

Inquiry into Elder Abuse in Queensland

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Elder Abuse Action Australia

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ELDER ABUSE ACTION AUSTRALIA ACKNOWLEDGES THE TRADITIONAL CUSTODIANS OF COUNTRY AND ISLAND HOME ACROSS AUSTRALIA, THE LANDS ON WHICH WE LIVE AND WORK. WE PAY OUR RESPECTS TO THEIR ELDERS BOTH PAST AND PRESENT AND ACKNOWLEDGE THE CONTINUED CONNECTION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE TO LAND, SEA, SKY, COMMUNITY, AND CULTURE. SOVEREIGNTY HAS NEVER BEEN CEDED. IT ALWAYS WAS AND ALWAYS WILL BE, ABORIGINAL LAND.

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Elder Abuse Action Australia

About Elder Abuse Action Australia

Elder Abuse Action Australia (EAAA) is a national peak body which was established in 2018 to create meaningful change in response to the need to address and eliminate the abuse of older people (elder abuse). Elder abuse has been recognised as a scourge on Australian society and the work of EAAA impacts positively on the older person, their loved ones, their communities, and society more broadly.

In the short period since its inception, EAAA has established itself as the leading authority on elder abuse in Australia and is best known for delivering the national elder abuse knowledge hub [Compass.info](https://compass.info). This valuable resource raises awareness of elder abuse by providing comprehensive and practical information and connects people to frontline services which tackle the abuse of older people.

In 2022 EAAA delivered the very successful National Elder Abuse Conference *Walk the Talk* in Hobart, followed the highly lauded 2024 National Conference *Turn up the Volume!* in Adelaide. Planning is currently underway for the 2026 National Elder Abuse Conference. In 2024 EAAA launched the Seniors Panel for Advocacy Rights and Knowledge (SPARK). This expert panel is made up of older people from every state and works to combat ageism and elder abuse by elevating the voices of older people and putting their needs at the centre of our work.

What we do

EAAA was established to confront the often-hidden problem of discrimination, neglect and mistreatment of older Australians. As the national voice for action, EAAA campaigns for a society that respects and values older Australians and is free from elder abuse. We use the tools of advocacy, policy development, research and capacity building to raise community awareness of elder abuse and improve the lives of older people.

Why we do it

Older people are among the most vulnerable of all Australians, not because of age itself, but due to the associated and intersected vulnerabilities associated with ageing. As people age, they increasingly rely on family, friends and carers for additional support. For many the experience of ageing is soured by discrimination, ageism, exclusion and abuse.

Older people have the same rights as everyone else. They have the right to be treated fairly, feel safe in their home, and live with dignity and self-determination. The abuse of older people affects individuals and society. It can limit the participation of older people in their communities and deny those communities the benefits of having older people fully contribute.

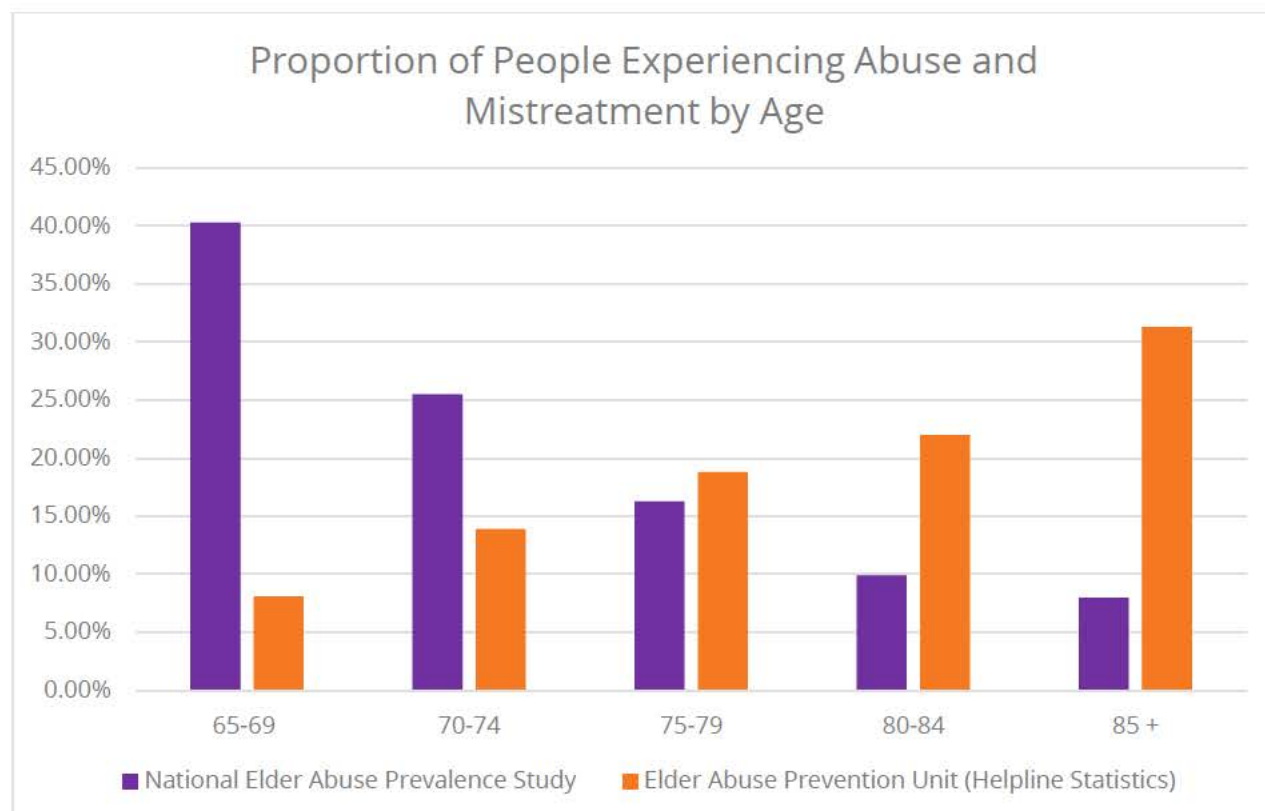
The Abuse and Mistreatment of Older People in Queensland

Elder Abuse Action Australia (EAAA) welcomes the Queensland government's clear commitment to addressing and eliminating the abuse and mistreatment of older Queenslanders as demonstrated by this Inquiry. The abuse and mistreatment of older people is often referred to as 'elder abuse', however for the purposes of this submission EAAA will instead refer to the 'abuse of older people' or the 'abuse and mistreatment of older people'. This approach serves dual purposes - avoiding any confusion or misinterpretation around the meaning of the word 'elder' whilst simultaneously maintaining consistency of language with the *Draft National Plan to End the Abuse and Mistreatment of Older People 2024 – 2034*¹.

The abuse and mistreatment of older people is a deeply entrenched, long-standing and insidious issue. Each year at least one in six people in Australia aged 65 and over experience some form of abuse². An accurate picture of the specific situation in Queensland however remains difficult to determine due to a lack of publicly available and reliable jurisdictional data. The Elder Abuse Prevention Unit publishes a highly valuable annual report based on calls received through its helpline³, but these figures are limited to those who seek help and do not provide a comprehensive measure of how widespread the issue is within the broader community.

The 2021 National Elder Abuse Prevalence Study, hereafter referred to as the Prevalence Study, highlighted that only one in three older people who experience abuse seek help in any form⁴. Amongst those who do seek assistance the most common source of help is family and friends rather than official channels⁵. Only 5.3% of those who sought help, and less than 2% of those experiencing abuse, reported reaching out to a helpline⁶. This reinforces the gap between the data reported by Queensland's Elder Abuse Prevention Unit and the true prevalence of abuse.

Help-seeking behaviours can also vary on factors including gender, age, and the type of abuse experienced, highlighting that certain demographic groups may face additional barriers to seeking help. The Prevalence Study indicates that 43% of older people who experience abuse are male⁷, while only 32% of calls to Queensland's helpline relate to male victims⁸. This obvious discrepancy further demonstrates the limitations of helpline data which can only capture cases reported directly to it. Similar inconsistencies exist across other demographic factors, such as age and the type of abuse reported. This further illustrates the need for more robust and comprehensive data collection to fully understand the state of the abuse and mistreatment of older people in a Queensland specific context.



*The Elder Abuse Prevention Unit also receives calls about people experiencing abuse who are under the age of 65. This demographic was not included in the National Elder Abuse Prevalence Study and has therefore been removed from this table. This explains the failure of the Elder Abuse Prevention Unit numbers provided to reach 100%

These limitations and the lack of jurisdictional data provided in Prevalence Study's final report mean that without the commissioning of further research, something which EAAA highly recommends, the most reliable way to determine the prevalence of abuse and mistreatment of older people in Queensland requires the use and extrapolation of Prevalence Study Data and Census demographic data.

This extrapolation tells us that:

- More than **140,000** people over the age of 65 in Queensland experience abuse each year. This consists of more than **80,000** women and more than **60,000** men.
- More than **110,000** people over the age of 65 in Queensland experience psychological abuse each year. This consists of more than **60,000** women and more than **45,000** men.
- More than **25,000** people over the age of 65 in Queensland experience neglect each year. This consists of more than **17,000** women and approximately **10,000** men.
- More than **20,000** people over the age of 65 in Queensland experience financial abuse each year. This consists of more than **10,000** women and more than **9,500** men*.

- More than **17,000** people over the age of 65 in Queensland experience physical abuse each year. This consists of more than **9,000** women and more than **9,000** men*
- More than **9,000** people over the age of 65 in Queensland experience sexual abuse each year. This consists of more than **6,000** women and more than **3,000** men.

*The prevalence rate for financial abuse and physical abuse is higher amongst men than women, this is not apparent in these figures due to the disproportionate number of older women over older men in Queensland. There are approximately 500,000 women over the age of 65 living in Queensland and approximately 450,000 men over the age of 65.

While the above figures are undeniably alarming, they are likely an underestimation of the abuse present in Queensland for several reasons:

- The Prevalence Study relied on self-identification and self-admission of abuse, noting that abuse and mistreatment is often unidentified or hidden due to feelings including shame, stigma, guilt, or the desire to protect the person causing harm;
- The Prevalence Study was limited to people living in the community and did not include those residing in residential aged care;
- The Prevalence Study did not include older people experiencing cognitive impairment or cognitive decline, who are known to be at higher risk of abuse and mistreatment, with some figures suggesting the rates of abuse for people living with dementia may be as high as 47%⁹;
- The Prevalence Study was limited in its scope to people aged 65 years and older, this means that it did not include Aboriginal and Torres Strait Islander peoples aged 50 – 64.

The above data may demonstrate the need for more research but noting that the true prevalence of abuse is likely significantly higher than what was found by the Prevalence Study, these numbers alone are enough to indicate that this is now an epidemic. They also reflect the urgent need to reduce the abuse of older people and ideally work to eliminate it altogether.

The impacts of the abuse and mistreatment of older people are far reaching and diverse, impacting adversely not only on the older people themselves, but also on their loved ones, their communities and on society more broadly. Abuse and mistreatment can inflict long-term physical, emotional and financial harm¹⁰, and has been linked to a significant increased risk of mortality¹¹. The flow on effects of this may diminish an older person's sense of safety, dignity and self-worth¹², leading to increasing levels of social isolation and poorer overall wellbeing¹³. There are also often strong feelings of shame or guilt which accompany the experience of abuse¹⁴, particularly because abuse is usually perpetrated by trusted individuals, most commonly adult children¹⁵. In cases of financial abuse older people may

face an additional burden of losing savings, property, or assets, and potentially the inability to afford the care or services they need.

Family members and loved ones can also suffer distressing impacts; discovering abuse has occurred and they have been unaware or unable to help often causes feelings of guilt, anger and helplessness¹⁶. In some cases, family relationships can become permanently and irreparably damaged with divisions arising between those seeking to help and those who deny or excuse the abuse¹⁷.

At the community level the abuse and mistreatment of an older person may deter them from participating in the community, resulting in the loss of their value and experience to community organisations and goals¹⁸.

Furthermore, at a societal level, impacts are felt across economic, legal, financial, social services and health settings¹⁹, whilst simultaneously perpetuating false stereotypes about older people and their value to society²⁰. The actual fiscal cost of the abuse and mistreatment of older people in Australia and in Queensland remains unknown but it is far from insignificant.

Despite the damage caused, only one third of older people who experience abuse and mistreatment seek help²¹. This is in part due to the multi-layered barriers to help seeking which often delay intervention and increase the harm caused by the abuse. Substantial barriers stem from the close relationships between the people experiencing abuse and those causing them harm as more than 50% of these are family members of the older person²². Emotional and/or financial dependency²³, fear of losing relationships, guilt²⁴, and concerns about retaliation²⁵ or further isolation²⁶ are just some of the reasons that can prevent older people from disclosing abuse. Shame and stigma also play a significant role in discouraging people from seeking help or support²⁷, particularly in cultures where deference to family and elders is an expected norm²⁸.

Institutional barriers also play a considerable role, with many older people encountering systemic challenges when engaging with organisations including banks, healthcare providers and aged care services²⁹. A lack of awareness and training amongst professionals often results in abuse being overlooked or dismissed. Power imbalances and reporting pathways that vary from complex to non-existent further complicate matters for older people who want help and find there is too often no meaningful option available³⁰.

The above challenges are further compounded by the scarcity of specialist services³¹. The abuse and mistreatment of older people is a nuanced, complex and unique problem. While dedicated services exist, they remain piecemeal, inadequate and disproportionately available³². Many mainstream services which may be more available are not equipped to respond to the intersection of ageing, dependency, familial complexities, and abuse³³ resulting in gaps to prevention, intervention and recovery.

It is for the above reasons of prevalence, an ageing population, and the barriers which not only undermine the ability to prevent and intervene in cases of abuse and mistreatment but may further contribute to exacerbate harm that EAAA is so encouraged by this Inquiry. We commend the Queensland government on convening it and are pleased to offer the

following six recommendations to the Inquiry to assist us in eliminating the abuse and mistreatment of older people in Queensland. These have been developed in consultation with EAAA's Queensland members:

- 1. Reform of 'Gag Laws' that prevent those subject to guardianship from speaking about their experiences**
- 2. Power of Attorney Reform**
- 3. The Introduction Adult Safeguarding Units**
- 4. Universal Access to Specialist Services for all Queenslanders ensuring a trauma-informed and culturally appropriate approach**
- 5. A focus on healing and recovery for older people who have experienced abuse and mistreatment**
- 6. A state-wide commitment to supported decision making.**

Recommendation One: Reform of 'Gag Laws' that prevent those subject to guardianship from speaking about their experiences

Section 114A of the *Guardianship and Administration Act 2000* (Qld) currently prohibits the publication of the identity of a person who is subject to a guardianship proceeding³⁴. This includes the publication of information that is likely to lead to the identification of the person by a member of the public³⁵. This provision is intended to protect the privacy of individuals subject to such proceedings. As well as isolating and silencing people from speaking about their own experiences of guardianship, it may also be in breach of the *Human Rights Act 2019* (QLD), and in particular the right to freedom of expression as per section 21³⁶.

The *Human Rights Act 2019* enshrines the right to freedom of expression, including the right to impart information of all kinds, verbally, in writing or in print³⁷. This right is fundamental to ensuring transparency, accountability, and public debate on matters of public or personal interest, including issues concerning guardianship and administration. Section 114A, by imposing strict confidentiality requirements³⁸ may be seen to limit this right in a manner not considered reasonable or demonstrably justified under section 13 of the Human Rights Act³⁹. There is also some concern that section 114A may not be consistent with Article 12 and Article 13 of the United Nations Convention on the Rights of Persons with Disability (UNCRPD) which outline the right to equal recognition before the law and access to justice respectively^{40,41}.

One of the key concerns regarding section 114A is its potential to suppress public discussion about systemic issues which exist within the guardianship system, including the abuse and mistreatment of older people. Individuals including the those subject to guardianship themselves are restricted by this provision from disclosing concerns about the operations of

their guardian, including in instances where older people subject to guardianship are experiencing neglect, mistreatment, or financial exploitation. This is particularly pertinent when one considers that the abuse and mistreatment of older people frequently occurs in situations where there is a power imbalance and limited oversight⁴². Restricting the ability to report concerns publicly in such situations can exacerbate people's vulnerability to abuse and mistreatment or lead them to believe there is no pathway to stop abuse⁴³.

Confidentiality provisions such as that found in the *Guardianship and Administration Act 2000* may also create barriers for whistleblowers or advocates who are seeking to expose abuses within the guardianship system. The inability to share critical information with external bodies, the media, or the broader public can prevent timely intervention from occurring, thereby allowing abuse and mistreatment to continue. This prevents appropriate scrutiny of the system and undermines the collection of evidence that may support reform, something which is contrary to broader principles of democratic accountability and public participation.

EAAA also has concerns that the restriction imposed by section 114A may be disproportionate to its intended objectives. Protecting personal information and ensuring that all people have a right to confidentiality as it relates to the guardianship process is a legitimate aim. A blanket restriction on disclosure which prevents people from speaking about their own personal experiences is overly broad.

Section 13 of the *Human Rights Act 2019* outlines the requirements to determine whether a limitation on human rights is reasonable, necessary and proportionate to achieving its legitimate purpose⁴⁴. Examination of section 114A suggests that it does not meet this standard as it fails to balance the need for confidentiality with the right to disseminate information of public importance. Reform that allows people to speak about their own experiences of abuse and mistreatment within the guardianship system will provide greater transparency and greater safety to people whilst simultaneously ensuring that they have the right to self-expression and to equal access to justice and recognition before the law. EAAA members have indicated support for these changes with one telling us that the gag laws have additional consequences in that the public remain uneducated on any systemic failures thereby allowing the system to continue unchecked even when people are suffering.

EAAA strongly recommends that the Inquiry and the Queensland government review section 114A with an aim of reform which allows people to speak out when suffering whether they are subject to a guardianship order or not. Guardianship is designed to protect; it is not designed to disempower or infringe on basic human rights. Confidentiality is vital but it must not be allowed to come at any expense. Currently section 114A comes at the expense of suffering and abuse. It comes at the expense of transparency and accountability and exacerbates the invisibility of the abuse and mistreatment of older people which allows it to continue at the high rates it does.

Recommendation Two: Power of attorney reform

In 2017, almost a decade ago, the Australian Law Reform Commission (ALRC) handed down its groundbreaking report *Elder Abuse: A National Legal Response*⁴⁵. One of the core recommendations of the report was national power of attorney reform which incorporated both harmonisation of power of attorney legislation across all states and territories, and a national register of powers of attorney⁴⁶. This would allow relevant parties to confirm the validity and currency of enduring documents. Substantial evidence was provided to support the case for these changes, and both were included as initiatives of **Priority Area Four: Planning for Future Decision Making** in the *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019 – 2024*⁴⁷. No visible progress has been made on either element in the intervening years and they do not appear in the current *Draft National Plan to End the Abuse and Mistreatment of Older People 2024 – 2034*⁴⁸.

EAAA has repeatedly raised its concerns that these initiatives appear to have been abandoned, noting that powers of attorney are complex enough without the current jurisdictional variances. Australia has a mobile population where it is commonplace for attorneys and principals to reside in different states and territories⁴⁹.

Harmonisation of legislation is a vital initiative to reducing pathways to abuse⁵⁰, particularly financial abuse, but it can also assist attorneys by simplifying their obligations and responsibilities⁵¹ when people reside in different jurisdictions. Service providers too can be victims of the current fragmented system. Often, they are required to understand and implement the rules and requirements across all states and territories⁵², even though interstate recognition of enduring documents is not universal.

This is a process that must be state-led, and this Inquiry is an opportunity for Queensland to take up this beacon and illustrate to other states that compromise is necessary to achieve better outcomes for people across Australia. States and territories around the country are committed to their own models of power of attorney. This commitment at the expense of harmonisation is a clear case of allowing the perfect to be the enemy of the good. EAAA urges Queensland strongly to be the first to recognise this and demonstrate that this process, and the compromise it requires, is vital for older people and people with disability around the country.

A National Register, which is the second vital element of the recommended reform, is another initiative that would require states and territories to work together for the betterment of all their populations. The ALRC report identified that a National Register would reduce financial abuse through:

- Increased transparency as to whether an instrument exists
- Provision of clarity as to the role and powers of the attorney
- Minimisation of the extent to which documents can be forged or amended without the consent of the principal
- Reduction in the ability for an attorney to rely on a revoked instrument

- Allowing institutions to identify the existence, scope and currency of an instrument⁵³.

There is no apparent rationale behind the removal of this from the national approach to ending the abuse and mistreatment of older people, but its absence is concerning. This would be a significant pathway to safeguarding people who may be vulnerable to financial abuse. Without a register, people remain at risk and the integrity of powers of attorney is called into question. A National Register is the ultimate goal, but in following our own earlier advice, EAAA will not allow the perfect to be the enemy of the good. If the remaining states and territories are unwilling to proceed with this much needed register, this does not prevent Queensland from implementing its own, protecting vulnerable Queenslanders. It is hoped that such a strong example set by Queensland could also inspire other states and territories to follow suit.

This Inquiry indicates Queensland's commitment to being a leader in the response to and elimination of the abuse and mistreatment of older people. Strong leadership on harmonisation and the implementation of a national register of powers of attorney will demonstrate this in a practical sense. This will not only protect vulnerable Queenslanders from abuse but cement Queensland's position as a leader in this field who will not defer action while other jurisdictions hang back.

Recommendation Three: The introduction of adult safeguarding units

Recommendation 14 of the 2017 ALRC report *Elder Abuse: A National Legal Response* called for the establishment of adult safeguarding laws in each state and territory⁵⁴. Eight years later adult safeguarding exists in three of the eight jurisdictions: South Australia⁵⁵, New South Wales⁵⁶ and the ACT⁵⁷. Noting the significant multi-faceted consequences of the abuse of older people outlined earlier in this submission, and the frequency with which this abuse infringes on older peoples' human rights, it is a moral imperative that Queensland takes action to protect vulnerable adults from these abuses. This requires a clear set of duties to *"Investigate, intervene, and protect older people who are being, or are at risk of abuse"*⁵⁸. EAAA strongly urges Queensland to take action to implement this now eight-year-old recommendation to uphold the rights of older people and other at risk adults.

EAAA knows that Queensland is committed to ending the abuse and mistreatment of older people, however current frameworks in Queensland do not provide sufficient mechanisms to safeguard at-risk adults who are not covered by guardianship laws or domestic violence legislation. Many vulnerable Queenslanders who experience abuse do not meet the criteria for state intervention through the Queensland Civil and Administrative Tribunal (QCAT) or Adult Guardian pathways, which do not have the capacity or mandate to investigate in the manner that may be necessary. This creates a significant gap in protection mechanisms, particularly for individuals who may have vulnerabilities such as cognitive impairment or mental illness which place them at additional risk. A dedicated adult safeguarding unit is the best approach to bridge this gap.

The introduction of adult safeguarding units will establish a vital framework for identifying, investigating, and responding to cases of abuse, ensuring that individuals who may lack the capacity or the means to protect themselves receive appropriate intervention and support. The New South Wales Ageing and Disability Commission (ADC) provides an established and well considered model on which Queensland could base its own safeguarding approach. The ADC operates with a legislative mandate to investigate and respond to allegations of abuse, neglect, and exploitation of older people or adults with a disability whilst prioritising the autonomy of these individuals and their right to reject intervention⁵⁹. This model of an independent and specialised body is critical to ensuring the safety and wellbeing of individuals who otherwise fall through the cracks of alternative social and legal support structures.

The ALRC report highlighted the importance of a rights-based approach to safeguarding, one which prioritises an individual's right to autonomy while balancing this against the provision of necessary interventions to prevent harm⁶⁰. EAAA recommends the adaptation of the New South Wales model as it achieves this balance by allowing investigations and support services to be initiated whilst prioritising an individual's right to make their own choices wherever possible. Adult safeguarding units operate on the principle that any intervention should be the least restrictive measure possible to protect the individual from harm. This approach ensures that protective measures do not infringe on personal freedoms while still providing a safety net for those who require it.

EAAA also recommends the New South Wales model due to the advantages that come from its multi-disciplinary approach. The ADC works closely with a range of services including health services, police, and community organisations to coordinate responses to abuse and neglect⁶¹. This integrated approach ensures that individuals receive appropriate and timely support including legal assistance, medical care, social services, advocacy, and case management. The benefits for Queensland of implementing a similar method of adult safeguarding would be immeasurable in assisting individuals in a holistic and collaborative manner that considers the full spectrum of an individual's needs.

The need for a dedicated safeguarding mechanism is something that EAAA has heard continually during various public consultations and focus groups we have run over the past two years. People appreciate the elder abuse helpline but often feel let down or frustrated that it often cannot provide them with real and tangible assistance⁶². Many report calling the helpline wanting action but find that though well-meaning, the helpline is largely advisory in its nature⁶³.

The abuse and mistreatment of older people is often invisible. It is poorly understood by both many services and by the public, often including those experiencing the abuse. The implementation of adult safeguarding units can assist in strengthening public awareness and education. The ADC has consistently engaged in community outreach and training initiatives to assist professionals and members of the public in identifying signs of abuse and understanding the intervention pathways it provides⁶⁴.

EAAA acknowledges that funding for adult safeguarding units will be a consideration for the Queensland government, however the cost of failing to implement this vital measure will be

far greater. In addition to the very high and very real personal costs associated with the abuse and mistreatment of older people is the substantial financial strain it places on healthcare, social services and legal systems. Abuse if unaddressed can lead to increased hospital admissions, long-term health needs, homelessness and a greater reliance on social welfare. The introduction of adult safeguarding units will reduce these long-term costs by providing necessary support to vulnerable adults before their situation deteriorates to this point.

It has been eight years since the ALRC recommended that all states and territories implement adult safeguarding units⁶⁵, and this inaction cannot be allowed to continue. Vulnerable adults deserve to live in safety and dignity, free from abuse and mistreatment and this Inquiry is a key opportunity for Queensland to help make this happen.

Recommendation Four: Universal access to specialist services for all Queenslanders, ensuring a trauma-informed and culturally appropriate approach

One of the most important and successful initiatives that was implemented as a part of the first *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019 – 2023* was the introduction of three specialist service models. These service models: Specialist Elder Abuse Units, Health-Justice Partnerships, and Case Management and Mediation, were initially implemented as trials with twelve services operating around Australia⁶⁶. In 2021 Inside Policy was tasked with undertaking an evaluation of the trials, which demonstrated them to be highly effective in meeting the needs and desired outcomes of people experiencing abuse, as well as essential to empowering and safeguarding the wellbeing of older people⁶.

Despite these successes, as well as the social return on investment (SROI) of \$3.69 per one dollar invested⁶⁸, these services have not been expanded. Queensland currently has one site in Caxton Legal Centre delivering a specialist elder abuse health-justice partnership and case management and mediation services are provided by Relationships Australia Queensland. Not only is there no access to the third type of service in specialist elder abuse units but existing services are frequently over-burdened and are not available to Queenslanders in all parts of the state.

The lack of expansion of these services represents a missed opportunity to build upon proven successes and ensure that all older Queenslanders receive the support they need, regardless of where in the state they live. The evaluation of the three service models demonstrated not only their effectiveness but also their role in reducing the broader societal and economic costs associated with the abuse and mistreatment of older people⁶⁹. Without the creation of additional services and provision of additional resources for existing

services, many older people across the state remain without access to these vital services and the pathways to safety they provide.

The abuse and mistreatment of older people is a complex issue which requires varying types of support and intervention depending on the circumstances and wants of the individual involved. The three specialist service models implemented under the first National Plan have been proven to meet diverse needs and deliver an integrated response. Their limited ability means that many older Queenslanders, particularly those in rural and remote areas of the state are unable to access the help they need. This gap in service provision must be addressed as a part of any strategy designed to end the abuse and mistreatment of older people in Queensland.

A key consideration in this expansion must be the need for trauma-informed and culturally safe services that have the required capacity and understanding to take an intersectional approach to service delivery. Many older Queenslanders who experience abuse have also faced lifelong disadvantage, discrimination, or other forms of trauma. The intersectionality of marginalisation, such as the combined impacts of ageism, racism, ableism, or gender inequality, can intensify trauma responses⁷⁰ and increase vulnerability to abuse⁷¹. Specialist services must recognise and appropriately respond to these complexities to provide support that is sensitive to the diverse lived and living experience of older people.

For older Aboriginal and Torres Strait Islander people, culturally safe responses are particularly critical⁷². EAAA strongly recommends that service expansion designed for Aboriginal or Torres Strait Islander people be co-designed with communities to ensure they are accessible and appropriate. Older Queenslanders from migrant or refugee backgrounds will also require services that can understand and acknowledge the impact of migration-related trauma, language barriers, and different cultural understandings of abuse and familial expectations⁷³. There are many barriers to help-seeking for people experiencing abuse and mistreatment. The provision of culturally appropriate specialist services is one method through which some of these may be reduced.

Queensland's commitment to ending the abuse and mistreatment of older people is to be applauded, but this commitment must be demonstrated through investment and action, including the scaling up of specialist services across the state. These services are a proven model⁷⁴. All Queenslanders, no matter their background or location deserve access to these services. EAAA strongly urges the Inquiry and the Queensland government to take the necessary steps to bring these services to those who need them.

Recommendation Five: A focus on healing and recovery for older people who have experienced abuse and mistreatment

The abuse and mistreatment of older people is distinct from family domestic and sexual violence. It has different risk factors, different complexities, enhanced dependencies, and

different impacts⁷⁵. What the two have in common is the need for recognition, response, prevention and early intervention, and recovery and healing. Nationally, and at a state level, those four elements are largely addressed in the domestic violence sector, with these four pillars making up the four Priority Areas of the *National Plan to End Violence Against Women and their Children 2022 – 2032*⁷⁶. Strategies to end the abuse and mistreatment of older people tend to cover only the first three of these areas and miss the vital step of recovery and healing.

The *Draft National Plan to End the Abuse and Mistreatment of Older People 2024 – 2034* makes only one reference to recovery and healing, which is a commitment to researching it as an issue⁷⁷. This is both insufficient and concerning when one considers that other national or state level frameworks to address violence or abuse position recovery as an integral part of the response, not as a potential area for future research.

Queensland must take action to develop a clear framework for recovery and healing. The absence of this framework suggests that it is sufficient to simply stop the abuse, without considering the ongoing needs of those who experience it. Recovery is not a passive process and it something that must be actively supported. The impacts of abuse and mistreatment on older people can be profound and long-lasting, affecting every area of their wellbeing. In some cases, abuse can even contribute to premature death or cognitive decline. Targeted measures can be implemented to support recovery, taking learnings from the family, domestic, and sexual violence sector, thereby ensuring that older people who have experienced abuse are able to rebuild their lives.

The absence of concrete recovery and healing in previous strategies and plans may also reflect a more troubling assumption - that older people are less capable of or less deserving of recovery. This mindset, rooted in unconscious ageism, cannot be allowed to continue.

Queensland can take national leadership in correcting this falsehood and working with older people to ensure their wellbeing and quality of life following experiences of abuse. If older people are not seen as having a right to healing and restoration, any strategy implemented is failing them at a fundamental level and perpetuating ageist bias. Recovery and healing must not be treated as a secondary consideration. They must be embedded in all Queensland initiatives designed to respond to the abuse of older people.

Recommendation Six: A state-wide commitment to supported decision making

The *Guardian and Administration Act 2000* (Qld)⁷⁸ and the *Powers of Attorney Act 1998* (Qld)⁷⁹ provide the frameworks under which guardians and attorneys act on behalf of those under guardianship and principals respectively. These frameworks provide the basis for the

process of substitute decision making which remains highly prevalent for those deemed to be without capacity across Queensland.

Substitute decision making is designed to protect the rights and wellbeing of individuals who cannot for various reasons make these decisions themselves. This approach is disempowering and highly troubling since it removes the autonomy of the person and leaves them helpless in relation to the decisions that impact their life. It is also inconsistent with Article 12 of the United Nations Convention on the Rights of Persons with a Disability (UNCRPD) which states:

"State Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

State Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

State Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

State Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

Subject to the provisions of this article, State Parties shall take all appropriate and effective measures to ensure that the equal rights of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property."⁸⁰

Owing to this inconsistency and the need to uphold the fundamental rights of individuals to exercise their own legal capacity, Queensland must shift to a system of supported decision making. The current system assumes that once a person is deemed to lack capacity their autonomy can then be overridden by someone making decisions 'in their best interest' but without consideration for their will and preference^{81,82}. Impaired capacity does not or should not mean that someone is prevented from making what may be viewed as a 'poor decision', nor does it necessarily mean that they are incapable of understanding the potential consequences of a decision⁸³.

Substitute decision making may be designed to protect vulnerable individuals; however it ultimately means that the decision-maker can act without considering the input or preferences of the individual who has their ability to impact decisions affecting their lives removed. This is an outdated approach which is inconsistent with current knowledge about capacity, which recognises that decision-making is not a zero-sum game, but something that exists on a spectrum⁸⁴. Many individuals who may be deemed not to have capacity to make



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their own decisions in some areas of life are fully capable of expressing their preferences and values, particularly if they are provided with the appropriate supports. Article 12 affirms that all people, regardless of cognitive ability, have the same rights to equal recognition before the law⁸⁵. This translates into the need for supported rather than substitute decision making and the introduction of mechanisms that can assist individuals to make decisions rather than having the decisions of others imposed on them.

Supported decision making can be achieved through tailored assistance mechanisms, such as accessible information and communication supports, and allows individuals to maintain the greatest level of control over their own lives. Queensland must move to recognise that most people with cognitive impairment or decline can make informed decisions when given the right tools, assistance, and support.

Studies have also shown that supported decision making leads to better personal and social outcomes as it enhances dignity, self-determination and inclusion⁸⁶. This is stark contrast to substitute decision making where appointed guardians and administrators make decisions based on their own perceptions even if these is contradictory to the individual's values, needs, or wants.

EAAA urges the Queensland government to implement a state-wide supported decision making strategy and commit to changes that empower those with impaired capacity. This shifts the focus from protectionism through the removal of rights, to empowerment through the provision of support to maintain their autonomy and dignity. Older people are disproportionately impacted by substitute decision-making, further isolating them, increasing their vulnerability to abuse, and reinforcing ageist assumptions about the autonomy to which they are entitled. This change is vital for Queensland to not only work towards ending the abuse and mistreatment of older people and people with a disability, but also to meet human rights obligations and create an inclusive society that respects the autonomy of all Queenslanders.

Conclusion

EAAA would like to thank Queensland for initiating this Inquiry and for its ongoing commitment to ending the abuse and mistreatment of older people. Queensland is one of only three jurisdictions with human rights legislation⁸⁷, clearly signally the values the state holds and its dedication to upholding the rights of all Queenslanders. But there is still more to be done.

With at least 140,000 older Queenslanders experiencing abuse each year⁸⁸, a number that will continue to grow as the population ages unless urgent action is taken, the scale of the problem cannot be denied. This abuse is detrimental to the health, stability and wellbeing of older people experiencing the abuse, their loved ones, their communities, and Queensland as a state. It must be addressed as a matter of urgency.



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The six recommendations provided by EAAA are vital to the task of eliminating the abuse of older people in Queensland. The reforms identified and prioritised by the ALRC back in 2017⁸⁹ cannot be delayed any further as doing so results in additional abuse and additional suffering. These reforms are evidence-informed and expert-driven. EAAA recognises that Queensland cannot implement harmonisation alone, but this is an initiative that has stagnated because it needs leadership. It needs one state to be the first to acknowledge the need for collaboration and compromise to protect vulnerable populations. This is Queensland's opportunity to be this leader and rather than waiting for other jurisdictions to catch up, demonstrate the needed behaviour of cooperation.

To end the abuse and mistreatment of older people in Queensland, we must prioritise their dignity, autonomy and human rights. Ageism is a leading cause of the abuse of older people, and one of the key reasons why the abuse so often remains invisible or unreported. Promoting the empowerment of older people, ensuring that they have the same rights to autonomy as people of other ages will help to combat ageism and will assist in eliminating abuse.

This Inquiry presents Queensland with a pivotal opportunity to lead the nation in meaningful reform. This is an opportunity which cannot be wasted or postponed. By taking meaningful action now, Queensland can set a precedent for ensuring that the rights, dignity, and safety of older people is enshrined in all levels of policy and practice.



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