

Inquiry into Elder Abuse in Queensland

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Elder Abuse in Queensland

Submission to the Education, Arts and Communities
Committee, Queensland Parliament

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Contents

Who we are	4
Introduction	5
The definition of “elder abuse”	5
The nature of elder abuse in Queensland.....	6
Improving responses to elder abuse in Queensland	7
Conclusion	8

Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Education, Arts and Communities Committee ('Committee') on elder abuse in Queensland.
2. ALA members represent older people, who have been injured or abused, in accessing justice, compensation and restitution.
3. Our submission addresses the following matters:
 - a. The definition of "elder abuse";
 - b. The nature of elder abuse in Queensland; and
 - c. Improving responses to elder abuse in Queensland.

The definition of "elder abuse"

4. The ALA notes that the Committee's Information Paper for this inquiry adopts the World Health Organization (WHO) definition of elder abuse:²

a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.
5. The ALA notes, however, that the following definition was developed as part of the *National Elder Abuse Prevalence Study* (an initiative which came out of the *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023*):³

a single or repeated act or failure to act, including threats, that results in harm or distress to an older person. These occur where there is an expectation of trust and/or where there is a power imbalance between the party responsible and the older person.
6. We submit that this is the preferred definition, as it addresses the power imbalances inherent to elder abuse, and it specifically identifies "threats" as a form of elder abuse (in addition to action or inaction).

² Education, Arts and Communities Committee, Queensland Parliament, *Inquiry into Elder Abuse in Queensland* (Information Paper, 13 January 2025) 1.

³ Kaspiew et al, *Stage One research; Feedback from the technical advisory group* (2019), cited in: Australian Institute of Family Studies, *National Elder Abuse Prevalence Study: Final Report* (2021) 164.

7. The ALA urges the Committee to adopt this latter definition for this inquiry and as part of broader policy development on elder abuse in Queensland.

The nature of elder abuse in Queensland

8. The ALA notes the forms of elder abuse proposed by the Committee in its Information Paper.⁴

9. ALA members have provided the following feedback for the Committee's consideration:

- a. The reference to "essential medical care" in "Neglect":

- ALA members recommend the removal of "essential" from this definition. That qualifier invites too much discretion and subjectivity on the part of carers in determining when medical care ought to be provided.
- In the experience of ALA members, it is frequently difficult to determine at what point a condition requires intervention to prevent deterioration and when the condition has reached a serious stage.
- Instead, seeking medical care for older people should be the default expectation, and that medical care should be sought and provided both preventatively and reactively for older people.

- b. The ALA recommends the addition of another form of elder abuse:

Coercion by another person, including but not limited to whether that person is a family member, friend, neighbour, carer or colleague, who intends to achieve dominance over an older person which results in harm, injury and/or financial loss.

- c. The ALA recommends that "Inappropriate use of drugs or physical restraints is also an example of physical abuse" should be rephrased as follows: "Inappropriate use of drugs or physical restraints are also examples of physical abuse".

⁴ Education, Arts and Communities Committee, Queensland Parliament, *Inquiry into Elder Abuse in Queensland* (Information Paper, 13 January 2025) 1.

Improving responses to elder abuse in Queensland

10. ALA members have identified the following ways in which the response to elder abuse in Queensland can be improved:

- a. In relation to financial abuse, civil tribunals in Queensland do not have powers of restitution.⁵ This must be rectified in the interests of older people achieving not only justice but also restoration to an acceptable and safe quality of life.
- b. Civil and criminal legal options should be made available and adequately resourced by the Queensland Government for resolving issues between older people and their abuse perpetrators through roundtable conferencing and mediation, as well as through compulsory arbitration (if necessary) for retrieving property.
- c. The establishment of a reporting structure for reporting elder abuse, with independent assessors who – after receiving comprehensive training in this space – could investigate complaints of elder abuse and the safety of living arrangements for older people. These independent assessors would operate separately to the Queensland Police Service ('Queensland Police') but could make referrals to Queensland Police about instances of elder abuse. Further, it should be mandatory under this reporting structure for certain cohorts of people to report suspected elder abuse – such as, health professionals.
- d. The Queensland Government must establish and/or support shelters and other services to which older people can turn when they suffer any form of elder abuse.
- e. Adoption of the ACT's model for legal action on elder abuse,⁶ with a public campaign to educate the general public about these reforms and with resources allocated for Queensland Police and the courts to actively enforce those provisions. It is important for older people to have a criminal avenue for pursuing justice, and criminal reform may also act as a deterrent to elder abuse.
- f. The Queensland Government should ensure that court processes are accessible to older people – including those who live in rural, remote and regional areas, as well as

⁵ Unlike, for example, Victorian Civil and Administrative Tribunal – see: *Powers of Attorney Act 2014* (Vic) s 77.

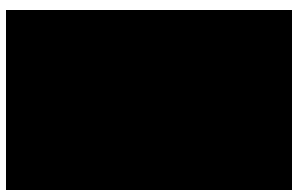
⁶ See: *Crimes Act 1900* (ACT) s 36A (Abuse of vulnerable person), s 36B (Failure to protect vulnerable person from criminal offence) and s 36C (Neglect of vulnerable person); *Crimes (Sentencing) Act 2005* (ACT).

those from lower socio-economic backgrounds who should not be barred from seeking justice by high legal costs. This could include empowering Local Courts and Civil and Administrative Tribunals with authority to address matters concerning elder abuse.

- g. Facilitation of access of family to information from and meetings with the Office of the Public Guardian (OPG) in Queensland about their family member, who no longer has decision-making capacity. It is currently very difficult for family members to organise meetings and receive responses from the person handling the file at the OPG. Whilst there is a complaints process on the OPG's website, the website does not explain the chain of authority to follow if a family member is not receiving a response to their requests for information or action.

Conclusion

- 11. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Education, Arts and Communities Committee on elder abuse in Queensland.
- 12. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



Sarah Grace

President, Queensland Branch Committee

Australian Lawyers Alliance