has previously raised concern about scaled advice by financial advisors. Scaled advice refers to targeted advice which is limited in scope. Some examples of scaled advice underline our concerns, such as a couple agreeing to receive advice on planning for retirement, without reference to any debts, when they had two real estate mortgages. Although scaled advice can be attractive to clients, because it is cheap and easily available, it is not objective and can result, for example, in individuals agreeing to advice without reference to mortgages. COTA accepts they should have the choice but suggests that clients need to be fully informed about the implications of limited advice. Moreover, COTA maintains concern that this type of advice can erroneously assume an equal knowledge between advisers and clients. Whilst COTA accepts that individuals have the right to choice it suggests that clients need to be fully informed about the implications of limited advice.

Opt-in provisions

COTA has previously mentioned opt-in provisions for renewed arrangements between individuals and their financial advisors, and resubmits its observations and recommendations on this issue. Previously, we advised that it should be a requirement for consumers to renew their arrangement with their adviser every two years to protect consumers. Our recommendations are based on many stories which have come to our notice of people having no continued contact with their adviser but keep paying fees to the advisor from the product vendors. The business model of putting all the effort into signing people up for advice and then never reviewing or being in contact again should be a thing of the past with this particular element of the original

FOFA package. Winding back this provision allows this model to flourish.

The opt-in provision can help to ensure that providers keep in contact with consumers, require them to up-date contact details and trigger periodic reviews. It should also encourage consumers to look at their financial goals and seek updated advice when circumstances change. It may also give them the impetus to shop around for advice and therefore promote competition and potentially reduce the cost of advice. It may also give an opportunity for people who have taken scaled advice to move to getting more holistic advice.

COTA does not accept that this opt in model is onerous on providers or that it carries high compliance costs. From our discussions with a number of people in the financial advice industry it would appear that current industry best practice is to do regular reviews, and discussion of fees is part of such a review. The opt-in provision is another way of ensuring that providers are continuing to act in the best interests of their clients and optimising the advice.

> **Recommendation** – COTA requests the Queensland state government give full consideration and support for its concerns regarding financial advisors acting in the best interests of seniors, scaled advice and opt-in provisions.

5. ROLE OF THE FINANCIAL SECTOR IN SENIORS FINANCIAL DECISION MAKING

There is continuing debate within government and the banking'/investment sector on ensuring ethical standards within the finance and superannuation industry. Ethical standards within the industry have come under scrutiny after several financial scandals such as Storm, Macquarie Bank and Timbercorp. The matter of practices and ethics in the financial advice sector may be even more pertinent at present given record lows in interest rates and the possibility of people leaving interest bearing investments for high risk investments offered by financial scammers.

Debate continues, even at the time of writing of this submission, about how to address unethical practices. In a piece by the University of New South Wales Centre for Law, Markets and Regulation (22 August 2014) the industry was also tagged for what appear to be sloppy standards, including:

- Client files not containing statements of advice,
- Advisers failing to demonstrate reasonable basis for advice provided to the client,
- Poor client records and lack of detail contained in advice documents,

- A lack of supporting documentation on files to determine if there was a reasonable basis for the advice provided to the client, and
- Failing to provide sufficient evidence that clients were sophisticated investors.

Despite problems in the financial planning industry there are encouraging signs that the banking, superannuation and finance advice sector desire to clean up the industry and to restore their reputation as ethical and professional providers. From a purely commercial standpoint, the sector appears determined to avoid mistakes that have resulted in multi-million dollar payouts to clients for poor advice. COTA, nationally, continues to work with these sectors, in the interests of seniors, to develop regulations and safeguards so that clients can make reliable financial decisions.

> **Recommendation** – COTA seeks support by the Queensland state government in its initiative to develop ethical and professional practices in the financial advice sector.

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