

Inquiry into Elder Abuse in Queensland

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**SUBMISSION ON THE
EDUCATION, ARTS AND COMMUNITIES COMMITTEE'S
INQUIRY INTO ELDER ABUSE IN QUEENSLAND**

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LAWRIGHT SUBMISSION ON THE EDUCATION, ARTS AND COMMUNITIES COMMITTEE'S INQUIRY INTO ELDER ABUSE IN QUEENSLAND

1.0 BACKGROUND	3
2.0 LAWRIGHT'S SUBMISSION	4
3.0 NATURE AND EXTENT, INCLUDING VULNERABLE COHORTS	5
3.1 <i>Forms of neglect and abuse</i>	5
3.2 <i>Relationships where elder abuse occurs</i>	5
3.3 <i>Risk and protective factors</i>	6
3.4 <i>Barriers and enablers for people to access support</i>	6
4.0 EFFECTIVENESS AND COHESIVENESS OF RESPONSES TO ELDER ABUSE, INCLUDING QUEENSLAND LAWS, POLICIES, PROGRAMS AND SERVICES, IN PREVENTING, SAFEGUARDING, IDENTIFYING AND RESPONDING TO ELDER ABUSE	8
4.1 <i>Adult guardianship and violence protection services, other funded services, and community-based interventions</i>	8
4.2 <i>Civil and criminal legal frameworks</i>	9
4.3 <i>Monitoring, evaluation and reporting processes</i>	9
4.4 <i>Human rights protections</i>	10
5.0 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	11
5.1 <i>Role of not-for-profit sector, community services and community leaders</i>	11
5.2 <i>The private sector</i>	11
5.3 <i>Focus Areas</i>	12
5.4 <i>Funding for legal assistance services</i>	12
6.0 CONTACTING US	14

1.0 Background

LawRight welcomes the opportunity to provide a submission to the Education, Arts and Communities Committee's Inquiry into Elder Abuse in Queensland (**Inquiry**).

LawRight is a not-for-profit, community-based legal organisation, that coordinates the provision of pro bono legal services to disadvantaged Queenslanders. LawRight undertakes law reform, policy work, legal education, and improves the lives of vulnerable people by increasing access to justice through strategic partnerships and referrals to pro bono lawyers. In 2023-24, LawRight's staff and member law firms and barristers delivered 22,750 pro bono hours to help vulnerable Queenslanders resolve complex legal issues.

LawRight manages the pro bono referral scheme of the Queensland Law Society and the Bar Association of Queensland and was established by the private profession to coordinate public interest law referrals.

LawRight's Pro Bono Connect service (**PBC**) offers a statewide service that assists individuals, and not-for-profit organisations with information, advice, assistance with discrete tasks, and referral to private solicitors and barristers for legal assistance. The legal assistance provided by private solicitors and barristers may include advice, assistance with discrete tasks, and/or full representation.

In 2023-24, PBC:

- reviewed and triaged 1,246 applications;
- provided information and referrals to 709 applicants;
- referred 403 applicants to LawRight's Court and Tribunal Services and LawRight's Community and Health Justice Partnerships;
- provided assistance to 110 applicants with advice or assistance with discrete tasks; and
- referred 150 applicants to private solicitors or barristers for full representation.

In 2023-24, the PBC client base had the following demographic information:

- 28% were older people;
- 35% were homeless or at risk of homelessness;
- 41% identified disability or mental illness;
- 25% were from rural, regional or remote areas;
- 24% experienced domestic violence; and
- 9% were First Nations peoples.

Acknowledgement of limitations

In preparing this submission, we want to caveat, and also acknowledge the limitations of any comments LawRight, as an organisation, can make about the experience of, or recommendations relating to Aboriginal and Torres Strait Islander peoples.

LawRight is not an Aboriginal and Torres Strait Islander led organisation, and we do not want to suggest that we have specific expertise or knowledge in this area above other purpose-built organisations. Any comments we make in this submission should not be considered in isolation and appropriate feedback and consultation processes should take place with Aboriginal and Torres Strait Islander led organisations, Elders, and the broader First Nations community.

2.0 LawRight's submission

Assisting older people experiencing abuse and mistreatment is the most common type of legal issue that PBC addresses, with the financial abuse of older people being the most prevalent. With reference to this experience, this submission will address the key points highlighted in the Inquiry's Terms of Reference.

3.0 Nature and extent, including vulnerable cohorts

3.1 *Forms of neglect and abuse*

The primary type of elder abuse that PBC addresses is financial abuse. This often takes place alongside emotional, psychological and physical abuse.

The matters PBC assist with are often very complex property and monetary disputes arising from breakdowns of relationships, often with the older person being in a position where they are reliant on another party for accommodation, care, support and/or access to grandchildren. These situations are volatile because neither party can afford for their living situation to change, and it may require expensive and time-consuming legal assistance to resolve.

In our experience, the financial situation¹ of the person causing harm can be a motivating factor in instances of abuse and mistreatment of older people. We often see a demand or expectation for early inheritance from adult children and/or financial support. This can foster an environment of entitlement in which adult children are more likely to cause harm through financial abuse, misuse of enduring power of attorney agreements, or patterns of abusive behaviour amounting to coercive control.

A common scenario presented to PBC involves an older person selling or transferring ownership of their home to make a substantial financial contribution to a family member. This contribution often supports the purchase of a larger home, renovations to an existing property, or the construction of a granny flat, with the intended goal of facilitating multigenerational living. The family member often becomes reliant on the financial contribution to secure a home loan, or to carry out building work, and may not have the financial capacity to repay the financial contribution to the older person. They may insist that the financial contribution is a gift, on the condition that they will allow the older person to live in the home indefinitely, to receive care, or to have access to grandchildren for the remainder of the older person's life.

We often see older people cut off from friends and family, access to services restricted (including internet, telephone and electricity), money withdrawn from their bank accounts, expectations that they will care for grandchildren and demands for payments for "rent" and/or other costs associated with maintaining or renovating the property owned by the other family member.

Whilst we do encounter many situations where an older person is intentionally subjected to abuse or mistreatment, in other situations the harm is unintentional or emerges from abuse an unexpected breakdown in the relationship between the parties.

3.2 *Relationships where elder abuse occurs*

The relationships where PBC observes financial elder abuse often occur between the older person and their adult children. Often an adult child (or children) hold a power of attorney for financial decisions. In other cases, the adult children are able to exercise power over the elder person through their shared living arrangements.

¹ We consider that housing affordability and cost of living crises contribute to an increase the prevalence of these risk factors.

A common theme is where legal and property rights are surrendered in exchange for familial security. A strong foundation of trust is evident initially, with little thought to the breakdown of the relationship or the long-term viability of shared living arrangements. Very rarely are the terms of these arrangements reduced to writing.

In such cases the elder person often forgoes independent legal or financial advice in favour of the advice or wishes of the other parties. Sometimes, this is because the older person wants to assist the family member, or even be seen as person of value in the relationship who is there to offer support.

Based on our experience, the majority of matters for older people experiencing abuse and mistreatment have been female older people living without a partner.

3.3 Risk and protective factors

Within the various forms of financial abuse, the primary risk factor is the vulnerability of the older person. This vulnerability is then compounded through losing control of their funds or by the actual loss of funds, placing the older person into a more precarious position. It denies them access to their own resources, which they might otherwise use to defend their rights or seek independence.

A key issue is that the participants in elder abuse, both perpetrator and victim, are likely at different stages of life. We see that older people are seeking security and stability, both financially and within family relationships. Other family members, who are perhaps younger, may be seeking ongoing financial growth and lifestyle changes. In shared living and financial arrangements, these situations are often incompatible over the long term.

We frequently see situations where older people and their families live across different states, or families move to different states to be closer to family when they are in a position of dependence, and the changes between different jurisdictions can make it more difficult for older people to receive legal assistance, or to enforce their rights.

Many of our clients are at risk of homelessness because of abuse and mistreatment. We hold the view that the increasingly older age profile of the Australian population makes it particularly important to prevent and respond to the abuse and mistreatment of older people effectively, and to create a more inclusive and age-friendly society.

3.4 Barriers and enablers for people to access support

Older people deprived of the financial means to obtain legal support can have significant barriers to ensuring their rights are upheld. Often the other party refuses to engage, becomes uncontactable or may create a narrative of wrongdoing by the older person. Litigation, or the threat of litigation, is often required to elicit engagement from the other party. Fortunately, these matters are often resolved in mediation without the need for expensive and time-consuming court proceedings. However, in some instances, litigation is avoided because the older person may not wish to jeopardise relationships.

Many people who approach LawRight for assistance do not appear to have accessed elder abuse support services before contacting us, or before entering into financial arrangements with others. We consider that many older people are unaware of the support services available to them – such as the Queensland Elder Abuse Helpline. It is often during their search for assistance after the abuse has occurred that they become aware of community legal services. Alternatively, some elder abuse victims are able to obtain support from legal services or other elder advocacy services. A key factor for older people obtaining assistance is their personal capacity to engage with support services or have people around them do so on their behalf.

4.0 Effectiveness and cohesiveness of responses to elder abuse, including Queensland laws, policies, programs and services, in preventing, safeguarding, identifying and responding to elder abuse

4.1 Adult guardianship and violence protection services, other funded services, and community-based interventions

In our experience, elder abuse victims (or those acting on their behalf), have not always engaged to a significant extent with elder abuse services and their effectiveness as a support mechanism may go untested.

For example, attorneys under enduring powers of attorney (**EPOA**) are duty-bound to uphold the interests of the person and act in their best interests. However, where there have been instances of abuse, neglect or exploitation by attorneys under EPOAs, we have seen only a few instances where the victim has reported the matter to the Office of the Public Guardian (**OPG**), and even fewer where the OPG has taken action.

LawRight often receives referrals from other community legal centres who provide some preliminary assistance to the victim before contacting LawRight. We find their assistance beneficial, in that the victim has an advocate and someone who LawRight can liaise with directly and provide ongoing assistance when PBC facilitates the assistance from a private law firm.

Due to inadequate funding in the community legal sector, the number of older people that can be assisted by community legal centre staff is limited. Referrals to private solicitors and barristers can increase the pro bono legal assistance available to older people significantly. LawRight uses its core funding to assist with these referrals but cannot assist every older person who applies to us due to our limited funding.

Although our model involves referring older people to law firms for full pro bono assistance, significant work is often required by LawRight staff before matters are referred out. Our role includes:

- making our service known to vulnerable clients, by connecting with community agencies, sharing fact sheets that may help people find us online, and delivering training to community workers;
- gathering information from the client and their support people, confirming that the client has capacity, the support people are authorised to assist the client, and building rapport with the parties;
- helping the client to collate necessary documents;
- identifying and assessing whether the client has a prima facie legal claim;
- providing advice;
- sometimes, referring the matter to a barrister for an opinion on prospects;
- sourcing help from a law firm willing to act pro bono, including addressing any concerns of capacity or worries from the client's perspective;
- connecting the client and the law firm, plus counsel if required; and
- connecting parties with pro bono mediators, if required.

Currently, there is specialist funding available for older people through the Seniors Legal and Support Services (**SLASS**) provided by a number of community legal centres in Queensland, but there is no specific funding to assist with connecting older people with private solicitors and barristers who can provide full representation for the matter. LawRight does not receive SLASS funding.

4.2 Civil and criminal legal frameworks

Most financial elder abuse victims seek legal assistance to recover funds or assert property rights or living arrangements. Unless a matter is resolved and settled without litigation, the victim will need to seek a court outcome. This avenue may ultimately be effective, but unless the victim obtains pro bono legal assistance, pursuing this avenue can be very expensive and may cost more than the amount that could be recovered.

Often the amount the amount to be recovered is over the jurisdictional threshold of the Queensland Civil and Administrative Tribunal (**QCAT**) and falls within the jurisdiction of the courts. In this event, the assistance of a solicitor to progress through the courts is required. If QCAT had an extended monetary jurisdiction to hear elder abuse financial claims beyond \$25,000, this could potentially assist with elder abuse victims obtain access to justice.

Another hurdle for elderly litigants seeking to recover property is the presumption of advancement, which elderly litigants must rebut in the first instance. We believe that in financial dealings between elderly people and adult children, there is little justification or requirement for this anachronistic presumption.

We also believe that it would be beneficial to older people to implement property interests that can be recognised appropriately on the Queensland Land Titles Registry in situations where an older person has made a financial contribution towards another person's property.

Housing affordability strategies to reduce the burden on older people to support family members, and for older people to have more affordable housing options would also reduce the risk of older people being forced into living arrangements that put them at risk of abuse.

Local governments also have a role to play in assisting older people in the community, in particular, by improving services relating to:

- local planning and zoning (especially in relation to granny flats, subdivisions and living arrangements for multigenerational families);
- libraries and recreational facilities (noting that libraries are a key service for many older people to use the internet, send emails and access resources);
- funding for community-led cultural events;
- local public information resources; and
- skill development opportunities for local workers, volunteers and community members.

4.3 Monitoring, evaluation and reporting processes

We consider that elder abuse is an underreported issue in the community, but one that is gaining more public awareness. With an aging population, cost of living increases and transfers of wealth to younger generations, the need to enhance and modernise reporting regimes has never been greater.

While the Elder Abuse Prevention Unit collects and reports data on the incidence of elder abuse, there is likely still a need for greater insight into the full scope of the issue. We believe this can be achieved through increased coordination between government and non-government agencies and organisations.

For example, we consider that abuse in retirement living environments is a very common issue among older individuals and likely underreported. Further regulations on aged care facilities and retirement villages must be enforced to ensure that they meet the highest standards of care. We suggest that the Queensland Government has room to formulate clear, accessible, and effective channels for older individuals and their families to report abuse or neglect.

4.4 Human rights protections

In PBC's experience, the human rights protections under the Act are rarely applied in cases involving elder abuse. This is largely because other legal pathways are typically more accessible and effective. Most victims we assist are not focused on seeking the return of property or the upholding of their rights through more established legal or equitable means.

5.0 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

The Queensland Government has a pivotal role in combatting ageism and ending the abuse and mistreatment of older people.

LawRight supports the promotion of a whole-of-government approach that engages policy areas including health and aged care, law and justice, social services, housing and homelessness, and disability and carers.

We believe that there needs to be a coordinated approach to initiatives that are implemented by the Queensland Government in concert with the proposed *National Plan to End the Abuse and Mistreatment of Older People 2024-2034*.

5.1 Role of not-for-profit sector, community services and community leaders

There are many essential not-for-profit organisations and community services that provide critical support to older people who are experiencing or at risk of abuse, neglect, or exploitation.

Due to increasing demand, many of these services require additional funding including:

- housing and homelessness services;
- community health services;
- family and domestic violence services;
- aged care and disability services;
- settlement and multicultural services;
- culturally safe support for First Nations and culturally and linguistically diverse groups;
- LGBTQIA+ inclusive services;
- advocacy services for older people; and
- community legal centres.

Additionally, there is a growing need for not-for-profit organisations to support the digital and financial literacy of older individuals. As an increasing number of services, transactions, and communications move online, many older Australians are at heightened risk of exclusion or exploitation in the digital and financial domains.

We recommend that not-for-profit organisations implement targeted programs designed to enhance digital literacy and financial knowledge among older Australians.

5.2 The private sector

Banks and financial institutions play a key role in identifying and preventing financial abuse of older people. Many are already aware of the issue and offer some resources and support for potential victims. Staff should be encouraged to recognise red flags for financial abuse and refer clients to specialised support services. Clear procedures for reporting suspected cases should also be in place. Further, education on internet banking and digital literacy should be promoted among elderly clients to reduce vulnerability to scams and misuse of funds.

Importantly, banks and financial institutions have access to transaction data that could help identify suspicious patterns associated with financial abuse. A mandatory capacity assessment could be introduced as a preliminary step before authorising large financial transfers by clients over the age of 60. This could assist in identifying abuse where an older person relies heavily on family for financial advice and has not yet appointed an EPOA. It could also flag situations where an EPOA may be misusing their powers or acting in conflict with their fiduciary duties.

5.3 Focus Areas

We consider the following areas require additional focus and support.

1. We strongly support actions to achieve greater national consistency regarding enduring power of attorney laws. In particular, we submit that the establishment of a national register of power of attorney documents would be beneficial to older people to help with the prevention and early intervention of abuse and mistreatment.
2. We strongly support actions to raise awareness about the importance of planning ahead for decision-making in later life, including understanding rights and responsibilities around enduring instruments. Many of the legal issues we see could have been prevented or resolved earlier with better future planning
3. We support increasing education for elderly persons about the circumstances which may give rise to elder abuse. This could include providing advice regarding the consequences of asset and monetary transfers to children, the necessity of written agreements, their rights in the event of issues, and the availability of elderly support services.
4. We support the introduction of further safeguards at the point transactions are made which may include the requirement to obtain independent legal advice for certain property and asset transfers, or the requirement for certain arrangements to be effective only if put into writing. Additionally, certain transfers may be limited to extent for the elderly above certain age limits, but balanced against the rights of individuals right to make decisions.
5. We support the increase to the equity of access to specialist services for older people who live in rural, regional and remote areas, for First Nations peoples and other priority groups, by removing barriers to seeking help and support. LawRight is a statewide service, but many community legal centres are only able to service a small local area.

5.4 Funding for legal assistance services

We strongly recommend increased funding for legal services providing pro bono assistance to older people to:

- increase access to justice;
- improve future decision planning and rights and obligations in relation to enduring instruments;
- support older people to identify and report abuse and mistreatment;
- advise older people of their rights with respect to abuse and mistreatment;
- ensure that older people understand their rights with respect to decisions relating to their health and wellbeing, assets, finances, living arrangements, estate planning, and ability to develop and maintain relationships within and outside of their family; and

- enforce the legal rights of older people.

For legal frameworks to be efficient and effective, they must be supported by appropriately resourced organisations. This support extends to government departments, courts and tribunals, and community legal centres and other legal assistance services.

Given the aging population demographics and the intention for there to be improved framework and adult safeguarding responses, the key funding issues that need to be addressed are as follows.

- There is insufficient funding for legal assistance services for older people who are currently seeking assistance after suffering abuse or mistreatment.
- An aging population will result in an increase of older people requiring legal and assistance services.
- To achieve the goal of prevention and early intervention, funding for additional legal assistance services for older people will be required.

LawRight

LawRight is the only community legal centre in Queensland which has a dedicated service to facilitate referrals to private solicitors and barristers. We are already operating at capacity and cannot meet increased demand for assistance without additional funding.

Access to independent legal assistance services is an integral part of any functioning framework in our justice and regulatory system. In summary:

- if there are changes in legal frameworks that lead to an increased demand for services, there should be an increase in funding to legal assistance services, proportionate to the demand created; and
- if there is an increase in funding or resourcing for government departments, courts or tribunals, to process legal matters, there should also be a proportionate increase in funding for legal assistance services.

Due to the way we leverage pro bono assistance, our model (and community legal centres more generally) are consistently proven to be more cost-effective than government integrated legal assistance services in regulatory bodies or than other types of legal assistance services.

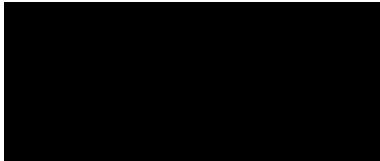
With increased funding, LawRight could help more older people and expand its scope to address the prevention and early intervention of abuse and mistreatment.

6.0 Contacting us

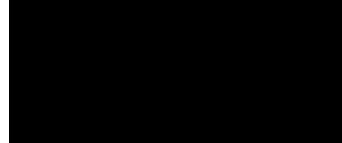
We appreciate the opportunity to provide a submission for consideration in response to the Inquiry into Elder Abuse in Queensland.

Please contact us on (07) 3052 4308 or by email to [REDACTED] if you have any questions about this submission.

Yours faithfully



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