

Inquiry into Elder Abuse in Queensland

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Inquiry into elder abuse in Queensland

Submission to the Education, Arts and Communities
Committee

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Introduction

1. The Commission is an independent statutory body with functions under the *Anti-Discrimination Act 1991* (Qld) (**Anti-Discrimination Act**) and the *Human Rights Act 2019* (Qld) (**Human Rights Act**), which includes promoting understanding, acceptance, and public discussion of human rights in Queensland.

Summary

2. The abuse of older Australians, including Queenslanders, is shamefully common.¹ The abuse of older persons is particularly common for vulnerable groups and communities including women, First Nations, and persons with disabilities.
3. The *Inquiry into elder abuse in Queensland* seeks input on the effectiveness and cohesiveness of responses to elder abuse, including human rights protections and civil and criminal legal frameworks.
4. The *Human Rights Act 2019* (the Human Rights Act) imposes obligations on public entities to act and make decisions about older persons in a way that is compatible with their human rights, and requires parliament to scrutinise new legislation that will have an impact on older Queenslanders for compatibility with human rights. The protections available under the Human Rights Act for protecting older Queenslanders could be improved by:
 - amending the Human Rights Act to specify that Commonwealth funded residential aged care facilities are ‘public entities’ under the Act to ensure all residential aged care providers in Queensland are required to act and make decisions compatibly with older Queenslanders’ human rights (**RECOMMENDATION 1**)
 - implementing the recommendations made by the *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019* report (**Human Rights Act Review**) to enhance the effectiveness of human rights protections available to older Queenslanders. (**RECOMMENDATION 2**)
5. The Anti-Discrimination Act prohibits discrimination on the basis of a person’s age in certain ‘areas’ (for example, work, and in the provision of goods or services). The Anti-Discrimination Act and the *Criminal Code Act 1899* (**Criminal Code**) also prohibit vilification on the basis of a number of protected grounds. However, this does not currently include age. The effectiveness of the Anti-Discrimination Act and the Criminal Code in protecting older Queenslanders from discrimination and vilification could be improved by:
 - commencing the provisions of the *Respect at Work and Other Legislation Amendment Act 2024* (**Respect at Work Act**) which introduces a positive duty to eliminate discrimination, sexual harassment, vilification and other objectionable

¹ See for example: A Gillbard, *Elder Abuse Statistics in Queensland: Year in Review 2023–24* (Elder Abuse Prevention Unit, Uniting Care, 2024); Lixia Qu et al, *National Elder Abuse Prevalence Study: Final Report* (Research Report, Australian Institute of Family Studies, July 2021).

conduct, and to take a preventative approach to eliminating discrimination in Queensland (**RECOMMENDATION 3**)

- commencing the amendments relating to vilification in the Respect at Work Act to prohibit civil and criminal vilification on the basis of age. (**RECOMMENDATION 4**)
6. Restrictive practices are often used on older people in residential aged care, health services, and disability services. Where restrictive practices are used inappropriately, this typically amounts to abuse. Regulation of restrictive practices in Queensland is sector-specific and piecemeal and creates risks in terms of non-compliance, under-reporting, and inhibiting efforts to build broad expertise on minimising and eliminating use of restrictive practices. The regulation of restrictive practices should be improved by:
- developing a consistent, multi-sector approach to regulating restrictive practices in Queensland that places respect for human rights at its center. (**RECOMMENDATION 5**)

Abuse of older people in Queensland

7. In the 2023-24 financial year, the Elder Abuse Prevention Unit received 2,674 abuse notifications from older people.² Abuse can involve physical violence, sexual abuse, psychological or emotional abuse, financial abuse, neglect, or social abuse.³
8. It is well established that ageism is a driver of abuse.⁴ Ageism refers to circumstances in which a person fails to afford another person equal value with other community members due to their age. Like any form of discrimination, ageism can create an environment in which members of society may tolerate or fail to recognise abuse of an older person when it occurs. Even perpetrators themselves may not understand their behaviour constitutes abuse. As a result, when older people do seek help, they may not be listened to. Ageism can also result in failure to consider older people when designing services, which leads to difficulties in accessing services and potentially isolation, which is a risk factor for abuse.⁵
9. The World Health Organisation *Global Report on Ageism* states:
- 'Ageism has serious and far-reaching consequences for people's health, well-being and human rights... Ageism reduces older people's quality of life, increases their social isolation and loneliness (both of which are associated with serious health*

² A Gillbard, *Elder Abuse Statistics in Queensland: Year in Review 2023–24* (Elder Abuse Prevention Unit, Uniting Care, 2024) 5.

³ A Gillbard, *Elder Abuse Statistics in Queensland: Year in Review 2023–24* (Elder Abuse Prevention Unit, Uniting Care, 2024). 6.

⁴ See for example: *Royal Commission into Aged Care Quality and Safety*, (Final Report, 2021) vol 2: The current system 217; *National Plan to End the Abuse and Mistreatment of Older People 2024-2034* (Public Consultation Draft, 2024) 22.

⁵ *Draft National Plan to End the Abuse and Mistreatment of Older People 2024-2034* (Public Consultation Draft, 2024) 22.

*problems), restricts their ability to express their sexuality and may increase the risk of violence and abuse against older people’.*⁶

10. The abuse of older Queenslanders is more likely to impact certain groups, in certain settings.

Vulnerable older Queenslanders are more likely to experience abuse

11. The statistics published by the Elder Abuse Prevention Unit and the *Draft National Plan to End the Abuse and Mistreatment of Older People* demonstrate that vulnerable older persons, including women, First Nations persons, and persons living with disabilities, are more likely to experience abuse.⁷
12. This is because the compounding impacts of structural inequality (for example, low wages, inequitable health care) experienced by these groups over a long period leaves them particularly vulnerable to abuse.⁸

Abuse in residential aged care

13. The *Royal Commission into Aged Care Quality and Safety (Royal Commission)* shone a light on the egregious human rights abuses occurring in residential aged care settings.⁹ The Royal Commission found a substantial number of instances of abuse including at the hands of staff members and in circumstances where staff had failed to protect residents from other residents. The Royal Commission also highlighted the inappropriate use of restraints in aged care.¹⁰

Inappropriate use of restrictive practices

14. Restrictive practices are commonly used on older people in a range of settings, including residential aged care, health services, and disability services.
15. A ‘restrictive practice’ is generally understood to be any practice or intervention ‘that has the effect of restricting the rights or freedom of movement of the relevant person’.¹¹
16. Types of restrictive practices include seclusion, chemical restraint, mechanical restraint, physical restraint, and environmental restraint (restricting access to all parts of a person’s environment, for example, a games room, garden).

⁶ World Health Organization, *Global Report on Ageism* (World Health Organization, 2015) xvi.

⁷ A Gillbard, *Elder Abuse Statistics in Queensland: Year in Review 2023–24* (Elder Abuse Prevention Unit, Uniting Care, 2024). 6; *Draft National Plan to End the Abuse and Mistreatment of Older People 2024-2034* (Public Consultation Draft, 2024) 22.

⁸ Lixia Qu et al, *National Elder Abuse Prevalence Study: Final Report* (Research Report, Australian Institute of Family Studies, July 2021).

⁹ *Royal Commission into Aged Care Quality and Safety*, (Final Report, 2021) vol 2: The current system.

¹⁰ *Royal Commission into Aged Care Quality and Safety*, (Final Report, 2021) vol 2: The current system, 99.

¹¹ See for example: *National Disability Insurance Scheme Act 2013* (Cth) s 9.

17. Where restrictive practices are used without clear justification or clinical indications, it will typically amount to abuse. The misuse of restrictive practices can cause serious physical and psychological harm, and inappropriate use of restraints has caused deaths.¹²

Impacts of abuse on older Queenslanders' human rights

18. Conduct constituting abuse, which can include physical violence, sexual abuse, psychological or emotional abuse, financial abuse, neglect, and social abuse, may limit one or more the rights protected by the Human Rights Act. Depending on the circumstances of the abuse, the rights limited could include:

- recognition and equality before the law (Human Rights Act s 15)
- protection from torture and cruel, inhuman or degrading treatment (Human Rights Act s 17)
- freedom of movement (Human Rights Act s 19)
- freedom of expression (Human Rights Act s 21)
- protection from unlawful or arbitrary interference with privacy, family, or home (Human Rights Act s 25)
- protection of families and children (Human Rights Act s 26)
- cultural rights, including of Aboriginal peoples and Torres Strait Islander peoples (Human Rights Act ss 27–28)
- right to liberty and security of person (Human Rights Act s 29)
- humane treatment when deprived of liberty (Human Rights Act s 30)
- right to health services (Human Rights Act s 37).

Effectiveness of current responses to elder abuse

Human rights protections - Human Rights Act

19. The Human Rights Act protects the equal rights of older Queenslanders by:
- requiring public entities to properly consider older people's human rights when acting and making decisions, and requiring them to make decisions that are compatible with older people's human rights¹³
 - requiring that legislation be interpreted in a way that is compatible with human rights¹⁴

¹² *Royal Commission into Aged Care Quality and Safety*, (Final Report, 2021) vol 2: The current system, 97.

¹³ *Human Rights Act 2019* (Qld) s 58.

¹⁴ *Human Rights Act 2019* (Qld) s 48.

- requiring any new legislation to be scrutinised for compatibility with human rights¹⁵
 - permitting a person to complain to the Commission if they believe a public entity has breached their obligations under the Human Rights Act, and have that complaint conciliated.¹⁶
20. A person cannot elect to have a human rights complaint determined by a court or tribunal, nor can they proceed to a tribunal if their complaint is unresolved. However, a person can ‘piggy-back’ their human rights complaint onto an existing court or tribunal proceeding.¹⁷
21. Example – how the Human Rights Act protects older persons
- The Human Rights Act requires hospital and health services providing functions of a public nature in Queensland to ensure any use of restrictive practices in relation to an older person is compatible with their human rights. This will typically require that the use of restrictive practices occurs only where there are no less restrictive means available to ensure the safety of the older person and other persons.*

Enhancing effectiveness of human rights protections – aged care providers to be ‘public entities’ under the Human Rights Act

22. Public entities under the Human Rights Act include ‘core’ public entities and ‘functional’ public entities, which are entities performing functions of a public nature for the State.¹⁸ The Human Rights Act also provides for entities to be prescribed by regulation to be a public entity.¹⁹
23. Relevant to older Queenslanders, core public entities include the Queensland Public Advocate, Queensland Public Guardian, Queensland Public Trustee, government owned hospital and health services, and government departments. Functional public entities include non-government organisations and private companies that are funded by the Queensland Government to provide public services.
24. The Human Rights Act specifically provides that National Disability Insurance Scheme (NDIS) service providers, when performing functions of a public nature in the State, are public entities.²⁰
25. Depending on how they are funded, residential aged care facilities in Queensland may be core or functional public entities. However, most aged care facilities are Commonwealth funded private institutions that are not public entities under the Human Rights Act.

¹⁵ *Human Rights Act 2019* (Qld) ss 38-47.

¹⁶ *Human Rights Act 2019* (Qld) s 77(2)(e).

¹⁷ *Human Rights Act 2019* (Qld) s 59(4).

¹⁸ *Human Rights Act 2019* (Qld) s 9.

¹⁹ *Human Rights Act 2019* (Qld) s 9(1)(j).

²⁰ *Human Rights Act 2019* (Qld) ss 9(2)(a) and (5).

26. As a result, a substantial number of residential aged care facilities are not legally required to consider older people's human rights under the Human Rights Act when making decisions about them and their care. This creates a gap in protection for older Queenslanders residing in those facilities compared with older Queenslanders residing in facilities which are public entities under the Human Rights Act.
27. The Committee should recommend that the Queensland Government amend the Human Rights Act to specify that Commonwealth aged care facilities providing services in Queensland are 'public entities' to ensure all aged care providers in Queensland are required to make decisions compatibly with older Queenslanders' human rights.

(RECOMMENDATION 1)

Enhancing effectiveness of human rights protections – improving the Human Rights Act

28. The Human Rights Act Review made a series of recommendations to enhance the operation and effectiveness of the Human Rights Act in protecting Queenslanders' human rights.²¹
29. Of particular relevance, the Human Rights Act Review recommended to:
- provide a separate cause of action to permit persons to commence proceedings against a public entity for an alleged contravention of the Human Rights Act (i.e., without being required to piggy-back onto an existing action) (recommendation 61); and to permit courts and tribunals considering human rights claims to order the full range of remedies within their power, including damages (recommendation 62)
 - allow the Commission to refer unresolved human rights complaints to a tribunal for determination and effective remedy (recommendation 60)
 - give the Commission functions to investigate and produce reports on systemic matters affecting the human rights of Queenslanders (recommendation 17)
 - ensure the government, the judiciary and legal profession, parliamentarians, and the community have access to education on human rights (recommendations 16, 25, 28, 29, 30, 33)
 - resource public entities to undertake an audit of legislation and policies for compatibility with human rights and deliver customised human rights training to their staff (recommendations 3, 16, 26)
 - resource the Commission to monitor public entities' compliance with the Human Rights Act (recommendations 2, 16, 17, 19)
 - require public entities to ensure participation of First Nations persons and people with disabilities in decisions that affect them (recommendation 50)

²¹ Susan Harris Rimmer, *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019* (Qld) Final Report (Statutory Review, 30 September 2024).

- repeal section 5A of the *Corrective Services Act 2006* which restricts the application of the Human Rights Act in relation to prisoners (recommendation 64); and
- that the Commission support community organisations who are public entities under the Human Rights Act to comply with their obligations (recommendation 35).

30. Implementation of these recommendations would enhance the human rights protections available to older persons in Queensland by:

- ensuring older Queenslanders can bring an action against an entity about a failure to act compatibly with their human rights related to abuse, and obtain an appropriate remedy
- ensuring an older Queenslanders can have their complaint determined by a tribunal, where a complaint about a failure to act compatibly with their human rights is not resolved through conciliation
- ensuring systemic human rights abuses of older Queenslanders can be investigated and reported on by the Commission
- ensuring relevant decision-makers, including public entities, are appropriately trained on human rights and can apply that training to protect the rights of older Queenslanders, thereby avoiding abuse
- ensuring public entities' compliance with the Human Rights Act is supported and monitored
- ensuring public entities allow First Nations Elders and older persons with disabilities to participate in decisions that affect them
- ensuring older Queenslanders who are imprisoned have the full protection of the Human Rights Act.

31. The Committee should recommend to the Queensland Government that further consideration be given to implementing the recommendations made by the Human Rights Act Review to enhance the effectiveness of human rights protections available to older Queenslanders. **(RECOMMENDATION 2)**

Civil and criminal legal protections - the Anti-Discrimination Act

32. As noted above, ageism is a key driver of abuse. The Anti-Discrimination Act responds to ageism by:

- prohibiting discrimination on the basis of age in particular 'areas', for example, work, education, the provision of goods or services, accommodation, club

memberships and affairs, superannuation or insurance, and the administration of State laws and programs²²

- permitting a person to complain to the Commission if they believe they have been discriminated against, and have the complaint resolved through conciliation, where possible²³
- permitting unresolved complaints to proceed to a tribunal for determination.²⁴

Enhancing the effectiveness of civil and criminal legal protections – taking a preventative approach to discrimination

33. As described above, the current approach to combatting discrimination, including discrimination based on age (ageism), relies on the resolution of complaints made by individual people or groups about conduct that has already happened. Many older people find it difficult to make a complaint. This may be because of limited access to support to make a complaint, or a lack of understanding about the protections available. These barriers limit the effectiveness of the Anti-Discrimination Act in combatting ageism.²⁵

34. The *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* report (**Building Belonging report**) recommended that the Queensland Government take a preventative approach to eliminating discrimination in Queensland by amending the Anti-Discrimination Act to include a positive duty for duty holders to take reasonable steps to eliminate discrimination.²⁶

35. Rather than responding to instances of discrimination via complaints, a positive duty would proactively prevent discrimination by requiring duty holders to take steps to prevent discrimination before it occurs. The requirement to take steps may also promote a better understanding of the causes and impacts of discrimination, having a further preventative effect.²⁷

36. In 2024, the Queensland Parliament passed the Respect at Work Act which contains a positive duty requiring duty holders (persons conducting a business or undertaking) to take reasonable and proportionate measures to eliminate discrimination, sexual

²² There are limited exceptions to this prohibition which permit discrimination on the basis of age including where there is a genuine occupational requirement for someone of a particular age to fulfill the duties of a job effectively (e.g., a role in a play might require a person of a particular age). Also, certain professions can be required to retire at a specified age. See *Anti-Discrimination Act 1991* (Qld) s7(f), Part 4, ss 25, 32, 106A.

²³ *Anti-Discrimination Act 1991* (Qld) ss 134, 158.

²⁴ *Anti-Discrimination Act 1991* (Qld) s164A.

²⁵ Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 215.

²⁶ Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 214-227.

²⁷ Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 217.

harassment, harassment on the basis of sex, and other objectionable conduct as far as possible.²⁸

37. However, on 14 March 2025, the Queensland Government announced the commencement of the Respect at Work Act would be paused indefinitely owing to concerns about discrete clauses in the Act.²⁹
38. The Committee should recommend that Government commence the positive duty provisions in the Respect at Work Act to better prevent ageism and address a key driver of the abuse of older people in Queensland. (**RECOMMENDATION 3**)

Enhancing the effectiveness of civil and criminal legal protections – improving protections against vilification

39. Civil vilification occurs where a person commits a public act that incites hatred towards, severe ridicule of, or serious contempt for a person or group because of a protected attribute.³⁰ Criminal vilification occurs where that public act involves a threat of harm to a person or their property, or inciting others to threaten physical harm to a person or their property.³¹
40. Currently, civil and criminal vilification are prohibited on the basis of race, religion, sexuality, and gender identity. Civil vilification is also prohibited on the basis of sex characteristics.³² Vilification on the basis of age is not prohibited.
41. In June 2023, the then Legal Affairs and Safety Committee, recommended that legislation prohibit civil vilification on the basis of age.³³
42. The Respect at Work Act introduced amendments to prohibit civil and criminal vilification on the basis of age.³⁴ However, as noted above, the commencement of these amendments has been indefinitely paused.³⁵
43. Failing to prohibit civil and criminal vilification on the basis of age could lead to older people withdrawing from the community and becoming isolated. Failing to prohibit vilification could also embolden community members' ageist beliefs and create circumstances in which the abuse of older persons is more common and tolerated.

²⁸ *Respect at Work and Other Legislation Amendment Act 2024* (Qld) s 25.

²⁹ Deb Frecklington, Attorney-General and Minister for Justice and Minister for Integrity, Queensland Government, 'Crisafulli Government to Consult on Anti-Discrimination Laws' (Media Release, 14 March 2025) <https://statements.qld.gov.au/statements/102168>.

³⁰ *Anti-Discrimination Act 1991* (Qld) s 124A.

³¹ *Criminal Code Act 1899* (Qld) s 52A.

³² *Anti-Discrimination Act 1991* (Qld) s 124A; *Criminal Code Act 1899* (Qld) s 52A.

³³ Legal Affairs and Community Safety Committee, Parliament of Queensland, Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023 (Report No 49, 2023) 9.

³⁴ *Respect at Work and Other Legislation Amendment Act 2024* (Qld) ss 21, 57.

³⁵ Deb Frecklington, Attorney-General and Minister for Justice and Minister for Integrity, Queensland Government, 'Crisafulli Government to Consult on Anti-Discrimination Laws' (Media Release, 14 March 2025) <https://statements.qld.gov.au/statements/102168>.

44. The Committee should recommend that the Queensland Government commence the amendments relating to vilification in the Respect at Work Act to prohibit civil and criminal vilification on the basis of age. (**RECOMMENDATION 4**)

Enhancing the effectiveness of civil and criminal legal protections - improving the regulation of restrictive practices

45. The regulation of the use of restrictive practices in Queensland varies depending on the sector in which the practice is deployed. This sector-specific and inconsistent approach to regulation creates a range of problems. For example, the Queensland Public Advocate has identified that the sector-specific approach:
- makes compliance difficult
 - results in unauthorised usage and underreporting
 - inhibits broad expertise-led approaches to minimising or eliminating the use of restrictive practices.³⁶
46. In particular, the regulation of restrictive practices in aged care has been described as 'extraordinarily complex' and 'flawed',³⁷ and the inappropriate use of restrictive practices has been identified as a problem in aged care for several decades.³⁸
47. A consistent, multi-sector approach to regulation of restrictive practices is urgently needed to ensure restrictive practices are not being used inappropriately, and to facilitate compliance with appropriate standards. It would also support older Queenslanders (and other persons subject to restrictive practices) to understand and access safeguards and facilitate the development of cross-sector expertise on minimising or eliminating use of restrictive practices.³⁹
48. In 2024, the former Queensland Government introduced the Disability Services (Restrictive Practices) and Other Legislation Amendments Bill 2024 (**Disability Services Bill**) which proposed to introduce a 'senior practitioner' model, whereby a senior practitioner would authorise the use of restrictive practices for recipients of NDIS supports or disability services. The model also provided for the monitoring and management of complaints about the use of restrictive practices.
49. Noting the value of this model, the Commission, along with a number of organisations that made submissions on the Bill during the Community Support and Services

³⁶ John Chesterman, *Proposal for the Future Regulation (and Reduction in the Use) of Restrictive Practices in Queensland: Discussion Paper* (Discussion Paper, March 2025) 1.

³⁷ John Chesterman, *Proposal for the Future Regulation (and Reduction in the Use) of Restrictive Practices in Queensland: Discussion Paper* (Discussion Paper, March 2025) 7.

³⁸ *Royal Commission into Aged Care Quality and Safety*, (Final Report, 2021) vol 2: The current system.

³⁹ John Chesterman, *Proposal for the Future Regulation (and Reduction in the Use) of Restrictive Practices in Queensland: Discussion Paper* (Discussion Paper, March 2025) 1.

Committee, argued that the scope of the Bill should be extended to additional sectors.⁴⁰ The Bill lapsed prior to the 2024 State election.

50. In 2025, the Queensland Public Advocate released a discussion paper advocating for a similar ‘senior practitioner’ model whereby a senior practitioner (supported by local authorisers) would approve, guide and monitor the use of restrictive practices across aged care, disability services, health services, education, and out-of-home care.⁴¹ The Public Advocate’s proposal notes Victoria, Australian Capital Territory, and Tasmania have established variations of a senior practitioner model.

51. The Committee should recommend that the Queensland Government urgently develop a consistent, multi-sector approach to the regulation of restrictive practices in Queensland. The government should consider the approach taken in the Disability Services Bill and recommended by the Queensland Public Advocate. Any regulatory approach should place respect for human rights at its centre. **(RECOMMENDATION 5)**

⁴⁰ Community Support and Services Committee, Parliament of Queensland, Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (Report No 48, 57th Parliament, July 2024).

⁴¹ The Queensland Public Advocate’s model proposes:

- local authorisers would be registered with a Senior Practitioner;
- all non-emergency usage of restrictive practices would need to be authorised by these local authorisers or by the Senior Practitioner;
- any usage beyond one-off or very short-term usage (which the office of the Senior Practitioner would be responsible for defining) would need to be accompanied by a Behaviour Support Plan, lodged with the Senior Practitioner;
- there would be specific requirements for the use of restrictive practices in emergency scenarios, which must be reported to the Senior Practitioner; and
- the Senior Practitioner would (amongst other things) collate data and publicly report on the use of restrictive practices and provide practical guidance

See: John Chesterman, *Proposal for the Future Regulation (and Reduction in the Use) of Restrictive Practices in Queensland* (Discussion Paper, March 2025) 11.