

Inquiry into Elder Abuse in Queensland

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Education, Arts and Communities Committee
By online submission
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Submission Responding to the Education, Arts and Communities Committee Inquiry into Elder Abuse in Queensland (2025)

Thank you for the opportunity to provide a submission to the Education, Arts and Communities Committee Inquiry into Elder Abuse (EA) in Queensland ('the Inquiry'). We would like to commend the Queensland Government for undertaking this important project with a view to preventing and adequately responding to EA in Queensland.

We provide this submission in response to the terms of reference. The submission will briefly explain the authors before noting overarching considerations and then making specific comments in response to the terms of reference.

Author Background

The authors are researchers from the Australian Centre for Health Law Research (ACHLR). ACHLR is a specialist research Centre within the Queensland University of Technology's (QUT) Faculty of Business and Law. ACHLR undertakes empirical, theoretical and doctrinal research into complex problems and emerging challenges in the field of health law, ethics, technology, governance and public policy. ACHLR has research strengths in elder law and EA in particular. Dr Purser and Professor Cockburn co-established and co-lead the Planning for Healthy Ageing Program nested within ACHLR. Amanda Ward is a PhD student undertaking her doctoral studies at QUT in the area of elder financial abuse (EFA).

Points to Note

The terms of reference for the Inquiry raise several important considerations that we would like to address at the outset before making specific comments.

1. **Definitional challenges.** In considering questions relating to EA, especially in relation to prevalence of the various forms, it is first necessary to not only define 'EA', noting the adoption of the broadly used World Health Organization (WHO) definition, but to also consider the term 'elder', specifically in the context of chronological age but also in relation



to what ‘elder’ means. That is, at what chronological age does someone become ‘elder’? Various definitions are adopted ranging from (usually) 60 or 65 years of age and over. The WHO and the Australian Law Reform Commission (ALRC) have defined ‘older’ persons as those aged 65 years and over.¹ For Indigenous persons, this can be from approximately 50 years of age. Further questions then arise in relation to the use of the term ‘elder’ noting the term can have a particular meaning for Indigenous people.

Dialogue exists around the use of the term ‘older’, but this too can raise questions.² One of the most notable challenges is the difficulty with facilitating knowledge and understanding about EA, a term in common usage, such that attempting to change the name may disrupt the work that has been done, acknowledging certain ‘brand recognition’ that occurs with the current term.³ It is also important to acknowledge that EA is separate to family violence and to ensure that it is not subsumed within that other very important societal problem at a risk of losing the significant challenges that occur in the specific EA context.⁴

2. **Older women.** Vulnerabilities can be experienced by older women on multiple fronts,⁵ including in relation to housing and accommodation.⁶ Abuse, neglect and violence against older women can often go undetected and/or there may be increased barriers for older women in accessing justice in response to EA.⁷ It is therefore important to gather separate data on the risk factors and abuse experienced by older women so that targeted evidence-based interventions and responses can be developed and implemented.
3. **Decision-making capacity.** The presumption of capacity is a fundamental but often overlooked principal,⁸ especially in the context of EFA, noting, for example, the proposed harmonisation of state and territory laws regarding enduring powers of attorney (EPAs).⁹ EPAs and stakeholder involvement with EPAs (such as by banks, financial institutions, residential aged care facilities and other service providers) are a fundamental consideration

¹ Australian Law Reform Commission, *Elder Abuse*, (Discussion Paper 83, 2016) 22.

² Kelly Purser, Tina Cockburn and Elizabeth Ulrick, ‘Examining Access to Formal Justice Mechanisms for Vulnerable Older People in the Context of Enduring Powers of Attorney’ (2020) 12(1) *Elder Law Review*. See generally B Lewis, K Purser and K Mackie, *The Human Rights of Older Persons: A Human Rights-Based Approach to Elder Law* (Springer, 2020), Chapter 1.

³ Purser, Cockburn and Ulrick, n 2.

⁴ Lewis, Purser and Mackie, n 2, Chapter 7.

⁵ See generally Lewis, Purser and Mackie, n 2, Chapters 1 and 7.

⁶ Tina Cockburn, ‘Addressing Power Dynamics in Granny Flat Arrangements: Access to Justice when Family Agreements Lead to Disagreements,’ *Queensland Law Society Succession and Elder Law Conference*, (2023) Brisbane, Australia. (Unpublished) available at: <Addressing power dynamics in granny flat arrangements: Access to justice when family agreements lead to disagreements | QUT ePrints>; Lewis, Purser and Mackie, n 2, Chapter 9.

⁷ Purser, Cockburn and Ulrick, n 2; Lewis, Purser and Mackie, n 2, Chapters 7 and 9.

⁸ See generally, K Purser, *Capacity Assessment and the Law: Problems and Solutions* (Springer, 2017); Lewis, Purser and Mackie, n 2, Chapter 6.

⁹ Kelly Purser et al, ‘Strengthening the Response to Elder Financial Abuse and the Proposed Enduring Power of Attorney Register: Suggested First Steps’ (2023) 3 *University of New South Wales Law Journal Forum* 1. See also: Kelly Purser et al, *Submission to the Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney Consultation Paper* (2023); Kelly Purser et al, *Submission to the Attorney General's Department regarding National Register of Enduring Powers of Attorney - Public Consultation Paper* (2021); Kelly Purser et al, *Submission Responding to the Australian Government Attorney-General's Department Enhancing Protections Related to the use of EPOA Instruments Consultation RIS* (2020).



in any discussion about addressing EFA. Definitions, national guidelines and education/training about capacity and assessing incapacity are necessary, acknowledging that capacity is time and decision specific. In particular, issues relating to the capacity test for making EPAs,¹⁰ fluctuating capacity and the implications for those relying upon powers under EPAs require focused education and training for all stakeholders.¹¹

4. **Training and education.** There is a need for focused, effective and accessible evidence-based education and training programs including in relation to the following:
 - a) Communities broadly regarding EA, including EFA. This should include targeted training about the utility of substituted decision-making documents (EPAs and advance health directives (AHDs)), including not only their nature and effect, but also about the obligations on attorneys in exercising their power under these documents. Such training can be directed towards prospective principals to encourage understanding about who to appoint as their attorney(s), and how, as well as the significance of the document. Persons who witness EPAs, including lawyers and others such as Justices of the Peace, should engage in ongoing education, including in relation to their responsibility to certify the capacity of the principal at the time of execution and keep records about the circumstances at the time of execution. Provision of education and training for attorneys, both at the time of accepting the responsibilities granted and when the power commences, may help safeguard against both intentional but also inadvertent EFA by ensuring attorneys understand the significant legal and equitable obligations applying to their position.¹² Attorneys should also be provided with education in relation to the nature and effect of EPAs, their legal, equitable (particularly fiduciary) and statutory responsibilities, especially the requirement to comply with the general principles in s 6C of the *Powers of Attorney Act Qld 1998* (Qld) (when attorneys are exercising their powers, and in particular the requirement that the views, wishes and preferences of the adult are to be taken into account),¹³ when the power of attorney takes effect, record keeping responsibilities, and the power to make applications to the Supreme Court and/or the Queensland Civil and Administrative Tribunal (QCAT) for directions and advice.¹⁴
 - b) Key stakeholders including banks and financial institutions, aged care facilities, hospitals and other service providers such as doctors, social workers and other health professionals. This should include training and education to increase their understanding about EA and recognition of warning signs, capacity and incapacity assessment, as well as ageism and the validity of EPAs to avoid delay, disputes, costs and unnecessary applications to QCAT.

¹⁰ *Powers of Attorney Act 1998* (Qld) s 41.

¹¹ See for example the issues raised by *Lambourne and Ors v Marrable and Ors* [2023] QSC 219. See generally Purser, n 8, Chapter 5.

¹² Tina Cockburn, 'Equity in Estate Litigation' (2017) 23(10) *Trusts and Trustees* 1066; Purser et al, n 9 ('Strengthening the Response to Elder Financial Abuse and the Proposed Enduring Power of Attorney Register: Suggested First Steps'), 1.

¹³ *Powers of Attorney Act 1998* (Qld) s 6C.

¹⁴ *Powers of Attorney Act 1998* (Qld) ss 109A, 118.



- c) Education and training programs are also required for other stakeholders, including legal and financial professionals (such as accountants and financial planners), witnesses, attorneys, principals, family members and the broader community.

It is acknowledged that education and training programs currently exist, but questions arise as to the efficacy and accessibility of these programs given the pervasive and persistent nature of EA.

5. **Technology.** COVID-19 highlighted the role of technology and its potential for use as a tool of abuse in addition to the benefits that may come from utilising technological advancements. Considering the role of technology, safeguards, as well as digital access and literacy are also important considerations in combatting EA.¹⁵
6. **Tribunals.** Consideration is needed of the role tribunals play in safeguarding against EA especially the potential to increase access to justice pathways. This includes ensuring that proceedings are conducted in an informal way that minimises costs to parties and is as quick as is consistent with achieving justice¹⁶ and ensuring that the tribunal is accessible and responsive to the diverse needs of persons who use the tribunal.¹⁷
7. **Human rights framework and ageism.** The appropriateness of adopting a human rights framework in this context, and the need to balance dignity and autonomy with safeguarding, is well-established, especially giving consideration to the PANEL (participation, accountability, non-discrimination, equality, empowerment and legality) principles and that of dignity.¹⁸ Amongst other human rights, older people have an inalienable right to enjoy a life of dignity, independence and security.¹⁹ Nevertheless, overt and subconscious ageism remains a significant problem. Ageism can also negatively affect an older person's rights to access justice and to equality before the law (see, for example, the *International Covenant on Civil and Political Rights* (ICCPR) art 26). Connected to this is the idea that ageing is something that happens to other people and older people are not 'us' (that is, 'othering'). Education is fundamental. Such education needs to be subject to ongoing reflective evaluation to ensure continual improvement in efficacy given that ageism still plays a significant role in facilitating EA but also in hindering the people who have experienced it from accessing appropriate supports and remedial relief.
8. **Equitable and legal principles.** Understanding the interplay between equitable principles (particularly undue influence, unconscionable conduct and fiduciary obligations) and the

¹⁵ For a discussion, see: Kelly Purser, Tina Cockburn and Bridget Crawford, 'Wills Formalities Beyond COVID-19: An Australian-United States Perspective' (2020) *University of New South Wales Law Journal Forum*, 2020 (5), pp. 1-14; Bridget Crawford, Kelly Purser and Cockburn, Tina, 'Wills Formalities in a Post-Pandemic World: A Research Agenda' (2021) *University of Chicago Legal Forum* (2021) 93-126; Kelly Purser and Tina Cockburn, 'Wills Formalities in the Twenty-First Century - Promoting Testamentary Intention in the Face of Societal Change and Advancements in Technology: An Australian Response to Professor Crawford by Kelly Purser and Tina Cockburn' (2019) *Wisconsin Law Review Forward* (2019) (4), 46-64.

¹⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 4(c).

¹⁷ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 4(e).

¹⁸ Purser, n 8.

¹⁹ See, for example: Australian Law Reform Commission, *Elder Abuse – A National Legal Response* (Report 131, 2017) <<https://www.alrc.gov.au/publication/elder-abuse-a-national-legal-response-alrc-report-131/>>; Lewis, Purser and Mackie, n 2.



common law is fundamental to facilitating access to justice where EA has been perpetrated. This includes understanding, in the absence of evidence as to clear intention, the equitable presumptions of resulting trust, advancement, and undue influence.²⁰

9. **Rigorous evidence-based research.** A rigorous and reliable evidence-base needs to be established in relation to not only prevalence rates of EA but also attitudes, knowledge, community perceptions, enablers and barriers to accessing justice, and the role of stakeholders (such as professional advisors including lawyers, accountants and financial advisors, banks, financial institutions and aged care facilities).²¹
10. **Authentic consultation with all stakeholders.** The inclusion of hearing from those people with lived experience in the terms of reference is noted and commendable, including the promotion of the human rights-based principle of participation. It is important, however, to ensure genuine inclusion and to give consideration as to how this will occur in a meaningful way. This should also include principles of co-design, including Indigenous led projects to understand the cultural, practical and legal barriers faced by Aboriginal and Torres Strait Islander people, as well as people from culturally and linguistically diverse communities.
11. **Funding.** Adequacy and certainty of funding for services and rigorous research is a challenging issue to which there is no easy answer. Funding for community services, such as community legal centres, advocacy groups, healthcare and social work and peer-to-peer support programs, especially in regional, rural and remote areas, are important tools when considering how to safeguard against and respond to EA. In addition, resources should be allocated to dispute resolution and mediation services to facilitate timely and cost effective access to justice.

Response to the Terms of Reference

1. **The abuse of older people in Queensland (elder abuse), defined as a single or repeated act, or lack of appropriate action, in the context of a relationship of trust, causing harm or distress, including the:**
 - a. **nature and extent, including for vulnerable cohorts, of:**
 - i. **forms of neglect and abuse, such as physical, sexual, psychological, emotional and financial;**
 - ii. **relationships where elder abuse occurs, including family and kinship relationships;**
 - iii. **risk and protective factors, and barriers and enablers for people to access support.**

²⁰ Cockburn, n 12, 1066.

²¹ See for example, Tina Cockburn et al, *The Role of Financial Planners in Preventing, Recognising and Responding to Elder Financial Abuse* (2021). See also Queensland Law Society, 'A Solicitors Role in Detecting and Responding to Elder Abuse' at <<https://www.qls.com.au/Practising-law-in-Qld/Ethics-Centre/Rules-Resources/A-solicitor%E2%80%99s-role-in-detecting-and-responding-to->>>.



The goal of identifying the nature and extent of the forms of EA, the relationships where it occurs, as well as the risk factors, and barriers and enablers to accessing support is an admirable one. However, the general themes identified above are relevant to this term of reference, particularly in relation to the need for rigorous methods underpinning the collection of the data necessary to ensure that any response is grounded in the evidence. This should not only inform the immediate response but also facilitate a reflective approach in terms of the ongoing response to ensure review and improvement mechanisms are inbuilt.

As noted, there is a need for consideration of clear definitions to facilitate reliable research and the WHO definition is widely adopted. However, it must also be noted that defining ‘older’ by a chronological age alone can have flow on effects in terms of ageism and othering. It is also impossible to homogenize an age-based cohort and to attempt to do so runs counter to human rights-based principles.²²

Similar concerns arise in terms of identifying ‘vulnerable’ cohorts noting the problematic nature of labelling and what this ‘label’ can represent to third parties as well as the potential role they can play in becoming ‘self-fulfilling prophecies’. That is, a person with that label is the label without consideration for the individual and specific circumstances the individual finds themselves in at any given moment.

Quality work exists examining the nature and extent of EA so a thorough synthesis and critical review of this work in conjunction with the collection of any new data would assist in developing an evidence-based response moving forward. For example, further work is needed in relation to the role of stakeholders (such as banks and financial institutions as well as aged care facilities) and professionals (such as lawyers, doctors and social workers), in examining the nature and extent of EA, particularly EFA.²³

A focus on identifying relationships commonly seen in EA will also be useful.²⁴ This can, for example, then be used to identify potential problems and begin to implement measures to try and safeguard against abuse. For instance, in the context of EFA, inadvertent abuse of EPAs is a known problem. This is because significant legal and equitable obligations are imposed on attorneys that they may not necessarily be aware of and/or may not understand. Thought therefore needs to be given to how this lack of effective education can be remedied as the current strategies do not seem to be consistently or universally working.

Facilitating enablers and addressing barriers to accessing supports is a key issue in the EA context. The role of education is again important here to ensure that people are aware of the supports that are available. It is also important to acknowledge the different experiences that can occur geographically in relation to accessing support as well as justice, and consideration is needed for those in regional but especially rural and remote areas.

²² Lewis, Purser, and Mackie, n 2.

²³ Cockburn et al, n 21.

²⁴ See for example, Kelly Purser et al, ‘Alleged Financial Abuse of those Under an Enduring Power of Attorney: An Exploratory Study’ (2018) 48(4) *British Journal of Social Work* 887 – 905.



- b. effectiveness and cohesiveness of responses to elder abuse, including Queensland laws, policies, programs and services, in preventing, safeguarding, identifying and responding to elder abuse, including:**
 - i. adult guardianship and violence protection services, other funded services, and community-based interventions;**
 - ii. civil and criminal legal frameworks;**
 - iii. community awareness, education and engagement initiatives;**
 - iv. monitoring, evaluation and reporting processes;**
 - v. human rights protections.**

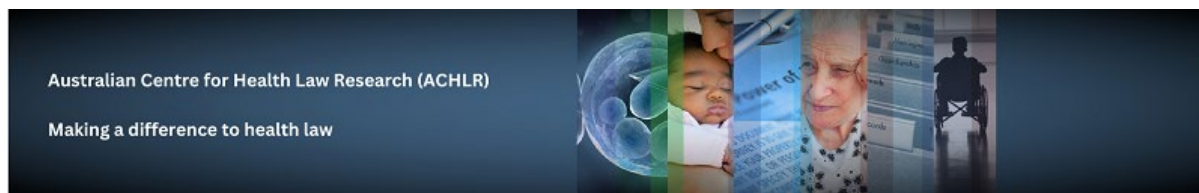
It would be useful to undertake a comprehensive, strategic review of *all* relevant laws, regulations, equitable principles, policies, principles, practice, programs and services, both Government and community run as well as any monitoring, evaluation and reporting processes that are currently in place.

Once this information is gathered, a rigorous methodology then needs to be developed to assess the efficacy of existing mechanisms to determine what is in place, identify opportunities for enhancing existing initiatives and understand the need for the development of alternative and supplementary initiatives to fill identified gaps. Authentic engagement with people who have lived experiences of EA, including EA which arises in the context of supported and substitute decision-making, is fundamental in determining whether this information, together with the rights and responsibilities of various stakeholders, is known and/or understood by individuals and what initiatives are or are not working effectively. By listening to and understanding people with lived experience, discipline experts (including academic, legal and other professionals such as doctors and social workers), policy and law-makers, stakeholders and older people can work collaboratively to form a co-production group to make the law more accessible by translating legal frameworks and well established legal principles to prevent, safeguard against and respond to EA in a meaningful way through participation, care, support, empowerment as well as respect for dignity and autonomy (wherever possible).²⁵

There is a pressing need to undertake rigorous research, involving multiple stakeholders and those with lived experience, about the existing legal and regulatory frameworks as well as to evaluate the effectiveness of the current legal and regulatory framework, policy and practice relating to EA. This should also include evaluation of the associated criminal and civil frameworks and access to justice mechanisms (noting the existence of barriers and enablers for victims of EA). It is imperative that an evidence-based approach be applied to inform any proposed law reform, including the potential adoption of initiatives from other Australian jurisdictions. It is therefore critical that this work, including an evaluation of the utility and effectiveness of initiatives/approaches in other jurisdictions, be completed before *any* reforms are implemented.

As stated above, this area sees a complex intersection between the common law (for example, criminal and family law, noting that the Australian Capital Territory has criminalised abuse or

²⁵ R Harding and E Taşcıoğlu, *Everyday Decisions Project Report: Supporting Legal Capacity through Care, Support and Empowerment* (University of Birmingham, 2017).



neglect of a "vulnerable person", which may include older persons²⁶ – there is a need to evaluate the utility and effectiveness of this new legislation before determining whether or not to adopt it in Queensland, especially in the context of whether the existing Queensland criminal law framework relating to EA is adequate) and equitable principles. A good example of the complexities in the legal framework and associated policy and practice, is capacity and the assessment of incapacity, fundamental concepts in supported and substitute decision-making regimes which can be both beneficial to older people but also used as vehicles for abuse.

It is important to ensure the provision of reasonable, appropriate and proportionate safeguards to promote human rights.²⁷ This includes legal and regulatory oversight supported by quick, affordable and informal (wherever possible) access to justice, including through mediation and alternative dispute resolution mechanisms, to resolve disputes and provide redress and compensation in appropriate cases. For example, tribunals, provided they are adequately resourced, government supported, and are empowered with jurisdiction, ideally enable low cost, expedient and informal access to justice, noting that the Queensland Civil and Administrative Tribunal (QCAT) has a statutory obligation to take reasonable steps to ensure that parties understand matters including the practices and procedures of the tribunal, assertions made in proceedings and the legal implications thereof, and the decisions of the tribunal. QCAT must also ensure that proceedings are conducted in a way that recognises and is responsive to cultural diversity, Aboriginal and Torres Strait Island tradition, including the needs of a party to or witness in the proceeding who is from another culture and/or linguistic background or and/is an Aboriginal person or Torres Strait Islander.²⁸

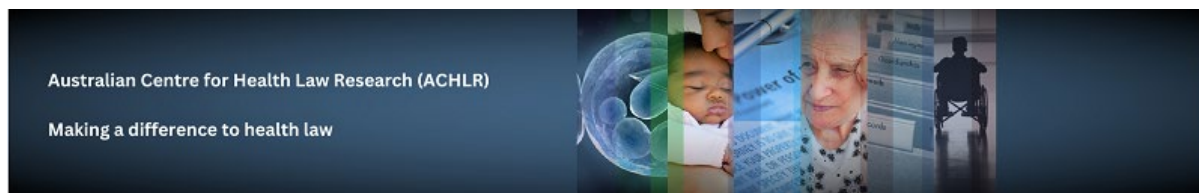
In relation to the complex question of decision-making capacity, *diminished* capacity needs to be distinguished from *lost* capacity. This is important because when a person has lost capacity, there is no operative 'will' to be able to support (for instance someone in a coma) and therefore supported decision-making may become challenging if not impossible (subject to the application of the general principles and the principle of substituted judgement which requires that the adult's views, wishes and preferences demonstrated when they did have capacity be identified and supported so far as practical).²⁹ Substitute decision-making documents (EPAs and AHDs) generally deal with *lost* capacity (subject to the terms of the document itself, which may take effect immediately, even in cases where the adult retains capacity). In this context, lost capacity means that the individual (principal) no longer retains the ability (or is able to be supported) to make their own legally recognised decisions and the presumption of capacity has been overturned. It is important to recognise that even when substitute decision-making is in place the substitute decision-maker has an obligation to make decisions taking into account the general principles, including recognising and preserving to the greatest extent practicable, the adult's right to make their own decision and, if possible, support the adult to make a decision,

²⁶ *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* (ACT).

²⁷ *Human Rights Act 2019* (Qld) s 13(1): 'A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom'.

²⁸ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 29.

²⁹ *Powers of Attorney Act 1998* (Qld) s 6C, especially (9) and (10) (substitute decision-makers under enduring documents). See also *Guardianship and Administration Act 2000* (Qld) s 11B (substitute decision-makers appointed by QCAT).



recognising and taking into account any views, wishes and preferences expressed or demonstrated by the adult.³⁰

Undue influence is also relevant here noting that although similarities exist, undue influence is distinct from incapacity at law.³¹ That is, an individual has to have a legally recognised ‘will’ (capacity) for it to be overborne (unduly influenced) at law. Questions of the intersection between undue influence and diminished capacity tend to arise more in the context of supported decision-making rather than substitute decision-making,³² requiring careful consideration of potential oversight mechanisms of supporters to provide safeguards for people who may be vulnerable by reason of diminished or lost capacity. Allegations of diminished capacity and incapacity, and the “need” for supported, substituted decision-making and/or substituted judgement can be prevalent in EA. Exacerbating this is the lack of genuine understanding about capacity, including financial capacity, and supported and substitute decision-making throughout society. Capacity assessments frequently lack transparency and connection to the requisite legal framework with assessments not infrequently undertaken on an ad hoc basis by persons with varied expertise.³³ This includes in relation to EPAs which can then be used in banks and other financial institutions to inappropriately access a person’s finances.³⁴ As stated above, other equitable doctrines relevant here include unconscionable conduct as well as fiduciary obligations in addition to potential equitable estoppel claims.³⁵

There is a link between EA, particularly EFA, and inheritance, which raises the question of how succession laws respond to abuse. Recognised as ‘inheritance impatience’ or ‘early inheritance syndrome,’ abuse can be financially motivated for those seeking to obtain early access to an expected inheritance.³⁶ Often, this form of EFA happens in silence and can remain hidden until after the victim has died and the estate’s personal representative is tasked with accounting for estate assets and liabilities.³⁷ A strategic review of laws which address EFA would provide an opportunity to consider whether Queensland’s existing succession laws could and should be better utilised to prevent and intervene in EFA cases. For example, in the United States, several jurisdictions demonstrate strong condemnation of EA by expanding the scope of the existing forfeiture rule (known as the ‘slayer rule’) to disqualify perpetrators from inheriting from the victim’s estate.³⁸ This novel approach uses succession law to remove the

³⁰ *Powers of Attorney Act 1998* (Qld) s 6C, especially (9) and (10). See also *Guardianship and Administration Act 2000* (Qld) s11B.

³¹ Kelly Purser and Karen Sullivan, ‘Capacity Assessment and Estate Planning: The Therapeutic Importance of the Individual’ (2019) 64 *International Journal of Law and Psychiatry* 88.

³² *Ibid.*

³³ See generally, Purser, n 8.

³⁴ Purser et al, n 24.

³⁵ Cockburn, n 12.

³⁶ Purser, Cockburn and Ulrick, n 2, 22-3.

³⁷ See, for example, *Gillespie v Gillespie* [2013] QCA 99; *Anderson v Anderson* [2013] QSC 008; *Anthony Taverniti and Steven Domenico Taverniti (as Executors of the Estate of Domenico Taverniti) v Taverniti* [2016] WADC 59.

³⁸ See generally, Travis Hunt, ‘Disincentivizing Elder Abuse Through Disinheritance: Revamping California Probate Code Sect 259 and Using it as a Model’ [2014] (2) *Brigham Young University Law Review*; Jennifer Piel, ‘Expanding Slayer Statutes to Elder Abuse’ (2015) 43(3) *The Journal of the American Academy of Psychiatry and the Law* 369; Emily Irwin, Protecting Mamaw and Her Estate: Elder Abuse Disinheritance in Kentucky’ (2016) *University of Louisville Law Review* 307.



financial motivation which often underlies abuse. While some argue extending the forfeiture rule to address elder abuse is a ‘step too far,’³⁹ on the contrary, imposing laws which strongly sanction abusive conduct potentially carries a critical and timely social message that older people are valued members of the community and EA is a serious act which will not be tolerated. It is submitted that Queensland should explore if and how the forfeiture rule could evolve to provide an alternative legal response to EA.

Consideration also needs to be given to the role of legal actors including solicitors, barristers and members of the judiciary in increasing access to justice. It can be intimidating, confronting, difficult and expensive to access ‘the law’. There is also a need to continue to raise judicial awareness and training about the nature and impact of trauma and its prevalence and how to apply trauma-informed principles in the task of judicial decision-making.⁴⁰ Legal actors, including peak legal bodies, therefore play an important role in facilitating access to justice, for example, through pro bono program participation and considering how to provide quality advice in rural and remote areas. As noted above, tribunals have an important role to play in facilitating low cost, quick and informal access to justice, but they need to be adequately resourced to discharge this important role in the administration of justice.

The promotion of a multidisciplinary approach drawing on the available supports to avoid perpetrating a ‘siloes’ approach is also important. To this end, a program developing medico-legal partnerships (MLPs) or health justice partnerships, for example, is worthy of further consideration to improve access to justice for those experiencing EA, especially in rural and remote areas. MLPs have significant potential to provide supports for both health and legal professionals, who can then assist individuals in navigating what can be complex systemic societal supports and legal systems. This would, in turn, assist with facilitating access to justice and maximise an individual’s human rights. Rigorous research is required to understand and evaluate existing MLPs (and similar programs) to ensure that targeted resources can be allocated to enhance and improve this important access to justice mechanism.

In 2017, the ALRC in its Elder Abuse Final Report acknowledged the importance of adopting a human rights framework. Such a human rights-based framework would ideally balance autonomy, dignity and participation on the one hand with safeguarding and protection aspects necessarily involved in attempting to address the abuse of older persons.⁴¹ Where a conflict occurs, autonomy is to be prioritised.⁴² The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the ICCPR mean that Australia, as a signatory to both, is obliged to fulfill the human rights-related obligations, including on relation to older persons. These international obligations and subsequent domestic implementation have implications for key policy areas in the EA context, including for example, any proposed development of an EPA register.⁴³ For example, any amending or new legislation introduced in Queensland will be

³⁹ South Australian Law Reform Institute, *Riddles, Mysteries and Enigmas: The Common Law Forfeiture Rule* (Report No 14, February 2020) 254 [9.2.16].

⁴⁰ See, for example, M King, ‘The Importance of Trauma-Informed Court Practice’ (2022) 34(6) *JOB* 59, available at <The importance of trauma-informed court practice>.

⁴¹ Australian Law Reform Commission, n 19.

⁴² *Ibid* [1.19].

⁴³ Australian Government Attorney-General’s Department, *Enhancing Protections Relating to the use of Enduring Power of Attorney Instruments Consultation Regulation Impact Statement* (2020) 5.



subject to scrutiny as to compatibility with human rights in accordance with the *Human Rights Act 2019* (Qld). However, limited enforcement mechanisms and pathways remains an issue.

In the context of older persons, EA can violate numerous human rights, including, for instance, the rights to security of the person (ICCPR art 9), freedom of movement, including freedom to choose one's place of residence (ICCPR art 12), social security (connected to the ability to be able to live a life of dignity, ICESCR art 9), and to an adequate standard of living (ICESCR art 11). There is also an inherent connection between an individual's financial security and the right to health (ICESCR art 12) such that EFA can have wide-ranging, long term negative consequences.

Significantly, on 3 April 2025, United Nation Member States in the Human Rights Council in Geneva adopted a landmark resolution to create a new intergovernmental working group to draft an international legally binding instrument (UN convention) on the human rights of older persons.⁴⁴ It will be important to ensure that any recommendations and/or reform proposals are informed by these international developments. Therefore, adopting a human rights-based framework approach is an important step but it must be done so in an authentic way noting the importance of co-design and lived experience especially when considering all people have an inalienable right to a life of dignity, security and independence.

c. opportunities to improve responses to elder abuse in Queensland, within the government, broader community, non-government, and private sectors, including ensuring responses are trauma informed and culturally appropriate.

As stated, there is a need to critically evaluate what is currently occurring and the efficacy of this through rigorous empirical research authentically co-designed with older people with lived experiences. This could then inform an evidence-based dataset from which to develop and implement opportunities to improve responses to EA in Queensland. One such idea could involve, for example, a pilot peer to peer project wherein older people can access information through a peer support network. A program such as this could be particularly useful in the rural and remote areas where access to services and/or supports can be limited.

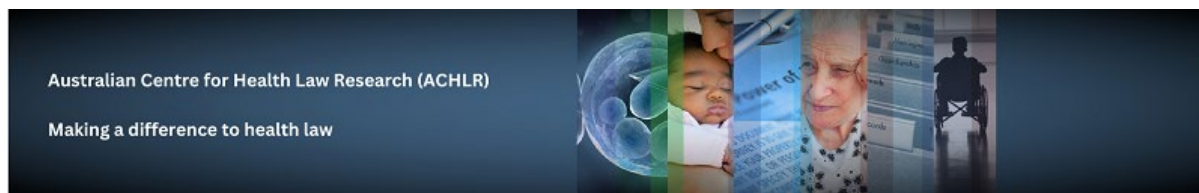
It will also be necessary to consider the different groups, noting that 'older people' are not a homogenised cohort. Accordingly, identifying and engaging with those more at risk groups will be important. It will also be necessary to consider geographical location as well in terms of improving EA responses.

2. The inquiry will consider:

- a. voices of people with lived experience of elder abuse (with appropriate assistance to be provided for people to engage with the inquiry where required);**
- b. views of other stakeholders; and**

⁴⁴ A/HRC/58/L.24/Rev.1

<https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/58/Pages/resolutions.aspx>.



c. relevant findings, reports and prevalence studies (insofar as they relate to elder abuse).

We commend the intention hear from people with lived experience noting only that this should be authentic engagement leading to genuine co-design of any opportunities resulting from this process. Similarly, hearing from all stakeholders is also important. This will be especially interesting in the context of banks and financial institutions given the potential role they have to play in addressing issues of EA, especially EFA.

The work in this area has been building over the last several years and the Inquiry is to be commended in engaging with it. We list the following relevant research that we have undertaken that may be of assistance:

Books

1. Lewis, B, Purser, K and Mackie, K, *The Human Rights of Older Persons: A Human Rights Based Approach to Elder Law* (Springer, 2020)
2. Purser, K, *Capacity Assessment and the Law: Problems and Solutions* (Springer, 2017)

Journal Articles

1. Cockburn, T, 'Equity in Estate Litigation' (2017) 23(10) *Trusts and Trustees* 1066
2. Crawford, Bridget, Purser, Kelly, & Cockburn, Tina 'Wills Formalities in a Post-Pandemic World: A Research Agenda' (2021) *University of Chicago Legal Forum*, 2021, 93-126
3. Hamilton, B, & Cockburn, T (2014) Laying Equitable Claims to Rest: Key Concerns in Estate Litigation Post Death. *Proctor*, 34(4) 20-22
4. Lonie, J and Purser, K, 'Assessing Testamentary Capacity from the Medical Perspective' (2017) 44(3) *Australian Bar Review* 297 – 317
5. Minciocchi Urban, Melisa, Sullivan, Karen A., and Purser, Kelly, 'Age-Bias in Assessments of Medical Decision-Making Capacity: A Cross-Sectional Experimental Vignette Study' (2024) *Psychiatry, Psychology and Law*
6. O'Connor, Deborah, Braun, Joan, Marriette, Natasha, and Purser, Kelly (2024) 'Assessing mental capacity in the context of abuse and neglect: A relational lens' *International Journal of Law and Psychiatry*, 97
7. Purser, Kelly & Cockburn, Tina, 'Wills formalities in the twenty-first century - Promoting testamentary intention in the face of societal change and advancements in technology: An Australian response to Professor Crawford by Kelly Purser and Tina Cockburn' (2019) 4 *Wisconsin Law Review Forward* 46-64
8. Purser, Kelly, Cockburn, Tina, & Crawford, Bridget, 'Wills formalities beyond COVID-19: An Australian-United States perspective' (2020) *University of New South Wales Law Journal Forum*, 2020(5) 1-14
9. Purser, K, Cockburn T, Cross, C and Jacmon H, 'Alleged Financial Abuse of those under an Enduring Power of Attorney: An Exploratory Study' (2018) 48(4) *British Journal of Social Work* 887 - 905



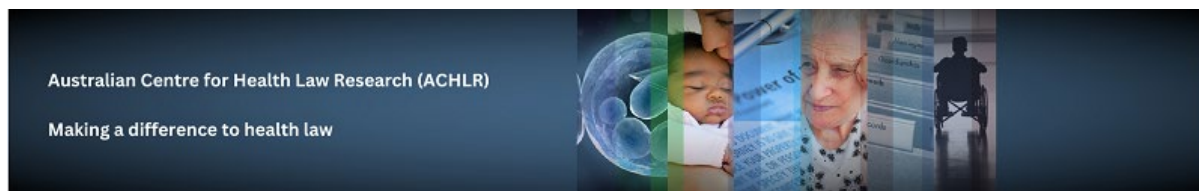
10. Purser, Kelly, Cockburn, Tina and Ulrick, Elizabeth, 'Examining Access to Formal Justice Mechanisms for Vulnerable Older People in the Context of Enduring Powers of Attorney' (2020) 12(1) *Elder Law Review*
11. Purser, Kelly, Lewis, Bridget, Cockburn, Tina, and Christensen, Sharon, 'Strengthening the Response to Elder Financial Abuse and the Proposed Enduring Power of Attorney Register: Suggested First Steps' (2023) 3 *University of New South Wales Law Journal Forum* 1
12. Purser, Kelly and Lonie, Jane, 'Mapping Dementia and Cognitive Decline in Testamentary Capacity' (2019) 66 *International Journal of Law and Psychiatry* Article number-101450
13. Purser, K, Magner, E, & Madison, J, 'A Therapeutic Approach to Assessing Legal Capacity in Australia' (2015) 39 *International Journal of Law and Psychology* 18 – 28
14. Purser, Kelly and Rosenfeld, Tuly, 'Evaluation of legal capacity by doctors and lawyers: the need for collaborative assessment' (2014) *Medical Journal of Australia* 201(8) 483-485
15. Purser, Kelly and Sullivan, Karen, 'Capacity Assessment and Estate Planning - The Therapeutic Importance of the Individual' (2019) 64 *International Journal of Law and Psychiatry* 88-98
16. Sullivan, K and Purser, K, 'Developing and piloting the Consumer Experience of Capacity Assessment Tool (CECAT)' *Psychiatry, Psychology and Law* (2021) <https://doi.org/10.1080/13218719.2021.1976300>
17. Sullivan, K, Purser, K, Graham, K and Parkinson, L, 'Public awareness of legal decision-making capacity and planning instruments in dementia: implications for health care practitioners' (2023) 30(4) *Psychiatry, Psychology and Law* 565
18. Ward, Amanda, 'Disinheriting Abusive Heirs: Could a U.S-Informed Response to Elder Financial Abuse be Utilized in Australia?' (2025) 17 *Drexel Law Review* (forthcoming)

Reports

1. Cockburn, Tina, Purser, Kelly, Buckby, Sherrena, & Paynter, Kirsty (2021) *The Role of Financial Planners in Preventing, Recognising and Responding to Elder Financial Abuse* (2021)
2. Cross, C, Purser, K, and Cockburn, T, *Report: Examining Access to Justice for those With an Enduring Power of Attorney (EPA) Who Are Suffering Financial Abuse* (2017)

Submissions

1. Purser, K, Cockburn T, Lewis B, & Christensen, S (2023) *Submission to the Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney Consultation Paper*



2. Purser, K, Lewis B, Christensen S, & Cockburn T (2021) *Submission to the Attorney General's Department regarding National Register of Enduring Powers of Attorney - Public Consultation Paper*
3. Purser, K, Lewis B, Cockburn T, & Christensen S (2020) *Submission Responding to the Australian Government Attorney-General's Department Enhancing Protections Related to the use of EPOA Instruments Consultation RIS*

About the Contributors

Dr Kelly Purser TEP is an Associate Professor in the Law School, Queensland University of Technology and a member of the Australian Centre for Health Law Research (ACHLR). She co-leads the Planning for Healthy Ageing Program within ACHLR with Professor Cockburn. Dr Purser has published nationally and internationally on capacity assessment and the ageing population, as well as elder financial abuse and the misuse of EPAs. She has written a research monograph examining capacity assessments and the need for national assessment guidelines, including a suggested paradigm for such guidelines. Her second (co-written) monograph explored the application of a human rights framework to elder abuse. She is a member of the Succession Committee and the Elder Law Committee of the Queensland Law Society and the Society of Trusts and Estate Practitioners.

Professor Tina Cockburn TEP is a Professor in Law at the Queensland University of Technology Faculty of Law, Brisbane. She is co-director of the Australian Centre for Health Law Research. Tina is a member of the Queensland Law Society Health and Disability Law Committee and the Society of Trusts and Estates Practitioners (STEP). She is an active member of the national legal profession and regularly contributes to continuing professional education programs for legal and health care professionals, particularly in the areas of health law (including medical negligence and intentional torts), elder law and succession law.

Amanda Ward is a PhD candidate in the ACHLR in the Law School at QUT. Her thesis examines the possible extension of the forfeiture rule to deter elder abuse and develops an innovative theoretical framework examining the interplay between human rights and expressive theory.

Thank you for your time and please feel free to contact us if you have any questions.

Dr Kelly Purser

Professor Tina Cockburn

Amanda Ward

Dr Kelly Purser, Professor Tina Cockburn, Amanda Ward *Submission Responding to the Inquiry into Elder Abuse in Queensland* (2025)