

# Review into the Prevalence and Characteristics of Elder Abuse in Queensland

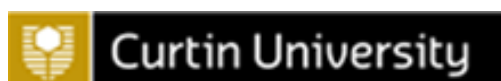
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The views expressed within this report are not necessarily those of the above organisations, and any errors of omission or commission are the author's responsibility.

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## Glossary of Acronyms

ABS	Australian Bureau of Statistics
ABA	Australian Bankers' Association
ACAT	Aged Care Assessment Team
ADA	Aged and Disability Advocacy
ADAS	Aged and Disability Advocacy Service
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
ANPEA	Australian Network for the Prevention of Elder Abuse
ANROWS	Australia's National Research Organisation for Women's Safety
APRIL	Abuse Prevention Referral and Information Line
ARAS	Aged Rights Advocacy Service
ARNLA	Australian Research Network on Law and Ageing
AVO	Apprehended Violence Order
CALD	Culturally and linguistically diverse
CNAP	Community Navigation and Access Program
CRPD	Convention on the Rights of Persons with Disabilities
COTA	Council on the Ageing
DATSIP	Department of Aboriginal and Torres Strait Islander Partnerships
DCCSDS	Department of Communities, Child Safety and Disability Services
DFVP	<i>Domestic and Family Violence Protection Act 2012</i>
DJAG	Department of Justice and Attorney-General
DVO	Domestic Violence Order
EAPU	Elder Abuse Prevention Unit
EPoA	Enduring Power of Attorney
GAA	<i>Guardianship and Administration Act 2000</i>
GPs	General practitioners
HACC	Home and Community Care
HREC	Human Research Ethics Committee
INPEA	International Network for the Prevention of Elder Abuse
JP	Justice of the Peace
LGA	Local government area
LGBTI	Lesbian, gay, bisexual, transgender and intersex
n	Number of participants
NARI	National Aged Research Institute
NCEA	National Centre on Elder Abuse
NCPEA	National Committee for the Prevention of Elder Abuse
OPA	Office of the Public Advocate

OPG	Office of the Public Guardian
PGA	<i>Public Guardian Act 2014</i>
PGBO	Peace and Good Behaviour Orders
PIPA	<i>Personal Injuries Proceeding Act 2002</i>
PIPR	<i>Personal Injuries Proceedings Regulation 2014</i>
POA	<i>Powers of Attorney Act 1998</i>
POP	Problem-oriented policing
QADA	Queensland Aged and Disability Advocacy
QGSO	Queensland Government Statistician's Office
QLD	Queensland
QLRC	Queensland Law Reform Commission
QPS	Queensland Police Service
SLSS	Seniors Legal and Support Service
UK	United Kingdom
US	United States
USDHHS	United States Department of Health and Human Services
WHO	World Health Organization

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## 1 Executive summary

This project reviewed current policy, legislative, and service responses to elder abuse in Queensland to provide a snapshot of the current context as well as an evidence base to allow stakeholders, including government and non-government organisations, to better understand the prevalence and characteristics of elder abuse in the state. Current responses and interventions to elder abuse have been mapped to identify issues, needs and gaps in elder abuse prevention and service responses in the state. Research design and activities incorporated detailed input from stakeholders and a dedicated research reference group and elder abuse data from a number of government and non-government stakeholder organisations was synthesised and included in this report.

### 1.1 Participants and data collection

A total of 184 staff from organisations that work with elder abuse in Queensland participated in this research which included interviews, focus groups, an online survey, and a scoping literature review, as shown in Figure 1.1 below.



Figure 1.1 Participant figures and data collection for the project

### 1.2 Defining elder abuse

Inconsistent definitions of elder abuse are used in Queensland and Australia which hinders data collection efforts in providing generalisable information about the issue's scope.

This project proposes a definition of elder abuse similar to the one provided by the US Department of Health and Human Services<sup>1</sup> (adapted on the next page) because it focuses on vulnerability rather than age, and identifies that people in positions of paid and unpaid care, along with other relationships, can be perpetrators of elder abuse. Adopting this type of definition may highlight often previously overlooked issues of abuse occurring in residential care and other service settings, as well as that perpetrated by professionals, such as accountants and real estate agents. Elder abuse definitions are discussed further in Chapter 4.

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<sup>1</sup> US Department of Health and Human Services (2014)



## What is elder abuse?

Any knowing, intentional or negligent act by family, caregivers or any other person that causes harm or a serious risk of harm to a vulnerable older person.<sup>2</sup>

## Inconsistencies

Definitions are inconsistent, including due to differences in age limits and whether only people in non-paid relationships are included.

## How should it be defined?

Definitions should focus on vulnerability rather than age and consider paid and non-paid relationships. Consistent definitions will assist data collection and understanding of the scope of the problem.

## 1.3 Types of abuse

There are six commonly accepted types of elder abuse. Financial abuse is the most commonly identified type of primary abuse experienced by older people, though this type of abuse may also occur with psychological abuse and social isolation. Data for single 'primary' abuse (and not all abuse types co-occur) type presenting to the Elder Abuse Prevention Unit (EAPU) Helpline is shown at Figure 1.2 below.<sup>3</sup> However, it is recognised that elder abuse is often a complex, multifaceted problem, with several types of abuse often occurring at once. Elder abuse characteristics are discussed in Chapter 6.



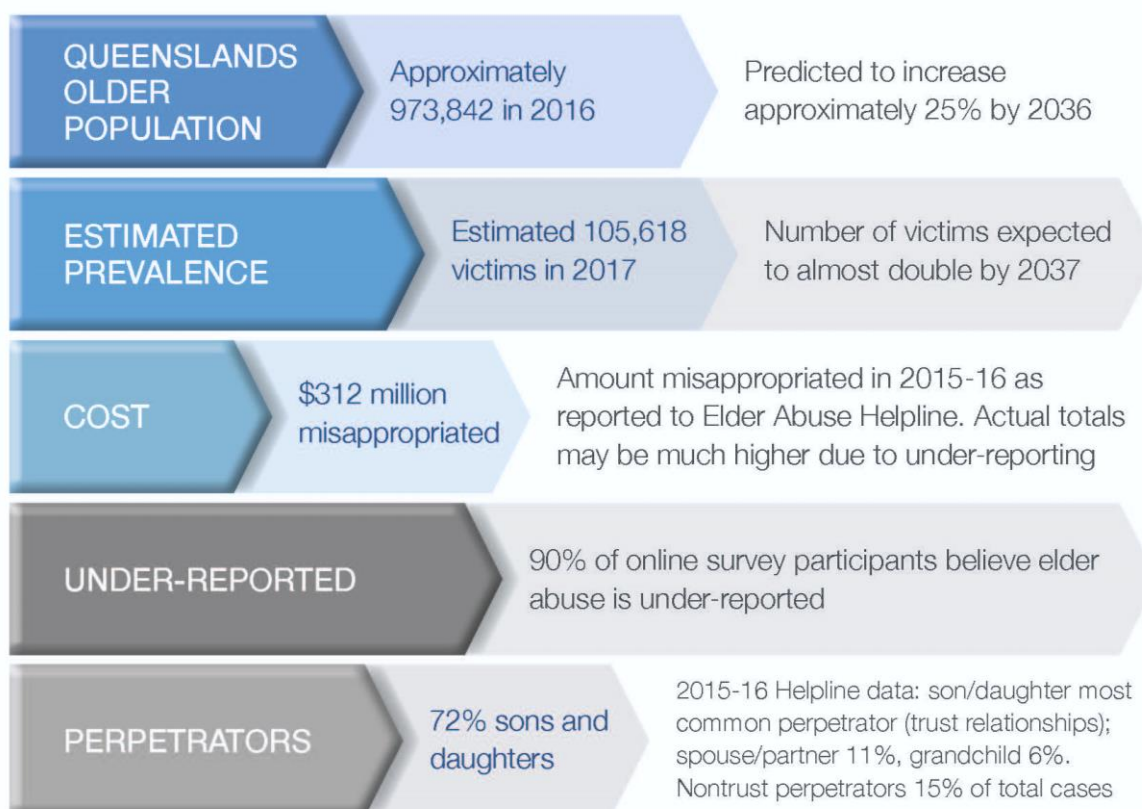
Figure 1.2 Percentage of 'primary' elder abuse type reported to EAPU 2015-16<sup>3</sup>

<sup>2</sup> Adapted from US Department of Health and Human Services definition (2014).

<sup>3</sup> Data from EAPU (2016) is for single 'primary' abuse type and not all abuse types co-occurring.

## 1.4 Prevalence and key characteristics of elder abuse in Queensland

Key characteristics of elder abuse were identified through the project’s data collection activities and these characteristics incorporate data provided by Queensland organisations responding to elder abuse, such as the EAPU, and are shown at Figure 1.3 below. Importantly, the state’s older population is estimated to increase by approximately 25 per cent by 2036. With an ageing population the number of people experiencing elder abuse is also likely to increase over this time. Estimated prevalence is further discussed in Chapter 5 of this report. The cost of elder abuse is substantial, with the EAPU reporting \$309.8 million misappropriated in 263 cases of abuse by family and friends (‘trust’ relationships) in 2015–16.<sup>4</sup> ‘Non-trust’ (for example, acquaintances, staff and professionals, etc.) financial abuse cases were an additional \$2.46 million. Inclusion of the cost of other types of abuse, such as neglect and psychological abuse, would only increase the financial impact of this problem. The overwhelming majority of service providers and stakeholders who participated in the research agreed that elder abuse is under-reported. In reports to the Queensland elder abuse helpline, sons and daughters were determined to be the perpetrator in 72 per cent of cases where a ‘trust’ relationship existed, with people in ‘non-trust’ relationships, such as workers and acquaintances, responsible for 15 per cent of total abuse cases.<sup>5</sup>



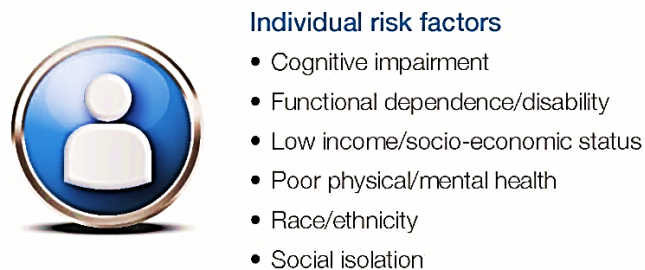
**Figure 1.3 Prevalence and key characteristics of elder abuse in Queensland**

<sup>4</sup> EAPU (2016)

<sup>5</sup> Ibid

## 1.5 Risk factors

Risk factors for elder abuse may be categorised using a socio-ecological framework in terms of victim, perpetrator, victim-perpetrator relationship, community, and society.<sup>6</sup> Elder abuse risk factors for older people — strongly validated by substantial evidence with unanimous or near-unanimous support from several studies — are shown in Figure 1.4 below.<sup>7</sup>



**Figure 1.4 Validated elder abuse risk factors for individuals<sup>3</sup>**

Other victim risk factors have mixed or limited evidence including: gender, being 75 years old or older, being financially dependent, cultural and linguistic diversity, and relationship, community and society risk factors, including geographical location, negative stereotypes of ageing, and cultural norms.<sup>8</sup> Risk factors for older people, perpetrator, victim-perpetrator relationship, community, and society are discussed further in Chapter 6.

## 1.6 Responses to elder abuse in Queensland

There are a number of services and organisations in Queensland responding to elder abuse and these may be categorised into: Statutory, Support, Advocacy and Information, Policy and Strategy, Other Referral, and Allies, as depicted in Figure 1.5 below and discussed further in Chapter 8.



**Figure 1.5 Categorisation of organisational responses to elder abuse in Queensland**

<sup>6</sup> Adapted from Bonnie and Wallace (2003)

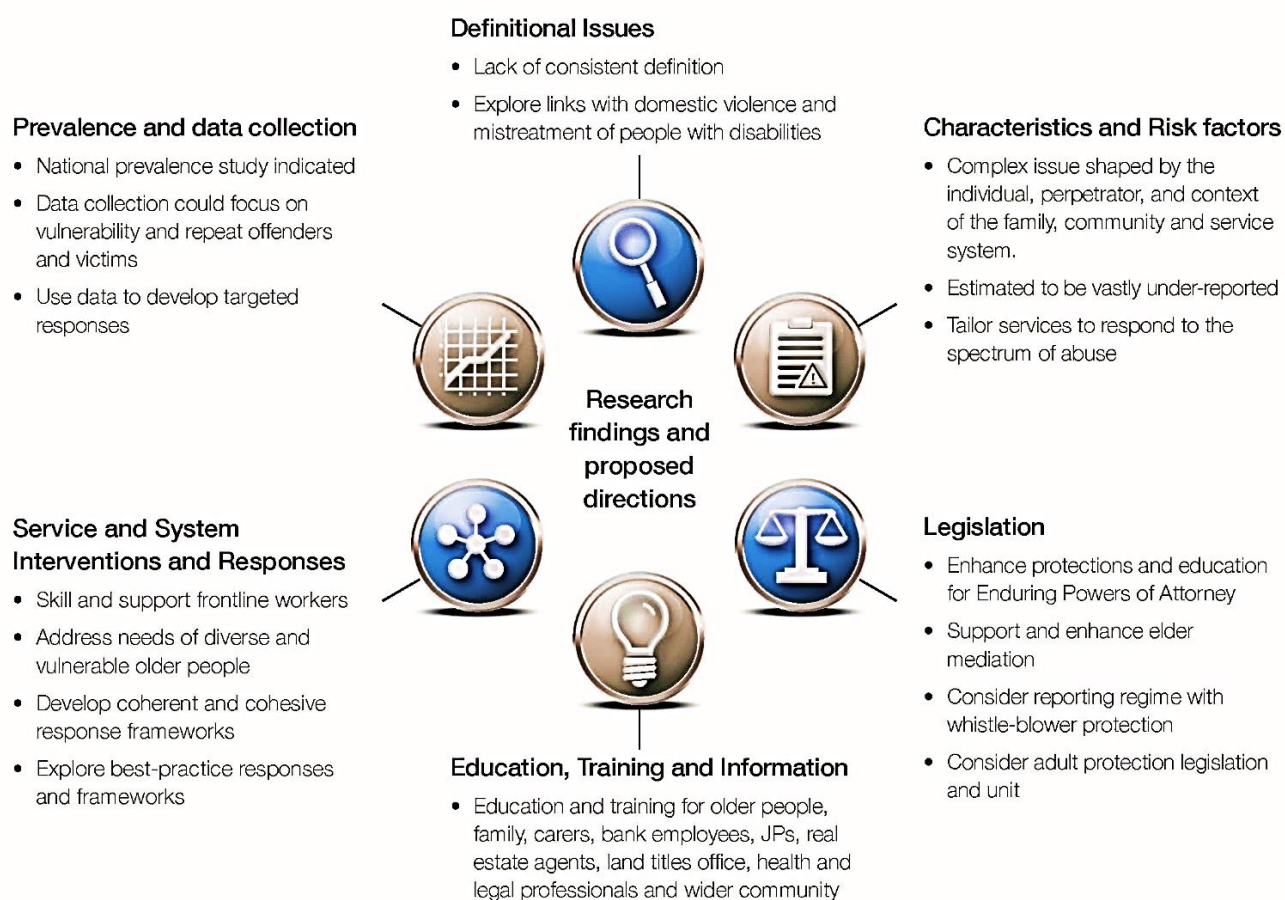
<sup>7</sup> Pillemer et al. (2016, p.S198); WHO (2015, p. 74)

<sup>8</sup> Ibid

Participants reported that the elder abuse sector is fragmented and not well coordinated. Many participants suggested the development of a multi-agency, coordinated Queensland response framework to elder abuse that is mandated, transparent and accountable.

## 1.7 Research findings

From the data collection, literature review, and legislative mapping undertaken as part of this research, key findings are grouped into six categories: definitional issues, prevalence and data collection issues, characteristics and risk factors, service and system interventions and responses, education, training and information, and legislative responses. The main issues identified are summarised in Figure 1.6 below.



**Figure 1.6 Research findings and proposed directions**

In conclusion, the true prevalence of elder abuse in Queensland is difficult to determine because of under-reporting and lack of awareness of the issue by some service providers, older people, their families, and the general community. There are also current limitations to measurement given the absence of a meaningful measure for 'elder abuse'. It is recommended that the Queensland Government does not undertake a Queensland-specific prevalence study at this time but rather focus on filling identified gaps in service provision, and complete research to develop targeted prevention strategies for specific elder abuse problems. The State should focus on developing a coherent and cohesive elder abuse response framework, examining best practice service responses, proactive prevention, and strengthening policy and practice to improve the lives of Queensland's older population.

## 2 Background and context

On 28 February 2015, the Queensland Premier announced the release of the Taskforce on Domestic and Family Violence in Queensland's report, *Not Now, Not Ever — Putting an End to Domestic and Family Violence in Queensland*,<sup>9</sup> which included recommendations about domestic and family violence in Queensland. Recommendation 11 called for the Queensland Government to commission a specific review into the prevalence and characteristics of elder abuse in Queensland to inform development of integrated responses and a communications strategy for older people who are victims of domestic and family violence. Additionally, the State Government's report from the 2015 *Inquiry into the Adequacy of Existing Financial Protections for Queensland Seniors*<sup>10</sup> called for a prevalence study of financial abuse of older Queenslanders. This research project was commissioned in response to the above recommendations.

This project reviews current policy, legislative and service responses to elder abuse in Queensland to provide a snapshot of the current context as well as an evidence base to allow stakeholders, including government and non-government organisations, to better understand the prevalence and characteristics of elder abuse in the state. Current legislative, policy and service responses and interventions to elder abuse have been mapped to identify issues, needs and gaps in elder abuse prevention and service responses in Queensland. Detailed input from stakeholders and a dedicated research reference group was incorporated into the research design and activities. Elder abuse data from a number of government and non-government stakeholder organisations was synthesised and analysed to inform data requirements for potential state or national prevalence studies. A review of relevant literature was also conducted to identify specific interventions and service responses with a view towards identifying best practice responses. In analysing the data and literature, this project combines theoretical perspectives from law, criminology and social work to inform elder abuse definitions, interventions and service system responses.

Little is known about the prevalence and extent of elder abuse in Australia, with no comprehensive national studies undertaken to date. A number of localised studies have been undertaken<sup>11</sup>, as well as research looking at state-based data from calls to elder abuse agencies and helplines<sup>12</sup>, however, figures from these studies cannot be reliably extrapolated to the Australian older population.<sup>13</sup> Commonly, the findings of localised elder abuse studies prove difficult to generalise on a national level because different age demarcations may be used, ranging from 50 years to age 65 plus. Varied definitions of abuse are also used, some excluding self-neglect, as well as abuse by people in paid relationships with the older person; abuse in residential aged care may also be excluded. Given these limitations, elder abuse is commonly reported to affect between three to five per cent of older people, based on dated statistics usually taken from non-generalisable studies that have occurred in other jurisdictions. The broader financial effects of elder abuse are largely unknown, though a Queensland report by the EAPU in 2009 estimated financial abuse losses to be \$97 million and the cost of associated hospital admissions to be between \$9.9–30.7 million.<sup>14</sup> EAPU figures from the

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<sup>9</sup> Taskforce on Domestic and Family Violence in Queensland (2015)

<sup>10</sup> Communities Disability Services and Domestic and Family Violence Prevention Committee (2015)

<sup>11</sup> Boldy, Horner, Crouchley, Davey and Boylen (2005); Clare, M. Black Blundell and Clare, J. (2011); Wainer, Owada, Lowndes and Darzins (2011)

<sup>12</sup> Joosten, Dow and Blakey (2015); Spike (2015a)

<sup>13</sup> Seniors Rights Service (2015)

<sup>14</sup> Jackson L. (2009)

2015–16 financial year report that approximately \$309.8 million was misappropriated in 263 financial abuse cases perpetrated by a person in a ‘relationship of trust’ reported to the agency; abuse perpetrated by people in ‘non-trust’ relationships totalled an additional \$2.46 million.<sup>15</sup>

Recently, there has been considerable discussion about elder abuse in Australia through the medium of various federal and state government Inquiries,<sup>16</sup> and the issue has been further explored in a number of research projects and literature reviews which have been referenced within this report. There is also a strong track record of elder abuse research in Queensland.<sup>17</sup> We recognise the significant work already accomplished in Queensland within this report, and incorporate references to these studies where relevant.

Any discussions about elder abuse must also be informed by the Australian Law Reform Commission (ALRC) report, *Elder Abuse – A National Legal Response*<sup>18</sup>, as well as the other recently completed state inquiries mentioned above. The ALRC released its final report in May 2017. It examines national law reform and supports a national plan to address elder abuse, though the plan’s scope and the matters it will cover remain unclear. The ALRC report was published before the draft submission of this report, however, attempts have since been made to incorporate relevant content into the final version.

The research findings provide important insights into the characteristics and prevalence of elder abuse in Queensland. This research analyses data collected by organisations dealing with elder abuse to estimate the extent to which the various elements of elder abuse are currently occurring. The information collected by this project may help identify strengths and weaknesses in current service provision, data collection, policy and legislation in the areas of prevention and responses to elder abuse. The project’s findings will inform elder abuse practice across a number of agencies, and will also help lay the foundations for a comprehensive action plan to address the identified issues in Queensland.

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<sup>15</sup> EAPU (2016)

<sup>16</sup> ALRC (2016a); Communities Disability Services and Domestic and Family Violence Prevention Committee (2015); General Purpose Standing Committee No. 2 (2015); House of Representatives Standing Committee on Legal and Constitutional Affairs (2007); The Senate (2015)

<sup>17</sup> Presented in chronological order: Setterlund, Tilse and Wilson (1999); Sanders (2005); EAPU (2005); McCawley, Tilse, Wilson, Rosenman and Setterlund (2006); McCawley (2007); Setterlund, Tilse, Wilson, McCawley and Rosenman (2007); Jackson L. (2009); Wilson, Tilse, Setterlund and Rosenman (2009); Office of the Public Advocate and Queensland Law Society (2010); Queensland Law Society (2011); Tilse, Wilson, White, Willmott and McCawley (2014); Spike (2015a); Communities Disability Services and Domestic and Family Violence Prevention Committee (2015); Taskforce on Domestic and Family Violence in Queensland (2015)

<sup>18</sup> ALRC (2017)

## **3 Methodology**

The project was designed to access and compile existing information and research on the prevalence and characteristics of elder abuse in Queensland, as well as the interventions and service responses. Given identified gaps in the current knowledge base, and in view of the likelihood that elder abuse is under-represented in official data sources, the study accessed and compiled a broad cross-section of existing information and research on the prevalence and characteristics of elder abuse in Queensland, as well as about interventions and service responses. To inform the study, the following qualitative and quantitative research methods were utilised:

- stakeholder and legislative mapping
- key stakeholder interviews
- mapping current service responses, networks and interventions
- literature review
- focus groups
- online survey
- information from a review and analysis of relevant administrative data held across the Queensland Government and other organisations and conducted by the Queensland Government Statistician's Office (QGSO).<sup>19</sup>

The remainder of this chapter provides more detailed information about the research methodology and approach.

### **3.1 Aims and objectives**

The project aimed to examine relevant information sources and the current policy, legislative and service responses to elder abuse in Queensland to provide an evidence base to better understand the prevalence and characteristics of elder abuse in the state.

Objectives:

- to provide information about the incidence and prevalence of all types of elder abuse in Queensland through a synthesis of data provided by non-government stakeholders, including information about victims and abusers, as well as quantitative and qualitative data collected for the project
- to inform data requirements for potential state or national prevalence studies
- to map current legislative, policy and service responses by government and specific organisations involved in prevention, responses and interventions to elder abuse, and collate information about their roles and approaches
- to identify any issues, needs and gaps around elder abuse prevention and service responses in Queensland
- to identify and summarise specific interventions and service responses to elder abuse, including information and evidence about their effectiveness, with a view towards identifying best-practice responses.

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<sup>19</sup> QGSO (2016)



### **3.2 Time line**

The project was conducted over the period July 2016 to August 2017. Interviews and focus groups were held between September and November, with data transcription and analysis taking place in October and November. A draft report was submitted for feedback in late December, and an interim report incorporating initial feedback was submitted in February. The final report addressing detailed feedback from the funder, the Office of the Public Guardian, and the Department of Justice and Attorney-General was submitted in August 2017.

### **3.3 Research reference group**

A research reference group consisting of representatives from key stakeholder organisations was established at the start of the project to provide regular advice and feedback about the development and rollout of the study. An invitation was extended to relevant organisations to be part of this group. Organisations represented included:

- Department of Communities, Child Safety and Disability Services
- Department of Aboriginal and Torres Strait Islander Partnerships
- Queensland Health
- Queensland Civil and Administrative Tribunal
- Queensland Law Society
- Office of the Public Guardian.

The Elder Abuse Prevention Unit (EAPU), while not officially in the reference group, remained a key project partner, supporting and facilitating the planning and organisation of the focus groups, as well as providing input and feedback about other research activities. The EAPU promotes the rights of older people to live free from abuse and provides a statewide service, including an Elder Abuse Helpline, to respond to the abuse of older people in Queensland. The Helpline offers specialised advice to people who experience, witness or suspect elder abuse.

### **3.4 Ethics approval**

The ethical approval processes were complex with approval needed from several different organisations. At project commencement, ethics approval was granted by the Curtin University Human Research Ethics Committee (HREC) (Approval number HRE2016–0117). During the course of the research, several participating organisations also requested that their internal ethical approval processes be followed, including UnitingCare Queensland, the Queensland Police Service (QPS) and Queensland Health. After discussion, Queensland Health determined that ethical approval was not necessary. Ethical approval was sought and granted by UnitingCare Queensland (Reference Number: Moyle 19616) and the QPS Research Committee.

All participants were provided with a research information sheet and asked to sign a consent form<sup>20</sup> in line with HREC Guidelines. Participants were informed that participation was voluntary and that they could withdraw from the study at any time without reason or consequence.

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<sup>20</sup> For the online survey, the research information sheet was included as an introductory page before the survey commenced and participants were told that proceeding further would be regarded as consent to participate.

### 3.5 Literature review

A scoping literature review was conducted to provide information about elder abuse prevalence policy and service responses both nationally and internationally, as well as to identify best-practice approaches to prevention and responding to elder abuse. Recently considerable work has been done in this area, including a detailed review of research and literature conducted by the Australian Institute of Family Studies into elder abuse issues, frameworks and responses.<sup>21</sup> The project incorporated material sourced from recent and ongoing inquiries into elder abuse and discrimination including the Victorian Royal Commission into Family and Domestic Violence<sup>22</sup> and the New South Wales Inquiry into Elder Abuse.<sup>23</sup> Submissions from the Australian Law Reform Commission [ALRC] inquiry<sup>24</sup> into elder abuse were also utilised, as were the ALRC's subsequent publications.<sup>25</sup>

The research also accessed information concerning existing networks of relevant government, non-government and legal organisations specialising in elder abuse. Content and findings from QGSO's report *Elder abuse, Queensland, September 2016: Report based on information sourced from administrative data collections*,<sup>26</sup> which examined the availability, quality and usefulness of existing administrative and service level datasets for use in reporting on aspects of elder abuse, were also incorporated into this report where relevant. The project also integrated recent Australian research undertaken by members of the research team<sup>27</sup> as well as other research focused on contemporary service delivery and legal frameworks in Queensland, other Australian states and territories, and international jurisdictions. These documents provided the foundation of the scoping review, and other relevant material was identified through a comprehensive search of identified databases for peer-reviewed articles; grey literature and information from relevant websites was also included. Information sourced in the literature review is provided in the relevant sections of this document.

### 3.6 Stakeholder and legislative mapping

A collaborative selection process with input from the project funder, the Department of Communities, Child Safety and Disability Services, initially identified 25 organisations as stakeholders. A number of stakeholder meetings were held in Brisbane at project commencement, and through further consultation and conversation via email, in telephone and in person during the early stages of the research, 18 of the original 25 organisations were identified as key stakeholders and their staff were invited to participate in interviews, focus groups and an online survey. During the research process, current responses to elder abuse in Queensland were mapped and documented, and information about these organisations is provided in Chapter 8. Additional stakeholder organisations were also identified by participants, and these have been categorised in Table 8.1 in Chapter 8, with further details in Appendix 9.

A legislative mapping exercise examined Queensland, other Australian and international law and policy frameworks. This included searches of:

- legal databases (for example, Westlaw, Lexisnexis and Austlii/Bailii/Canlii, etc.) for relevant legislation, legal articles and policy information

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<sup>21</sup> Kaspiew, Carson and Rhoades (2016)

<sup>22</sup> Government of Victoria (2016)

<sup>23</sup> For example, General Purpose Standing Committee No. 2 (2015)

<sup>24</sup> Australian Law Reform Commission (2016a)

<sup>25</sup> ALRC (2016b)

<sup>26</sup> QGSO (2016)

<sup>27</sup> Clare M. et al.(2011); Black Blundell and Clare M.(2012); Somes and Webb (2015); Webb (25 February 2016)

- government websites in Australia and internationally for legislation and key policy documents
- database searches for academic references. These included additional publications by federal, state and local government agencies and the not-for-profit sector. Equivalent publications in overseas jurisdictions were also source.d

The legislative analysis incorporated recent developments and findings in relation to reform in Queensland and in other jurisdictions as applicable. Queensland-specific elder abuse legislation was identified and compiled and is discussed in Chapter 9 in the context of interstate and national legislation (listed in Appendix 1 and 2).

### **3.7 Participants**

Overall, 184 individuals representing 57 organisations participated in this project, however, some individuals from the same agency participated in multiple forms of data collection. Eight interviews were conducted with key stakeholder organisations in the Brisbane metropolitan area. Six interviews were conducted face-to-face, and two agencies provided written responses. Ninety-nine participants took part in 13 focus groups across Queensland in metropolitan, regional and remote areas. Focus group participants came from 43 organisations with a broad range of backgrounds, including legal, health, policing, advocacy, community work, and social work. Seventy-five participants from 38 organisations completed an online survey.

#### **3.7.1 Key stakeholder interviews**

Participants interviewed in this category were based in Brisbane and were mid to high-level staff from key stakeholder organisations<sup>28</sup> with a good knowledge and understanding of their agency's elder abuse policies and practices. Staff of organisations working in the elder abuse sector involved in both direct and indirect prevention, policy and responses to elder abuse were invited to participate. Interviews were semi-structured and lasted from 45 minutes to two hours. A copy of the interview schedule is available at Appendix 3.

Six face-to-face interviews were held (n=8), which included two representatives each from Aged and Disability Advocacy and the Office of the Public Advocate and one each from the Office of the Public Guardian, Public Trustee, Queensland Civil and Administrative Tribunal and the QPS. Written responses to the interview questions were provided by two units of the Department of Communities, Child Safety and Disability Services: the Office for Domestic and Family Violence Reform and the Office for Seniors, Carers and Volunteering.

It was not possible to recruit participants from each identified organisation. Four other organisations were contacted and invited to participate several times, but did not take up the invitation.<sup>29</sup>

#### **3.7.2 Focus groups**

Thirteen focus groups were held with front-line staff who work in the areas of elder abuse policy, prevention and service responses, including those in rural and regional areas. Focus groups were

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<sup>28</sup> Staff from the EAPU took part in an EAPU-specific focus group, as well as other research activities.

<sup>29</sup> These were the Disability Services section of the Department of Communities, Child Safety and Disability Services, the federal Department of Health (Aged and Community Care), the Council on the Ageing and Queensland Advocacy Incorporated.

held in Brisbane, the Gold Coast, the Sunshine Coast, Cairns, Townsville, Hervey Bay and Barcaldine, as depicted in Figures 3.1 and 3.2 below, with locations selected in consultation with the reference group.

The focus groups were designed to gather information about current approaches to elder abuse prevention and service responses on the ground level and provide case study exemplars. They aimed to complement the interview data through a focus on front-line staff. An invitation to participate in the research was extended via an email from the EAPU contact list of organisations working in the focus group locations.



Figure 3.1. Focus group locations

Table 3.2. Focus group participant numbers by location

Location	Participants
Brisbane (4 groups)	26
Barcaldine	12
Cairns	9
Gold Coast	6
Hervey Bay (4 groups)	29
Sunshine Coast	8
Townsville	9
<b>Total</b>	<b>99</b>

Focus group participants came from a range of different organisations, including health and aged care, legal, statutory and support services. The focus groups were semi-structured, with questions based on those asked during the individual interviews (see Appendix 4 for research questions). Focus groups were between 57 minutes and one hour and 43 minutes.

### 3.7.3 Online survey

An anonymous online [Survey Monkey](https://www.surveymonkey.com)<sup>30</sup> questionnaire was developed and distributed broadly to staff working in the elder abuse sector as well as those working in allied organisations who may be involved in responding to elder abuse, such as people working in aged care or with older people (questions listed in Appendix 5). The research information and link to the online questionnaire were sent to 176 email addresses, which included stakeholder organisations identified through the research activities. Potential participants were invited to share this link with others within their organisations and to forward the information to other organisations and individuals that might be interested in participating, and to advertise the survey on their organisation’s social media accounts, if deemed appropriate.

Demographic information provided by the 75 online survey respondents indicated that 73 per cent of participants worked on elder abuse responses, and eight per cent worked in policy/prevention. It was common for other respondents to indicate they referred victims of elder abuse to other service

<sup>30</sup> [www.surveymonkey.com](https://www.surveymonkey.com)

providers; 66 per cent of respondents indicated that their organisation works directly with victims and perpetrators of elder abuse and 25 per cent referred cases to other organisations. The respondents ranged in their experience, with 26 per cent having worked in their current job for one year or less, 34 per cent for one to five years, and 40 per cent for more than five years. Most respondents were female (80 per cent) and almost all respondents reported speaking English at home. Respondents reported working throughout Queensland, with the areas covered including Brisbane metropolitan (14 per cent), statewide service provision (35 per cent), and other areas (including the Gold Coast, Cairns area, Moreton Bay Shire, the Sunshine Coast, Wide Bay-Hervey Bay, Atherton and surrounds, Silkwood to Kennedy, Redcliffe Peninsula, Fraser Coast, Townsville and surrounds, Central Queensland, Far North Queensland, and the Central West and South West of Queensland).

### **3.8 Data analysis**

All interviews and focus groups were transcribed verbatim and analysed using Nvivo software for themes and issues pertinent to the research aims. The online survey data was analysed for frequencies and descriptive statistics to give an overall impression of the main themes from respondents.

### **3.9 Research limitations**

This study's major limitations include:

- The data collated from interviews and focus groups focussed on the views of managers, professional practitioners and front-line workers. The voices of older people experiencing elder abuse and perpetrators of the abuse were not an active component of this study, so these perspectives have not been included as firsthand information.
- Limited time and resources meant it was impossible to travel to Far North Queensland to collect focus group data. The online survey component may address this in a limited fashion, but excludes the views of people who did not have access to the online survey.

## 4 Elder abuse definitions

This chapter discusses ways of defining elder abuse as well as the challenges with different conceptualisations. Themes and issues that emerged from the research data in relation to the definitions, and characteristics of elder abuse are also explored. Examples of different types of abuse have been included, as extracted from the interview and focus group data. It is important to note that, although each example is being used to illustrate a particular type of abuse, the case studies generally depict complex cases, with multiple types of abuse occurring at the same time. This highlights the fact that elder abuse is a multifaceted issue which is shaped by complex interrelated layers of family, community and service system issues. Elder abuse characteristics and risk factors are further discussed with reference to the research data in Chapter 6.

### 4.1 Defining elder abuse

The World Health Organization defines elder abuse as:

*“...a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.”<sup>31</sup>*

In the Australian literature and service delivery context, elder abuse is usually divided into the following categories — financial, psychological, social physical, sexual, and neglect. Other countries and jurisdictions use varying definitions; some combine emotional and psychological abuse, others include exploitation in discussions of financial abuse, and some encompass social abuse within other domains.<sup>32</sup> Comprehensive descriptions, including examples and signs of these different forms of elder abuse, may be found on the EAPU website.<sup>33</sup> Many interview and focus group participants mentioned the above definition as being a useful framework.

Operational definitions of elder abuse used by interview participants were affected by their respective organisation’s role and jurisdiction. The following issues were identified which influenced the definitions used:

- whether or not elder abuse was viewed as a subset of family and domestic violence

#### Elder abuse types<sup>4</sup>

**Financial abuse:** the illegal or improper use of a person's finances or assets without their informed consent.

**Psychological (emotional, mental, verbal) abuse:** the infliction of mental anguish, fear and feelings of shame and powerlessness.

**Social abuse:** the intentional prevention of an older person from having social contact with family or friends or accessing social activities of their choice.

**Physical abuse:** the infliction of physical pain, injury or force and the deprivation of liberty.

**Sexual abuse:** sexually abusive or exploitative behaviour or any behaviour that makes the older person feel uncomfortable about their body or gender.

**Neglect:** the failure of a caregiver to provide the necessities of life to a person for whom they are caring. Neglect can be intentional or unintentional.

<sup>31</sup> World Health Organization/International Network for the Prevention of Elder Abuse (2002)

<sup>32</sup> Mosqueda et al. (2016)

<sup>33</sup> [www.eapu.com.au/elder-abuse](http://www.eapu.com.au/elder-abuse)

<sup>34</sup> EAPU (2012, p. 3)

- whether or not it included abuse by paid carers and other professionals, such as accountants and real estate agents, etc.
- differences in age limitations for service access and the age at which people were defined as 'old'
- whether or not organisations were run by the state or federal government, non-government, or provided community care or in residential settings.

Behaviours encapsulated by the definitions of elder abuse may be experienced at any point of the life course, and there are similar definitions of the spectrum of abuse used in related fields of abuse, violence and mistreatment; for example, family and domestic violence, child protection and the abuse and mistreatment of people with a disability, though the spectrum and behaviours described varies slightly. In a Queensland government Department of Communities, Child Safety and Disability Services policy document entitled, *Preventing and Responding to the Abuse, Neglect and Exploitation of People with Disability*,<sup>35</sup> definitions of abuse are much more complex and have been broken down into three categories: abuse, neglect and exploitation. Abuse and neglect are further broken down into sub-categories: abuse including physical, sexual, psychological/emotional, financial, chemical, and denial of access to legal remedies; neglect encompassing physical, passive, emotional, wilful deprivation and crimes of omission.

During the research process, when interview and focus group participants discussed the nature of elder abuse, the absence of an agreed definition was recognised. What such a definition should encompass was also contested. However, this was not a widely discussed topic, and participants were keen to speak about particular issues and gaps in policy and legal responses, rather than dwell on formulating a definition. However, some expressed concern that the 'net' should be cast wider and commonly accepted definitions, such as the WHO definition mentioned above, did not incorporate some perpetrators further removed from the family unit.

Problematic issues in relation to the varied definitions used across organisations and government have been previously discussed in other Australian literature.<sup>36</sup> To summarise, there are several issues to be considered in establishing a useful and consistent definition of elder abuse which is broadly applicable, and these include:

- the purpose of the definition and how it will be used, including examination of existing definitions of elder abuse as well as operational definitions used by organisations in various jurisdictions
- the scope of the 'relationship of trust', and whether this is a necessary element. Should this only encompass 'family and friends' or also those who could be seen as having a duty of care relationship with the older person, including paid care staff and other professionals?
- at what age people are defined as 'older' and therefore subject to elder abuse (as opposed to another form of abuse) because the age range and eligibility for various seniors services and benefits can range from 50 to 65 plus years

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<sup>35</sup> Department of Communities (2014) Appendix 1

<sup>36</sup> Clare et al. (2014); Kaspiew et al. (2016)

- whether elements of dependence and/or vulnerability should be incorporated overtly into any definition, and how this may link to the area of the abuse of ‘at-risk’<sup>37</sup> adults or people with a disability
- how elder abuse might fit within the broader area of domestic violence.

Definitions are seen as important in data collection and research because they provide a framework for ensuring measurement and responses are consistent. In a recent international scoping review on key elder abuse issues which examined 20 studies of elder abuse prevalence and risk factors, it was proposed that the use of varying and poorly constructed definitions of elder abuse has proved a barrier to adequately exploring the issue.<sup>38</sup> Variable, context-dependent definitions make research results very location specific and non-generalisable to other jurisdictions or to other studies where different definitions have been used.

#### 4.1.1 Links with family and domestic violence

The Taskforce on Domestic and Family Violence in Queensland’s report, *Not Now, Not Ever — Putting an End to Domestic and Family Violence in Queensland*,<sup>39</sup> noted that older people may experience family and domestic violence though the major forms of abuse experienced may differ to those experienced within spousal and intimate partner abuse. In the elder abuse context, the abuse tends to manifest as non-spousal violence, with approximately 72 per cent of perpetrators reported to the Elder Abuse Prevention Unit (EAPU) Helpline being adult children of the older person.<sup>40</sup> Additionally, financial and psychological abuse are the most often reported forms of elder abuse,<sup>41</sup> whereas for domestic violence, it is physical and sexual abuse.<sup>42</sup>

In the current project, interview and focus group participants frequently mentioned the overlap between these two areas. Participants suggested that the concept of domestic violence needs to be broadened to encompass older people as well because domestic violence is typically seen by the public and some practitioners working with it as only about young families. This has implications for the way that elder abuse is discussed within the broader ambit of family and domestic violence, where the focus is primarily on spousal or partner violence and abuse.

Definitions also affect public perceptions and targeted education and awareness raising. There is a general lack of awareness that family and domestic violence also encompasses older people, but also that it is about more than just physical violence. Participants mentioned that both victims and perpetrators lack awareness and “don’t always know it’s abuse”:

*With elder abuse, people...just think of it as someone in a nursing home being force fed...but they don’t think of it as [being perpetrated by] a family member.*

*I was talking to a family member and defined it as elder abuse but obviously, stemming from a domestic violence background, and the family member was saying*

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<sup>37</sup> An at-risk adult is defined as an adult in need of care and support who is experiencing abuse or neglect or is at risk of abuse or neglect and who cannot protect themselves from the abuse (ALRC, 2017, p. 375)

<sup>38</sup> Pillemer et al. (2016)

<sup>39</sup> Taskforce on Domestic and Family Violence in Queensland (2015)

<sup>40</sup> EAPU (2016)

<sup>41</sup> Ibid

<sup>42</sup> Taskforce on Domestic and Family Violence in Queensland (2015)



*to me, “Oh, I wouldn’t have really called it that,” but there was physical harm going on between the two. There was withholding of food, there was locking people out. There’s a whole lot of conflict and yelling and screaming and everything, but they just never thought about it in that kind of way.*

In Queensland, elder abuse by a family member may be seen as elder abuse under the law, as discussed in Chapter 9. Additionally, the Australian Law Reform Commission report<sup>43</sup> into national legal responses to elder abuse suggests that family violence prevention initiatives may be helpful in informing elder abuse policy.

## 4.2 Key findings: Elder abuse definitions

The use of varying and poorly constructed definitions of elder abuse is a barrier to the development of policy and service responses and the conducting of broadly generalisable research about the area. Though the WHO’s elder abuse definition is often referred to by organisations, operational definitions of elder abuse are often variable and context dependent. Elder abuse responses are often fractured in line with the organisational mandate, and do not consider the issue holistically. There are overlaps with other definitions in the area of abuse and mistreatment, including that of people with a disability and family and domestic violence, and a lack of clarity about how these aspects fit together. Variable definitions also render research results very location specific and non-generalisable to other jurisdictions or other studies where different definitions have been used.

## 4.3 Proposed directions

A coherent and consistent definition of elder abuse could be established across all jurisdictions, and this will assist in data collection and recording the scope of the issue. In formulating the definition there should be consideration of:

- the purpose of the definition and how it will be used, including examination of existing definitions of elder abuse, as well as operational definitions used by organisations in various jurisdictions
- the scope of the ‘relationship of trust’ and whether it is a necessary element. Should this only encompass ‘family and friends’ or also those who could be seen as having a duty of care relationship with the older person, including paid care staff and other professionals?
- at what age people are defined as ‘old’ and therefore subject to elder abuse (as opposed to another form of abuse) because the age range and eligibility for various seniors services and benefits can range from 50 to 65 plus years
- whether elements of dependence and/or vulnerability should be incorporated overtly into any definition, and how this may link to the area of the abuse of ‘at-risk’<sup>44</sup> adults or people with a disability
- how elder abuse might fit within other areas of abuse and mistreatment, including family and domestic violence and abuse of people with a disability.

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<sup>43</sup> ALRC (2017, p. 20)

<sup>44</sup> An at-risk adult is defined as an adult in need of care and support who is experiencing abuse or neglect or is at risk of abuse or neglect and who cannot protect themselves from the abuse (ALRC, 2017, p. 375)

It is proposed that the definition should be broad and without reference to relationships of trust. A suggested definition based on that used by the United States Department of Health and Human Services<sup>45</sup> is:

*Elder abuse is any knowing, intentional or negligent act by family, a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable older person.*

Such a definition should refer to relationships of trust, and the definition should include a broader group of people than just family and friends, for example, professionals, banks and business people, who have a duty of care to the older person.

Development of a consistent definition of elder abuse will support coherent data collection and recording the issues on both a state and national level, as mentioned in Chapter 5. Broadening perceptions and understandings of domestic violence in policy and information/education will assist in community and professional recognition of abuse from non-spousal family members. If broader definitions are accepted in services that respond to domestic violence, this may provide additional intervention options for people experiencing elder abuse within systems already in existence.

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<sup>45</sup> United States Department of Health and Human Services (2014)

## 5 Elder abuse prevalence and data collection

This chapter focuses on elder abuse prevalence. Data from national and international prevalence studies has been used to contextualise Queensland data and provide quantitative indicators of the extent of elder abuse in the state, the aspects and characteristics of elder abuse, and the extent of service responses. Data collection issues are explored, and information from research participants about this topic is included in this chapter.

### 5.1 Queensland's older population

#### 5.1.1 Current population

Elder abuse is a significant issue for the Queensland community due to the ageing of the population and consequent increase in the proportion of the population in this demographic. Queensland's older population (aged 60 and over) was estimated to be 973,842 at 30 June 2016,<sup>46</sup> constituting one-fifth (20.1 per cent) of Queensland's total population. People aged 60–64 years comprised 5.4 per cent of the population; 65–74 year olds, 8.6 per cent ; 75–84 year olds, 4.3 per cent ; and those aged 85 and older, 1.8 per cent.<sup>47</sup> At June 2016, there were slightly more females than males (506,118 and 467,724, respectively), with a sex ratio of 92.4 males for every 100 females. For the group aged 75–84 the ratio was 89.9, while for those aged 85 and older, it was much lower at 59.9 males per 100 females. Queensland's older population has grown an average of 3.2 per cent each year since 1971, which is a higher annual growth rate than the population aged 60 years or younger (2 per cent).<sup>48</sup>

#### 5.1.2 Projected population<sup>49</sup>

By 30 June 2036, the number of people aged 60 and older in Queensland is projected to be between 1.66 million and 1.77 million people, as shown in Table 5.1.<sup>50</sup> By this time, the proportion of those aged 60 and older is expected to increase, reaching between 24.2 per cent (high series) and 26 per cent (low series) of Queensland's total population, as presented in Figure 5.2.<sup>51</sup> The median age of Queenslanders is also set to increase, from 36.3 years in 2015 to 39.9 years in 2036.

**Table 5.1. Projected number of persons aged 60 and older in Queensland, 2016–2036<sup>56</sup>**

Projection Series	2016	2026	2036
<b>Persons 60 years or older</b>		— Number —	
<b>Low</b>	973,400	1,312,000	1,658,700
<b>Medium</b>	974,700	1,330,400	1,715,800
<b>High</b>	976,000	1,348,200	1,769,600

<sup>46</sup> Australian Bureau of Statistics [ABS] 3101.0

<sup>47</sup> QGSO (2016)

<sup>48</sup> Ibid

<sup>49</sup> This section cites information compiled by QGSO (2016) in section 2.0 of their report, using data from ABS (3101.0, 2015) and Queensland Government population projections (2015)

<sup>50</sup> Reproduced from QGSO (2016, p. 5)

<sup>51</sup> The low and high series for population projections form the upper and lower limits of likely population figures. The medium series provides a mid-range projection.

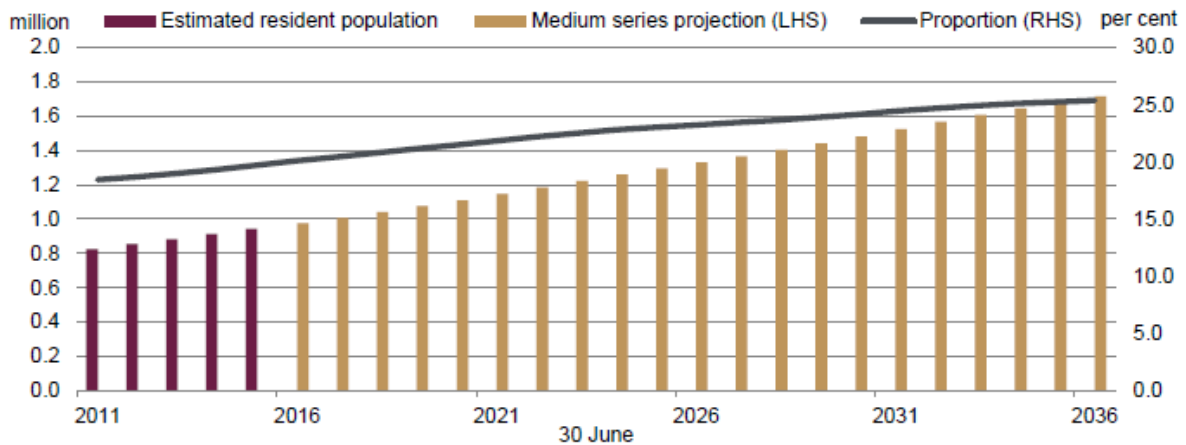


Figure 5.2. Estimated and projected population age 60 or older in Queensland 2011–2036<sup>52</sup>

Table 5.3 below identifies that projected population for older people aged 65 or older for Queensland’s 10 largest local government areas (LGAs) by absolute growth from 2011 to 2036, to show how the older populations in these areas are projected to increase.<sup>53</sup>

Table 5.3. Projected population growth persons aged 65 or older for selected Queensland local government areas (LGAs), June 2011–2036<sup>54</sup>

LGA	2011	2036	Change 2011–2036
—000s—			
Brisbane (C)	124.8	251.6	126.8
Gold Coast (C)	73.6	174.6	101.1
Moreton Bay (R)	50.2	128.9	78.7
Sunshine Coast (R)	47.5	114.1	66.6
Logan (C)	26.8	82.1	55.3
Ipswich (C)	16.6	64.4	47.9
Townsville (C)	17.5	49.6	32.1
Cairns (R)	14.7	41.4	26.6
Toowoomba (R)	23.7	49.3	25.7
Redland (C)	20.6	44.9	24.3

C = City R = Regional Council

<sup>52</sup> Data from ABS 3101.0, chart reproduced from QGSO (2016, p. 5)

<sup>53</sup> Reproduced from QGSO (2015, p. 6)

All the data presented above indicates that Queensland’s population is ageing and highlights the importance of considered policy development, planning and adequate resourcing to address this growing age group’s future needs. The population information provides context for the prevalence information provided in the next section.

## 5.2 Estimates of community prevalence from national and international studies

### 5.2.1 International studies

The 2015 World Health Organization [WHO] *Report on Ageing and Health*<sup>54</sup> proposed that the prevalence rate of elder abuse in high and middle income countries may be up to 14 per cent and higher still among people with cognitive impairment and/or who live in institutions. Prevalence statistics by type of elder abuse in community dwelling older people without cognitive impairment have been reported in the following ranges:<sup>55</sup>

- physical abuse 0–5 per cent
- sexual abuse 0–1 per cent
- psychological abuse, above a threshold for frequency or severity, 1–6 per cent
- financial abuse 1–9 per cent
- neglect 0–6 per cent.

The wide variation in prevalence estimates (see Table 5.4 below) is indicative of differences in: (a) methodologies used for each study, (b) survey instruments to capture different types of abuse, (c) samples, (d) how abuse types are operationalised, and (e) difficulties inherent to estimating prevalence (as outlined previously). With such limitations in mind, Table 6.4 provides an overview of prevalence estimates globally from available recent studies.

**Table 5.4. Summary of selected international prevalence estimate studies on elder abuse**

Country/Region	Overall prevalence	Financial	Psychological	Physical	Neglect	Sexual
<b>Global meta-analysis</b> <sup>56</sup>	Aggregated prevalence range 2.2–36.2% (average 14.3%)	1–13.1% (average 4.7%)	0.7–27.3% (average 8.8%)	0.2–14.6% (average 2.8%)	0.2–15.8% (average 3.1%)	0.04–3.3% (average 0.7%)
<b>Global meta-analysis</b> <sup>57</sup>	Aggregated prevalence range 1.1–44.6% (average 14.4%)	1.3–20.6%	1.1–41.2%	0.1–11.7%	0.2–31.1%	0.6–1.3%

<sup>54</sup> WHO (2015)

<sup>55</sup> Ibid (p. 74)

<sup>56</sup> Pillemer, Burnes, Riffin, and Lachs (2016)

<sup>57</sup> Sooryanarayana et al. (2013)

<b>Global systematic review<sup>58</sup></b>		Aggregated prevalence range 3.2%–27.5%				
<b>European meta-analysis<sup>59</sup></b>	Aggregate prevalence range 0.8% and 29.3% (average 10.0%)	0.2–7.6%	0.3–26.3%	0.1–6.2%	0.2–16%	0.1–5.1%
<b>United States<sup>60</sup></b>	10% across one-year period	5.2%	4.6%	1.6%	5.1%	0.6%
<b>United States<sup>61</sup></b>	4.6% across one-year period	NA	1.9%	1.8%	10.8%	NA
<b>United States<sup>62</sup></b>	14% across a one-year period	NA	12.1%	1.1%	NA	0.7%
<b>The Netherlands<sup>63</sup></b>	5.6% across a one-year period	1.4%	3.2%	1.2%	0.2%	NA
<b>Portugal<sup>64</sup></b>	12.3% across a one-year period	6.3%	6.3%	2.3%	0.3%	0.2%
<b>Ireland<sup>65</sup></b>	2.2% across a one-year period	1.2%	1.2%	0.5%	0.3%	0.05%
<b>United Kingdom<sup>66</sup></b>	2.6%	0.6%	0.4%	0.4%	1.1%	0.2%
<b>Brazil<sup>67</sup></b>	12.4%	2.5%	1.5%	0.3%	NA	NA
<b>Israel<sup>68</sup></b>	18.4% across a one-year period	6.4%	14.2%	2% (physical and sexual)	2.7–26%	2% (physical and sexual)

## 5.2.2 Projected elder abuse prevalence in Queensland

Keeping in mind the variety of estimates reported in the international data presented above, crude projections of elder abuse prevalence levels in Queensland have been calculated using the medium projected estimated resident populations in Queensland for those more than 65 years old<sup>69</sup>, and

<sup>58</sup> Cooper, Selwood and Livingston (2008)

<sup>59</sup> De Donder et al. (2011)

<sup>60</sup> Acierno et al. (2010)

<sup>61</sup> Burnes et al. (2015)

<sup>62</sup> Rosay and Mulford (2016)

<sup>63</sup> Comijs, Pot, Smit, Bouter and Jonker (1998)

<sup>64</sup> Gil et al. (2015)

<sup>65</sup> Naughton et al. (2012)

<sup>66</sup> Biggs et al. (2009)

<sup>67</sup> Bolsoni, Coelho, Giehl and d'Orsi (2016)

<sup>68</sup> Lowenstein, Eisikovits, Band-Winterstein and Enosh (2009)

<sup>69</sup> ABS (2015)

average, low, and high values for elder abuse from an international meta-analytical study of elder abuse reported above.<sup>70</sup> This is shown in Table 5.5 below. These calculations indicate that the estimated number of victims of elder abuse in 2037 may range from approximately 30,625 (low-range estimate) to 503,921 (high-range estimate). Importantly, average prevalence estimates of elder abuse indicate there may be almost double the number of victims in 20 years' time, providing some indication of the potential scope of the issue.<sup>71</sup>

**Table 5.5. Estimated projections of elder abuse victimisation prevalence for Queensland between 2017 and 2037, and estimated percentage increases in number of victims relative to 2017**

		2017	2022	2027	2032	2037
<b>Qld Population (65+)</b>		738,586	881,544	1,049,631	1,213,741	1,392,047
<b>Abuse prevalence estimate</b>	(avg. = 14.3%)	105,618	126,061	150,097	173,565	199,063
	(low = 2.2%)	16,249	19,394	23,092	26,702	30,625
	(high = 36.2%)	267,368	319,119	379,966	439,374	503,921
<b>Percentage increase from 2017</b>	(avg. = 14.3%)		19.4%	42.1%	64.3%	88.5%

Measuring the prevalence of elder abuse is difficult for a variety of reasons, as mentioned above and also discussed in the next section.

### 5.2.3 Limitations of estimating elder abuse prevalence

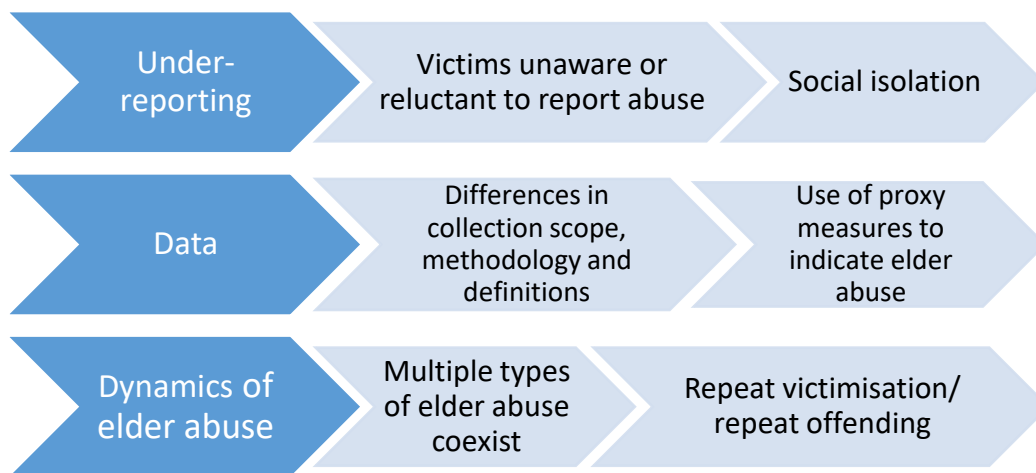
The following sections examine administrative data from Queensland organisations responding to elder abuse as a different way of exploring the extent of the issue for Queensland. Challenges in estimating elder abuse include under-reporting, different definitions, differences in how administrative datasets are collected, recorded, and categorised by different agencies, how datasets can change over time, and how elder abuse cases are reported to agencies.<sup>72</sup> These challenges are depicted in Figure 5.6 below. Further, the dynamics of elder abuse make it hard to accurately capture the extent to which this problem is occurring; multiple types of elder abuse may coexist, and repeat victimisation and offending can be common, with the same offender abusing the same person multiple times.<sup>73</sup>

<sup>70</sup> Pillemer et al. (2016)

<sup>71</sup> Projections rely on the accuracy of the assumptions used, and the values reported from international literature. Many factors could influence the number of elder abuse victim, not just population increase. As such, the accuracy of these projections cannot be assumed. Variation above or below the figures provided is to be expected. These projections do not take into account other variables that may affect elder abuse prevalence.

<sup>72</sup> QGSO (2016)

<sup>73</sup> Clare M. et al. (2011)



**Figure 5.6. Limitations affecting the collection of data about elder abuse prevalence**

This may mean that many studies rely upon the best available proxy measures within administrative datasets or surveys to estimate elder abuse prevalence.

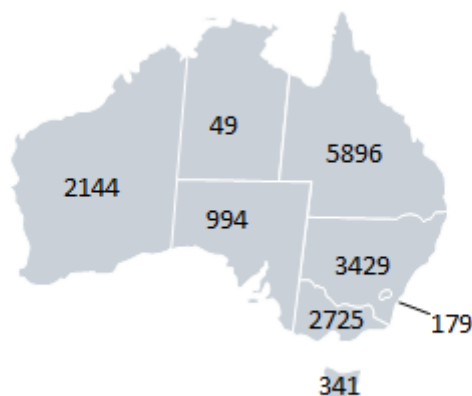
#### **5.2.4 Australian data**

This section reports on data from Australian studies and reports. A number of organisations which respond to elder abuse are mentioned and further information about these organisations is provided in Chapters 7 and 8, which discuss, respectively, the national context and Queensland organisations working in the area of elder abuse.

The *National Elder Abuse Annual Report 2015–2016*<sup>74</sup> reports there were 2,717 elder abuse advocacy cases dealt with by elder abuse agencies across Australia, and 12,993 information calls received, which may include out-of- scope calls, referrals and general enquiries about elder abuse, with 6,903 clients assisted overall. Figure 5.7 below, generated from information in the Report, indicates the number of information and advocacy cases dealt with by elder abuse agencies in each Australian state and territory. However, it does not specify data sources, how data was collated, or the methodologies used to calculate figures for each state. As such, the data is likely to be incomplete and from only a subset of services; it is also possible that double counting may be present within these figures. Therefore, this report recommends that these figures be questioned and that resources should be dedicated to compiling a more reliable national report. While limitations are acknowledged, this report is the only amalgamated data available about Australia as a whole and offers insight into the potential prevalence and under-reporting of elder abuse nationally.

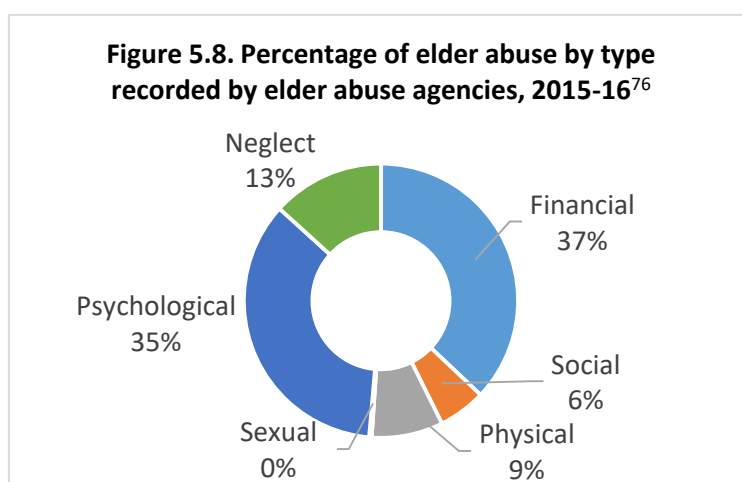
<sup>74</sup> Advocare Inc. (2016b)





**Figure 5.7. Information and advocacy cases by state, 2015–16<sup>76</sup>**

Information from the report shown in Figure 5.8 below depicts the percentage of elder abuse by type recorded by elder abuse agencies across Australia. (NB Sexual abuse was 0.3 per cent, too small to register on the chart.)<sup>75</sup>



**Figure 5.8. Percentage of elder abuse by type recorded by elder abuse agencies, 2015-16<sup>76</sup>**

Data from a Western Australian (WA) prevalence study of elder abuse found similar results using administrative data from Advocare between 2004 and 2010.<sup>76</sup> Financial and psychological abuse were most common (28.6 per cent and 27.4 per cent respectively), followed by physical abuse (10.5 per cent), neglect (10 per cent), social abuse<sup>77</sup> (6.9 per cent) and sexual abuse (0.5 per cent). Further, using data from the Office of the Public Advocate (WA), the same report identified financial abuse to be the most frequent type of abuse encountered by older people, followed by neglect. A 2002 WA study estimated the prevalence of elder abuse among people aged 60 years and older to be 0.58 per cent.<sup>78</sup> However, a substantial minority of respondents in the above research (22 per

<sup>75</sup> Advocare Inc. (2016b)

<sup>76</sup> Clare M. et al. (2011)

<sup>77</sup> Social abuse involves preventing a person from having social contact with friends or family or access to social activities.

<sup>78</sup> Boldy, Webb, Horner, Davey and Kingsley (2002)

cent) believed that the real figure may be as high as 15 per cent or more, if unreported cases are included. A 1997 study concerning patients of four Australian Aged Care Assessment Teams (ACAT) throughout three Australian states identified the prevalence of elder abuse overall within this group to be 1.2 per cent.<sup>79</sup> Psychological abuse was most commonly detected. Another similar study 2001 of ACAT patients in the Central Coast of New South Wales found a prevalence of 5.4 per cent.<sup>80</sup> Psychological abuse was the most commonly identified (67.7 per cent), and was seen in 90 per cent of cases with other types of abuse. Data from a 1997 New South Wales study that focused on ACAT patients in rural areas indicated an overall prevalence rate of 5.5 per cent for those aged 65 or older and living at home.<sup>81</sup> Those living alone and in the 76–80 age group were most likely to be victims of elder abuse.

Data from Australian elder abuse helplines shows similar results. Analysing phone call data from the Seniors Rights Victoria helpline, 60 per cent of calls were recognised as involving at least one type of abuse, with financial (61.3 per cent) and psychological/emotional abuse (59.3 per cent) the most commonly recorded.<sup>82</sup> However, the report identifies that it was rare for a caller to report only one type of abuse, highlighting the complexity of elder abuse; from 455 clients, 671 occurrences of abuse were reported. Similar patterns emerge from the New South Wales Elder Abuse Hotline.<sup>83</sup> Of 3,388 calls to the helpline, psychological abuse (57 per cent) was the most common abuse type, followed by financial (46 per cent), neglect (25 per cent), physical (17 per cent) and sexual abuse (1 per cent).

## 5.2.5 Queensland studies and agency data

A number of Queensland sources provide insight into estimating the prevalence of elder abuse in Queensland and these are discussed below. Each of these agencies are profiled in Chapter 8, which discusses Queensland responses to elder abuse and stakeholder organisations.

### 5.2.5.1 Elder Abuse Prevention Unit Helpline data

The Elder Abuse Prevention Unit (EAPU) collects descriptive statistics about its helpline calls.<sup>84</sup> The data reflects only those cases that come to the attention of the EAPU so it is not a complete picture of elder abuse in Queensland. Nevertheless, the data is rich in detail, providing information about trends over time, the demographic characteristics and relationships of victims and perpetrators, types of abuse, locations of abuse, living arrangements, risk factors and other information. Figure 5.9 below shows the number of abuse notifications has increased from 244 notifications in 2000–2001 to 1529 notifications in the 2015–16 financial year.<sup>85</sup> This rise could be due to an increase in actual abuse, improved awareness leading to increased reporting, and/or increased service capacity to respond to elder abuse.

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<sup>79</sup> Kurrle, Sadler, Lockwood and Cameron (1997)

<sup>80</sup> Livermore, Bunt and Biscan (2001)

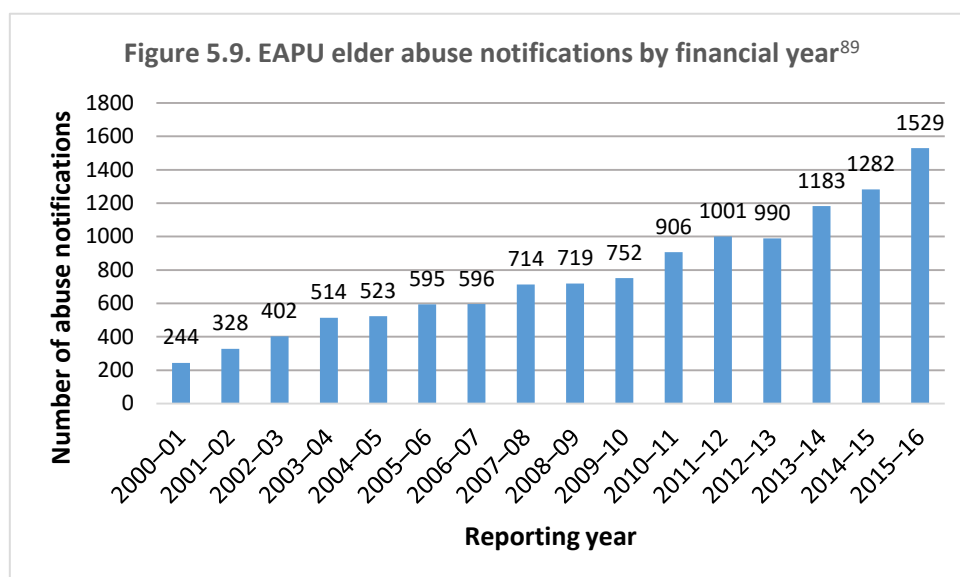
<sup>81</sup> Cupitt (1997)

<sup>82</sup> Joosten et al. (2015)

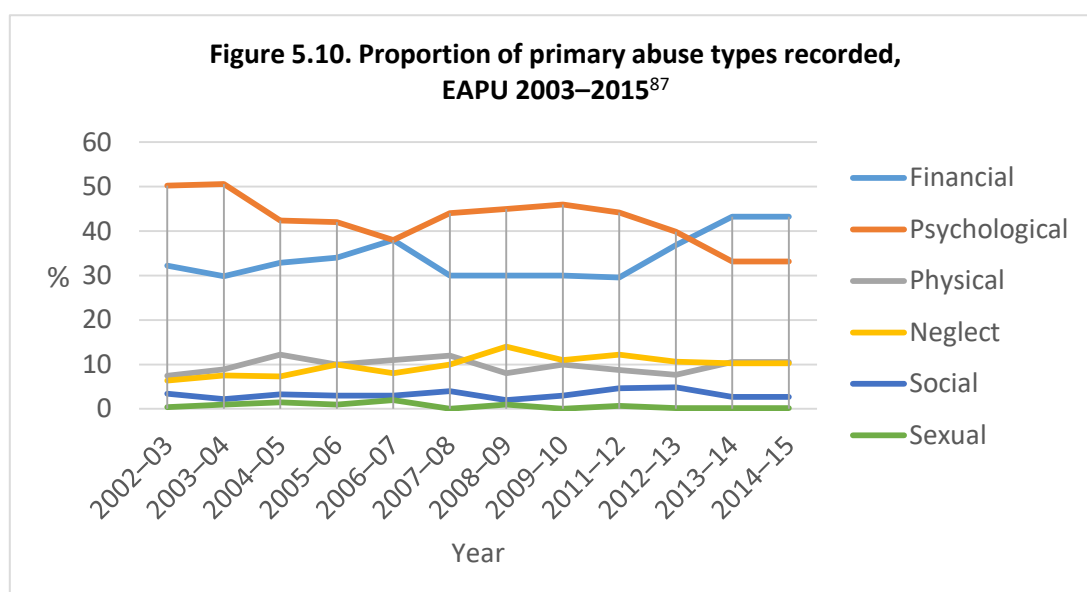
<sup>83</sup> NSW Elder Abuse Hotline and Resource Unit (2015)

<sup>84</sup> There are a number of caveats with EAPU for estimating prevalence, for instance, the sample is self-selected: notifiers choose to call the EAPU, and therefore may skew the data. For a full review of the limitations, see the latest annual report (EAPU, 2015, p. 6).

<sup>85</sup> Adapted from EAPU (2015, p. 10) and EAPU (2016, p. 6)



Up until 2013, psychological abuse was the most commonly reported abuse type (see Figure 5.10).<sup>87</sup> In the 2013–14 and 2014–15 financial years, financial abuse became the most commonly reported abuse type, constituting more than two in five of all helpline cases (43.2 per cent).<sup>88</sup> Further information can be found on the [EAPU website](http://www.eapu.com.au)<sup>89</sup>.



<sup>86</sup> EAPU (2015)

<sup>87</sup> An EAPU annual report for 2011 was not available, and therefore 2011 data is missing from Figure 5.10.

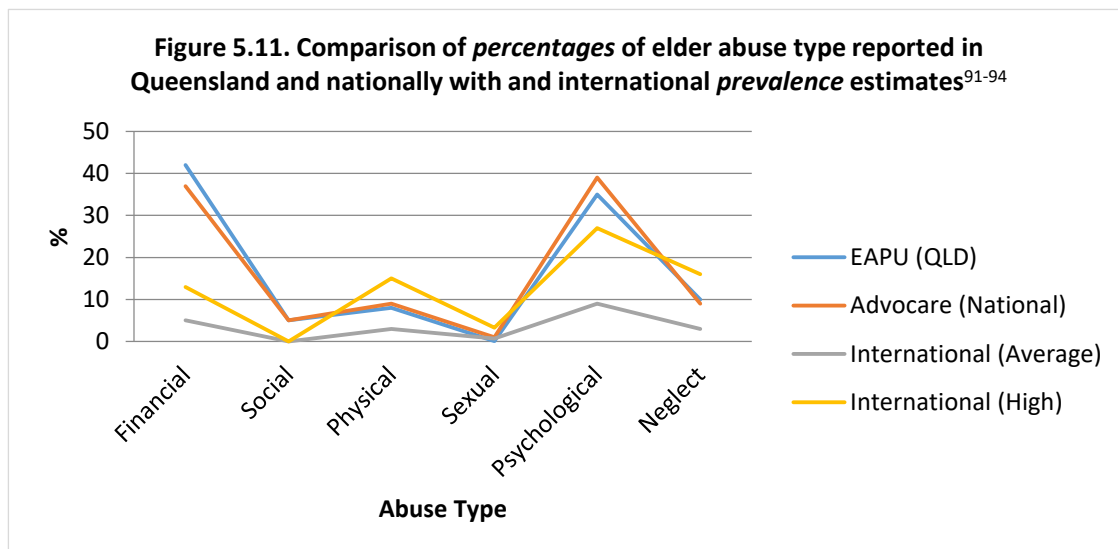
<sup>88</sup> EAPU (2015)

<sup>89</sup> [www.eapu.com.au/publications/annual-reports](http://www.eapu.com.au/publications/annual-reports)

### 5.2.6 State, national and international comparisons

International prevalence data<sup>90</sup> for each elder abuse type reported to elder abuse agencies has been compared with state<sup>91</sup> and national<sup>92</sup> data in Figure 5.11 below. It must be noted that these data sources are not directly comparable, as there were different definitions, methodologies and data collection methods used in each source, and the international figures are about prevalence, while the state and national data depicts percentages of reported abuse to helplines. EAPU and Advocare data is from helpline calls, whereas international sources used a range of methodologies including interviews and surveys.

Interestingly, when compared to international figures, the proportions of each type of abuse reported in state and national data tend to mirror the proportions of international prevalence across type of abuse, though financial and psychological abuse report percentages are significantly higher.<sup>93</sup> The reported percentages for each type of abuse in Queensland are similar to those provided from aggregated elder abuse hotline data across Australia, showing that financial abuse is the most common (42 per cent and 37 per cent for Queensland and Australia, respectively).



\*NB Different definitions, methodologies and data collection methods were used in each source.

#### 5.2.6.1 Office of the Public Guardian data

Data from the Office of the Public Guardian (OPG) 2014–15 Annual Report identified 212 completed investigations in the 2014–15 financial year<sup>94</sup> and the completed investigations by client age are shown in Figure 5.12 below. While the OPG deals with any person aged 18 and older with impaired capacity and decision-making needs<sup>95</sup>, overall, most investigations involved a client aged 85 and

<sup>90</sup> Pillemer et al. (2016)

<sup>91</sup> EAPU (2016)

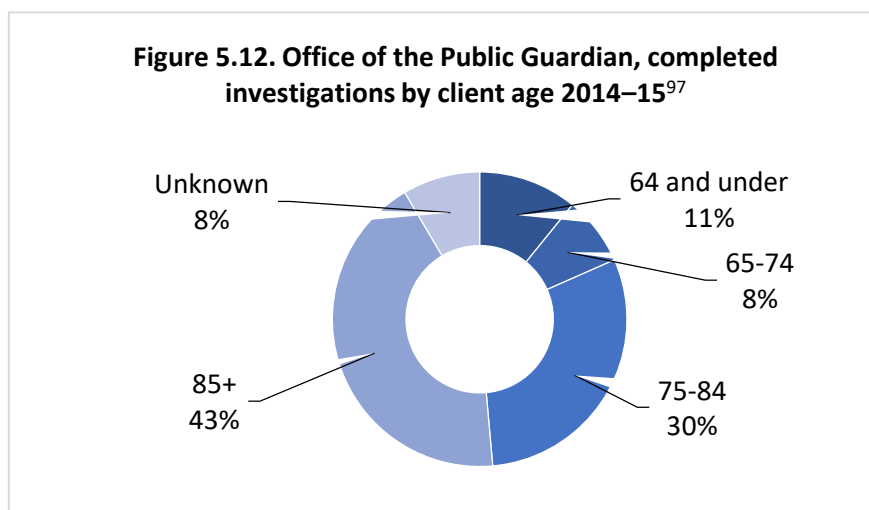
<sup>92</sup> Advocare Inc. (2016a)

<sup>93</sup> Note: the Pillemer et al. (2016) study did not include a category for social abuse.

<sup>94</sup> Office of the Public Guardian [OPG] (2015)

<sup>95</sup> The Office of the Public Guardian can only investigate complaints or allegations that an adult with impaired capacity, is being or has been neglected, exploited or abused; or has inappropriate or inadequate decision-making arrangements. See section 19 of the *Public Guardian Act 2014*.

older, and those aged 65 and older equate to 81 per cent of the overall OPG investigations. Financial abuse continues to represent the majority of cases referred to the OPG for investigation.<sup>96</sup>



#### **5.2.6.2 Queensland Government Statistician's Office report**

This section summarises the content and findings from the Queensland Government Statistician's Office (QGSO) publication *Elder abuse, Queensland, September 2016: Report based on information sourced from administrative data collections*.<sup>98</sup> The QGSO report was compiled to establish the availability, quality and usefulness of existing administrative and service level datasets for use in understanding and reporting on aspects of elder abuse. It was not defined as a prevalence study but examined elder abuse experiences that had come to the attention of elder abuse and related agencies. It is important to note that currently there is no formal, systematic reporting or monitoring of elder abuse undertaken by government agencies in Queensland. Instead, administrative data sources held by the Queensland government and 11 other sources<sup>99</sup> were analysed by the QGSO to answer questions about "service provision, resource capacity, and service utilisation among the older population in Queensland".<sup>100</sup> The report focused on Queensland residents aged 60 and older. Findings from five major organisations involved in elder abuse responses (that have not been discussed previously) which provide the best and most complete data for indicators of elder abuse are summarised below (data from the Aged Care Complaints Commission has been discussed within the section on elder abuse prevalence in residential and institutional settings).

##### **5.2.6.2.1 Seniors Legal and Support Services data**

Seniors Legal and Support Services (SLSS) across the state collected demographic information about clients, the legal matter, and the advice/casework services provided. Data from the Brisbane Caxton

<sup>96</sup> A caveat of the OPG data is that investigations can only begin once a complaint or allegation is lodged which, like the EAPU helpline statistics, could skew the data.

<sup>97</sup> OPG (2015)

<sup>98</sup> QGSO (2016)

<sup>99</sup> The 11 sources of examined data were from: the EAPU, SLSS, Aged Care, Queensland Health, Queensland Injury Surveillance Unit, Domestic violence applications, Queensland Police Service, Queensland-wide interlinked Courts data, The Public Trustee of Queensland, The Office of the Public Guardian, and Queensland Civil and Administrative Tribunal.

<sup>100</sup> QGSO (2016, p. 42)

Legal Centre for the 2014–15 year found the most common types of abuse experienced (in rank order) were: financial (882 incidents), psychological (571), unspecified (173), social (97), physical abuse (89), family and domestic violence (18), neglect (15) and sexual (not provided).

Brisbane Caxton Legal Centre conducted a case review of 500 SLSS files from 2010–2014, and found there were 1,700 issues reported. This information exemplifies the multifaceted nature of elder abuse, wherein multiple types of abuse per client are common. From these cases, the majority were female (70 per cent), aged 75 years or older (56 per cent), and family members were the most common perpetrators of abuse (sons, 24 per cent; other family, 23 per cent; daughters, 22 per cent).<sup>101</sup>

#### **5.2.6.2.2 Queensland Health data**

Queensland Health administers the Queensland Hospital Admitted Patient Data Collection which collects data on admitted patients, including demographic and clinical information. While there was no specific elder abuse identifier within this data, Queensland Health data can be used to identify those 60 years or older admitted to hospital for assault, by using the age of the victim and the relationship between the victim and perpetrator (which was available in many but not all cases). In 2014–15, 453 patients aged 60 and older were admitted for assault, which is an increase from the preceding period of 2013–14 when 416 patients were admitted. For 2014–15, the admission rate for people 60 and older in Queensland equalled 49.7 episodes per 100,000. The QGSO report notes that the admission rate has been trending upwards since 2011–12.

Over a 10 year period to 2014–15, most assaults (62.6 per cent) occurred at home, and 8.5 per cent occurred in an aged care (or other residential) facility. During the same time period, male patients were admitted at a rate 2.3 times that of female patients (however, female patients made up the majority of admissions for sexual assault by bodily force, 89.7 per cent; other maltreatment, 75.2 per cent; and neglect and abandonment 63.2 per cent). Assault by bodily force was the most common type of assault recorded for this time period (61.3 per cent and 59.7 per cent for males and females respectively). Persons with an Aboriginal or Torres Strait Islander background constituted 7.2 per cent of assault cases, in which seven out of 10 were men.

In two-thirds (67.7 per cent) of assault cases over the 10 years to 2014–15, the perpetrator was known to the victim. In cases where the relationship was specified, other family members (28.1 per cent) were cited as the most common perpetrator, followed by acquaintance or friend (20.2 per cent), spouse or domestic partner (16.9 per cent), other specified person (12.4 per cent), person or multiple persons unknown to the victim (12 per cent and 6.8 per cent respectively), carer (2.3 per cent), official authorities (1.1 per cent), and parents (0.2 per cent). There has been an upward trend in the rate of admissions for assaults where the perpetrator was known to the victim.

#### **5.2.6.2.3 Domestic Violence Prevention Team data**

The Domestic Violence Prevention Team sits within the Department of Communities, Child Safety and Disability Services, and is the data custodian for data collected by the Department of Justice and Attorney-General on domestic violence orders, including both protection orders (an order made by a court imposing conditions on the person responsible for the domestic violence), and temporary protection orders (made in the period before a court decides whether to make a protection order). For those aged 60 and older, the number of new domestic violence applications almost doubled

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<sup>101</sup> For a review of the other SLSS centres, see the QGSO (2016) report.

from 2005–06, when 741 applications were lodged, to 2014–15 when 1,455 applications were received in Queensland. The number of applicants aged 60 and older increased by 44 per cent, a slower increase than the increase for new domestic violence applications. For the 1,099 new domestic violence protection orders issued in the 2014–15 year for aggrieved people aged 60 years or older, 70 per cent involved cases where there was a family relationship, and those involving an intimate personal relationship accounted for the majority of remaining orders.

#### **5.2.6.2.4 Queensland Police Service data**

The QPS data produced information about reported victims of offences against the person and offences against property over a reporting period of 2007–08 to 2014–15. While specific elder abuse indicators are not available within this data, examining the age and sex of the victim, along with the relationship between the offender and victim, can provide useful insights into the type of crime experienced by older people in Queensland. During the reporting period, the victimisation rate of those aged 60 and older remained relatively stable for offences against the person, ranging from 97.7 per 100,000 to 115.2 per 100,000. The majority of offences against the person reported for persons aged 60 years and older were committed by persons with whom the victim had no relationship or an acquaintance with the victim. Over the five years to 2014–15, victims of Aboriginal and Torres Strait Islander origin were significantly more likely to know their alleged offender through a family relationship compared with non-Indigenous victims. Overall, for the five years to 2014–15, Aboriginal and Torres Strait Islander peoples accounted for 6.4 per cent of reported victims of offences against the person aged 60 years and older.

#### **5.2.6.3 Prevalence in residential care and institutional settings**

While this report focuses on elder abuse in community settings, it is important to acknowledge abuse that occurs in residential and institutional settings. Reliable prevalence rates for elder abuse in residential care and institutional settings are lacking due to a lack of research in this area<sup>102</sup>.

In the Australian context, the Aged Care Complaints Commissioner recorded 475 complaints of allegations of abuse within Queensland aged care services between 2007–08 and 2014–15.<sup>103</sup> Within the 475 complaints, 540 abuse issues were identified, highlighting the complex nature of alleged abuse. The most common abuse issues recorded over this time period were physical abuse (193 issues), verbal abuse (119 issues), and rough handling (97 issues). In the 2014–15 year, 66 complaints about allegations of abuse were received, which are similar numbers to prior years (however, the proportion of abuse allegations out of total complaints in 2014–15 was 9.1 per cent, which is higher than previous years).

International studies that utilise surveys of professional care staff offer an insight into levels of mistreatment in non-community settings. In research conducted into long-term care facilities in Taiwan, 16 per cent of nurses had witnessed significant abuse, with 99 per cent witnessing abuse (of any type) against older patients.<sup>104</sup> Just more than a third (36 per cent) of staff in nursing homes in New Hampshire reported witnessing abuse, and 10 per cent reported committing physical abuse against patients within the preceding 12 months. Psychological abuse was the most common type of

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<sup>102</sup> Pillemer et al. (2016)

<sup>103</sup> QGSO (2016)

<sup>104</sup> Wang (2006)

abuse witnessed (81 per cent) and committed (40 per cent) by staff.<sup>105</sup> Similar results were found in a German study, with 79 per cent of nursing home staff witnessing one or more incidents of physical or verbal abuse, or neglect in the past year.<sup>106</sup> Role ambiguity, role conflict, work stress, and burnout have been associated with condoning abusive behaviours in nursing homes.<sup>107</sup>

Studies have also used state and federal reporting systems to identify abuse within aged care facilities in the United States. Using 488 abuse reports submitted to the Medicaid Fraud Control Unit in the United States, data identified physical abuse as the most commonly reported (84.2 per cent), followed by sexual abuse (8.8 per cent), duty-related abuse (3.1 per cent), and monetary abuse (1.4 per cent).<sup>108</sup> Another study which used reports from the Connecticut Ombudsman Reporting System, found that more than two-thirds (69 per cent) of Connecticut's nursing homes had reported incidents of abuse, and just under half (47 per cent) had more than one reported incident of abuse.<sup>109</sup> A survey of Michigan residents with an elderly relative in long-term care reported that a quarter (24.3 per cent) had been subject to physical abuse while in care.<sup>110</sup> Forced use of restraints was the most commonly reported type of physical abuse (62 per cent), followed by physical mistreatment (i.e. kicking pushing; 27 per cent), and sexual abuse (11 per cent).

### **5.3 Relevant data from the current project**

This section reports on information provided by the 75 online survey respondents about data collection and reporting. The majority of respondents (73 per cent) worked in organisations that responded to elder abuse, while eight per cent worked in policy and prevention.

#### **5.3.1 Data collection issues and reporting**

Thirty-nine per cent of online survey respondents (n=54) said their organisation records data about elder abuse, 41 per cent said their organisation did not record information, and 20 per cent were unsure if this happened. The types of elder abuse information recorded included:

- demographic information about the victim and perpetrator, including ages, date of birth, income, country of birth, name, address, Indigenous status, relationship, living arrangements
- whether the victim had a disability: physical and mental (i.e. impaired capacity)
- type of abuse
- administrative data: case notes, outcomes, summary notes.

Of the 21 responses to the question about recording data about the types of elder abuse experienced by clients, 71 per cent of respondents indicated that their agency did do this. Generally, there was not a clear understanding about whether all types of elder abuse within a case were being recorded in a manner that could be interrogated for statistical purposes (with only nine respondents indicating this was the case). Very few respondents (n=7) indicated their organisation recorded data about the elder abuse perpetrator in each case. Overall, there does not seem to be a good understanding of the potential value of recording case information in this way and there is no consistent set of information that is captured relating to each case.

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<sup>105</sup> Pillemer and Moore (1989)

<sup>106</sup> Goergen (2001)

<sup>107</sup> Shinan-Altman and Cohen (2009)

<sup>108</sup> Payne and Cikovic (1996)

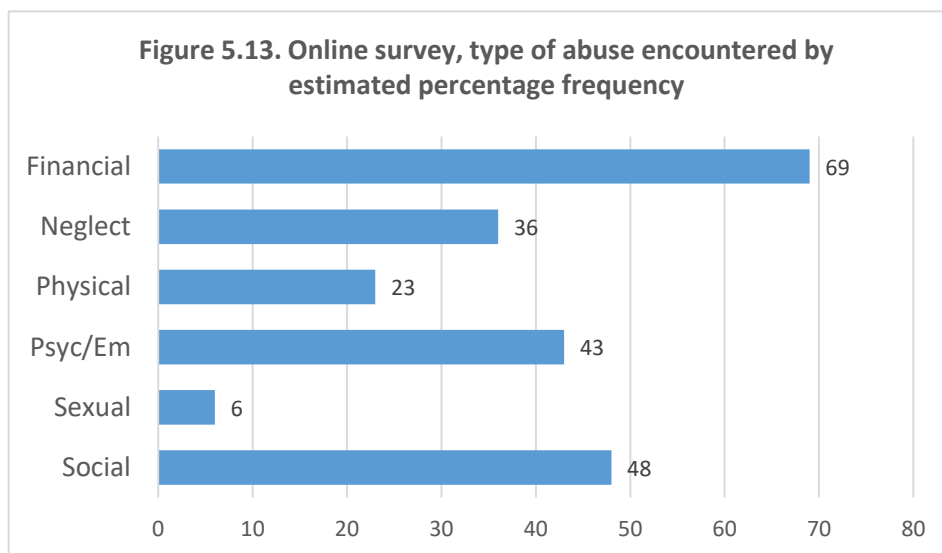
<sup>109</sup> Allen, Kellett and Gruman (2003)

<sup>110</sup> Schiamborg et al. (2011)



Participants in the interviews and focus groups reported that, depending on their occupation, the amount of elder abuse encountered was broad, ranging from not witnessing any incidents during the past year, to dealing with an “alarming” number of cases.

In the online survey, 54 respondents provided information about the relative frequency of the types of elder abuse that they dealt with in the past 12 months at their organisation. The frequency at which the following types of abuse were ‘often’, ‘very often’, or ‘always’ encountered are shown in Figure 5.13 below.



Participants expressed fears that prevalence may increase over time. As one interviewee stated:

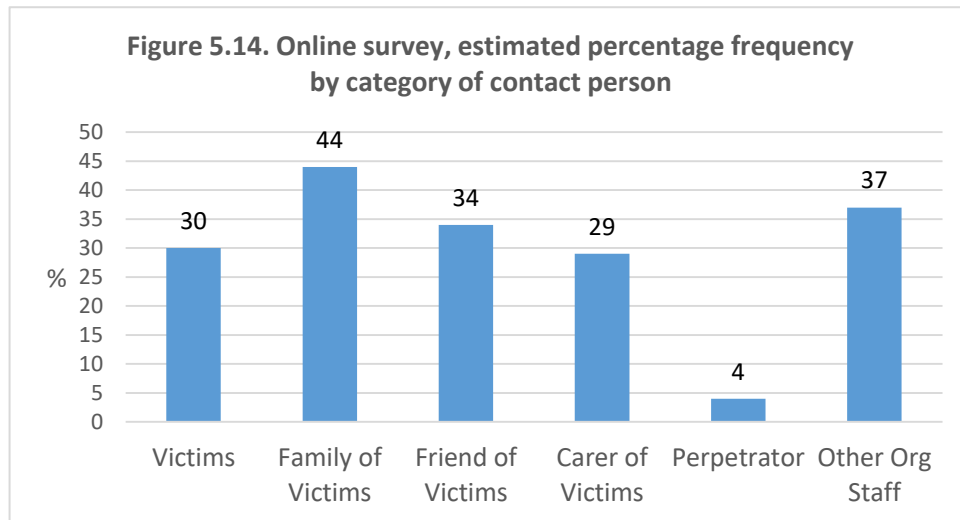
*“...it’s just getting worse as society ages. It’s just getting worse.”*

### 5.3.2 Volume of elder abuse work

Online survey participants were asked to estimate how many cases of elder abuse they had dealt with in the past 12 months: 51 per cent had dealt with fewer than five cases, 22 per cent between five and 15 cases, and 20 per cent with more than 30 cases (most of these participants were in senior management roles and worked for agencies that covered the whole state or large geographic regions within Queensland).

### 5.3.3 Category of contact person

Seventy-three percent of respondents provided information about the types of people that contact their organisations to report/seek help in relation to elder abuse. This is shown in Figure 5.14 which depicts the frequency of each category for which the following types of people ‘often’, ‘very often’, or ‘always’ contacted organisations. Family members (44 per cent) and the staff of other organisations (37 per cent) were the most frequent contact people, followed by the friends of victims (34 per cent). Victims (30 per cent) and carers (29 per cent) made contact at similar frequencies, while perpetrators only made contact in four per cent of cases.



### 5.3.4 Barriers to seeking help and reasons for under-reporting

For many victims of elder abuse, concerns about reporting are seen to outweigh the continuation of abuse. Reporting abuse can potentially come with severe personal and financial consequences for victims of elder abuse. As a result, prevalence rates are likely to underestimate the true extent of the issue, as victims are reluctant to report (particularly against family members) and older adults tend to under-report interpersonal violence.<sup>111</sup> The majority of online survey respondents, and all focus group and interview participants, believed elder abuse is under-reported in Queensland. Survey participants stated that the most common reasons for under-reporting are:<sup>112</sup>

- lack of awareness about what elder abuse is
- issues with impaired capacity
- uncertainty of outcome and lack of support
- lack of understanding where and how to report elder abuse
- embarrassment and shame — stigmatisation of victims
- fear of losing family members, housing, personal freedom and rights, and retribution from abusers
- lack of prosecution of offenders, lack of effective remedies and protective legislation
- limited supports available in remote areas — no services or safety measures available.

As one focus group participant suggested:

*“They might be scared to report it or do anything about it because they’ll lose their feeling of security, or, ‘Where am I going to live, or who’s going to look after me?’”*

<sup>111</sup> Bonnie and Wallace (2003)

<sup>112</sup> A detailed list is available at Appendix 7.

The Victorian Royal Commission into Family Violence<sup>113</sup> reported that elder abuse is largely under-reported and unrecognised because of its unique dynamics, which include:

- women being over-represented as victims
- a higher proportion of older men experiencing family violence compared to younger men
- a higher risk of financial abuse
- the perpetrator often being the older person's son or daughter
- the strong desire of many older people to maintain familial relationships and have abuse addressed at the same time
- the presence of not only gender-based but also ageist attitudes, which require a different approach to that of intimate partner violence.<sup>114</sup>

This is compounded by the likelihood of social isolation, embarrassment, cognitive decline and the fear of the consequences of reporting the abuse. Several respondents noted that in a child or domestic violence scenario, details are kept and can be followed up, providing statistics that can be reported on. Although respondents discussed the desirability of collecting as much data as possible, there was also concern about balancing the older person's privacy and autonomy. Two main reasons for concern were expressed: firstly, it was up to the older person to make a report rather than some form of mandatory reporting; secondly, there was concern that if people were aware their reports were being recorded, they may be reluctant to come forward.

#### **5.4 Key findings: elder abuse data collection**

While administrative data across a variety of organisations is helpful in building insights into the types of elder abuse and extent to which older people are victimised, as well as service provision and utilisation, and resource capacity, this type of data has limitations. This is not the specified intent of data collection for these agencies and there is a lack of a consistent process for identifying elder abuse victims in such data. Age and the relationship between the perpetrator and victim are heavily used as a proxy measure to identify elder abuse. Further, there are significant issues involved in reporting and/or detecting elder abuse, as outlined previously. These issues make it difficult to combine and compare relevant elder abuse data from different agencies.

A number of further actions and approaches could assist in improving data on the prevalence and characteristics of elder abuse in Queensland, as outlined below.

#### **5.5 Proposed directions**

Elder abuse sector organisations could sharpen the focus of data collection, and consider the use of measures relating to vulnerability rather than age. The use of existing frameworks from other, relevant contexts (such as disability) is suggested, to assess vulnerability of victims in a consistent manner that would allow agencies to monitor changes over time. This will counter the current limitations to measurement, given the absence of a meaningful measure for 'elder abuse' that can be used consistently and accurately across contexts for data collection purposes.

As age delimitations are variable across organisational contexts, rather than collecting data based on age delimitations, vulnerability could be used as an indicator to provide consistency and accuracy

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<sup>113</sup> Government of Victoria (2016)

<sup>114</sup> Ibid; see too Kaspiew et al. (2016); Commissioner for Senior Victorians (2016); Travia and Webb (2015).

across contexts for data collection purposes. This would address issues where elder abuse overlaps with the abuse and mistreatment of people with a disability, and family and domestic violence.

## **5.6 Concluding remarks**

This chapter has discussed international, national, and state estimates of elder abuse prevalence; reported on available Queensland data about the extent of the issue; and discussed data collection and reporting issues. Using a variety of statistics gathered from self-reporting of elder abuse to helplines and other statutory and non-statutory organisations working with older people, elder abuse is recognised as a serious issue occurring within Queensland. However, while there are limitations with the data collected in past research and the present study, they all identify that elder abuse is an issue occurring in the community and in aged care facilities. Using projected population estimates, the incidence of elder abuse is estimated to double within the next 20 years.

## 6 Elder abuse characteristics and risk factors

This chapter discusses the characteristics and risk factors for elder abuse and integrates information from previous research and literature in these areas with related themes and issues that emerged from the research. Examples of different types of abuse have been included, as extracted from the interview and focus group data. It is important to note that, although each example illustrates a particular type of abuse, the case studies generally depict complex cases, with multiple types of abuse occurring at the same time. Although elder abuse is typically divided into physical, sexual, financial, psychological, social and neglect (as described in Chapter 4), systemic abuse and abuse within the context of residential care have also been included because these categories were included by research participants in their discussions. This highlights the fact that elder abuse is a multifaceted issue which is shaped by complex interrelated layers of family, community and service system issues.

### 6.1 Characteristics of elder abuse

In this section, the different types of abuse are examined in the context of data gathered by the research, and each is highlighted through case studies as described by participants. Types of abuse are listed in order of the most to the least commonly reported to the Elder Abuse Prevention Unit (EAPU) helpline.<sup>115</sup>

#### 6.1.1 Financial abuse

Financial abuse is defined as the illegal or improper use of a person's finances or assets without their informed consent.<sup>116</sup> This type of abuse was highlighted as the one most commonly encountered in data collected during the interviews, focus groups, and online survey, although participants indicated that it was often associated with either emotional or physical abuse as well. While financial abuse was also the most commonly reported type of elder abuse to the EAPU Helpline in 2015–16, at 42 per cent,<sup>117</sup> it is speculated that this high level of reporting could be the result of tangible proof being available in such cases because this type of abuse can be evidenced. One focus group participant stated:

*“When you look at the data, they all say, ‘We’re overwhelmed with financial abuse.’ Well, my concern about that is, ‘No, we’re not. It’s just you’re asking the wrong questions. All you see is the financial abuse.’”*

There are many types of financial abuse such as fraud, and the abuse of family agreements, trusts and Enduring Powers of Attorney (EPOA). The cost of financial abuse is substantial, with the EAPU reporting \$309.8 million misappropriated in 263 cases of abuse by family and friends (trust relationships) in 2015–16. Non-trust<sup>118</sup> financial abuse cases encompassed an additional \$2.46 million. As well as the perpetrators of the abuse, these acts may involve a range of organisations and professionals such as the legal fraternity, banks, accountants, real estate agencies, and government departments, such as the Public Trustee and the Queensland Civil and Administrative Tribunal. A

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<sup>115</sup> EAPU (2016)

<sup>116</sup> EAPU (2012, p. 3)

<sup>117</sup> EAPU (2016)

<sup>118</sup> The ‘non-trust’ perpetrators category includes workers, neighbours, lawyers, real estate agents, etc.

large body of research has been conducted in this area over the past few years.<sup>119</sup> Issues involving these organisations and legislation are further discussed in Chapters 8 and 9, and a financial abuse case study is presented later in this chapter.

### 6.1.2 Psychological abuse

Psychological abuse is described as the infliction of mental anguish, fear and feelings of shame and powerlessness, and may encompass emotional, mental and verbal aspects.<sup>120</sup> Examples of this abuse type include verbal assaults and insults, threats, intimidation, humiliation, and harassment.<sup>121</sup>

Financial and psychological abuse are generally the highest reported categories of elder abuse,<sup>122</sup> and 35 per cent of calls to the EAPU helpline in 2015–16 were in regard to this subtype. Despite the fact that psychological abuse is highly reported, it does

not appear to receive the same level of attention as financial abuse, perhaps because it is difficult to prove and responses have not been well developed in this area. As psychological abuse usually occurs in private, it is often difficult to detect and hard to measure, though it comprises a significant proportion of abuse cases, and has been credited with being the lynchpin for other types of abuse, as it often co-occurs with other types.<sup>123</sup>

Recognition of the impact and importance of psychological abuse in the family and domestic violence field has increased over some years,<sup>124</sup> however, in the

elder abuse field, only a limited number of interventions exist which include counselling for the older person and anger management and educational interventions for perpetrators to reduce stress, anxiety and depression of perpetrators.<sup>125</sup> It has been suggested<sup>126</sup> that interventions in this area could range from monitoring the situation and providing counselling that may help to prevent escalation, through to family therapy, separation from the alleged abuser with corresponding treatment of the older adult, and further include immediate social, legal, or medical intervention. It must be noted that few prevention and intervention strategies used in this area are strongly evidence based.<sup>127</sup>

#### **Psychological abuse**

*“[There was a] 58-year old woman with significant health issues [who had] a son with mental health issues and drug issues standing over [her], basically living [there] without her consent saying, ‘If you kick me out, I will commit suicide’ and being physically abusive.”*

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<sup>119</sup> Communities Disability Services and Domestic and Family Violence Prevention Committee (2015); House of Representatives Standing Committee on Legal and Constitutional Affairs (2007); Jackson L. (2009); Jackson S. and Hafemeister (2013); Kaspiew et al. (2016); McCawley et al. (2006); Sanders (2005); Setterlund et al. (2007); Wainer, Owada and Darzins (2010); Wilson et al. (2009).

<sup>120</sup> EAPU (2012, p. 3)

<sup>121</sup> Conrad et al. (2011)

<sup>122</sup> Advocare Inc. (2015); Advocare Inc. (2016a)

<sup>123</sup> Ibid

<sup>124</sup> O’Leary (1999)

<sup>125</sup> Dong et al. (2013)

<sup>126</sup> Conrad et al. (2011)

<sup>127</sup> Dong et al. (2013)

### **Neglect**

*“...the care recipient had shoes on that were far too small for her. They were probably two or three inches too small; really high-falls risk. She had acquired brain injury. He had become her next of kin. She had the Public Trustee organising her funds. There was a mortgage on the property but he was controlling finances to the point where he gave her one cigarette and would sit there and smoke a pack and watch her. He was smoking marijuana and he wasn’t showering her. He said that she had no money for food.”*

### **6.1.3 Neglect**

Neglect may be intentional or unintentional and is usually referred to as the failure of a designated caregiver to provide the necessities of life to a person for whom they are caring.<sup>128</sup> Few studies look at neglect in isolation from other forms of elder abuse, though there are suggestions that it may be the most common form of elder mistreatment and can occur both in the home and in residential care by both paid and non-paid carers.<sup>129</sup> Neglect comprised approximately 10 per cent of cases reported to the EAPU’s helpline in 2015–16.<sup>130</sup>

Some examples of this category provided by research participants were relatively low level and included stories of caregivers not changing incontinence pads frequently enough due to a lack of money. Others were much more serious and there was one notorious local example discussed in several different forums described

as the ‘ice cream lady’, who was basically locked in her house and only provided with hot dogs and ice cream in her freezer on a fortnightly basis (this case study has been provided at Appendix 6).

It has been suggested that efforts should be made to research and understand elder neglect more broadly because it may be categorised as caregiver neglect and also as an employment-related crime in a service setting or white collar crime if committed by a health professional.<sup>131</sup>

### **6.1.4 Physical abuse**

Physical abuse is described as the infliction of physical pain, injury or force and the deprivation of liberty.<sup>132</sup> This type of abuse comprised approximately eight per cent of reports to the EAPU helpline in 2015–16.<sup>133</sup> When elder abuse first came into social consciousness in the 1970s, there was more focus on the physical aspects of it and it was termed ‘granny battering’.<sup>134</sup> A recent US examination of legal records from 87 successfully prosecuted physical elder abuse cases occurring in the home identified the following precipitating factors:<sup>135</sup>

- threat or concern that the victim would involve the authorities

### **Physical abuse**

*“...there was a son who was verbally and physically aggressive to any [paid] carer that would go in the house. The patient needed services to be able to live at home and could’ve lived at home with services, but...no services would go in and the police couldn’t do enough to keep that son away, cause they can’t be there 24 hours a day, and he would just turn up even though there were AVOs in place. She went into care even though she could’ve gone home and it just is like the victim continues to be the victim...”*

<sup>128</sup> EAPU (2012, p. 3)

<sup>129</sup> Payne, Blowers and Jarvis (2012)

<sup>130</sup> EAPU (2016)

<sup>131</sup> Ibid

<sup>132</sup> EAPU (2012, p. 3)

<sup>133</sup> EAPU (2016)

<sup>134</sup> Baker (1975)

<sup>135</sup> Rosen et al. (2016)

- disputes over minor household issues
- confrontation about financial exploitation/demanding money
- dispute over theft/destruction of property
- victim attempting to prevent the perpetrator from entering, or demanding that he or she leave
- issues with multigenerational child rearing
- conflict about the abuser's substance abuse
- victim threatening or attempting to leave/escape
- presence during/intervention in ongoing family violence
- conflict about romantic relationship.

However, the researchers suggested that further research is required to confirm the generalisability of these factors to physical elder abuse both in the home and other community settings.<sup>136</sup> Physical elder abuse has also been observed in residential aged care perpetrated by staff members<sup>137</sup> and resident-to-resident<sup>138</sup> (often termed resident-to-resident aggression) which is an under-investigated area that may include physical as well as sexual abuse.<sup>139</sup>

#### 6.1.5 Social abuse

Social abuse is defined as intentionally preventing an older person from having social contact with family or friends or accessing social activities of their choice.<sup>140</sup> Social abuse comprised approximately five per cent of reports to the EAPU helpline in 2015–16.<sup>141</sup> This form of abuse is sometimes described as 'social isolation' and often occurs in conjunction with other types of abuse, such as psychological abuse<sup>142</sup> because it allows the perpetrator to isolate the victim from sources of help and support, enabling them to hide the abuse and keep the victim under their control, as described in the social abuse case study. In some jurisdictions, such as the US, social abuse is not recognised as a separate type of abuse, but is rather listed under psychological/emotional abuse.<sup>143</sup> Social isolation has an established association with vulnerability to elder abuse in much elder abuse literature and research.<sup>144</sup>

#### **Social abuse**

*"...he'd been living in her home long-term and claiming the carer's pension for her. She's a woman in her 80s and she faked a heart attack. When the ambulance came she said, 'Look, I'm okay. Everything is fine. I've been a prisoner in my home for quite some time. I want to sell my house because I can't live there any longer and care for myself. My son lives with me, but he doesn't really do very much. I want to sell the house [but] he doesn't want me to sell because it's worth a lot of money and, as a result of that, I haven't been allowed out of the house for the last several months. I've had no friends, no family. When people ring, he tells them I'm not available or I'm in the shower or something like that. And I've been a prisoner'."*

<sup>136</sup> Rosen et al. (2016)

<sup>137</sup> Schiarnberg et al. (2012)

<sup>138</sup> Ferrah et al. (2015)

<sup>139</sup> McDonald et al. (2012)

<sup>140</sup> EAPU (2012, p. 3)

<sup>141</sup> EAPU (2016)

<sup>142</sup> Ibid

<sup>143</sup> Conrad et al. (2011)

<sup>144</sup> Acierno et al. (2010); Kaspiew et al. (2016); WHO (2015)



### 6.1.6 Sexual abuse

Sexual abuse cases comprise a very small proportion of recorded elder abuse cases (as shown in reported incidence figures provided in the previous chapter) and there are some assumptions in the sector that this type of abuse is not widespread. An Australian analysis of data from the Australian Bureau of Statistics (ABS) Personal Safety Survey<sup>145</sup> reported that 0.2 per cent of women aged 55 years and older within the sample population reported experiencing sexual assault in the past 12 months, compared with 1 per cent of women across all age ranges.<sup>146</sup> However, a recent Australian qualitative study has proposed that the sexual assault of older women may occur with more frequency than previously reported.<sup>147</sup> A Canadian study into institutional abuse<sup>148</sup> reviewed relevant elder abuse literature and reported that perpetrators of sexual elder abuse were mostly older males, with family members most likely to abuse women living in the community, and other residents most often the abusers of women living in residential aged care facilities. While women are disproportionately represented in this category, a US study examining sexual abuse among younger and older men found that men with physical, cognitive, or emotional disabilities may also be at risk of abuse.<sup>149</sup> It has been suggested that sexual elder abuse is under-reported because of shame, fear and ageist assumptions about older people being asexual.<sup>150</sup>

#### **Sexual abuse**

*"I had to send a lady home to her house where she'd been sexually assaulted by her son. I had to go around to her house and ring the ambulance to put her into hospital. Why? Because the services that were supposed to be put in place didn't follow through. There's all this evidence and data saying 'financial abuse, financial abuse, financial abuse' but old people are not going to lob up and go, 'Yo! I'm being sexually assaulted over here. Come and talk to me about it'."*

## 6.2 Elder abuse risk factors

There are many different risk factors for elder abuse, and some of these also vary by type of abuse. These have been well explored in the recent Australian Institute of Family Studies report<sup>151</sup> on understanding issues, frameworks and responses to elder abuse. This section explores risk factors in detail, using a socio-ecological framework to incorporate data from this project, along with other relevant research and literature. Socio-ecological models<sup>152</sup> and systems theory<sup>153</sup> are often applied in social work as useful frameworks for the analysis and understanding of complex social issues and have been applied to the field of elder abuse in previous research.<sup>154</sup> Applying these perspectives to elder abuse is useful in allowing examination of factors related to individual 'victims' and

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<sup>145</sup> ABS (2013)

<sup>146</sup> Cox (2015)

<sup>147</sup> Mann, Horsley, Barrett and Tinney (2014)

<sup>148</sup> McDonald et al. (2012)

<sup>149</sup> Roberto, Teaster and Nikzad (2007)

<sup>150</sup> Mann et al. (2014)

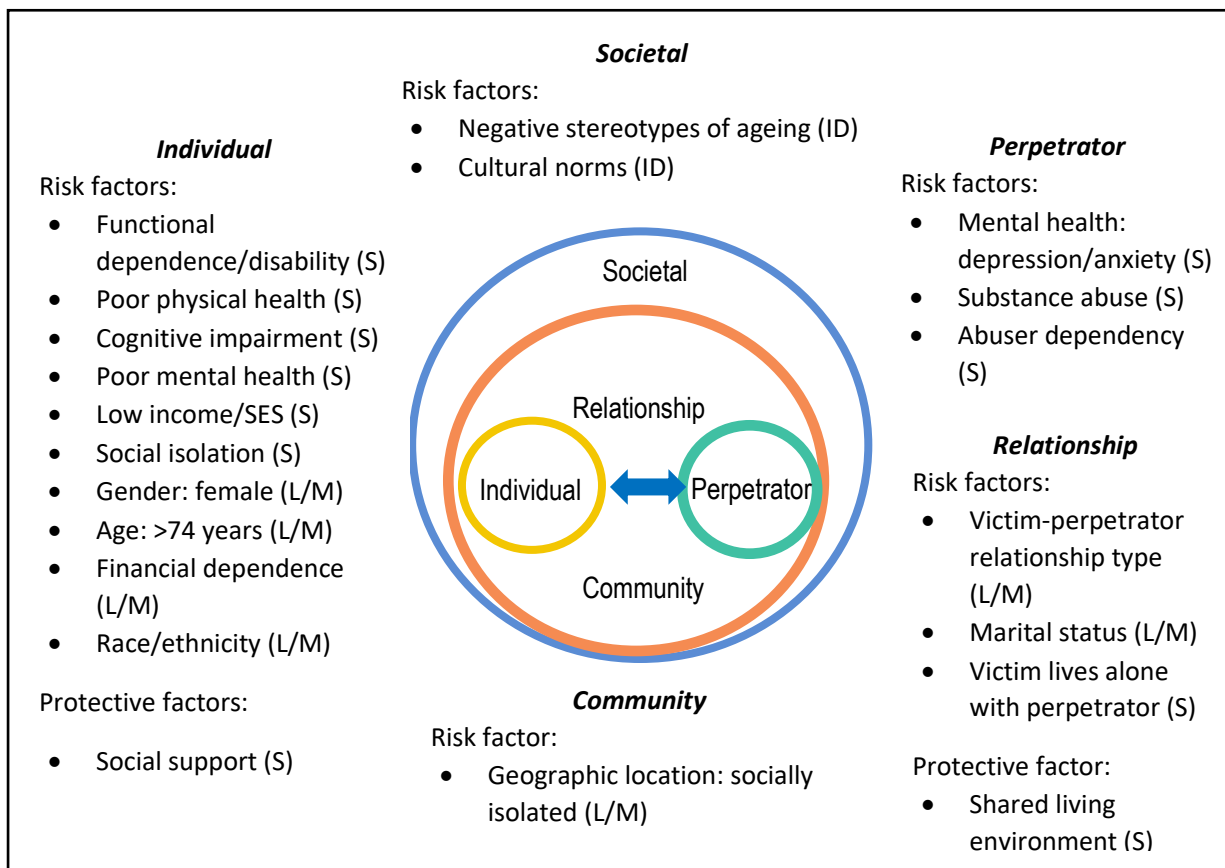
<sup>151</sup> Kaspiew et al. (2016, p. 11-13)

<sup>152</sup> Osburn (2009)

<sup>153</sup> Payne (2014)

<sup>154</sup> Bonnie and Wallace (2003); Pillemer et al. (2016); Schiamberg et al. (2011); Weeks and LeBlanc (2011)

‘perpetrators’<sup>155</sup> within the contexts of the relationship, family, community and society. The socio-ecological model of risk (shown below in Figure 6.1) focuses on elements of the individual (victim and perpetrator), relationship, community, and society that are associated with increased risk of elder abuse.<sup>156</sup> Some of these elements have been examined by research and Figure 6.1 below is based on this model and lists the different risk factors in each category, along with a rating of whether or not these risk factors have been validated by research.<sup>157</sup> The factors listed as ‘strong’ are those validated by substantial evidence with unanimous or near unanimous support from several studies; those listed as ‘low-moderate’ are risk factors with mixed or limited evidence; while those listed as having ‘insufficient data’ have been hypothesised to increase risk but have not been substantiated by evidence.



**Figure 6.1. Socio-ecological model of risk of elder abuse, listing strength of evidence and protective factors (Strength of evidence: S = strong, L/M = low-moderate, ID = insufficient data)<sup>157</sup>**

### 6.2.1 Individual risk factors

Figure 6.1 above shows characteristics known to increase the risk of abuse or vulnerability for individuals. Vulnerability is a term used to describe the potential of being harmed or being exposed

<sup>155</sup> These labels are used for brevity but it is acknowledged that being labelled a ‘victim’ is sometimes seen as disempowering for individuals and the term ‘perpetrator’ also may be negatively stigmatising and not recognise the range of motivations of the person perpetrating the abuse.

<sup>156</sup> Bonnie and Wallace (2003)

<sup>157</sup> Figure 6.1 created using information adapted from Bonnie and Wallace (2003); Pillemer et al. (2016, p.198), WHO (2015, p. 74).

to the risk of being harmed. Older people with one or more of these characteristics may be seen as vulnerable in that these factors may increase their risk of being abused, neglected or exploited.

Attributes that may affect an individual's vulnerability or resilience to abuse include behaviour or personality, educational status, financial situation, capacity for self-protection, cooperation with support agency, and fear of the alleged abuser.<sup>158</sup> The following issues should also be considered, especially in relation to people who receive care and support from others (these have been adapted from work conducted in the disability field):<sup>159</sup>

- people with high physical support needs who rely on others for daily living may be at increased risk of abuse and have restricted escape options
- learned helplessness can restrict people's decision-making skills, increasing vulnerability, and learned over-compliance may encourage a desire to please, discouraging assertiveness and increasing vulnerability
- limited physical mobility can give offenders greater access and opportunity and can prevent individuals leaving services or abusive situations
- limited communication skills (and/or lack of an effective advocate) may lead to a person being viewed as a 'safe' victim and make it more difficult for the individual to report abuse. This may include people with cognitive, communication and/or sensory impairments, and particularly people who are non-verbal
- people who display behaviours of concern and people without family, advocacy and community connections may be at increased risk
- low income or limited access to resources can create dependency on others and limit a person's capacity to leave abusive situations
- limited opportunity for sexual or intimate relationships can lead to toleration of sexual abuse because of a longing to feel intimacy with another person
- lack of understanding of abuse and individual rights, particularly among people with an intellectual disability, can increase opportunities for abuse.

### **6.2.2 Other elements of risk or vulnerability**

Elder abuse research has identified that people from what are perceived as disadvantaged or vulnerable groups are often over-represented in elder abuse statistics. Studies have found that people with some form of decision-making disability are more likely to be subject to abuse<sup>160</sup> and people with other forms of disability are also at increased risk.<sup>161</sup> Females are more likely to experience elder abuse than males<sup>162</sup> (though some research contradicts this)<sup>163</sup> at a rate two and a half times higher than the rate for men. People aged 75 years and older are also more likely to experience abuse.<sup>164</sup> There is also evidence that older Aboriginal and Torres Strait Islander people<sup>165</sup>

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<sup>158</sup> McDonald and Marks (1991)

<sup>159</sup> Barr (2012)

<sup>160</sup> Boldy et al. (2005); Dong, Chen and Simon (2014); Kaspiew et al. (2016)

<sup>161</sup> Hughes et al. (2012)

<sup>162</sup> Wainer et al. (2010)

<sup>163</sup> Amstadter et al. (2010)

<sup>164</sup> Boldy et al. (2002)

<sup>165</sup> EAPU (2005); Office of the Public Advocate (WA) (2005)

and older people from culturally and linguistically diverse (CALD) backgrounds<sup>166</sup> may be at a higher risk of elder abuse due to factors including discrimination and disadvantage, previous negative experiences with law enforcement, and language and cultural barriers. People who identify as lesbian, gay, bisexual, transgender or intersex (LGBTI), and people experiencing mental health issues have also been identified as vulnerable.<sup>167</sup> Additionally, people experiencing elder abuse in rural and remote areas may be disadvantaged because of a lack of resources and services. Given this, it is important that the effect of these variables on resources and responses is considered. The different aspects of vulnerability discussed above have recently received attention and some strategies have been put in place in different organisations to address them. Information provided by interview and focus group participants about these issues and their perceptions of their organisation's capacity to work with people from diverse groups are discussed in Chapter 8.

### 6.2.3 Repeat victimisation

It has been proposed that previous abuse may be a risk factor for future abuse, and people who have experienced abuse as children have been reported to have increased vulnerability to further intra-familial and extra-familial abuse later in life.<sup>168</sup> If a person has been subjected to previous abuse, the following issues may be important considerations in assessing future risk and responses:<sup>169</sup>

- type of abuse or mistreatment, severity, chronicity of alleged or potential maltreatment
- location of injury, severity and frequency of abuse or neglect
- whether or not the abuse was reported to authorities and what was done about it
- whether or not steps have been taken to safeguard the person. Does the perpetrator still have access to the person and what kind of access? Is protection offered through the presence of other people?

Focus group discussions indicated that repeat visits or calls from older people and clients were relatively common for service providers. One legal service in Queensland reported that clients became repeat clients in one quarter of cases. Further, online survey data identified that about half of respondents' clients (n=53) had previously sought their services (response categories were 'sometimes', 'often', and 'very often'). EAPU report<sup>170</sup> data collected from calls to the elder abuse helpline during the 2015–16 financial year indicates that 11 per cent of victims were reported to have experienced previous trauma of some kind, with domestic violence the most common type.

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<sup>166</sup> Black Blundell and Clare M. (2012); Ethnic Communities' Council of Victoria (2009); Office of the Public Advocate (WA) (2006)

<sup>167</sup> The Senate (2015a)

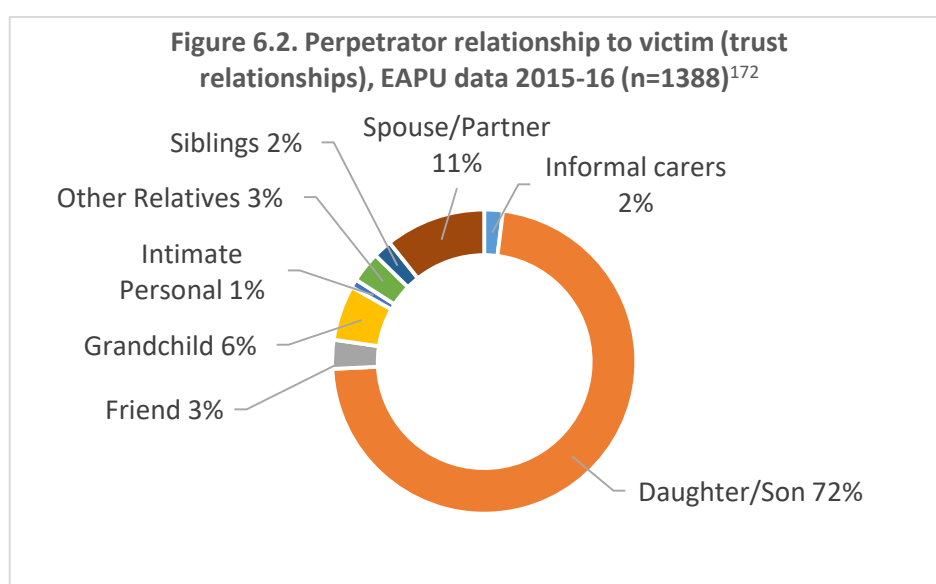
<sup>168</sup> Irenyi, Bromfield, Beyer and Higgins (2006)

<sup>169</sup> McDonald and Marks (1991)

<sup>170</sup> EAPU (2016, p.33)

#### 6.2.4 Perpetrator characteristics

Historically, elder abuse research has focused on understanding why some older people are more vulnerable to victimisation.<sup>171</sup> To design targeted interventions, it is important to understand how perpetrator characteristics contribute to the abuse. As mentioned in Chapter 5, data collected about perpetrators in Australia tends to focus on descriptive statistics, and according to 2015–16 EAPU helpline data, the profile of elder abuse perpetrators is that 72 per cent are sons and daughters of the older person.<sup>172</sup> Other perpetrator categories include friends and neighbours, siblings, carers, parents, spouses, grandchildren, nieces and nephews. In the elder abuse research, perpetrators are generally equally male<sup>173</sup> and female, and substance abuse, drug addiction, and mental health issues are commonly co-occurring factors.<sup>174</sup> EAPU helpline data about the relationship between perpetrator and victim in reported cases during the 2015–16 financial year is shown in Figure 6.2 below.<sup>175</sup> However, it must be noted that this data excludes non-trust relationships (e.g. workers, neighbours, lawyers, etc.) which make up about 15 per cent of EAPU cases.



EAPU 2015–16 data about perpetrators in ‘non-trust’ relationships is shown in Figure 6.3 below.<sup>176</sup> As displayed, the highest proportion of perpetrators in this category are workers/management (25.4 per cent), followed equally by neighbours (23.5 per cent) and ‘other’ (23.5 per cent). It must be noted that there is some overlap between the non-trust categories, for example, a neighbour may also be considered an acquaintance.

<sup>171</sup> Jackson S. (2016)

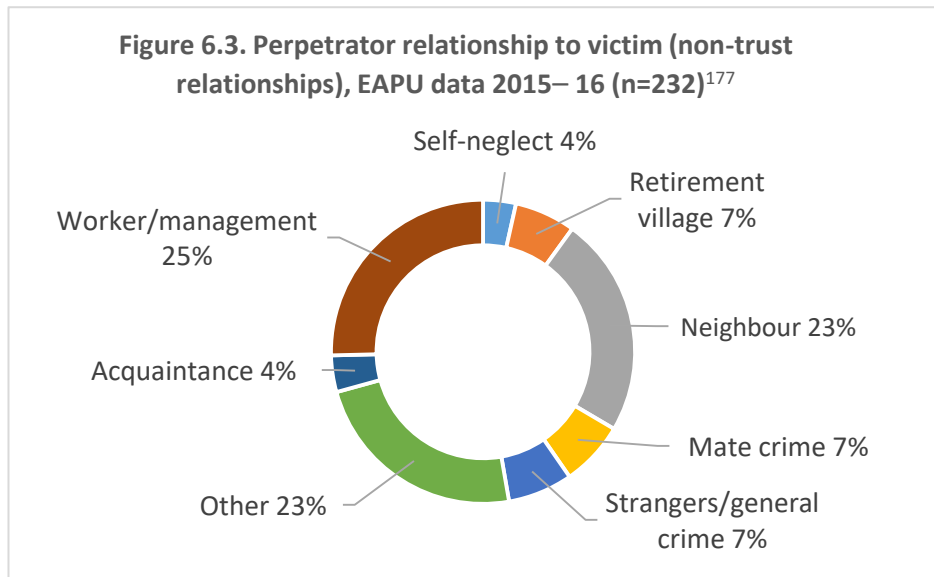
<sup>172</sup> EAPU (2016)

<sup>173</sup> Though, as discussed in the previous section, in sexual abuse of both females and males, perpetrators are predominantly male.

<sup>174</sup> Pillemer et al. (2016)

<sup>175</sup> EAPU (2016, p. 15)

<sup>176</sup> Ibid (p. 44)



### 6.2.5 Work with perpetrators

Online survey respondents were asked to provide information estimating the relative frequency of the category of perpetrators that they dealt with in the past 12 months at their organisation. Seventy-five percent provided this information (n=56). The overwhelming majority of perpetrators they dealt with were adult sons and daughters, and approximately a third were spouse or partner or other relative, followed to a lesser extent by unpaid carers.

Perpetrator characteristics and risk factors are important in understanding the nature of elder abuse. They have often only been examined in a cursory way, although in the area of financial elder abuse, perpetrators' motivations have been more fully explored in the Australian context,<sup>178</sup> and more research is now available internationally.<sup>179</sup> Recent studies have suggested that perpetrators of elder abuse are a diverse group and that there are important differences in regard to risk factors and the type of abuse perpetrated.<sup>180</sup>

It is also worth considering the perpetrator's capacity for, and quality of, physical and emotional care of the person, their perceptions of stress, their awareness of problems and motivation to solve them, and their level of cooperation.<sup>181</sup> The following perpetrator characteristics have been identified in relation to the abuse of people with a disability, including within service settings, and may have some relevance in the elder abuse context:<sup>182</sup>

- In most cases the perpetrator is someone known to the person.
- Most sexual abusers are male and their victims are female. Abusers may seek or exploit opportunities for unsupervised contact with potential victims through 'grooming' behaviours such as spending time with them, buying them gifts, doing special favours or excessive praise.

<sup>177</sup> EAPU (2016)

<sup>178</sup> Setterlund et al. (2007)

<sup>179</sup> Amstadter et al. (2010); De Donder et al. (2011); Jackson S. (2016); Lachs, Bachman, Williams and Kossack (2004)

<sup>180</sup> Amstadter et al. (2010); Jackson S. (2016)

<sup>181</sup> McDonald and Marks (1991)

<sup>182</sup> Disability Services Queensland (undated)

- Physical or emotional abuse or neglect is more likely to be unplanned and influenced by features of the care environment (for example, lack of resources or inadequate training, rationing of support staff, etcetera).
- About 20 per cent of reported abuse in residential settings is perpetrated by other residents, with incompatibility between residents being a common factor in injury, aggression, hostility, threats, intimidation and fear within services.
- Unauthorised constraint, containment or seclusion for behaviour management can be types of abuse involving taking away a person's rights. Such abuse is more likely to be committed by support staff or carers who are untrained or poorly trained and lacking adequate supervision.
- Perpetrators of financial abuse are often opportunistic but in some cases can be predatory, seeking out vulnerable people and situations in which theft is not likely to be discovered or is hard to prove.

A UK research project into the abuse of people with dementia by family (unpaid) carers found that 52 per cent of the carers sampled reported some abusive behaviour toward the person they were caring for.<sup>183</sup> Though past theories that emphasised the role of 'carer stress' in perpetrating elder abuse have largely been discounted, this aspect is still an important consideration in some circumstances, such as residential aged care and care of an older person with high support needs in the home. There are a number of factors known to contribute to caregiver stress in both the residential and family care context, including decreasing satisfaction with the work, long hours, low pay, physical demands, staff shortages and increased workload, and low levels of education and training.<sup>184</sup> Staff and carers may also experience abuse from the person they are caring for, creating the potential for retaliation.<sup>185</sup>

#### 6.2.5.1 Perpetrator culpability

A continuum of perpetrator culpability has been proposed which shows the range of underlying perpetrator motivation,<sup>186</sup> and this has been adapted in Figure 6.4 below. Perpetrators may be premeditated 'bad actors' committing deliberate actions or 'exploiters' who readily take advantage of unexpected opportunities. 'Reluctant' perpetrators may exploit opportunities due to mixed motivations, including caregiver stress. 'Inappropriate' abusers may act in a way that is somewhat consistent with the older person's wishes, though inappropriate. 'Unintentional' perpetrators are people who legitimately do not understand why their actions or omissions are abusive or are not capable of fulfilling expected roles.

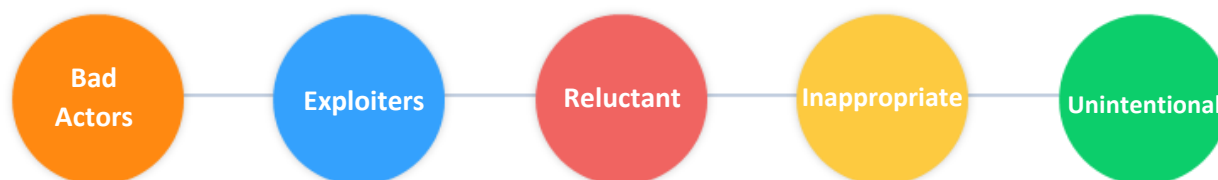


Figure 6.4. Continuum of Elder Abuse Perpetrator Culpability<sup>187</sup>

<sup>183</sup> Castle, Ferguson-Rome and Teresi (2015); Cooper et al. (2009)

<sup>184</sup> Baker & Heitkemper (2005); Castle et al. (2015); Shanan-Altman and Cohen (2009)

<sup>185</sup> Castle et al. (2015)

<sup>186</sup> Jackson S. (2016); Jackson S. and Hafemeister (2013)

<sup>187</sup> Figure 6.4 adapted from Jackson S. (2016) and Jackson S. and Hafemeister (2013)

### 6.2.5.2 Unintentional perpetrators

This category of perpetrator was mentioned during interviews and focus groups, predominately in relation to neglect and misuse of finances. Perpetrators were discussed as lacking awareness and understanding of their roles as carers or attorneys:

*“...so much of financial abusers are what we call innocent abusers on the face of it. They didn’t realise that they’re doing the wrong thing.”*

*“They came in to see me and I couldn’t believe their response was, ‘What are we doing here? Why do we have to come and see a lawyer? What have we done wrong? This is what Mum would have wanted’.”*

This theme supports findings by previous financial abuse research, where perpetrators acknowledged that they financially abused an older person without actually realising it because they saw it as their prerogative as their child.<sup>188</sup> Research participants suggested that there should be more accountability and oversight of people managing another person’s finances, and the findings on this point are further discussed later in this chapter and also in Chapter 9.

The effect of changes in the aged care system on perpetrator behaviour was also mentioned by participants. It was suggested that the increasing costs of aged care services have led to families trying to keep older people in their homes for longer to preserve the asset and other beneficial arrangements, as shown in the case study exemplar provided on financial abuse. This issue has also been documented by the EAPU<sup>189</sup> and is further discussed in Chapter 8.

#### **Financial abuse**

*“People are reluctant to put their parents into care because they don’t want to lose the family home. A woman had lost capacity and was incontinent and the family locked her in the home as their way of dealing with not having to put her into care.”*

### 6.2.6 Relationship risk factors

Elder abuse definitions tend to refer to acts of omission or commission by someone in a ‘position of trust’ which highlights the relationship linking the older person and the perpetrator. Family and relationship dynamics (including family conflict and violence, power and control) are a known risk factor for elder abuse<sup>190</sup> as is dependency of the perpetrator on the victim for financial or other support.<sup>191</sup> Therefore, the family/carer context and characteristics are significant and the following issues have been highlighted for consideration in the child protection and disability services fields<sup>192</sup> but may also prove relevant for the assessment of risk elder abuse and responses:

- general characteristics of the family context, for example, number of people in the home, family relationships, stress on individual family members, family functioning, family violence, victimisation of other people, and mental health status of others in household

<sup>188</sup> McCawley (2007); Setterlund et al. (2007); Wainer et al. (2010)

<sup>189</sup> EAPU (2015)

<sup>190</sup> Vrantsidis, Dow, Joosten, Walmsley and Blakey (2016)

<sup>191</sup> Jackson S. (2016)

<sup>192</sup> Adapted from McDonald and Marks (1991)



- relationships and interactions between the person and their carer including, the person's family relations, continuity of care, carer expectations, and approval of the person.

### 6.2.7 Informal and paid carers

There were some discussions in interviews and focus groups about carers' conduct. The conversation included carers within the family unit, for instance an adult child, as well as those in paid positions. There was acknowledgement that the majority of carers work hard to improve the lives of older people. Some participants expressed concern that the actions of the minority and the necessity for intervention meant that things might get more difficult for the 'good' carers (for context — in the perpetrator statistics collected by EAPU<sup>193</sup>, informal carers, or those providing unpaid care, represent 1.99 per cent of perpetrators in trust relationships). Nevertheless, it was clear from these conversations that concerns relating to some carers were significant enough to suggest enhanced oversight may be appropriate.<sup>194</sup>

Carers Australia ACT<sup>195</sup> notes that some informal carers may be at risk of committing abuse when they: are sleep deprived; in poor physical and mental health (including depression and anxiety); lack confidence they can provide appropriate care to the person they care for; are reluctant to access carer or other services because they think they should be able to cope; the person they care for refuses to receive services or to use alternate care to provide a break for their carer; have a low household income and unreliable or inadequate employment that leads to financial stress and housing insecurity; are unaware of what elder abuse involves, including financial, physical, emotional, social and neglect; become isolated and do not receive sufficient practical and emotional support from family members or friends, and service providers and health practitioners.

#### 6.2.7.1 Carer Allowance and Carer Payment

A key point made during several focus group discussions was that some individuals collecting the Centrelink Carer Allowance<sup>196</sup> and/or Carer Payment<sup>197</sup> were not providing care for the older person. Examples were provided where, despite being paid to 'care', older people were not taken to a doctor and were neglected in other ways. This problem was perceived to be significant and such individuals were subject to few performance measures to remain entitled to receive these benefits. This issue was raised in three focus groups; two in Brisbane and one on the Sunshine Coast. One participant commented:

*"...And I think it was something like 50 per cent [or] about 200 calls that we had, 50 per cent of those who had a carer payment were neglecting the older person. And I think in 30 per cent of cases, they weren't providing any care at all..."*

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<sup>193</sup> EAPU (2016, p. 15)

<sup>194</sup> The issue of abuse by carers is discussed in the following elder abuse literature: Bagshaw, Wendt, Zannettino and Adams (2013); Brandi and Raymond (2012); Homer and Gilleard (1990); McAlpine (2008). It suggests that such abuse is increasing and requires further investigation.

<sup>195</sup> Carers ACT (2015)

<sup>196</sup> A fortnightly income supplement provided by Centrelink to people giving daily care and attention to someone who has a disability, serious illness, or an adult who is frail and old.

<sup>197</sup> An income support payment provided by Centrelink for people giving constant care to someone who has a severe disability, illness, or an adult who is frail and old.

Eligibility for the Carer Allowance and Payment is determined with reference to *The Adult Disability Assessment Determination 1999* through consideration of the level of disability and care required by the person. The carer must demonstrate *inter alia* the person with a disability must receive 'care and attention' on a daily basis because of the disability (adults who have a terminal illness and are not expected to live more than three months are taken to satisfy this requirement) and care and attention must be provided in a private home that is the residence of the carer and the care recipient. Additionally, the carer must be a family member. When the carer and the adult care receiver do not live in the same private home, the carer may still qualify if they provide care in the home of either the carer or the care receiver. However, the carer must provide a minimum of 20 hours care each week with some care being provided every day. The care must be required by the adult care receiver as indicated by the Adult Disability Assessment Determination assessment and must be related to the care receiver's bodily functions or to sustaining the care receiver's life. It should be noted that the Department of Social Services is currently reviewing the assessment process for carer payments and allowances.<sup>198</sup>

The idea of monitoring carers receiving the Allowance and Payment to ensure care was being provided was a subject of concern for participants. In a nutshell, respondents wondered what could be done to ensure some kind of care and assistance was being provided. The first issue was some kind of effective monitoring. One person suggested that regular visits to the doctor could be enshrined in requirements for receiving the benefits. Others countered this by recognising that abused people, if they went to the doctor at all, could be moved from doctor to doctor. Also, if the person was reported and the benefit was cut off, there were no repercussions. As a solution, it was suggested that a similar process to child support could apply, where a child has to be checked through Medicare. This could result in an older person being regularly monitored.

Following the death of Cynthia Thoresen in Queensland in 2009, the Queensland Coroner suggested an overhaul of the federal administration of the Carer Allowance.<sup>199</sup> Centrelink had paid Mrs Thoresen's daughter to be her mother's carer since 2001 but after an initial independent doctor's assessment, needed to provide no further evidence to Centrelink that she was acting appropriately as her mother's carer. The Coroner suggested that carers should be required to have their charge medically reviewed annually to keep receiving the payment. A spokesman for the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs said a medical review was required every two years. However, that rule does not apply when the person being cared for has a disability or medical condition that is permanent or not improving.

### **6.2.8 Monitoring of Carer Allowance and Payment**

There is some evidence that a minority of people in receipt of a Carers Allowance and/or Payment are not providing care to the older person, and this may be unintentional and due to lack of awareness and education about the carer role, as well as intentional. Participants suggested that carers could receive training and information about their roles and responsibilities before they are allowed to receive the Carer Allowance or Payment and that people receiving Carer Allowance and Payment could be monitored to ensure they are providing adequate care. This could be achieved by, for example, a mandatory medical assessment by a mobile nurse or a general practitioner every six to 12 months, a record of which is flagged on the Medicare system. This could be tied into

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<sup>198</sup> Department of Social Security (2016)

<sup>199</sup> Office of the State Coroner (2013)

opportunities for respite, to take the pressure off carers. The *Social Security Act 1991* could also be amended to ensure that checks are maintained, even when there is a non-changing condition. To maintain benefits, checks should be at least annual and include at least one visit to the doctor per year. It is conceded that this would be extra red tape for good carers but it could ensure that people maintain standards if they want to receive benefits. Monitoring may also identify if carers are not coping, as well as ensure the older person's welfare.

### 6.3 Contextual risk factors: society and community

A number of environmental or contextual issues have also been highlighted as risk factors for abuse, neglect and mistreatment. These include general living conditions and environment, for example, where the person lives, furnishings, sanitation, security and safety, level of overcrowding and availability of utilities, having formal and informal environmental/social supports available and rate of use.<sup>200</sup> Living in a 'neglected service environment' is a known risk factor, as are service environment issues such as when services are seen as 'risky' where there is 'weak' management and lack of practice leadership, and/or a lack of policy awareness and unskilled staff.<sup>201</sup> These are important considerations within the disability services sector and may also be relevant to residential aged care settings. People who live in residential environments or who receive services in the home may also be at increased risk where there is high staff turnover, increased staff stress and/or high use of agency or casual staff. Also those who are in isolated or 'closed' services where unacceptable staff attitudes and practices can become normalised.<sup>202</sup>

#### 6.3.1 Residential care

In the past two decades, research has shown that people with a disability who receive disability support services, particularly institutional care, are at major risk of abuse and mistreatment.<sup>203</sup> In the Australian elder abuse context, there has been less emphasis on abuse that occurs in residential and service settings, though the prevalence of abuse in this setting has been well documented internationally,<sup>204</sup> as outlined in Chapter 5.

Interview and focus group participants mentioned that sometimes being subjected to elder abuse meant older people were ending up in residential care too early because they were put into care to protect them from abuse in the home. An example was provided of a person being eligible to receive in-home services but no staff would go there because of the son's behaviour (see physical abuse case study provided earlier in this chapter).

#### ***Abuse in residential care***

*"...she was being punished — she was 'pinched.' She also had bruises on her legs and her inner thighs where she was abused because she wanted to be taken to the toilet during the night. She didn't have any mobility. So we encouraged her to talk to the bosses and when the resident nurse came, she [said] 'We have to do something about this. Now the first thing we have to do is answer all these questions. We're going to get you to answer these questions and then we have to call in other professional people and they're going to ask you questions too' and I'm just thinking 'Oh my God, I wouldn't complain any longer!' It was very aggressive in there so I wonder about the value of having mandatory reporting — having people actually report [abuse]."*

<sup>200</sup> Barr (2012)

<sup>201</sup> Ibid

<sup>202</sup> Ibid

<sup>203</sup> Ottmann, McVilly and Anderson (2012); Sullivan and Knutson (2000)

<sup>204</sup> Castle et al. (2015); Krug, Mercy, Dahlberg and Zwi (2002); McDonald et al. (2012)

### 6.3.2 Systemic abuse

Systemic abuse may be described as abuse perpetrated due to organisational or societal structures and systems. It was suggested by several research participants that hospital and residential aged care systems were sometimes responsible for perpetrating systemic abuse on older people. One participant mentioned that a key form of systemic abuse experienced by older people is the way they are often moved against their will from their homes into residential aged care following a hospital admission:

*“...people should not be making decisions about them without allowing them to participate in that process and genuinely taking their views into account. And that's not happening. People just railroad older people into nursing homes.”*

#### **Systemic abuse**

*“It's frightening what happens in nursing homes and hospitals to older people. We've had people who are locked in dementia wards who shouldn't be there and, once they're there, everything they do to try and get out of that ward is seen as another behavioural problem. If they get angry, well, that's why they should be [t]here, because they're angry. If they get upset in any way, that's against them. So, that sort of stuff is really distressing. I've seen people locked in hospitals. The door is locked on them and all sorts of things. It's systemic stuff that needs to change.”*

Another example given by a participant in relation to the way people with dementia are sometimes treated in residential aged care has been included in the systemic abuse exemplar box above. Suggestions were made by research participants that systemic abuse should also be recognised within the definition of elder abuse, and that this type of issue often occurs due to society's ageist assumptions about older people's lack of physical and mental capacity.

### 6.3.3 Lack of awareness of elder abuse

Lack of awareness seems to be a multilevel factor raised by many participants in relation to a range of issues. Research participants proposed that a lack of awareness by both victims and perpetrators leads to under-reporting as well as unintentional abuse (as discussed earlier in this chapter). It was reported that older people often do not recognise that they are being abused and some perpetrators do not recognise that their behaviours are abusive. It was suggested that it is easier for people to understand when it is explained in terms of behaviours:

*“...the term [elder abuse] itself makes people go, 'I'm not...' They'll disassociate themselves from it but I think, when you break up the behaviours, that's when people will go, 'Oh, that's actually going on'.”*

Lack of awareness on the part of staff and professionals dealing with elder abuse was also discussed, and it was proposed that this sometimes impacted on assessment of risk of elder abuse and responses made.

The issue of elder abuse education, training and information is further discussed in Chapter 8.

### 6.3.4 Ageism

Some participants mentioned ageism and the effect it has on perceptions about older people, their lives and opportunities. Ageism may be defined as the stereotyping and discrimination of individuals

and groups based on age and it may lead to prejudicial attitudes, discriminatory practices or institutional policies and practices that perpetrate negative stereotypical beliefs.<sup>205</sup> Some of this has already been touched on in the discussion about systemic abuse. Participants spoke about the need for regular positive media portrayals of older people to combat ageism, and how negative stereotypes about older people's abilities influence elder abuse perpetrators and service providers to think:

*"...because they're an older person, people automatically think that they don't have capacity."*

This may mean service providers sometimes place more emphasis on family members' wishes and words than the older person's, as described by research participants. It has been proposed that our society's inherent ageism abets the lack of recognition and reporting of elder abuse,<sup>206</sup> however, validated evidence about this assertion is lacking.<sup>207</sup>

#### **6.4 Key findings: characteristics and risk factors of elder abuse**

The different types of abuse, victims' vulnerabilities, and perpetrators' motivations and risk factors must all be considered when designing targeted interventions; and these should also be based on empirical evidence from effectiveness studies. Services should be tailored to deal with the spectrum of abuse and should understand that a 'one-size-fits-all' delivery is not always appropriate. Given the diversity of types of abuse and explanations for its occurrence, more research and focus on interventions with victims and perpetrators is required to provide effective alternatives to criminal justice approaches. The high prevalence of family perpetrators and reluctance of victims to take legal action against them suggests it may be important to also provide a range of family intervention options, including mediation and family relationship counselling. Work in this space is discussed in Chapter 8 of this report.

#### **6.5 Proposed directions**

Elder abuse is a complex phenomenon. Preventative responses and interventions to abuse need to utilise a socio-ecological framework and take into account the complex characteristics of victims and perpetrators and the relationship

Chapter 7 provides information about elder abuse responses occurring nationally. This provides context to material discussed in Chapter 8 which examines responses to elder abuse in Queensland and presents suggestions for prevention and intervention.

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<sup>205</sup> WHO (2015)

<sup>206</sup> Australian Association of Gerontology (2015)

<sup>207</sup> Pillemer et al. (2016)

## 7 Elder abuse responses: national context

This chapter details the national context of elder abuse policy and service delivery. The following overview of policy and service responses to elder abuse and neglect in Australia has been compiled from several sources<sup>208</sup> and updated with contemporary information based on recently available articles and reports. Where information is available on websites rather than a formally referenced report, the websites are hyperlinked to the relevant phrases.

Elder abuse was largely a hidden problem in Australia until the 1980s, only rising in social awareness after a number of reports and research projects were published which influenced the development of national and state responses.<sup>209</sup> The issue of elder abuse emerged gradually on a state by state basis as professionals working with older people began to share their experiences about cases they were involved with.<sup>210</sup> Currently there is no elder abuse-specific legislation, although there is compulsory reporting<sup>211</sup> to Police and the federal Department of Health when ‘unlawful sexual contact’ or ‘unreasonable use of force’ has been used on a resident of an aged care facility. Complaints and allegations about abuse, neglect or exploitation concerning an adult with a decision-making impairment may be investigated under state-based guardianship legislation (see Chapter 9), and the person’s interests may be protected through the appointment of a substitute decision maker. There is also a range of elder abuse advocacy, information and referral organisations across Australia, each with slightly different roles and funding arrangements, and these are outlined in Section 7.1 Elder abuse agencies. As shown in Table 7.1 below, definitions of elder abuse across Australia are fairly consistent and focus on abuse occurring in relationships of trust. Many jurisdictions follow the WHO definition or that of the Australian Network for the Prevention of Elder Abuse (ANPEA). Each state considers that abuse may be physical, sexual, financial, psychological, social, and/or neglect. South Australia is the only state to consider chemical abuse as an additional form of abuse, defined as “any misuse of drugs, alcohol, medications and prescriptions, including the withholding of medication and over-medication”.<sup>212</sup>

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<sup>208</sup> Chesterman (2016); Clare M. et al. (2011); Kaspiew et al. (2016); Kurrle and Naughtin (2008)

<sup>209</sup> Kurrle and Naughtin (2008)

<sup>210</sup> Ibid

<sup>211</sup> [www.agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/guide-for-reporting-reportable-assaults](http://www.agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/guide-for-reporting-reportable-assaults)

<sup>212</sup> [www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/stop+elder+abuse/what+is+elder+abuse](http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/stop+elder+abuse/what+is+elder+abuse)

**Table 7.1. Federal and state definitions of elder abuse**

Jurisdiction	Elder abuse definition
<b>Federal</b> <sup>213</sup>	Australian Network for the Prevention of Elder Abuse (ANPEA) definition: any act occurring within a relationship where there is an implication of trust which results in harm to an older person. Abuse may be physical, sexual, financial, psychological, social and/or neglect.
<b>Australian Capital Territory</b> <sup>214</sup>	World Health Organization (WHO) definition: a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.
<b>New South Wales</b> <sup>215</sup>	WHO definition
<b>Northern Territory</b> <sup>216</sup>	Elder abuse is any act occurring within a relationship where there is an implication of trust, which results in harm to an older person. Abuse may be physical, sexual, psychological, financial abuse or neglect from someone in a position of trust, such as family members, friends, carers, paid/volunteer workers or professionals.
<b>South Australia</b> <sup>217</sup>	Elder abuse is any deliberate or unintentional action, or lack of action, carried out by a person in a trusted relationship which causes distress, harm, or serious risk of harm to an older person or loss or damage to property or assets.
<b>Tasmania</b> <sup>218</sup>	Abuse of older people is a single or repeated act occurring within a relationship where there is an implication of trust, which causes harm to an older person.
<b>Victoria</b> <sup>219</sup>	ANPEA definition WHO definition
<b>Western Australia</b> <sup>220</sup>	Elder abuse is defined as any act which causes harm to an older person and occurs within an informal relationship of trust, such as family or friends.

## 7.1 Elder abuse agencies

There are now elder abuse helplines available in each state and territory (the contact details of which are listed in Appendix 8). These helplines are free and confidential and provide a straightforward way to access support and assistance. Older people, concerned friends and family, and staff and professionals working with older people are able to contact the helplines and be given information and referral to relevant organisations that may be able to assist further, such as the police or guardianship and administration organisations. An advocacy model is used in some elder abuse agencies. Advocacy approaches focus on supporting the older person's wishes while also promoting their autonomy and ability to act on their own behalf, as much as possible. Australian

<sup>213</sup> [apeawa.advocare.org.au/](http://apeawa.advocare.org.au/)

<sup>214</sup> ACT Department of Disability (2010)

<sup>215</sup> Family and Community Services (NSW) (2014)

<sup>216</sup> [www.cotant.org.au/uncategorised/preventing-elder-abuse-is-everyones-business/](http://www.cotant.org.au/uncategorised/preventing-elder-abuse-is-everyones-business/)

<sup>217</sup> [www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+cond itions+prevention+and+treatment/stop+elder+abuse](http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/stop+elder+abuse)

<sup>218</sup> Tasmanian Department of Health and Human Services (2012)

<sup>219</sup> Department of Health (VIC) (2012)

<sup>220</sup> [apeawa.advocare.org.au/](http://apeawa.advocare.org.au/)

elder abuse organisations also provide education and information sessions to staff working with older people, older community groups, aged care consumers, and special needs groups. In the financial year 2015–2016, it was reported that 1,597 information/education sessions were held across Australia and attended by 39,252 attendees.<sup>221</sup> Information about specific responses in each state and territory is provided below.

### 7.1.1 Australian Capital Territory

An Elder Abuse Taskforce convened in 2003, resulting in release of a resource guide *Meeting the Challenge of Elder Mistreatment*<sup>222</sup> to assist service providers to deal with elder abuse and provide practical guidance and information about referral services. A program to respond to elder abuse was developed at this time which included a telephone information and referral service, a community awareness campaign, development of training materials for professionals and an Australian Capital Territory (ACT) Elder Abuse Policy Framework. In October 2008, a strategic review on the implementation of the ACT Elder Abuse Prevention Program was undertaken. The ACT Elder Abuse Prevention Program Policy, introduced in 2012, was developed based on the review's recommendations.<sup>223</sup> The policy outlines approaches for preventing and responding to abuse, key agencies' roles and responsibilities, and reporting requirements. ACT Community Services operates the Older Persons Abuse Prevention Referral and Information Line (APRIL)<sup>224</sup> which provides support, information and service referrals that may assist with abusive situations.

### 7.1.2 New South Wales

The New South Wales (NSW) Taskforce on Abuse of Older People was convened through the Office on Ageing in 1991. It released a report, *The Abuse of Older People in Their Homes*.<sup>225</sup> In 1995, the NSW government developed an interagency response to elder abuse, *Abuse of Older People: An Interagency Protocol*, with its primary focus on ways of responding to elder abuse. This response model outlines the roles of various agencies with an interest in elder abuse, and was revised in 2014 as the Preventing and Responding to Elder Abuse: NSW Interagency Policy<sup>226</sup> to take into account changes in service delivery and practice. This policy outlines governing principles and issues of responding to elder abuse, and provides directions to agencies for developing their own policies.

As part of the [NSW Ageing Strategy 2016–2020](#)<sup>227</sup>, the NSW Elder Abuse Helpline and Resources Unit was developed. The unit provides information, support and referrals to older people, family members, and service providers and front-line workers. The unit also runs education and training for staff and community information sessions. In 2016, the NSW Legislative Council produced a report: *Elder abuse in New South Wales*.<sup>228</sup> The report's purpose was to understand the prevalence of abuse, the nature of support services, the effectiveness of laws, policies, services, and strategies, and best-practice approaches to combating elder abuse.

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<sup>221</sup> Advocare Inc. (2016a)

<sup>222</sup> ACT Health (2004)

<sup>223</sup> ACT Department of Disability (2010)

<sup>224</sup> [www.communityservices.act.gov.au/wac/ageing/elder\\_abuse\\_prevention\\_and\\_assistance](http://www.communityservices.act.gov.au/wac/ageing/elder_abuse_prevention_and_assistance)

<sup>225</sup> 1993, in Kurrle and Naughtin (2008, p. 116)

<sup>226</sup> Family and Community Services (NSW) (2014)

<sup>227</sup> [www.facs.nsw.gov.au/participation-and-inclusion/the-nsw-ageing-strategy-2016-2020](http://www.facs.nsw.gov.au/participation-and-inclusion/the-nsw-ageing-strategy-2016-2020)

<sup>228</sup> General Purpose Standing Committee No. 2 (2015)



### 7.1.3 Northern Territory

Relevant policy in the Northern Territory is more focused around increasing older people's wellbeing and lifestyle. There are some general strategies about elder abuse but, overall, the Territory does not have a formal policy about managing and responding to elder abuse. Most cases are dealt with by Aged Care Assessment Teams (ACAT). In rural and remote areas, community workers are trained to recognise high-risk situations for abuse and work with the older person's family to improve the older person's care and establish strategies to prevent abuse from occurring. In April 2015, the Darwin Community Legal Service established the Elder Abuse Information Line as part of its Aged and Disability Advocacy Service (ADAS). The helpline provides information and referrals to older people, family members and friends, front-line workers and the public.<sup>229</sup> ADAS also provides education sessions about elder abuse to aged care and disability service providers and government staff. The *Strong Seniors: Seniors Participation Framework 2016-2019*<sup>230</sup> outlines strategies to increase socialisation, diversity, economic security, education, health and community safety for older Territorians. Part of the framework looks at specific strategies to prevent and reduce elder abuse, along with providing support and community education for older people and the wider community.

### 7.1.4 South Australia

The Elder Protection Program Committee was established in 1992 and developed a model for responding to abuse, the Elder Protection Program, which began in 1994. The Aged Rights Advocacy Service (ARAS) has delivered the program since 1997. ARAS utilises an advocacy model in dealing with elder abuse, assisting in the individual management of elder abuse cases once identified. It provides people experiencing elder abuse with information, strategies and options to overcome the abuse and supports them in decision making. ARAS's website, Abuse Prevention: Preventing Abuse of Older People<sup>231</sup>, provides information for staff of residential care facilities. South Australia (SA) Health's website, Stop Elder Abuse<sup>232</sup>, is also a useful reference tool. The Alliance for the Prevention of Elder Abuse<sup>233</sup> (APEA) was formed in 1998 and members are key stakeholders in relation to responding to the abuse and exploitation of older people. The current South Australian Government policy on elder abuse is set out by SA Health in its Strategy for Safeguarding Older South Australians Action Plan 2014–21.<sup>234</sup> The policy identifies risk factors and vulnerable groups, information about reporting, and prevention and early intervention strategies. SA Health also run the South Australian Elder Abuse Prevention Phone Line, offering information and service referrals.

Currently, the University of South Australia is working on a prevalence study of elder abuse in South Australia for the Office for the Ageing (with SA Health): The Prevalence of Elder Abuse in South Australia. The project's final report was due in December 2016. In addition, the Parliament of South

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<sup>229</sup> Darwin Community Legal Service (2015)

<sup>230</sup> [dcm.nt.gov.au/supporting-government/strategies-and-plans/strong-seniors-seniors-participation-framework-2016-19](http://dcm.nt.gov.au/supporting-government/strategies-and-plans/strong-seniors-seniors-participation-framework-2016-19)

<sup>231</sup> [www.sagedrights.asn.au/abuse\\_prevention](http://www.sagedrights.asn.au/abuse_prevention)

<sup>232</sup> [www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/stop+elder+abuse](http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+conditions+prevention+and+treatment/stop+elder+abuse)

<sup>233</sup> [www.apea.org.au/](http://www.apea.org.au/)

<sup>234</sup> [www.sahealth.sa.gov.au/wps/wcm/connect/6816e88048bf9ce9be6fff7577aa6b46/Safeguarding+Action+Plan+FINAL.pdf?MOD=AJPERES&CACHEID=6816e88048bf9ce9be6fff7577aa6b46](http://www.sahealth.sa.gov.au/wps/wcm/connect/6816e88048bf9ce9be6fff7577aa6b46/Safeguarding+Action+Plan+FINAL.pdf?MOD=AJPERES&CACHEID=6816e88048bf9ce9be6fff7577aa6b46)

Australia is undertaking the Joint Committee on Matters Relating to Elder Abuse.<sup>235</sup> The Committee will consider: the prevalence and most common forms of elder abuse in South Australia; available support services; the effectiveness of laws, policies, resources, services, and strategies; best-practice strategies for multi-agency responses; and methods to prevent abuse.

### 7.1.5 Tasmania

The Tasmanian Department of Human Services introduced the Tasmanian Elder Abuse Prevention Strategy in January 2011. The current policy is set out in Protecting Older Tasmanians from Abuse: Elder Abuse Prevention Action Plan 2015–2018.<sup>236</sup> The policy identifies four fundamental strategies about the themes of awareness, empowerment, action, and support. Key elements include community education and training, along with the provision of information services. Current legislation is under ongoing review to examine its adequacy to protect older people's rights. Further, the report, *Responding to Elder Abuse: Tasmanian Government Practice Guidelines for Government and Non-Government Employees*<sup>237</sup>, was developed to help staff identify, manage, and respond effectively to elder abuse. The policy is based on Victoria's policy for elder abuse and identifies types of elder abuse, service provider frameworks, guidelines for best-practice, suggestions for developing agency protocols, and information services. Advocacy Tasmania<sup>238</sup> also runs the Tasmanian Elder Abuse Helpline as part of its Elder Abuse Prevention Strategy, which aims to help older persons, families, and service providers with information and referral support.

### 7.1.6 Victoria

Victoria has adopted a generic approach to responding to elder abuse, and all services are supported in dealing with older people and identifying and managing cases of elder abuse. Victorian government policy recommends all agencies that deliver services to older people develop protocols and procedures to deal with elder abuse and neglect. A 2005 research report, *Strengthening Victoria's Response to Elder Abuse*<sup>239</sup>, led to \$5.9 million in funding to implement the report's recommendations. Part of the funding was allocated to the development of a specialist older person's legal service, Seniors Rights Victoria (SRV), established in April 2008. This service includes a telephone helpline, advocacy and support, legal services, and community education. In 2015, SRV established the Elder Abuse Roundtable of experts, to advocate for older people and raise awareness of elder abuse.<sup>240</sup>

As part of the Victorian Health Plan: Victorian Health Priorities Framework 2012–22, the Elder Abuse prevention and response guidelines for action 2012–2014<sup>241</sup> were developed. The guidelines apply to organisations and agencies working in elder abuse and outline four key priorities: to increase community awareness of elder abuse; empower older people through education and advice provision; engage professionals through training and education; and increase multi-agency coordination. More recently, the National Ageing Research Institute (NARI) began scoping Victoria's

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<sup>235</sup> [www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=2&CId=334](http://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=2&CId=334)

<sup>236</sup> [www.dhhs.tas.gov.au/\\_data/assets/pdf\\_file/0004/208993/Elder\\_Abuse\\_Prevention\\_Action\\_Plan\\_2015-18.pdf](http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0004/208993/Elder_Abuse_Prevention_Action_Plan_2015-18.pdf)

<sup>237</sup> Tasmanian Department of Health and Human Services (2012)

<sup>238</sup> [advocacytasmania.org.au/](http://advocacytasmania.org.au/)

<sup>239</sup> Office for Senior Victorians (2005)

<sup>240</sup> Seniors Rights Victoria (2016)

<sup>241</sup> Department of Health (VIC) (2012)

current research, policy, and practice in dealing with elder abuse. This project<sup>242</sup> aims to identify gaps in service provision and develop an action plan outlining ways address these gaps; it will conclude in late 2017. Further, in April 2016, as a response to the Royal Commission into Family Violence, the Victorian government pledged \$527 million to address family violence. Royal Commission recommendations involve trialing specialist family violence and elder abuse response teams in the Victoria Police, and continuing a holistic whole-of-government response to elder abuse.<sup>243</sup>

### **7.1.7 Western Australia**

Advocare,<sup>244</sup> an independent advocacy agency for older people, was established in 1997 to provide information and assistance to people experiencing elder abuse, as well as referral and community education about the prevention, detection and management of elder abuse. Advocare also works to support the rights of people receiving government-funded aged care services. The agency provides a statewide service but is based in the Perth metropolitan area. The Western Australian Network for the Prevention of Elder Abuse (WANPEA) was formed in 1999 to encourage collaboration across government and non-government agencies within the health and welfare sectors. The Alliance for the Prevention of Elder Abuse: Western Australia<sup>245</sup> (APEA: WA) was established in 2005 to promote a whole-of government policy framework that values and supports older people's rights. APEA: WA is high-level policy group and members work collaboratively to raise awareness of elder abuse issues, and to influence current attitudes, policies and practices in relation to elder abuse. With funding from the Department of Local Government and Communities, in 2013 APEA developed the Elder Abuse Protocol: Guidelines for Action.<sup>246</sup> The protocol outlines a six-step approach for identifying and responding to elder abuse, signs and risk factors of elder abuse, and information on elder abuse referral and support agencies. The Older People's Rights Service<sup>247</sup> is a specialist legal service managed in partnership by Advocare and the Northern Suburbs Community Legal Centre and offers legal assistance and social work to those experiencing or at risk of elder abuse.

### **7.1.8 National**

The Australian Network for the Prevention of Elder Abuse (ANPEA) works on a national level to promote better policies and responses to address elder abuse issues in Australia, and contributes to the work of the International Network for the Prevention of Elder Abuse (INPEA). Across the country, organisations and individuals with an interest in this area are able to become members<sup>248</sup> of this network.

In February 2016, the Australian Law Reform Commission (ALRC) was appointed to conduct an inquiry<sup>249</sup> into laws and frameworks to safeguard older Australians from abuse. Its purpose was to examine existing Australian laws that protect older people from elder abuse and to identify best-practice legal frameworks. The inquiry into Protecting the Rights of Older Australians from Abuse

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<sup>242</sup> [www.nari.net.au/research/current-projects/elder-abuse](http://www.nari.net.au/research/current-projects/elder-abuse)

<sup>243</sup> Government of Victoria (2016)

<sup>244</sup> [www.advocare.org.au/](http://www.advocare.org.au/)

<sup>245</sup> [apeawa.advocare.org.au/](http://apeawa.advocare.org.au/)

<sup>246</sup> APEA: WA (2013)

<sup>247</sup> [nsclegal.org.au/legal-services/elder-law-services/](http://nsclegal.org.au/legal-services/elder-law-services/)

<sup>248</sup> [www.eapu.com.au/anpea](http://www.eapu.com.au/anpea)

<sup>249</sup> [www.alrc.gov.au/inquiries/elder-abuse](http://www.alrc.gov.au/inquiries/elder-abuse)

takes a broad view, investigating federal and state/territories laws, legislative instruments, policy and practice guidelines, standards, education, and information sharing. The ALRC released an issues paper on 15 June 2016 calling for submissions, which closed on 18 August 2016.<sup>250</sup> The issues paper attracted more than 200 submissions and the ensuing discussion paper<sup>251</sup> includes 43 proposals for law reform. Proposals were made concerning:

- a national register of powers of attorney<sup>252</sup>
- that enduring powers of attorney must be witnessed by two people<sup>253</sup>
- that powers of investigation be granted to public advocates and public guardians<sup>254</sup>
- that the Code of Banking Practice requires banks to try to prevent financial elder abuse<sup>255</sup>
- action on the regulation of family agreements<sup>256</sup>
- responses through the social security system regarding financial abuse, for example, carers' allowances<sup>257</sup>
- a reportable incidents scheme in aged care that requires staff to report to the Aged Care Complaints Commissioner<sup>258</sup>
- a call for the Law Council of Australia to review the guidelines for the preparation and execution of wills.<sup>259</sup>

The Inquiry released its final report in May 2017 and made 43 recommendations across a range of areas, some of which are discussed in subsequent chapters of this report. There was a focus on the following issues:<sup>260</sup>

- consistent laws across states and territories
- a new serious incident response scheme
- a national register of power of attorney documents
- a nationwide prevalence study
- training for bank tellers to spot financial abuse.

It is also worth noting that the Liberal/National Government went to the election in July 2016 with a commitment to develop a national plan to better protect the rights of older Australians<sup>261</sup> from all forms of abuse and set aside \$15 million for this purpose. Its national plan included measures to: enhance the knowledge base surrounding elder abuse prevalence and risk factors; understand the effectiveness of current prevention and intervention programs; develop measures to enhance coordination; and develop training and awareness programs.

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<sup>250</sup> ALRC (2016b)

<sup>251</sup> ALRC (2016c)

<sup>252</sup> Proposal 5-1 – 5-3

<sup>253</sup> Proposal 5-4

<sup>254</sup> Proposal 3-1-3-5.

<sup>255</sup> Proposal 7-1

<sup>256</sup> Proposal 8-1 – 8-2

<sup>257</sup> Proposal 10.

<sup>258</sup> Proposal 11

<sup>259</sup> Proposal 9

<sup>260</sup> Lewis (15 June 2017)

<sup>261</sup> [www.liberal.org.au/coalitions-policy-protect-rights-older-australians](http://www.liberal.org.au/coalitions-policy-protect-rights-older-australians)

## **7.2 Key findings: national context**

While there are well-developed national responses in place for domestic violence<sup>262</sup> and child abuse,<sup>263</sup> and some work is being done within the disability sector to reduce violence, abuse and neglect of people with a disability,<sup>264</sup> there is nothing on this scale in regard to elder abuse. To date, responses are largely state-led and fragmented across different jurisdictions. A national government-led approach is lacking, though the National Ageing Research Institute Action Plan being developed in Victoria may prove adaptable to the national context. This fragmentation and lack of national leadership is a hindrance to developing integrated responses to elder abuse. When developing policy frameworks and strategies to address elder abuse, it is worth considering how to incorporate well-developed responses to family and domestic violence and the abuse and mistreatment of people with a disability.

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<sup>262</sup> National Plan to Reduce Violence against Women and their Children 2010–2022

<sup>263</sup> National Framework for Protecting Australia’s Children 2009–2020

<sup>264</sup> Council of Australian Governments (2011); Zero Tolerance Framework can be found at [www.nds.org.au/resources/zero-tolerance](http://www.nds.org.au/resources/zero-tolerance)

## 8 Queensland service responses to elder abuse

This chapter discusses responses to elder abuse across government and non-government organisations in Queensland. Data has been collected from a range of Queensland publications,<sup>265</sup> the organisations' websites (which have been hyperlinked), and through the project's research activities (though legislative responses are discussed in Chapter 9). Following discussion of Queensland service responses, issues and gaps identified by the research project's data are reported, and information about best practice is provided in relevant sections with suggested directions incorporated where relevant.

### 8.1 The Queensland context

A number of government, non-government and private sector organisations are involved in prevention, detection, response, and systemic advocacy efforts around elder abuse in Queensland. These include: the Elder Abuse Prevention Unit (EAPU); the Seniors Legal and Support Services (SLSS); the Office of the Public Guardian; The Public Trustee; the Queensland Civil and Administrative Tribunal; the Office of the Public Advocate; Queensland Health; the Queensland Police Service; and the Office for Seniors, Carers and Volunteering in the Department of Communities, Child Safety and Disability Services. Key organisations' roles are detailed in this chapter, and organisational responses to elder abuse in Queensland are categorised and summarised in Table 8.1 below. A detailed list of all specific stakeholders identified through the research process is provided in Appendix 9. This chapter focuses on organisations and does not include the most important stakeholders of all, older people themselves, their carers, friends or family.

**Table 8.1. Categorisation of organisational responses to elder abuse in Queensland**

Category	Nature of service and activities
Statutory	<p>Empowered under legislation to protect older people subjected to neglect, abuse and exploitation. Agencies have different statutory functions and powers and activities include:</p> <ul style="list-style-type: none"> <li>• investigation</li> <li>• prosecution/penalisation of offenders</li> <li>• determination of capacity</li> <li>• appointment of substitute decision makers</li> <li>• substitute decision-making services.</li> </ul>

<sup>265</sup> EAPU (2015); Office of the Public Advocate (QLD) (2012)

<p><b>Support</b></p>	<p>Information and support services provide initial support and guidance for situations where a senior is subjected to neglect, abuse or exploitation, and can assist seniors through a crisis period. Most of these services are operated by non-government agencies with many supported by state or federal funding. Services include:</p> <ul style="list-style-type: none"> <li>• financial support</li> <li>• emergency respite care</li> <li>• telephone hotlines</li> <li>• legal advice and services</li> <li>• assistance to develop safety and response plans.</li> </ul>
<p><b>Advocacy and information</b></p>	<p>Provided by organisations with a strong focus on advancing the rights and promoting the safety of seniors at risk of elder abuse</p>
<p><b>Policy and strategy</b></p>	<p>Focuses on the prevention of elder abuse as a whole-of-government responsibility that requires community interest and support</p>
<p><b>Other referral and support</b></p>	<p>Includes agencies that do not focus on elder abuse specifically but are useful to refer people to, for example, aged care services or agencies dealing with family and domestic violence or the rights of people with a disability.</p>
<p><b>Allies</b></p>	<p>Several organisations and groups may be allies in developing cross-sector strategies on elder abuse prevention and intervention, as well as state and national-level policy.</p>

The Queensland organisations listed below are divided into six categories: statutory; support; advocacy and information; policy and strategy; other referral and support services; and allies. Interagency networks and forums are also discussed. Organisations may sometimes be categorised in several ways, however, in this instance they have been grouped in relation to their involvement in elder abuse. These lists are not necessarily exhaustive.

## 8.2 Statutory

Statutory agencies have the power under legislation to protect older people who are victims of elder abuse. Agency activities include: investigation, prosecution, determination of capacity, appointment of substitute decision makers, and substituted decision-making services.<sup>266</sup>

### 8.2.1 Anti-Discrimination Commission Queensland

The Anti-Discrimination Commission Queensland<sup>267</sup> is an independent statutory authority which administers the *Anti-Discrimination Act 1991* and is headed by the Anti-Discrimination Commissioner. The Commission works towards a fair and inclusive Queensland within the framework of established international human rights instruments. Under the Act, the Commission:

<sup>266</sup> Office of the Public Advocate (QLD) (2012)

<sup>267</sup> [www.adcq.qld.gov.au/about-us](http://www.adcq.qld.gov.au/about-us)

promotes the understanding, acceptance and public discussion of human rights in the state; provides a free statewide telephone enquiry service; information in print, online and other formats; training about discrimination and human rights; and a free and impartial complaint resolution service.

### **8.2.2 Office of the Public Guardian**

The Office of the Public Guardian<sup>268</sup> (OPG) is an independent statutory body that protects the rights and interests of vulnerable Queenslanders, including adults with impaired capacity, to make their own decisions. The OPG makes personal and health decisions for adults with impaired capacity if appointed as their guardian or attorney. They also investigate allegations of abuse, neglect or exploitation of adults with impaired capacity, advocate and mediate for them, and educate the public about the guardianship system. Legislative functions and powers are prescribed in the *Public Guardian Act 2014*, and the *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision makers. The OPG also operates a Community Visitors Program where adult community visitors independently monitor three different types of accommodation where vulnerable adults live: disability accommodation provided or funded by the Department of Communities, Child Safety and Disability Services; mental health services and private hostels (level 3 accreditation) — where vulnerable adults live. Community visitors make inquiries and lodge complaints for, or on behalf of, residents of these sites. The OPG has offices in Brisbane, Ipswich, Townsville and Cairns, and regional staff operate from local court houses around the state.

### **8.2.3 Public Trustee of Queensland**

The Public Trustee<sup>269</sup> provides financial substitute decision making and estate planning services in Queensland. It can only intervene if it is suspected that an older person with capacity is being financially abused. This service can provide older people with estate planning advice and guidance about safeguarding assets. In cases where the older person does not know any suitable substitute decision makers, the Public Trustee can be nominated as their financial attorney. In addition, they also offer a free will-making service, enduring powers of attorney (for a fee), free document storage, and community presentations about elder abuse, estate planning, and enduring powers of attorney documents.

### **8.2.4 Office of the Public Advocate**

The Office of the Public Advocate<sup>270</sup> (OPA) is an independent statutory body whose role is to protect and promote the rights, autonomy, and participation of people with impaired decision-making capacity. Its work involves statutory systems advocacy to influence government and non-government agencies and preparing systemic advocacy reports on a range of matters including legislative, policy and practice aspects of systems.

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<sup>268</sup> [www.publicguardian.qld.gov.au/adult-guardian](http://www.publicguardian.qld.gov.au/adult-guardian)

<sup>269</sup> [www.pt.qld.gov.au/about/about-us/](http://www.pt.qld.gov.au/about/about-us/)

<sup>270</sup> [www.justice.qld.gov.au/public-advocate](http://www.justice.qld.gov.au/public-advocate)



### 8.2.5 Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal<sup>271</sup> (QCAT) has the power to determine whether an adult has impaired decision-making capacity, and the ability to appoint appropriate guardians and administrators if required under the *Guardianship and Administration Act 2000*. If an older person with impaired capacity is suspected to be abused, neglected, or exploited, QCAT can hold a hearing that determines capacity and whether the existing decision-making arrangements are adequate.

### 8.2.6 Queensland Police Service

The Queensland Police Service<sup>272</sup> (QPS) holds a broader mandate than the above services and may be the first port of call for people experiencing abuse. Many forms of elder abuse are crimes, as outlined in Chapter 9. The Police provide support and protection to people experiencing elder abuse and their families through the application of relevant laws and community intervention. If there is sufficient evidence of a crime being committed, it is QPS policy that charges should be laid and that incidents of violence toward an older person in the domestic setting are treated in the same way as a violent incident in any other circumstances is treated. With regard to elder abuse, the QPS's Community Safety and Crime Prevention Branch has introduced new policies and task forces, including the Seniors Task Force, and provides information to all QPS employees on best-practice approaches to communicating with older people, particularly when they are victims of crime.<sup>273</sup>

## 8.3 Support

Support services can provide specific support and guidance to victims of elder abuse, neglect, and exploitation. Services include telephone helplines, legal advice and assistance, and assistance with creating safety plans.<sup>274</sup>

### 8.3.1 Elder Abuse Prevention Unit

The EAPU<sup>275</sup> is funded by the Queensland Department of Communities, Child Safety and Disability Services and works under the auspices of UnitingCare Community. Its role is to prevent and respond to elder abuse in Queensland. The EAPU works to raise awareness about the nature and extent of elder abuse through involvement with community groups and by developing and disseminating resources. Based in Brisbane, it operates a statewide confidential telephone helpline which provides information and advice to older people about elder abuse. The EAPU also facilitates a statewide Multidisciplinary Peer Support Network, which is discussed further in the interagency networks section below.

### 8.3.2 Supported Elder Mediation Project

In December 2016, the Dispute Resolution Branch within the Department of Justice and Attorney-General sought submissions to its prospective Supported Elder Mediation Project. The project sought to address issues including: whether supported elder mediation should be offered in instances of abuse; protection for participants; how to best determine capacity in older people to

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<sup>271</sup> [www.qcat.qld.gov.au/](http://www.qcat.qld.gov.au/)

<sup>272</sup> [www.police.qld.gov.au/](http://www.police.qld.gov.au/)

<sup>273</sup> Office of the Public Advocate (QLD) (2012)

<sup>274</sup> Ibid

<sup>275</sup> [www.eapu.com.au/about](http://www.eapu.com.au/about)

participate in mediation; how to ensure that elder mediation is offered to diverse and vulnerable groups; and referral methods.

### **8.3.3 Seniors Legal and Support Services**

Five SLSS operate in Queensland (Brisbane, Toowoomba, Hervey Bay, Townsville, and Cairns) servicing a broader geographic area. The Queensland Government funds four community legal centres and one neighbourhood centre, which provide free legal and support services for older people concerned about abuse, neglect, or exploitation.<sup>276</sup> Within the centres, solicitors and social workers together address the legal and social aspects of elder abuse. As such, the centres offer legal and non-legal options. Legal options include providing advice regarding Enduring Powers of Attorney, assistance with obtaining Domestic Violence Orders and Administration Orders, help to negotiate contracts for retirement villages, and advice on the recovery of assets. Social responses include counselling and developing safety plans which aim to reduce risk of abuse. The services are provided in a variety of ways, including centre-based appointments, telephone support, house visits, or via a rural/remote outreach service.

## **8.4 Advocacy and information**

Advocacy and information services focus on advancing the rights and interests of older people throughout Queensland. Advocacy services assist older people in addressing and exercising their rights, can help resolve conflicts with service providers, and support older people through formal hearings, such as QCAT proceedings.<sup>277</sup> Information services can provide information about elder abuse, along with details about older peoples' rights, educate service providers about the indicators of elder abuse, and provide community education and training materials.

### **8.4.1 Aged and Disability Advocacy Australia**

Aged and Disability Advocacy Australia<sup>278</sup> (ADA Australia) is an independent, community-based advocacy and education service that provides support to older people and people with a disability. ADA Australia offer services in four broad categories: advocacy support, guardianship advocacy, education, and information services. Advocates can discuss clients' needs and concerns, and provide support and information about service options. ADA Australia also runs a legal advocacy service to help older people with QCAT hearings by providing them information on the processes, preparing evidence, advising on their options, and representing them at the hearing.

### **8.4.2 Australian Pensioners' and Superannuants' League, Queensland**

The Australian Pensioners' and Superannuants' League (APSL) is a voluntary organisation that provides support, referrals, information and advocacy for pensioners and superannuants, including those from diverse and vulnerable groups.<sup>279</sup> APSL provides information sessions about elder abuse awareness, rights, available services, and prevention strategies and is also involved with lobbying all levels of government about elder abuse and other issues affecting pensioners and superannuants.

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<sup>276</sup> Office of the Public Advocate (QLD) (2012)

<sup>277</sup> Ibid

<sup>278</sup> [adaaustralia.com.au/about/about-us/](http://adaaustralia.com.au/about/about-us/)

<sup>279</sup> Office of the Public Advocate (QLD) (2012)

### **8.4.3 Council on the Ageing Queensland**

The Council on the Ageing Queensland<sup>280</sup> (COTAQ) is a state-based organisation committed to advancing the rights, needs and interests of people as they age in Queensland. COTAQ engages in a range of initiatives,<sup>281</sup> including: facilitating Seniors Week on behalf of the Queensland Government; promoting and engaging in research of interest and concern to older people; and providing community education and information to older Queenslanders to enhance their ability to age well within their own communities. COTAQ also provides advice to governments and community organisations; works in partnership with older Queenslanders and their organisations to inform COTA's policy and advocacy work; and advocates on behalf of older people, giving priority to those suffering injustice, discrimination, disadvantage or disability.

### **8.4.4 Older People Speak Out**

Older People Speak Out (OPSO)<sup>282</sup> is an independent organisation which lobbies government about elder abuse and other issues which affect older people's lives.<sup>283</sup> The organisation holds meetings with older people and other stakeholders to identify issues and potential solutions and also encourages positive community perceptions of seniors.

## **8.5 Policy and strategy**

Organisations that fit into this category are interested in whole-of-government responses and strategies to prevent elder abuse. Other organisations that may fit into this category which have been designated in other categories because of their primary roles include the Office of the Public Advocate and the EAPU.

### **8.5.1 Office for Seniors, Carers and Volunteering**

The Office for Seniors, Carers and Volunteering within the Queensland Department of Communities, Child Safety and Disability Services<sup>284</sup> consults with the seniors sector to understand the issues and priorities that are important to Queensland seniors, and works across government to coordinate, review and monitor the provision of services which respond to seniors' priority issues.

The Office for Seniors, Carers and Volunteering delivers programs designed to increase seniors social participation, prevent elder abuse, provide information, and improve health, wellbeing and the safety of seniors with a focus on vulnerable people. The EAPU and the SLSS are services funded by the Office for Seniors, Carers and Volunteering.

The Department also conducts an annual elder abuse prevention campaign which is intended to:

- raise community awareness of the signs and forms of elder abuse
- prompt people who know or suspect that elder abuse is occurring, and the victims of elder abuse, to contact the Elder Abuse Helpline for advice and assistance.

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<sup>280</sup> [cotaqlld.org.au/about-us/vision-mission/](http://cotaqlld.org.au/about-us/vision-mission/)

<sup>281</sup> Information from Council on the Ageing (QLD) (2016)

<sup>282</sup> [opso.com.au/](http://opso.com.au/)

<sup>283</sup> Office of the Public Advocate (QLD) (2012)

<sup>284</sup> Ibid

## **8.6 Other referral and support services**

A range of other agencies do not specifically focus on elder abuse but assist or support people experiencing elder abuse, providing services including legal, financial, counselling, advocacy, complaints, health and aged care services, as well as culturally specific services for Aboriginal and Torres Strait Islander peoples and people from culturally and linguistically diverse backgrounds. Some organisations may deal with family and domestic violence or the rights of people with a disability, while others aim to provide help and support to older people or a wider section of the population needing support and assistance. There are also support services for carers of older people available. Different forms of elder abuse often require tailored responses and referrals; for example, a situation involving neglect is handled differently to one involving financial abuse.

There seems to be a multitude of organisations available to assist in responding to elder abuse. Nevertheless, aside from the EAPU, the OPG and the SLSS, the other organisations are not specifically designated to respond to elder abuse. This may mean there are issues about the appropriateness of a referral for some older people. For example, an older person experiencing domestic violence may not feel comfortable in a women's refuge because they tend to be designed primarily to cater for the needs of younger women with children. Also, services that do not often encounter older people as clients may not be educated in the nuances of assisting them, for example, taking into account issues such as hearing and visual impairments or lack of mobility. This may make it more difficult for older people to access mainstream services. Other services that provide general support, assistance and care may not be aware of elder abuse issues or have the policies, procedures and staff training to deal with them effectively.

## **8.7 Allies**

Several organisations and services have been identified as potential 'allies' in elder abuse prevention and intervention, and in developing policy frameworks that do not fit within previously mentioned categories. These include: Aboriginal and Torres Strait Islander Elders and groups; professional associations, such as the Australian Medical Association; carer support services, for example, Carers Queensland; peak bodies, such as Aged and Community Services Australia; the Australian Association of Gerontology; and universities and other research institutions.

## **8.8 Interagency forums and networks**

As previously mentioned, the EAPU facilitates a statewide Multidisciplinary Peer Support Network which operates via teleconferencing, newsletters and additional written communication to assist, resource and support workers in rural and remote locations to respond to elder abuse. Several elder abuse prevention taskforces were established in Queensland during the past two decades but key research stakeholders advise that all have been discontinued.

A Prevention of Elder Abuse Taskforce was established in 2000 to act as a reference group for government and community initiatives.<sup>285</sup> It was active in raising awareness and encouraging implementation of best-practice models for responding to abuse and initiatives. Regional Taskforces in West Moreton, the Gold Coast and the Fraser Coast were also established in the early to mid

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<sup>285</sup> Kurrle and Naughtin (2008)

2000s.<sup>286</sup> A Prevention of Elder Abuse in CALD Communities Taskforce was also established around this time with the aim of contributing a cross-cultural perspective to the Strategic Plan of the Prevention of Elder Abuse Task Force. A Seniors Task Force was established in 2004 and was involved in supporting Queensland's whole-of-government approach to elder abuse,<sup>287</sup> which then developed into the Seniors Roundtable. The Seniors Roundtable<sup>288</sup> included organisations such as COTAQ, National Seniors Australia, Older People Speak Out, Older Women's Network, Queensland Retired Teachers' Association, and the Ethnic Communities Council of Queensland. The 2013 *Confident, Safe and Secure living in Queensland: Handbook on Safety for Seniors*<sup>289</sup> was an initiative of this group. A Seniors Task Force is also convened by the QPS and is mentioned in Section 8.2.6.

Currently, an EAPU Reference Group meets quarterly and its members include many of the statutory, advocacy and information, support, and policy and strategy organisations mentioned in this chapter.<sup>290</sup> The Group's purpose is to share expertise and knowledge, and to guide and advise the EAPU about elder abuse responses, research and trends that affect older people.

## 8.9 Queensland elder abuse service responses: perceptions and experiences

Research activities collected information about staff perceptions and experiences of their work with elder abuse, and this data is presented in this and following sections.

### 8.9.1 Workplace elder abuse policies, procedures, and processes

Participants in the interviews, focus groups and the online survey were asked about their organisation's elder abuse policies, procedures and processes. Of online survey respondents who answered this question, 48 per cent (n=35) reported that their organisation had a specific elder abuse policy, procedure, or process for identifying and responding to elder abuse, and 94 per cent (n=33) of these respondents reported that it was developed by their own organisation. Of this group of respondents, 86 per cent (n=30) indicated that they thought this procedure, policy or process was followed within their organisation.

In interviews and focus groups, comments about this issue included the need for standardised policies, procedures, and education about elder abuse in residential aged care. One participant highlighted the importance of involving direct service workers in the development of policies and procedures and legislation, and not just upper management, because these staff were the ones working on the front-lines.

Recently there has been a focus on the development of elder abuse protocols and interagency policies in different states, including Queensland.<sup>291</sup> These include information about elder abuse with examples and risk factors, and guidance on how to respond to elder abuse, including referral information. It is unclear how widely these are used by relevant organisations because no data has been collected about this.

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<sup>286</sup> EAPU (2007)

<sup>287</sup> Kurrle and Naughtin (2008)

<sup>288</sup> [www.cotaqld.org.au/wp.../Seniors-Roundtable-Communique-December-2011.pdf](http://www.cotaqld.org.au/wp.../Seniors-Roundtable-Communique-December-2011.pdf)

<sup>289</sup> State of Queensland, QPS (2013)

<sup>290</sup> See EAPU (undated)

<sup>291</sup> Aged Rights Advocacy Service (2011); Alliance for the Prevention of Elder Abuse: WA; EAPU (2012); Family and Community Services (NSW) (2014)

### 8.9.2 Service responses and staff perceptions of their effectiveness

Online survey participants were asked how their organisations worked with people experiencing elder abuse (victims). A range of service and response categories emerged, including:

- advocacy and support
- referral and coordination with other agencies
- combined social work and legal service team
- educational presentations to practitioners (for example, doctors) who are likely to encounter elder abuse
- hosting community gatherings and public education.

Participants were also asked whether they worked with victims and/or perpetrators, and if they thought the services they provided were effective. Of the respondents who answered this question (victims n=42; perpetrators n=23), 12 commented on effectiveness in relation to victims and three in relation to perpetrator services.

#### 8.9.2.1 Perceived effectiveness of interventions with ‘victims’

Of the responses in this group, five respondents said they felt their services were effective, or highly effective. Three mentioned that they felt their services were effective, working within certain limitations:

*“...it is effective in that support is put in place and therefore the person has more chance of protection.”*

*“It is as effective as the law can be given there is no Adult Protective legislation or [any] specific elder abuse laws in Australia.”*

*“Depends on which worker is working with the victim.”*

One participant mentioned that it was effective in the sense that, if it was low-level abuse, they could often stop the abuse from continuing. Another respondent questioned the definition of effectiveness, commenting:

*“It depends on how you define ‘effective’. If effective work with victims means the number of victims that have escaped abuse, perhaps we are not very effective. If ‘effective’ means the number of victims who have felt heard, who understand their rights and know where to go if they do want assistance to escape abuse, then I’d say we’re very effective.”*

In the focus groups, one participant mentioned that it is hard to address abuse if the person being abused does not feel they are being abused and is “happy with everything”. Another participant highlighted the importance of safety planning and the need for a well thought-out plan to put into place for people at risk, if interventions were to be effective.

### 8.9.3 Service interventions with perpetrators

In the online survey, respondents were asked if they worked with perpetrators of elder abuse and how they worked with them. Forty-three per cent (n=32) indicated that their organisation worked with perpetrators, and some of the ways the respondents undertake this work include:

- indirectly working with them — primary focus on victims
- providing legal advice about entitlement, etc.
- family counselling and seeking to uncover and alleviate the causes of stress
- providing education and referrals to support agencies
- investigating conduct and prosecuting offences where possible.

### **8.9.3.1 Perceived effectiveness of perpetrator interventions**

Of the three respondents who provided written responses to the question asking whether they perceived their work with perpetrators as effective, one answered “yes”, another said it was “sometimes effective”, while the third commented that the responses were particularly effective when the perpetrator was unknowingly carrying out elder abuse.

### **8.9.4 Knowledge of outcomes of referrals**

Twenty-eight percent (n=15) of survey respondents (n=54) to the question asking about knowledge of outcomes of referrals considered they knew the outcomes of ‘most’ or ‘all’ of the elder abuse cases they had been involved with in the previous 12 months. For those that did not, the reasons for lack of knowledge of outcomes included that, as an advisory service, it was beyond the agency’s remit to follow up with clients and that where follow up did occur, it was due to the client needing further assistance, being referred to QCAT, or requiring permanent residential aged care.

Overall, factors perceived to influence knowledge of the outcome of cases — successful or otherwise — related to a range of issues: the limited nature of particular agencies’ responsibilities; the limitations of client confidentiality post-discharge; agencies’ resource and service constraints; the length and complexity of elder abuse cases; the lack of legislative protections; and inconclusive ‘outcomes’ such as a client’s death, or where a client viewed nursing home placement as less than ideal.

### **8.9.5 Case resolutions**

Online survey participants were asked to estimate how often elder abuse cases they were involved in were resolved to the older person’s satisfaction (of cases that they were aware of the intervention outcome). Half the respondents to this question (50 per cent, n=38) indicated that they considered the cases they had been involved in over the past 12 months were ‘often’, ‘very often’, or ‘always’ resolved to the victim’s satisfaction. Respondents felt it was frequently difficult for the victim to be satisfied with the outcome of their complaint because of the complex nature of elder abuse arising from the physical or mental vulnerability of older people, their dependence on family members for physical, emotional or financial support, lack of services for assistance, and the lack, expense or complexity of legal safeguards and protections.

Such concerns are captured in the following quotes:

*“Some [older people] were prematurely placed in residential care without capacity assessments or consultation with other family. Others were sent home with their abuser after [the] doctor told the abuser that violence was disclosed by the victim (‘he beat the cr\*\* out of me’). Some were referred to Police against victims’ wishes, Police didn’t intervene due to [the] victim’s unwillingness to disclose: put in further danger. Victims remaining silent due to fear of being placed in residential care. Ongoing*

*financial abuse with no OPG intervention/support due to having capacity (but too vulnerable and incapacitated to address alone)."*

*"We may struggle with the fact that the abuse has been allowed to continue but this may be the victim's wish."*

*"Many of our patients clearly have mixed feelings so while we may have been able to stop further abuse, often relationships suffer when all the older person wanted was for the abuse to stop."*

*"There is little law to protect victims of elder abuse, in particular misuse of Enduring Powers of Attorney. What law there is, it is very expensive to access."*

*"Very little recourse for compensation of financial abuse."*

### **8.9.6 Limited response options and consequences for elder abuse**

This topic was widely discussed by interview and focus group participants, mentioned in eight of 13 focus groups and in four interviews. Participants generally held the view that there were limited responses available in relation to elder abuse, both legal and otherwise, and that these were inadequate. Many mentioned that perpetrators were rarely brought to account, and that there were often no repercussions or consequences for perpetrators of elder abuse, for example, where care was not provided, access to assets was abused under an EPoA or prosecutions were not pursued once an older person dies. The difficulties of prosecuting cases when the burden of proof must be established from within the privacy of the home or residential care setting, or where there is little independent oversight, such as with an EPoA, were cited as causes for the limited recourse to justice for older people. Should the older person die, the prosecution also usually ceases, leaving the perpetrator to 'get away with it'.

One interview participant mentioned that a lot of progress has been made in the area of domestic violence, stating that there is currently an 85 per cent success rate in victims not going back to the perpetrator because of an increase in the available options for accommodation and support. The participant suggested that more interventions and response options for older people needed to be made available to address fears of the unknown consequences of taking action. It was suggested that such responses should include greater legal protections to ensure older people are able to recover money lost in financial abuse and that there should be financial consequences or criminal charges for the perpetrator. However, other participants pointed out that this frequently results in the loss of the relationship, which, usually involving a family member, is also an unfavourable outcome for the older person. Still, others maintained that a legal outcome should be the last resort.

Such sentiments are captured by the following quotes:

*"If someone dies, investigation stops. The Public Guardian stops; their jurisdiction stops if you die, so you get away with it if mum or dad dies."*

*"Sometimes you just feel like [the system] is a bit of a toothless tiger. We've got all the policies in place and what we go through...and when the outcome for the client isn't really favourable, it's very difficult for them to get a case against the perpetrator, and to actually come out the winner in the situation."*



*“There’s no legal recourse for them that’s cost-effective. There’s no legislation, there’s nothing in the Criminal Codes to make elder abuse an aggravating feature.”*

*“The burden of proof in that particular section [referring to legislation] is so hard to overcome. The multiple neglect cases that have been put forward just can’t proceed because of the one that makes causation — who caused this death — was it from neglect? They couldn’t prosecute the daughter because they couldn’t prove that link.”*

*“I think what’s really happening is it’s difficult to prosecute when a lot of these kinds of offences occur in our private homes where it’s one-on-one, and it’s one person’s word against another and it’s an older person...”*

*“I suspect the public’s opinion, or anyone who has dealt with the Aged Care Complaints, does not have anything nice to say about it. Look at the last case that I saw come out. Some guy that has pressure sores, he ended up in hospital and died. They couldn’t link the pressure sores [with his care in the facility] but clearly there was a direct link there. He actually has the letter from the Commission about what they implemented and it simply says the staff need to be trained and that the staff need to speak up more in some staff meetings, and that’s pretty much the extent of the result. There was no penalty for anybody. No one was held accountable and all the pressure was put on the staff who are probably already overrun.”*

## **8.10 Online survey data: Interagency referrals**

In the online survey, 91 per cent of respondents to this question (n=52) said they refer elder abuse clients to other organisations. The agencies that respondents indicated they referred clients to the most frequently were (in order of frequency): the OPG, QCAT, Queensland Police Service, EAPU, SLSS, the Public Trustee, Aged and Disability Advocacy Australia, and community legal services. To a lesser extent, clients were referred to: Elder Law, Centrelink, the Commonwealth Aged Care Complaints Scheme, non-government organisations, the Department of Social Services, aged care services, and private pro bono lawyers. This information, including the percentage of referrals to each agency, is provided in Table A10.1 in Appendix 10.

Fifty-seven percent (n=53) of survey respondents also reported receiving elder abuse referrals from other organisations. Of these organisations, 58 per cent (n=31) of respondents received referrals from a wide range of government and non-government community services such as: community health services, domiciliary nursing services, nursing teams, chronic disease teams, residential care facilities, community support services for the aged, Blue Care, clients and families, other lawyers, Queensland Ambulance Service, banks, hospitals, [direct quote] “local community/support groups, Aged Care Assessment Team, private companies (for example, banks), community care organisations, respite centres, Carers Qld, doctors’ surgeries, Legacy, Allied Health services, respite services, hospitals, neighbourhood centres, seniors accommodation, People with Disability Australia, Aged and Disability Advocacy Australia, police, residential care organisations, RSL sub-branches, Seniors Enquiry Line”.

The remainder of organisations that respondents estimated they received most referrals from included the Queensland Police Service, the EAPU, SLSS, Office of the Public Guardian, community legal services, Aged and Disability Advocacy Australia, the Queensland Civil and Administrative Tribunal, the Public Trustee, Centrelink, and Elder Law services. This information, including the percentage of referrals from each agency, is provided in Table A10.2 in Appendix 10.

## 8.11 Elder abuse service responses: gaps and issues

A number of gaps and issues were raised by participants during the research data collection, and those related to the service context are summarised in this section. A number of suggestions linked to the service and system issues raised are listed below.

### 8.11.1 Support and service system issues impacting on elder abuse

Several issues were identified with the service systems that support older people. Problems with the aged care referrals system were reported as putting people at risk of premature entry into residential aged care (mentioned in Chapter 6) which was construed by some participants as precipitating systemic abuse. In addition, it was described as important to be able to deliver needed care and support services for clients in a timely manner to address the risk of neglect. While the My Aged Care system has been implemented at the national level to address this issue, service providers were critical of how the system operated, stating that it has “simply made things much more complicated”. They contended that the implementation of a competitive market-based model of aged care services had resulted in confusion for consumers and competition for aged care packages restricting timely access to services. Participants mentioned that in some regional areas such as Bundaberg, Hervey Bay, Gympie and Kingaroy, some services were simply unavailable, although other respondents pointed out that there are many good services in the ‘bush’ (issues for regional and remote areas are discussed later in this section).

Participants working in the health system also mentioned that sometimes more focus was put discharging patients from hospital as soon as possible, with little regard to whether they would be at risk of abuse when returning home. Social workers in the health system were seen as having a key role in educating other staff about assessing and managing risks of abuse during discharge.

### 8.11.2 Face-to-face support and home visiting

Several participants spoke about the importance of face-to-face contact and home visits in the assessment and support of older people who may be at risk of abuse:

*“I’ve talked to people on the phone and thought, ‘Oh, they’re going ok’, and then the social worker visits and tells you what really is going on and you think ‘Oh my God’. Often they’ll sound okay, but there’s actually a lot of neglect or whatever [occurring].”*

Face-to-face contact was seen as critical, and it was mentioned that in-home support workers could perform the important role of monitoring the wellbeing of the older person and also provide detailed information about the home situation. A suggestion was made that more funding needs to be available so that social workers and other front-line workers can spend more time with older people and develop a supportive relationship with them. It was proposed that sometimes the risk of elder abuse could be mitigated by spending time with the family and educating them about elder abuse.

Several participants spoke about the importance of listening and providing support to the older person when they spoke about the abuse. They also saw it as important that the older person was provided with support through any intervention process such as attending meetings with them, reassurance or information provision, suggesting that this should be a standard part of intervention. Participants asserted that such support was empowering for the older person, assisting them to counter the effects of psychological abuse and intimidation by the perpetrator.



### 8.11.3 Perceptions about organisational capacity to work with diverse and vulnerable groups

Interview and focus group participants were asked to comment about whether they felt their organisations had the capacity to work effectively with people experiencing/perpetrating elder abuse from diverse and vulnerable groups such as:

- Aboriginal and Torres Strait Islander peoples
- people from culturally and linguistically diverse (CALD) backgrounds
- people living with a physical and/or mental health disability
- people living in rural and remote areas
- others including women and men (gendered responses), and people from the lesbian, gay, bisexual, transgender and intersex (LGBTI) community.

Participants' responses were mixed; some said their organisations did this work well and had good resources and referral organisations to work with, while others said they did not know if they were servicing these groups well or not because they had no relevant data or information. Participants explained that sometimes the service was not made aware that the client was from one of the nominated groups because this demographic information was not always sought, for example, people are not routinely asked if they are LGBTI. One small organisation said they were not doing anything proactive, due to a time constraints. Points raised by study participants have been summarised in Table 8.2 below. There were many issues that overlapped regarding Aboriginal and Torres Strait Islander peoples and people from CALD communities. Gender was not significantly discussed so is not included. There were also matters discussed in relation to people with decision-making capacity issues. Information about rural and remote issues is detailed in Section 8.11.4.

**Table 8.2. Interview and focus group data: issues discussed in relation to working with people from diverse groups**

<b>Aboriginal and Torres Strait Islander people</b>	<ul style="list-style-type: none"> <li>• Perception that some Indigenous people want to deal with issues themselves, within the family or community, and do not want people from outside coming in</li> <li>• A history of wounds and punishment from big organisations, including government and religious organisations, may make it difficult for people to approach an agency and make reports against the family.</li> <li>• Concern expressed about a lack of expertise to deal with Aboriginal communities</li> <li>• Approach has to be individualised to the location because there are many different 'mobs'</li> </ul>
<div style="text-align: center;">   <b>overlapping issues</b>   </div>	<ul style="list-style-type: none"> <li>• Language barriers are an issue: sometimes cannot get access to an appropriate interpreter; using telephone interpreters does not always work well.</li> <li>• Important to take the time to build rapport and trusting relationships</li> <li>• Important to increase cultural knowledge and awareness about who the group is and who is the appropriate contact person in the area (for example, elder, or other cultural or religious leader)</li> <li>• It is helpful to have an Indigenous worker/cultural liaison to provide advice about cultural protocols.</li> <li>• Need a separate approach to deal with different cultures and to use appropriate language to tailor the information provided to each community in culturally appropriate ways</li> <li>• In some cultures, shame can be an issue that can stop people from reporting abuse ; it can be seen as shameful if your family is not looking after you.</li> </ul>

	<ul style="list-style-type: none"> <li>• Sometimes tapping into the community in the local area is not necessarily what the person wants because of family connections.</li> <li>• It is important to have culturally appropriate material because it indicates that ‘You matter to us. We’re responsive’.</li> </ul>
<b>Culturally and linguistically diverse people</b>	<ul style="list-style-type: none"> <li>• Developing culturally appropriate resources is expensive and can be challenging; there are more than 100 different cultural groups in some areas.</li> <li>• Some services are starting to connect with more communities but the services tend to be Brisbane-based.</li> </ul>
<b>People with a disability</b>	<ul style="list-style-type: none"> <li>• Some issues with older people caring for adult children with a disability where neither is probably capable of looking after each other properly</li> <li>• Clients with a disability do not necessarily report the disability.</li> <li>• To work with people with a disability is sometimes about making the required accommodations, for example, “...if they had a mental health issue, we would choose the best time to speak with them. If they were deaf, we would get a sign language interpreter”.</li> </ul>
<b>People who are lesbian, gay, bisexual, transgender or intersex</b>	<ul style="list-style-type: none"> <li>• These days there is generally more training and awareness in the community but many older people going into aged care can still find it very discriminatory.</li> <li>• Older people tend not to disclose and try to blend in.</li> <li>• Substantial abuse in residential care; people can suffer sexual harassment and intimidation from their peers; transgender people can be prevented from wearing the clothing of their choice</li> <li>• Assumptions that older people do not have sex or could be gay</li> <li>• Can be problems with the division of assets after people die</li> </ul>

#### 8.11.4 Work in rural and remote areas

Focus group discussions raised several issues about work in rural and remote areas. One participant mentioned that there were good resources in the Brisbane area but much fewer available in regional areas; another said some policies work well in the city but can fail in rural and remote areas due to lack of services and supports. Participants reported that in some regional and remote areas there are not many services to approach for support or information, and there is a lack of support services after hours. It was also mentioned that it is important to have localised services and a more regional approach.

Social isolation was discussed as something that can be exacerbated by living remotely with no supports available, and that it may increase vulnerability. However, it was also mentioned that living remotely could be a person’s preference; even though a service’s view might be that the person will have a lower life expectancy, it is important that clients’ wishes are heard and respected.

Positive aspects of living in small communities were mentioned. Participants felt that many people look out for each other, and that high-care clients can get three visits a day, which probably would not be possible in the city. It was reported that if you were from the area and part of a local family, there was a lot of goodwill and trust associated with your name. However, participants acknowledged that it could be more difficult to intervene in a potentially abusive situation if a staff member knew the victim or perpetrator — there could be retribution:

*“...when we have reported an issue, we’ve also felt it in our personal lives out of work. There’s been retribution for doing the right thing.”*

It was noted that Queensland's geography and population spread is a challenge and that service delivery across the state is "extraordinarily expensive".

#### **8.11.5 Service resourcing**

Some respondents thought the Queensland Civil and Administrative Tribunal (QCAT) and the Public Trustee were under-resourced to deal with the volume of elder abuse cases referred to them. Waiting times between case lodgement and QCAT actioning the matter could be months, during which time abuse could continue. Conversely, the QCAT representative said they felt they were well-resourced to handle the number of cases that came to their attention, however, it was noted that the QCAT Human Rights division has faced a significant increase in workload, with guardianship lodgements in 2015–2016 rising by 12 per cent from the previous financial year.<sup>292</sup>

### **8.12 Key findings: support and service system issues affecting elder abuse**

Issues in support and service systems for older people have flow-on effects that may affect those experiencing elder abuse and staff working to intervene. Research participants identified issues within the *My Aged Care* referrals system that have impacted on the access and availability of services needed by older people to prevent neglect and premature admission into residential aged care.

Face-to-face workers play a key role in monitoring older people's wellbeing and detecting and responding to elder abuse. Given the evidence of an older person's shame and embarrassment in elder abuse situations, trust between front-line workers and vulnerable older people is essential through relationship-based processes. It is important to have time within workload allocations to build trust and rapport with older people, and face-to-face interaction with the person, rather than a phone call, may prove more effective in prevention and early detection of elder abuse.

It is important that all organisations responding to elder abuse have adequate needs-based funding and effective inter-organisational processes to respond to the needs of diverse and vulnerable groups and individuals across the state, encompassing services in regional, rural and remote areas of Queensland, as well as the metropolitan area.

### **8.13 Elder abuse response frameworks**

Many participants proposed that there is no coherent structure or framework for responding to elder abuse. Some discussed challenges around jurisdictional issues and the development of effective responses, including:

- the difficulty of working with federal legislation when many organisations dealing with elder abuse are state-based (this has also been discussed in other literature<sup>293</sup>)
- the need to address elder abuse from a sector perspective and involve academics as well as people involved in front-line responses.
- the requirement for future response framework to be mandated, transparent, and accountable or it will not lead to coordinated and effective responses
- a demand for a tiered response system that includes a range of responses from 'crisis' and 'urgent' to 'preventative' (a suggested model of service integration is discussed in section 8.15).

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<sup>292</sup> OPG (2016)

<sup>293</sup> Kaspiew et al. (2016)

### 8.13.1 Interagency collaboration and partnerships

A few focus group participants mentioned difficulties linking to other organisations, with problems between agencies around the appropriateness of referrals and lack of response to, or gatekeeping of, referrals. Participants suggested these responses were because of a lack of ongoing dialogue between agencies, or 'siloiing' where agencies work in isolation. Navigating multiple separate systems that lacked coordination was confusing and challenging for older people and workers. One participant said:

*"I think part of the problem is that people don't know how to navigate who to go to for what questions."*

Poor system coordination is a significant frustration for service providers working in elder abuse and related organisations. Suggestions to address this included improved interagency communication and coordination that focuses on raising awareness of other agencies' roles, and networking and building relationships with key people from other agencies. Implementing a 'one-stop shop' for elder abuse was another idea:

*"So maybe it's around looking at one of those centralised repositories of knowledge. If you take, for example, the UK where you've got a single central agency that is dealing with the information site."*

Many participants recommended a multi-agency coordinated response.

## 8.14 Key finding: Queensland elder abuse response frameworks

Queensland (and Australia) lacks a consistent and coherent structure or framework for responding to elder abuse and this deficiency may hinder staff responses as well as older people's ability to seek help and support.

## 8.15 Proposed directions

To address fragmentation and lack of coordination in the elder abuse sector, there is a need for a multi-agency coordinated Queensland response framework to elder abuse that is mandated, transparent and accountable and incorporates improved interagency communication and collaboration between all stakeholder organisations. Creation of an elder abuse adult protection unit and accompanying adult protection legislation, as suggested by the South Australian report discussed below, may be one model worth exploring. Other models described below include the primary, secondary and tertiary model of service integration and continuum of systemic methods of intervention with individuals and families.

### 8.15.1 Elder abuse 'one-stop shop'

In 2011, the Office of the Public Advocate in South Australia compiled a comprehensive response to elder abuse for introduction in that state. While the recommendations have not yet been adopted, they provide an achievable 'road map' for the provision of a coordinated response to elder abuse, including a comprehensive process to assist older people who are vulnerable but retain capacity. The South Australian report proposes that current legal frameworks are not preventative in nature, though they do provide protection for serious cases of abuse and also protect those particularly

vulnerable due to mental illness or incapacity.<sup>294</sup> The report suggests that further work on early intervention could assist in avoiding more serious abuse developing. Additionally, it proposes that:

*“The lack of a legal or policy framework which requires or promotes interagency collaboration, together with information-sharing guidelines, creates a vacuum within which providers must operate. The result is that any collaboration and coordination between agencies is largely left to the goodwill of individuals working within those agencies and can involve instances where an agency’s legal mandate is being creatively stretched beyond its actual limits.”<sup>295</sup>*

The framework’s suggested focal point is an adult protection unit within government. This unit would coordinate responses to elder abuse and collaborate with relevant government and non-government agencies and police services. The South Australian report suggests heightened levels of cooperation and information sharing between agencies, a mandatory response system based on the severity of the abuse, and voluntary reporting. The suggested Adult Protection Unit framework, as shown in Figure 8.3 below, would also incorporate considerable community involvement based on the Community Navigation and Access Program<sup>296</sup> (CNAP) network in British Columbia, Canada. From a legal perspective, the recommended adult protection legislation would be supplemented by a Code of Practice.

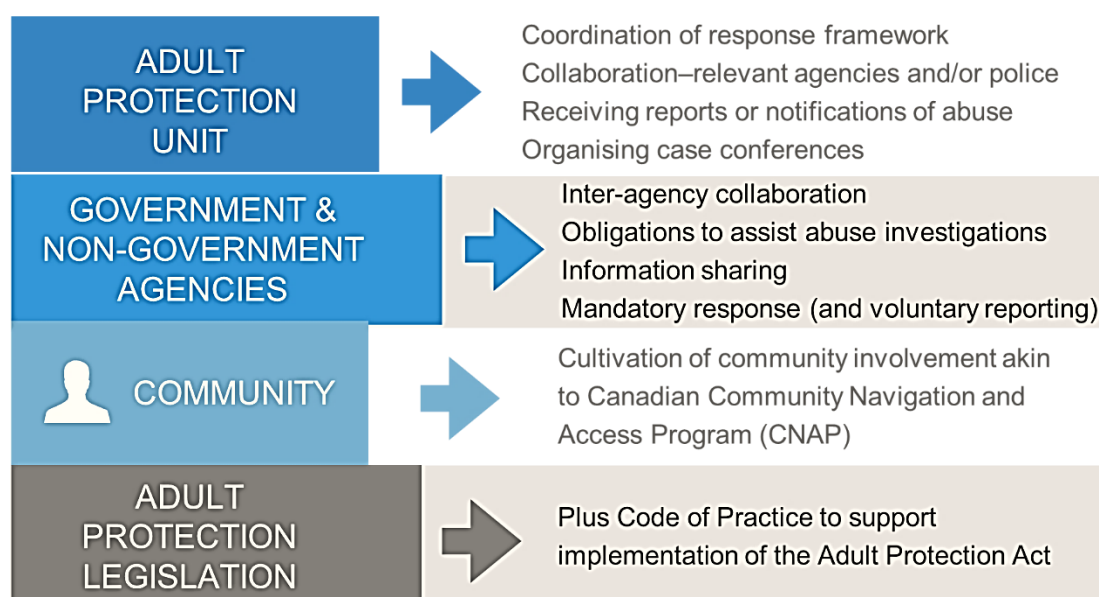


Figure 8.3. Adult Protection Unit Framework<sup>297</sup>

<sup>294</sup> Office of the Public Advocate (SA) (2011)

<sup>295</sup> Ibid (p. 23)

<sup>296</sup> [www.4seniors.org/AboutUs.aspx](http://www.4seniors.org/AboutUs.aspx)

<sup>297</sup> adapted from Office of the Public Advocate (SA) (2011)

### 8.15.2 Primary, secondary and tertiary model of service integration

Another useful framework for service integration is to categorise responses into primary, secondary and tertiary responses based on levels of risk and vulnerability, as depicted in Figure 8.4 below. This model has been used in the field of child protection and adaptations of this model for the elder abuse sector have been discussed in other literature.<sup>298</sup>

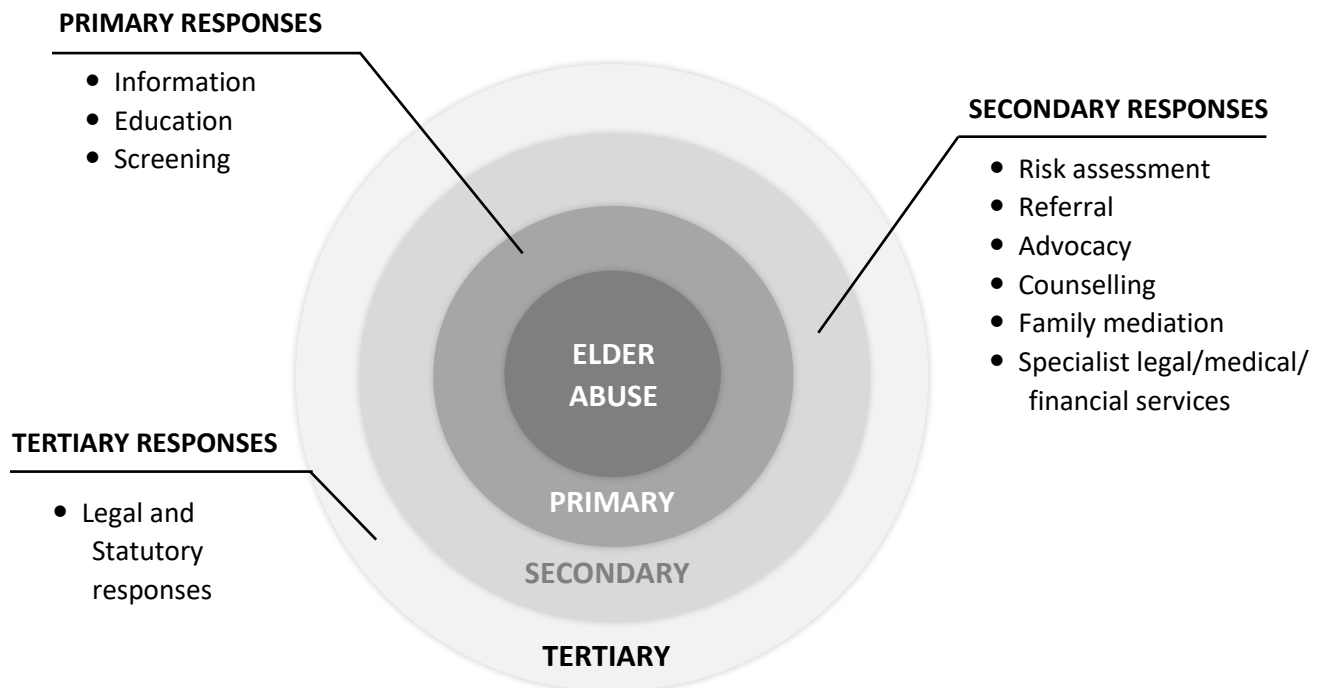


Figure 8.4. Elder abuse service integration model

#### Primary prevention

Primary prevention focuses on stopping or deterring abuse before it happens. This is done by removing the cause of abuse or preventing risk factors from developing. Responses which fall into this category include:

- universal and targeted information (newspaper articles/media/video clips)
- GP and other screening (reactive and timed, for example, pre-retirement)
- community education.

Examples of these occurring include:

- 60 and Better Healthy Ageing programs
- the Queensland Government's *There's No Excuse for Elder Abuse* campaign
- World Elder Abuse Awareness Day
- National Respect for Seniors campaigns
- Home and Community Care/Commonwealth Home Support Program services.

<sup>298</sup> Brown (2009); Clare M. et al. (2011)



### **Secondary prevention responses**

Secondary prevention involves an immediate response to the abuse to stop the risk of abuse escalating or continuing. These responses may involve:

- proactive and reactive risk assessment and referral
- individual counselling and advocacy
- family group conferencing and mediation
- specialist legal, medical, and financial services.

Organisations that deliver secondary responses include: SLSS, EAPU, Aged and Disability Advocacy (ADA) Australia, The Public Advocate, and Aged Care Assessment Teams (ACAT).

### **Tertiary statutory prevention**

Tertiary prevention takes place after abuse has occurred and seeks to deal with the consequences of abuse. It also looks to stop the abuse from recurring. Most secondary responses and tertiary/statutory prevention are legal-centric led by law-based organisations such as the QPS, Office of the Public Guardian, the Public Trustee.

It is worth noting that categorising responses this way can give the illusion of neatly compartmentalised divisions in responses when, in reality, assessment and action are multifaceted, with a continuum of severity and an amalgam of overlapping concerns, on occasions. Complexity is heightened when the abuse takes place in a family context, is long term, or there are co-occurring forms of elder abuse.<sup>299</sup>

#### **8.15.3 A continuum of systemic methods of intervention with individuals and families**

Given the number of explanations and causes of elder abuse and the continuum of severity of risk, there is a strong argument for the development of a multi-systemic, multidisciplinary and multi-method service strategy. This systemic framework has been adopted in other fields and mirrors the socio-ecological systems framework, discussed in Chapter 6. It is anticipated that such a system would include the following levels of intervention:

- individual, for example, casework, counselling
- family, for example, mediation, therapy
- group, for example, social, support, therapeutic
- community, for example, development, action.

The framework would be predicated on an initial risk and needs assessment to identify the appropriate method and target in response. It would also be informed by statutory responsibilities. Appendix 11 includes a case study example of systemic intervention through interdepartmental collaboration in the area of child welfare in Slough in the UK, and indicates how this model may be adapted to the elder abuse context.

### **8.16 Elder abuse prevention, detection and evidence-based interventions**

This section discusses relevant literature about the prevention and detection of elder abuse as well as evidence-based interventions. Participant data that discusses the importance of elder abuse education, training and awareness raising in the prevention of abuse has been integrated into this section.

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<sup>299</sup> Jackson S. (2016)

### 8.16.1 Elder abuse prevention: targeted initiatives and education

Research participants in this project highlighted the importance of elder abuse prevention work, and some commented that legal responses should be a last resort. Aside from education, training, and awareness raising (discussed separately below), social support groups for seniors were noted as a specific preventative initiative to prevent isolation and provide a forum for monitoring and information transmission about elder abuse. Advanced care planning was also discussed as a way of older people being able to assert their rights and wishes after capacity may be lost. It was suggested that advance health directives could be associated with ehealth records, such as the Medicare-linked MyHealth Record, to make them available and accessible for health professionals.

### 8.16.2 Scope for interagency, targeted elder abuse prevention

Elder abuse occurs most frequently in the victim's home. There is also consistent evidence to show there is a non-random distribution of offending, with a very small percentage of offenders responsible for a very large amount of crime. A victim's adult children are most often associated with the perpetration of elder abuse and neglect. There is also evidence to show that approximately a third of those who perpetrate offences against older people abuse multiple victims, or the same victim multiple times. Finally, there is also good evidence to demonstrate that chronic, repeat victimisation accounts for a very large proportion of the total amount of crime occurring. This project's focus group participants estimated that 25 per cent of known elder abuse victims had suffered multiple instances of abuse. Further, data from Western Australia found that eight per cent of victims had been victimised more than three times over a five-year period.<sup>300</sup> There are known issues with under-reporting for this type of crime so it is suspected that the number of elder abuse victims who are repeatedly abused is much higher.

Building on what is known about targeted prevention and patterns for repeat offending and repeat victimisation in criminological contexts, it would be useful for Queensland agencies with an interest in elder abuse prevention to collect information about 'repeats' (victims, offenders, and problem types) within their own context of service provision, database structures, and records management systems. This would provide a platform for effective problem prevention, which, in a crime context, is dependent on defining small, independent, meaningful groups of problems and targeting efforts to prevent these specific issues. It should be noted that high-level labels such as 'assault' and 'financial abuse' are unhelpful to develop targeted prevention. Instead, the specific type of financial abuse needs to be specifically identified to build effective, targeted prevention strategies. The logic of this approach is consistent with a recent paper which asserts that:

*"...elder maltreatment should be divided into distinct subtypes reflecting their different aetiologies, risk factors, interpersonal dynamics, correlates, and consequences, and which, in turn, necessitate distinct societal responses. Without recognising that this abuse occurs in the context of a relationship, understanding of elder abuse and the building of relevant models will be significantly limited."<sup>301</sup>*

Building successful, sustainable problem prevention measures requires proactive, interagency efforts and leveraging a range of available legislative powers and community resources. Focus groups held as part of this research identified a lack of proactive responses to elder abuse as

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<sup>300</sup> Clare M. et al. (2011)

<sup>301</sup> Jackson S. and Hafemeister (2016, p. 289)

significant. Policy makers and practitioners interested in developing a targeted response framework will find the following references of interest:

Johnson, K. D. (2002). Financial crimes against the elderly, Problem-Oriented Guides for Police: Problem-Specific Guides. Series No.20. US Department of Justice: Office of Community Oriented Policing Services.

Payne, B. K. (2013). Physical and emotional abuse of the elderly, Problem-Oriented Guides for Police. Problem-Specific Guides Series No.71. US Department of Justice: Office of Community Oriented Policing Services.

### **8.16.3 Participants' perceptions and experiences of education, training, and awareness-raising**

Online survey participants were asked if they had received any elder abuse education and training: 65 per cent of respondents (n=49) said they had; 23 per cent had received formal training and 49 per cent informal training (multiple responses were possible per person); 38 per cent had no formal training.

For those who completed training (n=48), 49 per cent had done so within 12 months before completing the survey, and 33 per cent had not had training for more than two years. For 35 per cent (n=17), the most-recent training completed was provided by the EAPU; 'own-organisation' training accounted for 27 per cent (n=13), and the rest (n=18) was provided by a mix of other stakeholder organisations in Queensland, including universities, and previous employers (some of which were interstate).

The following organisational sources of elder abuse information and publications were highlighted as helpful by online survey respondents (n=52) and are listed in order of most helpful first: EAPU, OPG, own organisation, Public Trustee, other government, other industry, Office for Seniors, and Other (includes the internet, journal articles, EAPU visits and other networking opportunities).

Seventy-six per cent of online survey respondents (n=53) indicated they were familiar with the elder abuse awareness campaign conducted annually in June by the Queensland Government. Only 20 per cent of respondents (n=40) indicated they had noticed an increase or variation in the type or volume of elder abuse inquiries received during and following this campaign.

Lack of awareness and the need for increased education and training and promotion of elder abuse were a prominent themes in interviews and focus groups (discussed in three interviews and five focus groups). Research participants suggested there is a need for individuals (victims and perpetrators), staff and professionals working in organisations dealing with elder abuse, allied organisations, Justices of the Peace, attorneys, real estate agents, banks, and the general community to receive information, education and training about elder abuse and how to respond to it. Education plays a significant role in making the community aware of the nature of elder abuse, how to report instances of abuse and to obtain access to justice. Specific comments in relation to particular types of staff and professionals follow, and suggestions in relation to education and training are included:

#### **Health and care services staff**

Participants mentioned that, because medical and other health care services personnel are often on the 'front-line' in relation to elder abuse, it is important that they are educated about elder abuse

and appropriate responses and interventions (as highlighted previously in this chapter with regard to social workers in health settings).

### **Lawyers and accountants**

Some research participants were concerned about some legal and accounting professionals' lack of awareness about elder abuse (also noted in other research.<sup>302</sup>) Issues raised included a lack of awareness regarding capacity, issues related to Enduring Powers of Attorney (EPOAs), taking instructions from adult children rather than the older person despite transactions applying to the older person's property, witnessing of documents, and a general lack of awareness of the nature and features of elder abuse, which have also been discussed in other literature, as referenced.<sup>303</sup> It is essential that lawyers become more attuned to recognising situations that could involve elder abuse issues and ensure that older person's interests are paramount.

### **Real estate agents and Titles Registry Office employees**

Participants made reference to examples of financial elder abuse, for example, the property of an older person being sold to a third party, often by a family member misusing an EPOA. The Torrens title system of land registration and its fundamental notion of indefeasibility of title means that once a property is sold and registered in the name of another party, it is almost impossible, except in a limited number of circumstances including the registered proprietor's fraud, to have the land returned to the original owner. This highlights the importance of information and education about elder abuse for these groups.

### **Justices of the Peace**

Several participants mentioned that it is important that Justices of the Peace (JPs) receive adequate educational programs and appropriate continuing education to ensure they are aware of elder abuse in its many forms and are alerted to potential decision-making capacity issues in older people whose documents (such as EPOAs) they witness. At present, to become a JP or a Commissioner for Declarations in Queensland, a person must be *inter alia* of good character and have completed the relevant training course.<sup>304</sup>

### **Bank employees**

Bank employees can be in a position to identify and prevent some types of financial elder abuse. One participant suggested that it was important that banks took a proactive stance in relation to elder abuse and had responsibilities around educating their staff in identifying it and having protocols in place to respond appropriately. Strategies for detecting a customer's lack of capacity have been developed in a number of US states, particularly directed at training bank employees to identify banking activity that might signify elder abuse. Drawing on the US initiative, the Australian Bankers' Association has formulated guidelines to help staff identify financial abuse of their bank's customers.<sup>305</sup> The Australian Law Reform Commission's (ALRC) Elder Abuse Discussion Paper proposes that banks should go further, noting that the Code of Banking Practice should ensure banks will take reasonable steps to prevent the financial abuse of older customers.<sup>306</sup> Further, it suggests that the Code should give examples of such reasonable steps, including staff training, using software

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<sup>302</sup> See generally Freilich, Levine, Travia and Webb (2014)

<sup>303</sup> Freilich, Levine, Travia and Webb (2014); Wuth (2013)

<sup>304</sup> Other persons who can witness documents are listed in s31 in the *Powers of Attorney Act 1998*.

<sup>305</sup> Australian Bankers' Association (2014). Note that the ALRC views such guidelines are "voluntary and unenforceable".

<sup>306</sup> ALRC (2016b) Chapter 7

to identify suspicious transactions, and, in appropriate cases, reporting suspected abuse to the relevant authorities.

Bank employees, and bank management, may be reluctant to report suspected elder abuse because of fears of liability and concerns about the relationship of trust between the bank and the customer being broken. This necessitates the introduction of whistleblower protection. This is commonplace elsewhere. For example, in several US states, bank employees must report suspected elder abuse cases but both the bank and the employee are protected under the legislation.<sup>307</sup> Whistleblower protection is further discussed in Chapter 9.

### **8.16.3.1 Community education and awareness raising**

Research participants stressed the need to continually educate the general public, including older people and their carers, about elder abuse. Several participants mentioned that people who hold enduring powers of attorney for an older person need to be educated about their role and powers and the consequences for acting inappropriately. One participant remarked:

*“...one big factor is that there is no process for educating the attorney as to their responsibilities. The document itself gives a certain amount of information and advice to the donor as to what they’re doing. If you read the document, it’s a duty of the person witnessing it to say that they explained it and the person understands it, but there’s no similar requirement for the attorney.”*

It was suggested that further educating attorneys about their responsibilities may reduce instances of unintentional abuse. Education for service providers and staff members about attorneys’ rights and responsibilities was also discussed:

*“...another gap is education of other services. It’s amazing some of the stories that come through about a nurse or care staff or sometimes hospital staff telling people they have to sell their house or preventing people from seeing other people because of [the attorney’s directions]. Just that fear of this document, so not knowing that could cause issues because they don’t understand it.”*

Similar issues were discussed in relation to guardians and administrators, and the importance of providing information and education about their roles and responsibilities. Other participants discussed the importance of education and support for carers under stress or who do not feel that they know what they are doing as a carer and are unsure how to adequately care for the older person, suggesting that this may help prevent elder abuse.

The Queensland Government’s annual elder abuse awareness campaign is noted as an example of best practice, particularly with regard to the organisational partnerships established and its measurable results.<sup>308</sup> The EAPU has also been involved in a number of awareness-raising community forums across Queensland, with the most successful involving joint presentations with various combinations of guardianship areas, legal services (including SLSS), the QPS (Crime Prevention), Centrelink and other agencies. Evaluations of these joint sessions show they are a

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<sup>307</sup> OR ST §124.075. See too Maine, Maryland, Michigan, New York: ME ST T. 22 §3479-A; MD FAMILY §14.309; MI ST 400.11c(1); NY SOC SERV §473-b; and OR ST §124.075. See generally Hughes (2003a)

<sup>308</sup> EAPU (2015)

preferred method for older people to receive information about issues affecting their safety and wellbeing.<sup>309</sup>

Research participants mentioned that the 'branding' of information and education sessions was important; they need to be tailored to suit the target audience. They also noted that the use of the potentially confronting term 'elder abuse' can deter people from attending:

*"...by you calling it elder abuse training, people won't come."*

It was suggested that a unified and powerful message about elder abuse is presented when related information sessions are run by multiple organisations and coordinated under one theme such as 'senior safety'. These sessions also allow important information to be conveyed about preventative measures against any form of victimisation, such as safety around EPoAs, personal safety, scams and banking safety.<sup>310</sup>

### **8.17 Key findings: education, training and information about elder abuse**

Education, training and information are important in promoting recognition of elder abuse issues and responses, for front-line staff and policy makers, as well as for older people, their families, carers and the wider community. These measures may also have a protective effect, and include the promotion of financial, retirement, and estate planning, as well as advanced care planning and advanced health directives.

### **8.18 Proposed directions**

The adequate resourcing of organisations such as the EAPU and the SLSS is extremely important if they are to continue to develop and provide targeted information and education to older people, their families, carers, staff, professionals and the wider community, as well as respond to elder abuse victims.

As knowledge about family and domestic violence has increased in public awareness over the past few years, it is helpful to highlight links between domestic violence and elder abuse (as mentioned in earlier chapters). The use of illustrative examples is also beneficial when providing training and information because often people do not label what they have been experiencing or witnessing as abusive, especially when it is part of an established pattern of behaviour within a relationship or family.

It is important to ensure that elder abuse education is embedded in training for staff and professionals working with older people. Universities and other educational institutions should be encouraged to include it in curricula in health sciences (for example, nursing, medicine, social work, occupational therapy, dentistry, etc.) as well as law, accounting and other relevant disciplines to enable students to understand, recognise and respond effectively to elder abuse. Also, service providers and professional associations should be encouraged to promote and include elder abuse education as part of their annual continuing professional development programs.

Preventative measures such as multimedia public education campaigns, retirement planning, advanced care planning and advanced health directives are also important. There is an opportunity for mechanisms to be explored to raise awareness of elder abuse, educate staff, and encourage the appropriate responses of JPs, and alert people working in specific industries including real estate,

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<sup>309</sup> EAPU (2015)

<sup>310</sup> Ibid

banking and finance and the legal profession about elder abuse issues. With regard to JPs, their roles and responsibilities in relation to elder abuse should be reviewed and, where needed, appropriate training provided. Amendments to the *Justices of the Peace and Commissioners for Declarations Act 1991* could be examined, including:

- placing greater responsibilities on Justices of the Peace in relation to cases of suspected elder abuse, for example, refusing to proceed where such behaviour is suspected
- imposing penalties on Justices of the Peace who are negligent
- providing an opportunity for the older person to receive compensation where a Justice of the Peace has acted negligently or fraudulently and, as a consequence, an older person has experienced abuse.

Opportunities exist for organisations providing elder abuse information and education to collaborate with and support the activities of the Queensland Law Society and its Elder Law Committee to enhance awareness of elder abuse among practitioners and law students. Ways to help include:

- providing support for the proactive stance of the Queensland Elder Law Committee
- where appropriate, contributing to updates on elder abuse issues in legal publications, for example, *Proctor*.

It is suggested that bank employees should be obliged to report suspected property and mortgage fraud involving property owned by older people. Although the issue of mandatory reporting is controversial, it is proposed that banks need to enhance a culture of caring for the security of their older customers. The ABA has encouraged its members to develop financial literacy programs. However, rather than a generic approach, there must be a specific focus on older bank customers. Bank staff also need to be taught how to recognise vulnerability in older customers and what to do about it. Strategies for detecting a customer's lack of capacity must be further developed.

Such strategies began to be developed in a number of US states in the 1990s, directed at training bank employees to identify banking activity that might signify elder abuse. Drawing on the American initiative, the ABA has formulated guidelines to help staff identify financial abuse of bank customers.<sup>311</sup> Nevertheless, the ALRC has proposed that banks should go further, noting:

**Proposal 7–1** The Code of Banking Practice should provide that banks will take reasonable steps to prevent the financial abuse of older customers. The Code should give examples of such reasonable steps, including training for staff, using software to identify suspicious transactions and, in appropriate cases, reporting suspected abuse to the relevant authorities.<sup>312</sup>

Vulnerabilities in older bank customers may make them easy prey for those close to them, as well as those more removed. The severe financial consequences that may ensue can cause irreparable financial damage to them, necessitating catastrophic lifestyle changes. In Canada, older people may

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<sup>311</sup> Australian Bankers' Association (2013). Note that the ALRC has noted that such guidelines are "voluntary and unenforceable"

<sup>312</sup> ALRC (2016b) Chapter 7

authorise banks to monitor their accounts for unusual transactions. The bank can raise the issue and inform the older person, who can then make a decision about what to do.<sup>313</sup>

### 8.18.1 Elder abuse detection: screening and assessment tools

Many different screening tools and protocols for identifying elder abuse have been developed for use in hospitals, medical practices, and within the home care setting. Screening tools are seen as helpful in other jurisdictions, such as the US, where mandatory reporting exists in some states. The tools may ensure staff and professionals who may lack training, experience, or adequate guidelines around elder abuse, can recognise it.<sup>314</sup> The American Medical Association has recommended all older patients be screened for elder abuse, and many researchers suggest that it is an important step in prevention and detection.<sup>315</sup> A variety of different screening tools have been developed for use on both older people (with and without dementia) and their caregivers,<sup>316</sup> however, three have been specifically highlighted by the US Centres for Medicare and Medicaid Services for their ability to assess multiple types of abuse, the specifications of their measures and the focus of each tool when combined,<sup>317</sup> and these are detailed in Table 8.5 below.

**Table 8.5. Selected elder abuse screening tools<sup>318</sup>**

Screening tool	Items	Administration	Psychometrics	Setting
<b>Elder Abuse Suspicion Index (EASI)</b>	6	By health care professional to assess risk, neglect, verbal, psychological, emotional, financial, physical and sexual abuse during a 12-month period; two minutes to complete	Sensitivity: 0.77 (correctly identifies Elder Abuse 77% of the time)  Specificity: 0.44 (correctly identifies those who have not experienced Elder Abuse 44% of the time)	Validated in family practices and ambulatory care settings
<b>Hwalek-Sengstock Elder Abuse Screening Test (H-S/EAST)</b>	6	Self-report or interview by a professional	Construct and predictive validity, weak item reliability, but good cross-cultural adaptation	Suitable in emergency or outpatient setting

<sup>313</sup> Saskatchewan Provincial Advisory Committee of Older Persons & King (2003); Canadian Centre for Elder Law (2011)

<sup>314</sup> Hoover and Polson (2014)

<sup>315</sup> National Centre on Elder Abuse (2016)

<sup>316</sup> As discussed in Cohen, Halevi-Levin, Gagin and Friedman (2006); Conrad et al. (2011); Pérez-Rojo, Nuevo, Sancho and Penhale (2015)

<sup>317</sup> McMullen, Schwartz, Yaffe and Beach (2014)

<sup>318</sup> Adapted from National Centre on Elder Abuse (2016). A number of other tools are also listed in this reference.



<b>Vulnerability to Abuse Screening Scale (VASS)</b>	12	Self-report of dependency, dejection, coercion and vulnerability	Moderate ranges of reliability and moderate to good construct validity	N/A
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Previous research has identified a number of health care settings as appropriate locations for screening including primary care services, dental clinics, home health settings, emergency departments, gynaecologist practices, and long-term care.<sup>319</sup> Difficulties with screening have been highlighted—a consistent definition of abuse is lacking, as well as clarity about who should be screened and what to do if abuse is identified. There are also wide-ranging risk factors and it has been indicated that some changes related to ageing can mimic signs of elder abuse.<sup>320</sup> It is worth noting that the US Preventative Service Task Force found insufficient evidence of harm reduction through use of elder abuse screening tools by medical practitioners.<sup>321</sup> Screening tools have been criticised as often only reliant on the assessment of clinicians, rather than older people themselves.<sup>322</sup> It has also been suggested that none of the tools developed is optimal because they are considered inaccurate, non-specific or insensitive to some degree, or not reliable.<sup>323</sup>

Assessment tools may be used after elder abuse has been identified to document signs and indicators of abuse. Some may also be used to assess the level of risk to the older person and to formulate an action plan. There have been some good resources developed in the elder abuse field that may prove useful in different settings<sup>324</sup> and some work in the disability sector may be able to be adapted.<sup>325</sup>

### 8.18.2 Finding: Evidence-based interventions for elder abuse

Concerns have been raised in recent years that elder abuse intervention models in Australia lack an evidence base, though there have been a few localised studies investigating the efficacy of certain interventions.<sup>326</sup> Information about the evaluation of different interventions in other jurisdictions and related settings is presented below.

A systematic review of elder abuse research conducted in 2011<sup>327</sup> examined 14 studies evaluating three types of elder abuse interventions: the education of caregivers, adult protective service workers, and health care staff; support group meetings; and a daily money management program. The research found no significant difference for older people in one social support group but that an educational support group for caregivers reduced abusive behaviour. It also found positive benefits were gained from the provision of education sessions, including increased knowledge of elder abuse, assessment and responses, and positive changes in attitude and behaviour towards older people. No significant difference was found in relation to the money management program for older people.

<sup>319</sup> National Centre on Elder Abuse (2016)

<sup>320</sup> Cohen (2011)

<sup>321</sup> Moyer (2013)

<sup>322</sup> Conrad et al. (2011)

<sup>323</sup> Pérez-Rojo et al. (2015)

<sup>324</sup> Fulmer, Guadagno, Bitondo and Connolly (2004); Imbody and Vandsburger (2011); Mosqueda et al. (2016)

<sup>325</sup> Department of Communities (2014); National Disability Services (2016)

<sup>326</sup> Cripps (2001); Vrantsidis et al. (2016)

<sup>327</sup> Daly, Merchant and Jogerst (2011)

The researchers noted that, due to the small number of studies reviewed, these interventions require further rigorous testing for validation.

A US study looking at factors that influenced elder abuse continuing after the close of Adult Protective Services investigations found that older people were more likely to experience continuing abuse when they continued to cohabit with the perpetrator, had ongoing contact with the perpetrator, and when there was a lack of consequences for perpetrators related to their abusive behaviour.<sup>328</sup> The same study reported that abuse was more likely to cease when the perpetrator was under the auspices of the criminal justice system on a charge related to elder abuse; the appointment of a guardian, and perceptions of risk were not related to continuation of abuse.

A few recent studies have focused on the abuse of people with a disability in the context of the disability support services system and the measures services have taken to safeguard their clients from abuse and neglect, as well as the 2015 Senate Inquiry into violence, abuse and neglect against people with a disability in institutional and residential settings.<sup>329</sup> A number of policies and procedures have been developed to address the risk of abuse in the services context, including de-institutionalisation, compulsory police checks, internal complaints mechanisms and protocols and guidelines.<sup>330</sup> Recent Australian research<sup>331</sup> suggests that current reporting-focused safeguarding regimes are insufficient to protect people with a disability from abuse. People with a disability require specific safeguards against neglect and abuse, which can vary across disability type,<sup>332</sup> and it is likely that this is also relevant for older people experiencing elder abuse because disability is often a factor.

### **8.18.3 Proposed directions**

Given that many elder abuse intervention models in Australia lack an evidence base, it is important to further examine current approaches to elder abuse prevention and responses in Queensland and nationally to determine whether or not these approaches are effective, from the perspectives of service providers and also older people and their friends, families and carers. Effective best-practice responses used in other jurisdictions should also be explored.

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<sup>328</sup> Jackson S. and Hafemeister (2013)

<sup>329</sup> Connor and Keely (2015); Jones et al. (2012); Ottmann et al. (2014); Senate Standing Committees on Community Affairs (2015)

<sup>330</sup> Ottmann et al. (2014)

<sup>331</sup> Ibid

<sup>332</sup> McVilly et al. (2014)

## 9 Legal responses to elder abuse in Queensland

### 9.1 Overview of law relevant to elder abuse matters in Queensland

At the outset, it is important to state that victims of elder abuse are often reluctant to pursue legal avenues. Nevertheless, in some cases, older people may be desirous of pursuing their legal rights. In serious cases, recourse to the law, particularly criminal law, may be unavoidable. This chapter provides an overview of existing law relevant to elder abuse in Queensland.

There is no single law or legislative instrument that specifically addresses elder abuse in Queensland. Legal responses to elder abuse are drawn from statute and the common law (shown in Figure 9.1 below) and the nature of any such response will depend on the circumstances of a particular case. There are no specific provisions addressing elder abuse in the *Criminal Code Act 1899*, nor is there designated adult protection legislation.



Figure 9.1. Legal responses to elder abuse in Queensland

This is not to say that the Queensland law is ineffective in addressing elder abuse issues. For instance, criminal behaviour is addressed by *inter alia* provisions of the *Criminal Code Act 1899* and the *Domestic and Family Violence Protection Act 2012* (DFVP Act). Matters relating to substitute decision making for adults, including older persons with impaired capacity, are regulated by the *Guardianship and Administration Act 2000*, *Public Guardian Act 2014* and *Powers of Attorney Act 1998*. The common law and equity are relevant to elder abuse matters in relation to matters involving *inter alia* contract;<sup>333</sup> tort,<sup>334</sup> the application of certain equitable doctrines, trusts, and real property law.<sup>335</sup>

<sup>333</sup> For a recent example of a consideration of contractual issues involving a financial agreement between a parent and child see *Cirillo v Manieri & Anor* [2013] VSC 399; *Manieri v Cirillo* [2014] VSCA 227. It was held at first instance and upheld on appeal that a written agreement did not comprise the entirety of the agreement and evidence was admitted of a prior oral arrangement. This finding was upheld on appeal.

<sup>334</sup> Instances of neglect could attract an allegation of negligence. Legislation is also relevant in relation to tortious conduct through the *Personal Injuries Proceedings Act 2002* and *Civil Liability Act 2003* where an older person experiences physical or psychological injury as the result of elder abuse.

<sup>335</sup> For an overview of the potential interaction of these various areas of the law in respect to Family Agreements, a common source of elder financial abuse, see Somes and Webb (2015); In relation to equity, trusts and property law in particular, see Somes and Webb (2016).

## 9.2 Defining elder abuse for the purposes of this chapter

There is no legal definition of elder abuse in the Queensland legislation which means that definitions used in research literature and those used to guide services are generally adopted.<sup>336</sup> This chapter will not readdress this report's discussion of the various definitions of elder abuse. However, it is instructive to note that the Australian Law Reform Commission (ALRC) recently described elder abuse as referring to abuse by family friends, carers and other people the older person may trust, rather than abuse by strangers.<sup>337</sup> This statement was underscored in its recent report: *Elder Abuse — A National Legal Response* which notes:

*“The definition of elder abuse does not include all abuse of older persons but is limited by the relationship between the abuser and the older person — that is, when they are in a relationship where there is an expectation of trust. This will include an expectation of trust as a result of an ‘affective relationship’, such as family members, friends, and informal carers, and those in a ‘functional position of trust’, such as paid carers and some professionals.”*<sup>338</sup>

This chapter will utilise this description of elder abuse. There are examples of conduct affecting older people that may be regarded as elder abuse in a general sense, for instance, consumer scams<sup>339</sup>, however, this type of conduct is not within the purview of the ALRC definition and will not be considered in this report.<sup>340</sup>

## 9.3 Criminal law

Queensland law does not include specific legislation addressing elder abuse, nor cover targeted offences in the Criminal Code. Criminal matters involving elder abuse are pursued under generic provisions in the Criminal Code:

- **Physical abuse:** The Criminal Code contains offences directed at other people such as physical<sup>341</sup> and sexual assault.<sup>342</sup> The Code also contains offences relevant to behaviours that could intimidate or lead to an apprehension of physical harm such as stalking.<sup>343</sup> Some instances of elder abuse can be caught by offences where the victim exhibits an impairment of the mind.<sup>344</sup>
- **Neglect:** The Code provides for a duty for a person ‘having charge’ of another person to provide necessities<sup>345</sup> and imposes consequences for a failure to provide such necessities.<sup>346</sup>

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<sup>336</sup> Even where legislation in other regimes defines elder abuse, varying definitions are adopted. Refer again to the discussion in Chapter 6.

<sup>337</sup> ALRC (2016c) 1.10

<sup>338</sup> ALRC (2017) 2.27.

<sup>339</sup> Webb (26 February 2016) considers consumer law's response to conduct directed at older people.

<sup>340</sup> Indeed, it has been noted that “evidence on elder abuse occurring outside of a familial context (for example, in care settings) is particularly sparse” Kaspiew et al. (2016, p. 5).

<sup>341</sup> Sections 245-246 *Criminal Code*. Refer too to the offences in Chapter 30 *Criminal Code*.

<sup>342</sup> Chapter 32 *Criminal Code*.

<sup>343</sup> Chapter 33A *Criminal Code* in particular ss 359B, E and F.

<sup>344</sup> This involves circumstances where a person's capacity (whatever his or her age) is substantially reduced due to intellectual, psychiatric, cognitive or neurological impairments.

<sup>345</sup> Section 285 *Criminal Code*

<sup>346</sup> Section 324 *Criminal Code*

- **Financial abuse:** Again, generic provisions in the *Criminal Code*, in particular offences relating to stealing<sup>347</sup> and fraud,<sup>348</sup> may be utilised.

Furthermore, under the *Criminal Code*, an assault on person 60 years of age or older is regarded as a serious assault.<sup>349</sup>

### 9.3.1 Laws pertaining to domestic and family violence

Under the *Domestic and Family Violence Protection Act 2012*, a domestic violence order (DVO) may be obtained by persons experiencing domestic violence to provide protection from the respondent committing domestic violence. A DVO can also be obtained by a person who feels threatened or fearful for their safety or wellbeing.<sup>350</sup> The legislation aims to provide safety and protection for people in relevant relationships who are victims of domestic and family violence.<sup>351</sup>

In summary, domestic violence involves the commission of, or counselling, or procuring,<sup>352</sup> particular conduct<sup>353</sup> towards a person (the aggrieved)<sup>354</sup> with whom the perpetrator (the respondent)<sup>355</sup> is in a 'relevant relationship'.<sup>356</sup> The types of conduct listed are broad and would extend to many instances of elder abuse including emotional and psychological abuse<sup>357</sup> and some forms of financial abuse.<sup>358</sup>

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<sup>347</sup> See generally Chapter 36 *Criminal Code*, particularly ss 390,391 and 398. See too Chapter 38.

<sup>348</sup> Section 408C *Criminal Code*

<sup>349</sup> Section 340(1)(g) *Criminal Code*

<sup>350</sup> See generally s8 *Domestic and Family Violence Protection Act 2012*, especially ss 8(1) and (2).

<sup>351</sup> See generally Section 3 (Main Objects of the legislation) and Section 4 (Principles guiding the legislation) *Domestic and Family Violence Protection Act 2012 (Qld)*. Elderly people are specifically mentioned in s4(2)(d) as examples of people who may be particularly vulnerable to domestic violence.

<sup>352</sup> Section 8(3) *Domestic and Family Violence Protection Act 2012*

<sup>353</sup> Section 8(1) *Domestic and Family Violence Protection Act 2012* Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—

- (a) is physically or sexually abusive; or
- (b) is emotionally or psychologically abusive; or
- (c) is economically abusive; or
- (d) is threatening; or
- (e) is coercive; or

(f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else. See too the circumstances listed in s8(2). The definition is very similar to the definition of 'family violence' in the *Family Law Act 1975 (Cth)* as amended in June 2012.

<sup>354</sup> Section 21(1) *Domestic and Family Violence Protection Act 2012*.

<sup>355</sup> Section 21(3) *Domestic and Family Violence Protection Act 2012*.

<sup>356</sup> As defined in Division 3 *Domestic and Family Violence Protection Act 2012*.

<sup>357</sup> Section 11 *Domestic and Family Violence Protection Act 2012* Meaning of emotional or psychological abuse: behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

<sup>358</sup> Section 12 *Domestic and Family Violence Protection Act 2012* Meaning of economic abuse: behaviour by a person (the first person) that is coercive, deceptive or unreasonably controls another person (the second person), without the second person's consent—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or
- (b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child, if the second person or the child is entirely or predominantly dependent on the first person for financial support to meet those living expenses.

The legislation's scope is broad and extends from persons in a close familial relationship<sup>359</sup> to, in some cases, informal care relationships.<sup>360</sup> A relevant relationship includes a parent<sup>361</sup> and a person in a family relationship or a relative of the perpetrator.<sup>362</sup> Provision is made for persons such as Aboriginal or Torres Strait Islander people who may have a wider concept of the term 'relative'.<sup>363</sup>

An informal care relationship exists between two persons if one of them is or was dependent on the other person (the carer) for help in an activity of daily living.<sup>364</sup> An informal care relationship cannot exist between a child and a parent of a child.<sup>365</sup>

An informal care relationship does not exist if the assistance is pursuant to a commercial arrangement.<sup>366</sup> A 'commercial arrangement' is not defined in the legislation, but s20(4) provides instances where an arrangement may be, or will not be, regarded as commercial for the purposes of s20.

A commercial arrangement may exist even if a person does not pay a fee for the help provided under the arrangement, for instance, where a voluntary organisation for which a person does not pay a fee may still be under a commercial arrangement.<sup>367</sup> However, an arrangement is not a commercial arrangement because a person receives a pension or allowance, or reimbursement for the purchase price of goods, for the help provided under the arrangement.<sup>368</sup> Furthermore, an arrangement will not be a commercial arrangement if a person pays a fee for the help provided under the arrangement because of domestic violence committed by the other person.<sup>369</sup>

A DVO can be obtained by older people experiencing abuse where the abuse occurs in a domestic situation including, for example, at the hands of a partner or an adult child.<sup>370</sup> Temporary orders can also be obtained.<sup>371</sup>

A court may make a protection order<sup>372</sup> against a person (the respondent) for the benefit of another person (the aggrieved) if the court is satisfied that:

- (a) a relevant relationship exists between the aggrieved and the respondent; and

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<sup>359</sup> Reference is made to 'parent' in s16 *Domestic and Family Violence Protection Act 2012* and to 'family relationship' and 'relative' in s19 *Domestic and Family Violence Protection Act 2012*.

<sup>360</sup> See generally s 20 *Domestic and Family Violence Protection Act 2012*

<sup>361</sup> Section 16 *Domestic and Family Violence Protection Act 2012*

<sup>362</sup> Section 19(1), (2), (3) *Domestic and Family Violence Protection Act 2012*

<sup>363</sup> Section 19(4) provides examples of persons who may have a wider concept of a relative including Aboriginal and Torres Strait Islander people.

<sup>364</sup> Section 20(1)

<sup>365</sup> Section 20(2)

<sup>366</sup> Section 20(1) *Domestic and Family Violence Protection Act 2012*. Note that s20(3) expressly excludes commercial arrangements. Commercial arrangements are defined widely and include voluntary agencies s20(4).

<sup>367</sup> Section 20(4)(a) and the example provided therein.

<sup>368</sup> Section 20(4)(b)

<sup>369</sup> Section 20(4)(c)

<sup>370</sup> Section 23 *Domestic and Family Violence Protection Act 2012*

<sup>371</sup> Section 23(2)(b), (3) A temporary protection order is an order made in the period before a court decides whether to make a protection order for the benefit of an aggrieved.

<sup>372</sup> Section 25(1) *Domestic and Family Violence Protection Act 2012*

- (b) the respondent has committed domestic violence against the aggrieved; and
- (c) the protection order is necessary or desirable to protect the aggrieved from domestic violence.<sup>373</sup>

An application for a protection order can be made only by an aggrieved person; an authorised person for the aggrieved;<sup>374</sup> a police officer under section 100(2)(a) *Domestic and Family Violence Protection Act 2012* or a person acting under another Act for the aggrieved.<sup>375</sup>

A respondent must not contravene a DVO.<sup>376</sup> Financial penalties or imprisonment can be imposed for a breach of a domestic violence order.<sup>377</sup>

### 9.3.2 Other orders

A peace and good behaviour order (PGBO)<sup>378</sup> can be sought where a perpetrator who does not fall within the definition a relevant relationship under the *Domestic and Family Violence Protection Act 2012* threatens or commits physical damage to an older person or their property. Before the 2012 legislation, PGBOs were utilised when the instances of abuse did not occur in a domestic situation. It would seem the broader scope of the 2012 legislation negates the need to use PGBO in most circumstances of elder abuse.<sup>379</sup>

### 9.3.3 Considerations when sentencing

The *Penalties and Sentences Act 1992* sets out sentencing guidelines and options for the judiciary.<sup>380</sup> Section 9 addresses sentencing guidelines and, in sentencing an offender a court must have regard to *inter alia*:

- “...the nature of the offence and how serious the offence was, including —  
(i) any physical, mental or emotional harm done to a victim...<sup>381</sup>”

It would seem that this provision considers elder abuse within the sentencing process.

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<sup>373</sup> Section 37(1) *Domestic and Family Violence Protection Act 2012*.

<sup>374</sup> Section 25(2) *Domestic and Family Violence Protection Act 2012*. An authorised person for an aggrieved means:

- (a) an adult authorised in writing by the aggrieved to appear on behalf of the aggrieved; or
- (b) an adult the court believes is authorised by the aggrieved to appear on behalf of the aggrieved even though the authority is not in writing.

<sup>375</sup> Section 25 *Domestic and Family Violence Protection Act 2012*. This can include a guardian for a personal matter of the aggrieved under the *Guardianship and Administration Act 2000* or an attorney for a personal matter of the aggrieved under an enduring power of attorney under the *Powers of Attorney Act 1998*.

<sup>376</sup> Section 177(2) *Domestic and Family Violence Protection Act 2012*

<sup>377</sup> Section 177(2) *Domestic and Family Violence Protection Act 2012* sets out the consequences where a DVO has been contravened. Section 177(2) states that a respondent must not contravene a DVO. If the respondent has previously been convicted of contravening a DVO within the past five years, the penalty will be 120 penalty units or three years' imprisonment. In other cases, the penalty will be a maximum of 60 penalty units or two years' imprisonment.

<sup>378</sup> Section 6, *Peace and Good Behaviour Act 1982*

<sup>379</sup> Refer to the discussion in Queensland Law Society and the Office of the Public Advocate (2010).

<sup>380</sup> Section 9 *Penalties and Sentences Act 1992*

<sup>381</sup> Section 9(2)(c) *Penalties and Sentences Act 1992*

Clause 7 of the Charter of Victims Rights (contained in Schedule 1AA *Victims of Crime Assistance Act 2009*) provides that a victim may make a victim impact statement under the *Penalties and Sentences Act 1992* for the court's consideration during sentencing of a person found guilty of an offence relating to the crime.

### 9.3.4 Compensation for Victims of Crime

The *Victims of Crime Assistance Act 2009 (Qld)*<sup>382</sup> provides for a scheme to give financial assistance to certain victims of crime.<sup>383</sup>

The legislation has been the subject of recent amendments<sup>384</sup> that expand eligibility for victim assistance to victims of domestic violence, including victims of elder abuse.<sup>385</sup> The amendments also introduced a Charter of Victims' Rights (the Victims' Charter)<sup>386</sup> to enhance the rights of victims and how they are treated by government and non-government services.<sup>387</sup> In particular, the Victims' Charter places a proactive obligation on relevant services to provide information to victims if appropriate and practicable to do so.<sup>388</sup> The amendments expands the role of the Victim Services Coordinator to help victims resolve complaints against services when the victim is dissatisfied with the way they have been treated.<sup>389</sup>

### 9.3.5 Support for older people during interviews and the court process

Section 21A *Evidence Act 1977 (Qld)* provides that some persons can be described as 'special witnesses' and additional support can be provided to them.<sup>390</sup>

S. 21A (1) A special witness means...

(b) a person who, in the court's opinion, would:

- (i) as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness; or
- (ii) be likely to suffer severe emotional trauma; or
- (iii) be likely to be so intimidated as to be disadvantaged as a witness; if required to give evidence in accordance with the usual rules and practice of the court.

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<sup>382</sup> The *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Amendment Act) received assent on 30 March 2017.

<sup>383</sup> Section 51 provides that a victim of an act of violence may apply for victim assistance.

<sup>384</sup> The amendments to the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* in the Amendment Act commenced on 1 July 2017.

<sup>385</sup> As defined under the *Domestic and Family Violence Protection Act 2012*

<sup>386</sup> See s6B(1) *Victims of Crime Assistance Act 2009*

<sup>387</sup> See generally Chapter 2 and Schedule 1AA *Victims of Crime Assistance Act 2009*

<sup>388</sup> See generally Schedule 1AA, Division 1, 3; Division 2, 1-5. *Victims of Crime Assistance Act 2009*

<sup>389</sup> Section 20A, Chapter 4 *Victims of Crime Assistance Act 2009*

<sup>390</sup> A special witness means *inter alia* a person who, in the court's opinion would:

- (i) as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness; or
- (ii) be likely to suffer severe emotional trauma; or
- (iii) be likely to be so intimidated as to be disadvantaged as a witness; if required to give evidence in accordance with the usual rules and practice of the court.



This includes people who may require such support due to age or emotional issues associated with the trial's circumstances, for instance, a matter involving an adult child. In these circumstances, the court may give various orders to protect and provide support for the special witness.<sup>391</sup>

## 9.4 Civil law: the common law and equity

There are innumerable ways in which elder abuse can be addressed by the common law and equity and it is beyond the scope of this report to try to discuss them all. However, after providing an overview of potential actions, a case study of a family agreement — a common vehicle for elder financial abuse — will be discussed to elaborate on the diverse number of laws that may be relevant to a single transaction.

### 9.4.1 Contract

Contract law in Queensland is regulated primarily by the common law, although some legislation may be relevant in particular circumstances, for example, contracts for the sale of land are required to be in writing.<sup>392</sup>

Of importance in a discussion regarding older people is that all parties to the contract must have capacity to contract. This becomes particularly contentious where there is some degree of diminished capacity and the older person is entering into a significant contractual obligation. All adults are presumed to have the capacity to enter into contracts with the onus of proof in the event of a dispute resting on the person alleging that there was a lack of capacity. A contract will not be effective at law if it is entered into when one party lacks the capacity to understand the nature or effect of the transaction.<sup>393</sup>

An exception to this is where a person is subject to a plenary administration order issued by the QCAT. In such a case, any residual capacity to transact in relation to a 'financial matter' vests in an administrator upon their appointment.<sup>394</sup>

There must also be an intention to create legal relations.<sup>395</sup> There is a (rebuttable) presumption that social and domestic arrangements do not have legal consequences<sup>396</sup> although the Australian law has moved away from this presumption in recent times.<sup>397</sup>

An agreement that involves the transfer of interest must be in writing, otherwise, a valid contract can exist in oral form.

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<sup>391</sup> See generally, s21A(2).

<sup>392</sup> For example, in relation to contracts relating to the sale of land, a contract for the disposition of an interest in land will only be enforceable if the contract is in writing or a memorandum of the contract is in writing and the contract or memorandum is signed by the party to be charged: Section 59 *Property Law Act 1974 (Qld)*.

<sup>393</sup> *Gibbons v Wright* [1954] 91 CLR 423

<sup>394</sup> *Bergmann v DAW* [2010] QCA 143, [15]-[16], [35]. See generally O'Neill and Peisah (2017) Chapter 3 *incapacity and contracts and gifts during lifetime*, 3.3.

<sup>395</sup> Halsbury's Laws of Australia, [110-930] – [110-935]

<sup>396</sup> *Balfour v Balfour* [1919] 2 KB 571; *Jones v Padavatton* (1969) 2 All ER 616.

<sup>397</sup> *Ermogenous v Greek Orthodox Commissioner of South Australia* (2002) 209 CLR 95

### 9.4.2 Tort

Instances of neglect could attract an allegation of negligence. Furthermore, the *Personal Injuries Proceedings Act 2002 (Qld)* and *Civil Liability Act 2003 (Qld)* and supporting Regulations may apply where an older person experiences physical or psychological injury as the result of elder abuse.<sup>398</sup>

The *Personal Injuries Proceedings Act 2002 (Qld)* purpose was to impose restrictions on the amounts of damages (and costs) which a person may recover and to ensure an appropriate balance between benefits and the cost of premiums and preserving adequate compensation to the moderately and seriously injured, rather than those with relatively minor injuries. Such claims are generally limited to claims for general damages, domestic assistance and medical expenses.<sup>399</sup>

In 2014, the Queensland Government introduced new Regulations for the *Personal Injuries Proceedings Act 2002 (Qld)*, the *Personal Injuries Proceedings Regulation 2014*.<sup>400</sup> Section 12 of the *Personal Injuries Proceedings Regulation 2014* provides amounts for declared 'costs limit', 'lower offer limit' and 'upper offer limit' in accordance with section 75A of the *Personal Injuries Proceedings Act 2002 (Qld)*.

The prescribed costs recoverable under the PIPR have increased. Section 56 PIPA provides limits on costs that can be awarded for smaller claims. Where damages are \$43,020 or less, no legal costs are recoverable. If damages are more than \$43,020, but not more than \$71,730, the claimant has a maximum entitlement under the claim for legal fees of \$3,600. If the damages awarded are more than \$71,730, then the ordinary costs recovery principles under the Uniform Civil Procedure Rules apply. In those circumstances, PIPA does not limit the recovery of legal costs.

### 9.4.3 Equity and trusts

There are several ways equity and trusts may be relevant to elder abuse issues:

- **Equitable doctrines** can recognise rights where there is no remedy available under common law. Although a valid contract may have been entered into at law, equity may recognise that the conduct of one of the parties offends conscience.
- **Unconscionable conduct:** A transaction may be set aside where one party has entered into an agreement with a person who is suffering from a special disadvantage and the first person knowingly takes advantage of that disadvantage.<sup>401</sup>
- **Undue influence:** Similarly, where an agreement is entered into and there has been undue influence by one party over the other, there may be grounds to vitiate the transaction. There are recognised categories of undue influence or undue influence may be found due to the circumstances of particular cases. While there is a presumption that a parent has undue influence over a child, even an adult child, the opposite is not the case.<sup>402</sup>

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<sup>398</sup> Section 52

<sup>399</sup> As discussed in Queensland Law Society (2011), section 4.1.3.

<sup>400</sup> superseding the previous *Personal Injuries Proceedings Regulation 2002 (Qld)*. *Civil Liability Regulation 2014 (Qld)*

<sup>401</sup> *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447, 474 (Deane J); *Blomley v Ryan* (1956) 99 CLR 362; *Johnson v Smith* [2010] NSWCA 306.

<sup>402</sup> See generally Burns (2002)

- Where a person has made a contribution of money or property to a second person but is not recognised as the legal owner, equity may — depending on the facts of the case — impose a resulting trust or a constructive trust in favour of the person who made the contribution to the extent of that contribution.<sup>403</sup>
- Where a person has relied on a representation made by a second person, that representation is not honoured and the first person experiences detriment as a result. In these circumstances, the second person may be estopped from avoiding the promise.<sup>404</sup>

#### 9.4.4 The presumption of advancement

The presumption of advancement means that the law assumes that money or property provided to a child, even an adult child, by a parent is intended to be of benefit to that child (i.e. to ‘advance’ their welfare) and is presumed by the courts to be a gift.<sup>405</sup> This can be problematic in an elder abuse scenario where property has changed hands. The presumption of advancement will suggest that the older person may have intended it to be a gift when, in fact, it was not.<sup>406</sup>

#### 9.4.5 Case study: assets for care arrangements

In an assets for care arrangement, an older person’s family (usually an adult child) receives a financial benefit in exchange for a promise to provide accommodation for and, in some cases, care for the older person as he or she ages.<sup>407</sup> These arrangements may include the adult child moving in with the older person; a gift of the older person’s home to the child; the purchase of a new home to accommodate a larger household; renovations to an existing home; or the construction of an ancillary dwelling (granny flat) where the older person simply occupies a room in an existing house. The common denominator is that the older person has made a financial contribution in exchange for accommodation and care for life.<sup>408</sup> The number of these largely unregulated transactions has increased and, to date, there is little of analysis of the legal ramifications and appropriate responses when these types of arrangements fail.<sup>409</sup> Such an agreement may be in the form of the contract but, in the vast majority of cases, is not into writing, leading to disputes as to the nature, scope and content of any arrangement.<sup>410</sup>

A dispute involving a family accommodation arrangement can potentially raise an array of legal issues potentially involving contract law, family law, land law and equity and trusts law. At present, an older party wishing to commence an action to recover property in a failed asset for care

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<sup>403</sup> This is a complex area that is beyond the scope of this report. For an overview see *inter alia* *Calverley v Green* (1984) 155 CLR 242, 246 (Gibbs CJ); *Allen v Snyder* [1977] 2 NSWLR 685, 689-90; *Muschinski v Dodds* (1985) 160 CLR 583, 589-90 (Gibbs CJ), 612-614 (Deane J); Barkehall-Thomas (2008).

<sup>404</sup> *Giumelli v Giumelli* (1998) 196 CLR 101; *DeLaforce v Simpson Cook* [2010] NSWCA 84; Barkehall-Thomas (2008).

<sup>405</sup> Glister (2011)

<sup>406</sup> *Nelson v Nelson* (1995) 184 CLR 538.

<sup>407</sup> Webb (25 February 2016)

<sup>408</sup> Or, in some cases, when the time comes when medical care is required and a residential facility is more appropriate.

<sup>409</sup> Herd (2002); Joosten, Dow and Blakey (2015); Somes and Webb (2016)

<sup>410</sup> And, even where the agreement appears to have been made in writing, the situation may become problematic: *Cirillo v Manieri & Anor* [2013] VSC 399; *Manieri v Cirillo* [2014] VSCA 227.

arrangement would need to pursue an equitable cause of action, which is, in turn, dictated by the particular circumstances giving rise to the dispute. The available equitable actions are:

- resulting trust
- undue influence
- unconscionable conduct
- remedial constructive trusts
- equitable estoppel.<sup>411</sup>

For instance, a transaction entered into pursuant to undue influence or the unconscionable conduct of the defendant may be set aside by the court. Although these doctrines provide a degree of protection to vulnerable individuals against exploitation, the onus still remains upon the older party to commence the action and prove the elements of the equitable claim. The presumption of advancement can operate, which presumes the property was a gift rather than held on trust. The presumption is difficult to rebut because intention is determined at the time of the transfer.

Queensland legislation provides that no resulting trust will arise on the conveyance of land despite an absence of consideration.<sup>412</sup> Any contribution to property must be towards the purchase price, or costs necessarily incurred in the acquisition of the property. In these cases, the older party would need to look to other equitable causes of action, such as claiming the arrangement that gave rise to a constructive trust, or claiming relief based on the principles of estoppel. Recovery of property via equitable action is rarely undertaken.

The process is fraught with risk. As the ALRC notes:<sup>413</sup>

*“Accordingly, there are a range of potential legal actions available to an older person who has suffered financial loss on the breakdown of a family agreement and their success will depend on the extent to which the facts of the particular situation can meet the required tests in law and equity. The fact that the older person has suffered significant financial loss may not be sufficient of itself. An older person has to weigh up the strength of their case in the context of unwritten agreements and conduct that may be evidence of a range of intentions. This assessment must be made with an understanding of the considerable costs of equity litigation.”*

The proceedings must commence in the District Court or Supreme Court depending on the value of the property involved. Such proceedings are expensive, time consuming and stressful, and it is unlikely an older party has either the financial or emotional resources to commence proceedings.

It should be noted that it seems a statutory remedy may also be available in circumstances where the ‘family agreement’ involved an attorney or administrator of the older person. A presumption of undue influence arises under section 87 of the *Powers of Attorney Act 1998* (POA) where the relevant transaction was between the principal and his or her attorney (or a relation of the attorney).<sup>414</sup>

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<sup>411</sup> ALRC (2017) section 6.31

<sup>412</sup> Section 7, *Property Law Act 1974 (Qld)*.

<sup>413</sup> ALRC (2017) section 6.47

<sup>414</sup> *Smith v Glegg [2004] QSC 443*

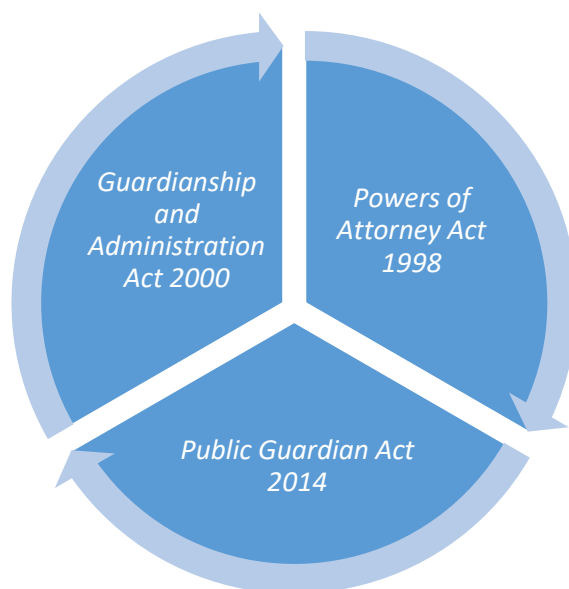
The ALRC (2017) Final Report does not recommend meddling with existing equitable doctrine, preferring to recommend that the state and territory tribunals should have jurisdiction to resolve family disputes involving residential property under an ‘assets for care’ arrangement.<sup>415</sup>

## 9.5 Supported decision making: the guardianship regime

In respect to guardianship laws nationally, the Australian Research Network on Law and Ageing (ARNLA) has noted:<sup>416</sup>

*“There does not appear to be any shortage of laws that make abuse unlawful and provide civil remedies. Prevention requires a combination of education, deterrence and investigatory and remedial powers of government agencies who can take action on behalf of an elderly person (such as the Public Advocate) and civil claims and criminal penalties for abuse of powers.”*

Queensland’s Guardianship Regime is based on the *Guardianship and Administration Act 2000* (GAA), the *Powers of Attorney Act 1998* (POA) and the *Public Guardian Act 2014* (PGA), as shown in Figure 9.2 below. Each Act is to be read in conjunction with the others.



**Figure 9.2 Acts encompassed within Queensland’s guardianship regime**

A person or entity who performs a function or exercises a power in relation to an adult with impaired capacity must apply what is known as the General Principles, a series of presumptions and rights.<sup>417</sup> The General Principles are noted in Schedule 1, Part 1 of the *Guardianship and Administration Act 2000*. The POA also contains a requirement to apply the general principles in relation to performing a function or exercising a power under an enduring document (replicated in Schedule 1, Part 1 of the POA). If the function or power relates to a health matter or special health

<sup>415</sup> Recommendation 6.1

<sup>416</sup> Australian Research Network on Law and Ageing (2016)

<sup>417</sup> Schedule 1, Part 1 *Guardianship and Administration Act (2000) (Qld)*.

matter, then the person must apply the health care principle (GAA, Schedule 1, Part 2; and POA, Schedule 1, Part 2). Similarly, under the PGA, persons performing functions or exercising powers under the Act for a matter in relation to an adult with impaired capacity are listed in the Guardianship Act, schedule 1. This comprises the general principles and, for a health matter or a special health matter, the health care principle.<sup>418</sup> Such persons must also have regard to the acknowledgements stated in Section 5 of the GAA when performing the functions or exercising the powers.<sup>419</sup>

The legislation provides a comprehensive legislative regime for a system of supported decision making for adults with impaired capacity. It provides for the role of the Queensland Civil and Administrative Tribunal in respect to a number of functions associated with guardianship including assessments of capacity, appointment of guardians and administrators and making orders for compensation.<sup>420</sup> The legislation also provides for the jurisdiction of the Public Guardian and the Public Advocate.<sup>421</sup> In combination, the legislation also provides for the appointment of individual guardians, administrators and private attorneys.

The legislation is superior to most equivalent state or territory legislation, particularly with respect to recognising the role of undue influence<sup>422</sup> in such circumstances and the availability of genuine legal recourse against enduring power of attorneys who may abuse their position.<sup>423</sup>

### 9.5.1 Issues involving Enduring Powers of Attorney

In several Australian jurisdictions there are no mechanisms for registering or auditing enduring powers of attorney (EPoAs) or other substitute decision making powers. Given that the attorney is almost invariably a person in a close personal relationship with the older person (the donor), the arrangement is more than an arm's length legal relationship. The complexities of family relationships make abuse of EPoAs difficult to detect and litigation makes obtaining an appropriate remedy financially and emotionally arduous.<sup>424</sup>

EPoA misuse was considered in recent ALRC consultations and the ensuing Final Report. The ALRC has recommended that a national register of EPoAs be introduced. It is instructive to refer to the recommendation in full:<sup>425</sup>

#### Recommendation 5–1

Safeguards against the misuse of an enduring document in state and territory legislation should:

- (a) recognise the ability of the principal to create enduring documents that give full powers, powers that are limited or restricted, and powers that are subject to conditions or circumstances;

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<sup>418</sup> Section 6(1) *Public Guardian Act 2014*

<sup>419</sup> Section 6(2) *Public Guardian Act 2014*

<sup>420</sup> See generally *Guardianship and Administration Act 2000 (Qld)* Ch 3 Part 1, Part 3.

<sup>421</sup> *Guardianship and Administration Act 2000 (Qld)* s209.

<sup>422</sup> POA s87.

<sup>423</sup> POA s106; 107 *Guardianship and Administration Act 2000 (Qld)* ss59, 60.

<sup>424</sup> See generally, Wuth (2013)

<sup>425</sup> ALRC (2017, p. 12-13)

- (b) require the appointed decision maker to support and represent the will, preferences and rights of the principal;
- (c) enhance witnessing requirements;
- (d) restrict conflict transactions;
- (e) restrict who may be an attorney;
- (f) set out in simple terms the types of decisions that are outside the power of a person acting under an enduring document; and
- (g) mandate basic requirements for record keeping.

#### **Recommendation 5–2**

State and territory civil and administrative tribunals should have:

- (a) jurisdiction in relation to any cause of action, or claim for equitable relief, that is available against a substitute decision maker in the Supreme Court for abuse, or misuse of power, or failure to perform their duties; and
- (b) the power to order any remedy available to the Supreme Court.

#### **Recommendation 5–3**

A national online register of enduring documents, and court and tribunal appointments of guardians and financial administrators, should be established after:

- (a) agreement on nationally consistent laws governing:
  - (i) enduring powers of attorney (including financial, medical and personal);
  - (ii) enduring guardianship; and
  - (iii) other personally appointed substitute decision makers; and
- (b) the development of a national enduring document model.

Queensland has already implemented many of these safeguards.

### **9.5.2 Approved form**

Section 44(1) of the POA requires an EPoA to be in the approved form. There is a standard form which meets the formal requirements to make an EPoA under the POA.

### **9.5.3 Detecting abuse**

In Queensland, the PG and POA Acts provide some protection in detecting abuse through the necessity to keep records and the possibility of audit. Section 85 of the POA Act provides that an attorney for a financial matter must keep and preserve accurate records and accounts of all dealings and transactions made under the power.<sup>426</sup> Section 122 of the POA Act provides the court with a power to order that an attorney for a financial matter provides records or the attorney's accounts be audited. Under section 21 of the PG Act, the Public Guardian may have the accounts audited.

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<sup>426</sup> *Powers of Attorney Act 1998*, section 85

#### 9.5.4 Registration of EPoAs

At present, section 60 of the POA Act provides that an EPoA and an instrument revoking an EPoA may be registered. If an attorney undertakes land transactions under the EPoA, then the EPoA must be registered for the transactions to be valid.<sup>427</sup>

##### 9.5.4.1 Should there be mandatory registration of EPoAs?

The issue of mandatory registration of EPoAs has been considered by the Queensland Law Reform Commission (QLRC).<sup>428</sup> While noting that registration has a number of benefits, on balance, the QLRC found that the burdens of mandatory registration (for example, implementation costs and privacy implications) would likely outweigh its benefits.<sup>429</sup> Furthermore, the QLRC did not find any evidence that registration of EPoAs would detect fraud or abuse. Ultimately the QLRC did not recommend the registration of all EPoAs.<sup>430</sup>

Mandatory reporting was recommended in the *Inquiry into the adequacy of existing financial protections for Queensland's seniors*.<sup>431</sup> The Committee also recommended that the Queensland Government work with the Federal Government to implement a Federal Register to complement the proposed State Register.<sup>432</sup>

#### 9.6 Mandatory reporting of elder abuse in Queensland

There is no mandatory reporting of elder abuse in Queensland. There are compulsory reporting provisions under the *Aged Care Act 1997 (Cth)* but this is applicable only to notifiable assaults in aged care facilities.<sup>433</sup> The subject of mandatory reporting is controversial because, on one hand, there are arguments that mandatory reporting undermines the autonomy of older people, yet others regard it as an important safeguard to assist vulnerable older adults.<sup>434</sup> Mandatory reporting is common in the US but not elsewhere.<sup>435</sup> In Australia, several prominent commentators have criticised the concept<sup>436</sup> although it does draw support in some quarters.<sup>437</sup> Any proposal to introduce mandatory reporting would also have to navigate the complexities of Commonwealth and state privacy legislation.<sup>438</sup>

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<sup>427</sup> *Property Law Act 1974*, section 241

<sup>428</sup> QLRC (2010)

<sup>429</sup> *Ibid*

<sup>430</sup> Recommendation 16–15

<sup>431</sup> tabled in Parliament by the Communities, Disability Services and Domestic and Family Violence Prevention Committee on 15 February 2016 (recommendation 37)

<sup>432</sup> The Queensland Government's response to recommendation 37 was to undertake to consider how to address the aims of recommendation 37. See too the Seniors Strategy, implementation schedule, action 36 (Examine ways to encourage the lodgement of certified copies of enduring powers of attorney with appropriate agencies and entities (such as attorneys, doctors, health providers, solicitors, accountants and stockbrokers).

<sup>433</sup> Under the compulsory reporting regime, it is the responsibility of Police to substantiate the reports, while the Federal Health Department's primary role is to ensure aged care providers comply with the legislation's requirements to report a suspected incident within 24 hours: Belardi (24 August 2016)

<sup>434</sup> Office of the Public Advocate (SA) (2011)

<sup>435</sup> Rodriguez (2006)

<sup>436</sup> Lacey (2014)

<sup>437</sup> Miskovski (2014)

<sup>438</sup> ARNLA (2016)



It has been suggested that, if introduced at all, mandatory reporting should be restricted to situations which involve the most vulnerable in society or pose a significant threat to public health;<sup>439</sup> this would balance the autonomy in older people with capacity and safeguard vulnerable people. At present, there is no obligation to report although it has been suggested that banks and financial institutions are in a position to detect elder abuse.<sup>440</sup> Similar considerations may apply to front-line medical staff.

## 9.7 Whistleblower protections

A pivotal concern regarding mandatory reporting or reporting elder abuse in general is the potential for ramifications for persons who make the reports. If the report is not malicious but lacks substance or if the allegations cannot be established, such person could face legal action. In Australia, whistleblower protection remains largely inadequate<sup>441</sup> although there are some suggestions for improvements in the offing.<sup>442</sup> In instances of elder abuse, it would be instructive to review some of the US provisions that provide protection for whistleblowers; although most states do not require banks to report suspicions about elder abuse because of concerns about legal liability, immunity is offered in Oregon for reporting suspected financial abuse of older persons.<sup>443</sup> In California, the *Financial Elder Abuse Reporting Act 2005* mandates the reporting of elder abuse by certain organisations. Banks and financial institutions are liable if they fail to report suspicions of elder financial abuse.<sup>444</sup> Furthermore, in British Columbia in Canada, there is no mandatory reporting under the *Adult Guardianship Act 1996*, but there is an indemnity for those persons who do report.<sup>445</sup> The identity of the person is protected and an actions for damages cannot be brought against the person who made the report or anyone involved in the investigation.<sup>446</sup>

## 9.8 Property law

Queensland utilises the Torrens System of land registration. In summary, a registered proprietor enjoys indefeasible title over land, subject only to limited exceptions. Even if an older person contributes towards the purchase price or towards capital improvement to the property, he or she is rarely on the title. Similarly, if an older person is persuaded to enter into a guarantee or mortgage on behalf of, for example, an adult child, the registered instrument would mean that if the adult child defaulted, the older person's assets may be jeopardised. Property law principles do not protect an older party's position and lack safeguards for older people who do not have a registered interest in the land and there is little opportunity to protect any equitable interest.<sup>447</sup>

## 9.9 Access to justice considerations

Ideally, education and other preventative strategies will assist in reducing instances of elder abuse. The issue will not disappear, of course, and it is essential that older people experiencing abuse have real accessibility to the justice system.

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<sup>439</sup> Ibid

<sup>440</sup> Lichenberg (2016)

<sup>441</sup> Brown (2013); Osterhaus & Fagan (2009)

<sup>442</sup> Beech (22 November 2016)

<sup>443</sup> See generally Hughes (2003b)

<sup>444</sup> Fn 173. S1108 *Financial Elder Abuse Reporting Act 2005 (Calif)*

<sup>445</sup> S46 Section 46, *Adult Guardianship Act 1996*

<sup>446</sup> Section 46(2),(3), *Adult Guardianship Act 1996*

<sup>447</sup> For example, an older person may have a caveatable interest but the caveat can be challenged and can expire.

### 9.9.1 Impediments to accessing the justice system

Older people experiencing abuse may encounter difficulties with, or a reluctance to, access legal assistance. In the first place, there may be a physical, personal, economic or social inability to take action or make a report. For example, a person with diminished capacity may not recognise circumstances of abuse or be unable to make a report without assistance. In other cases there may be a reluctance to report or commence proceedings against a family member as a result of love, loyalty, fear or embarrassment. Even if an older person proceeds with a complaint, there can be impediments through the vagaries of the legal process and the cost (in terms of finances, time and emotional energy) of legal proceedings. Procedural and evidential issues can also be problematic.

### 9.9.2 Utilising tribunals to address elder abuse issues

One of the pivotal issues for older people who negotiate the court system is that, in many cases, the matter must proceed in a superior court. For example, in the case of assets for care arrangements, or other matters requiring equitable relief, the matter must be commenced in the District or Supreme Courts. However, tribunals are well suited to dealing with older people and disputes between older people and their families. As Carroll and Smith note:

*“This is where tribunal members and processes are designed for and knowledgeable of family conflict, family dynamics and the scope for less-restrictive alternatives than tribunal orders in appropriate cases.”<sup>448</sup>*

In respect of assets for care arrangements, the ALRC recommends that state and territory tribunals should have jurisdiction to resolve family disputes involving residential property under an ‘assets for care’ arrangement.<sup>449</sup> The recommendation does not extend to family businesses and farms which are, in the ALRC’s view, better suited to formal adjudication through the courts.<sup>450</sup>

Implementation of the recommendation would see tribunals given jurisdiction over disputes where an older person’s principal place of residence is involved in an assets for care arrangement.<sup>451</sup> The ALRC notes that:

*“This recommendation seeks to provide an alternative avenue for dispute resolution and would otherwise not disturb existing legal and equitable doctrines.”<sup>452</sup>*

Assets for care are but one aspect of elder abuse, consideration could also be given to extending jurisdiction in other areas involving elder abuse. Obviously this would involve a consideration of appropriate categories of matter, the sum of any monetary limit and how such developments would impact on jurisdiction more broadly.<sup>453</sup>

## 9.10 Key findings: legislative responses to elder abuse

The law and legislation relevant to elder abuse matters in Queensland is comprehensive and provides a generally accessible and robust legal framework. In several respects, for example, in the

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<sup>448</sup> Carroll and Smith (2010, p. 30)

<sup>449</sup> ALRC (2017) Recommendation 6-1, [6.48], [6.51].

<sup>450</sup> Ibid [6.51]

<sup>451</sup> Ibid [6.48]

<sup>452</sup> Ibid [6.48]

<sup>453</sup> A discussion of such issues is beyond the scope of this report.

legislative regime affecting EPoAs, the laws are superior to those in many other states. However, the elder abuse landscape is fluid and the Queensland Government and its relevant agencies need to stay attuned to developments to ensure the law remains adequate. The ALRC (2017) Final Report<sup>454</sup> recommendations should be considered and, where relevant to Queensland law, adopted.

## **9.11 Proposed directions**

While the Criminal Code seems to address all areas of potential elder abuse, elder abuse matters pursued under the Criminal Code should be monitored by relevant agencies to assess outcomes. If it appears that the provisions do not deal adequately with elder abuse matters, consideration could be given to formulating discrete sections dealing with elder abuse.

The Queensland Government could consider adopting Recommendation 6-1 of the ALRC (2017) Final Report regarding the extension of jurisdiction to tribunals in matters involving assets for care arrangements. The Queensland Government could also:

- monitor the POA Act's provisions to ensure it remains adequate to address EPoA misuse
- adopt the ALRC's recommendation regarding enhanced protections for older people entering into EPoAs
- participate in the creation of a national online register of enduring documents as noted in Recommendation 5-3
- encourage greater awareness and education among potential power of attorneys.

A discussion could be convened with relevant stakeholders regarding the potential for, and scope of, an elder abuse reporting regimen. Participants should draw on appropriate responses in international jurisdictions to ensure appropriate whistleblower protection exists to protect persons who report elder abuse in good faith. Such a discussion should involve:

- What is the scope of the reporting?
- Who needs to report?
- What type of conduct should require reporting?

It is proposed that there could be an enhanced role for mediation and conciliation services in response to elder abuse. For example, mediation could be (except in cases where it would be deemed inappropriate) an essential first step in matters raised and a condition precedent to any elder abuse matter brought to the Tribunal as discussed above.<sup>455</sup> As mentioned earlier in this chapter, the Queensland Attorney General's Dispute Resolution Branch established a Supported Elder Mediation Project.<sup>456</sup>

This report recommends that support for the project's design and implementation continues and notes that the Queensland Government has committed to exploring options for the development and implementation of supported elder mediation.<sup>457</sup>

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<sup>454</sup> ALRC (2017)

<sup>455</sup> This was also suggested by National Legal Aid (2016, p. 19) in its submission to the ALRC Inquiry.

<sup>456</sup> Queensland Government (2016)

<sup>457</sup> *Queensland: an age-friendly community* — Action Plan and implementation schedule (action 29) available at: [www.communities.qld.gov.au/communityservices/seniors/queensland-age-friendly-community](http://www.communities.qld.gov.au/communityservices/seniors/queensland-age-friendly-community)

## **10 Summary and discussion**

This research project reviewed current policy, legislative, and service responses to elder abuse in Queensland with the aim of providing an overview of the current context as well as an evidence base to allow stakeholders, including government and non-government organisations, to better understand the prevalence and characteristics of elder abuse in the state. Current legislative, policy and service responses and interventions to elder abuse were mapped to identify issues, needs and gaps in elder abuse prevention and service responses in Queensland. Elder abuse data from a number of government and non-government stakeholder organisations was synthesised and included in this report. Research participants comprised 184 staff members from 57 unique organisations that work with elder abuse in Queensland. Research included interviews, focus groups, an online survey, and a scoping literature review.

Key research findings are summarised in this chapter and are grouped into the following six themes:

- definitional issues
- prevalence and data collection issues
- characteristics and risk factors
- service and system interventions and responses
- education, training and information
- legislative responses.

In this chapter, these key findings are discussed, followed by proposed directions for future responses to address the issues raised by each finding, where relevant.

### **10.1. Definitional issues**

In the Australian literature and service delivery context, elder abuse is usually divided into the following categories: financial, psychological, social physical, sexual, and neglect. Other countries and jurisdictions use varying definitions; some combine emotional and psychological abuse, others include exploitation in discussions of financial abuse, and some encompass social abuse within other domains.<sup>458</sup> Operational definitions of elder abuse used by interview participants varied and were affected by their respective organisation's role and jurisdiction.

The lack of a consistent definition of elder abuse is problematic, as is noted in many other reports.<sup>459</sup> Definitions impact on data collection and recording, how the issue is responded to and which agency has jurisdiction. There are overlaps with other areas of abuse and mistreatment, namely family and domestic violence and the abuse and mistreatment of people with a disability. Also, previous definitions have overlooked abuse within residential aged care. Creating links and synergies between the different areas may provide additional intervention options and learnings from other more well-developed fields. However, it is still important that elder abuse is recognised as a distinct category of abuse and mistreatment with unique features; it should not be subsumed completely within the broader area of family and domestic violence. As mentioned in Section 4, the concept of 'vulnerability' should be further explored as a replacement for arbitrary age cut-offs. Arguably, some agencies, such as the Office of the Public Guardian and the Office of the Public Advocate, already

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<sup>458</sup> Mosqueda et al. (2016)

<sup>459</sup> Clare M. et al. (2011); Office of the Public Advocate and Queensland Law Society (2010); Queensland Law Society and Elder Abuse Prevention Unit (2011); Sanders (2005)

consider ‘vulnerability’, for example, by focusing on impaired decision making capacity rather than age. This approach has been adopted in other jurisdictions, such as the UK, where the *Care Act (2014)* and government safeguarding policy seeks to protect adults with care and support needs who are experiencing, or are at risk of experiencing, abuse or neglect, and because of these needs cannot protect themselves against actual or potential abuse or neglect, regardless of age.<sup>460</sup>

### 10.1.1 Proposed direction

A coherent and consistent definition of elder abuse could be established across all jurisdictions, and this will assist in data collection and recording the scope of the issue. In formulating the definition, there should be consideration of:

- the purpose of the definition and how it will be used, including examination of existing definitions of elder abuse, as well as operational definitions used by organisations in various jurisdictions
- the scope of the ‘relationship of trust’ and whether it is a necessary element. Should this only encompass ‘family and friends’ or also those who could be seen as having a duty of care relationship with the older person, including paid care staff and other professionals?
- at what age people are defined as ‘older’ and therefore subject to elder abuse (as opposed to another form of abuse) because the age range and eligibility for various seniors’ services and benefits can range from 50 to 65 years or older
- whether elements of dependence and/or vulnerability should be incorporated overtly into any definition, and how this may link to the area of the abuse of ‘at-risk’<sup>461</sup> adults or people with a disability
- how elder abuse might fit within other area of abuse and mistreatment, including family and domestic violence and abuse of people with a disability.

The proposed definition should be broad and without reference to relationships of trust. It could be based on that used by the United States Department of Health and Human Services<sup>462</sup>:

*“Elder abuse is any knowing, intentional, or negligent act by family, a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable older person.”*

Such a definition should refer to relationships of trust, and the definition should include a broader group of people than just family and friends, for example, professionals, banks, and business people, in appropriate circumstances.

Development of a consistent definition of elder abuse will support coherent data collection and recording of the issues on both a state and national level, as mentioned in Chapter 5. Broadening perceptions and understandings of domestic violence in policy and information/education will assist in community and professional recognition of abuse from non-spousal family members. If broader definitions are accepted in services that respond to domestic violence, this may provide additional intervention options for people experiencing elder abuse within existing systems.

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<sup>460</sup> Age UK (2016)

<sup>461</sup> An at-risk adult is defined as an adult in need of care and support who is experiencing abuse or neglect or is at risk of abuse or neglect and who cannot protect themselves from the abuse (ALRC, 2017, p. 375)

<sup>462</sup> United States Department of Health and Human Services (2014)

## 10.2 Prevalence and data collection issues

No comprehensive studies on the prevalence and characteristics of elder abuse have been undertaken in Queensland or Australia. A number of localised studies have been conducted<sup>463</sup> as well as research examining state-based data from calls to elder abuse agencies and helplines,<sup>464</sup> however, figures from these studies cannot be reliably extrapolated to the Queensland or Australian older population.<sup>465</sup>

International studies indicate that the prevalence rate of elder abuse in high and middle income countries may be up to 14 per cent and possibly higher among people with cognitive impairment or who live in institutions. International prevalence studies indicate widely ranging prevalence estimates (from 1.1 per cent to 44.6 per cent in one analysis<sup>466</sup>) which are likely to be the result of using different methodologies, definitions, survey instruments and sample sizes.

The most comprehensive dataset on elder abuse in Queensland is that collected and compiled by the Elder Abuse Prevention Unit (EAPU) and sourced from helpline calls. The data is published in annual *Elder Abuse Prevention Unit Year in Review* publication. This data reflects only those elder abuse cases that come to the EAPU's attention so is not a comprehensive picture of elder abuse in Queensland. However, the data is rich in detail because it provides information on trends over time, the demographic characteristics and relationships of victims and perpetrators, types of abuse, locations of abuse, living arrangements, risk factors and other information.

There is no formal, systematic reporting or monitoring of elder abuse undertaken by Queensland government agencies. The Government Statistician's Office (QGSO) publication *Elder abuse, Queensland, September 2016: Report based on information sourced from administrative data collections* examined the the availability, quality and usefulness of datasets held by government and service providers which could be used to better understand prevalence and characteristics of elder abuse.

Researchers' examination of a number of datasets<sup>467</sup> and the QGSO report findings indicate that data collection methods are variable, and issues such as changes in the way datasets are managed over time, the accuracy of recording cases within and between agencies, and the complex nature of elder abuse influence the recording and resulting quality of data on elder abuse.

### 10.2.1 Proposed directions

Four other Queensland studies and reports<sup>468</sup> have recommended prevalence studies (and have been contraindicated in one<sup>469</sup>). However, given the consistency of findings from available studies in other jurisdictions and the research challenges in investigating the prevalence of elder abuse (including a lack of definitional specificity, unwillingness to report, etc.), it is proposed that enough is already known about the general frequency of the types of abuse experienced by vulnerable elderly people to question the benefit of undertaking a comprehensive prevalence study, given the costly

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<sup>463</sup> Boldy, Horner, Crouchley, Davey and Boylen (2005); Clare, M. Black Blundell and Clare, J. (2011); Wainer, Owada, Lowndes and Darzins (2011)

<sup>464</sup> Joosten, Dow and Blakey (2015); Spike (2015a)

<sup>465</sup> Seniors Rights Service (2015)

<sup>466</sup> Sooryanarayana et al. (2013)

<sup>467</sup> EAPU (2015, 2016); OPG (2015); QGSO (2016)

<sup>468</sup> EAPU (2015); Communities Disability Services and Domestic and Family Violence Prevention Committee (QLD) (2015); Jackson L. (2009); Taskforce on Domestic and Family Violence in Queensland (2015)

<sup>469</sup> Sanders (2005)

nature of this research. Rather than conducting a costly prevalence survey, the Queensland Government could work with the federal government to pursue data collection on a national level. State resources would be better directed to filling identified gaps in service provision and completing research to develop targeted prevention strategies for specific elder abuse problems.

A number of actions and approaches would improve data about the prevalence and characteristics of elder abuse in Queensland:

- Elder abuse sector organisations could sharpen the focus of data collection and give consideration to the use of measures relating to vulnerability rather than age. Using existing frameworks from other, relevant contexts (such as disability) to assess victims' vulnerability in a consistent manner would allow agencies to monitor changes over time. It would counter current limitations to measurement given the absence of a meaningful measure for 'elder abuse' that can be used consistently and accurately across contexts for data collection purposes.
- Age delimitations are variable across organisational contexts so, rather than collecting data based on age delimitations, vulnerability could be used as an indicator to provide consistency and accuracy across contexts for data collection purposes. This would address issues where elder abuse overlaps with the abuse and mistreatment of people with a disability, and family and domestic violence.
- Adopting a criminological approach, existing data about elder abuse could be used to identify and map problem areas and develop targeted responses using crime prevention models (as discussed in Chapter 8). It is suggested that problem-solving be the focus, with interagency collaborative responses developed as required. Existing tools (resources, legislation, data, etc.) could be used to develop this approach and a broad range of interventions could be developed as a result.
- The collection of data by government agencies on repeat victimisation and repeat offending (victims, offenders and problem types) would be useful in informing targeted prevention strategies.

### **10.3 Characteristics and risk factors**

Although elder abuse is typically divided into physical, sexual, financial, psychological, social and neglect types, research participants also recognised systemic abuse and abuse within the context of residential care as categories. This highlights the fact that elder abuse is a multifaceted issue shaped by complex interrelated layers of family, community and service system issues. Risk factors for elder abuse may be categorised using a socio-ecological framework in terms of victim, perpetrator, victim-perpetrator relationship, community, and society.<sup>470</sup> Elder abuse risk factors for older people — strongly validated by substantial evidence with unanimous or near unanimous support from several studies — include cognitive impairment, functional dependence/disability, low income/socio-economic status, poor physical/mental health, race/ethnicity, and social isolation.<sup>471</sup> Other victim risk factors, including gender, being aged 75 years or older, being financially dependent, cultural and

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<sup>470</sup> Adapted from Bonnie and Wallace (2003)

<sup>471</sup> Pillemer et al. (2016, p.5198); WHO (2015, p. 74)

linguistic diversity, and relationship, community and society risk factors, including geographical location, negative stereotypes of ageing, and cultural norms, have mixed or limited evidence.<sup>472</sup>

The cost of elder abuse is substantial, with the EAPU reporting \$309.8 million misappropriated in 263 cases of abuse by family and friends (trust relationships) in 2015–16.<sup>473</sup> Non-trust (for example, acquaintances, staff and professionals, etc.) financial abuse cases were an additional \$2.46 million. Including the cost of other types of abuse, such as neglect and psychological abuse, would only increase the financial impact. The overwhelming majority of service providers and stakeholders who participated in the research agreed that elder abuse is under-reported. In reports to the Queensland Elder Abuse Helpline, sons and daughters were determined to be the perpetrator in 72 per cent of cases where a ‘trust’ relationship existed, with people in ‘non-trust’ relationships, such as workers and acquaintances, responsible for 15 per cent of total abuse cases.<sup>474</sup>

### **10.3.1 Proposed directions**

The different types of abuse, victims’ vulnerabilities, perpetrators’ motivations and risk factors must all be considered when designing targeted interventions; these should also be based on empirical evidence from effectiveness studies. Services should be tailored to deal with the spectrum of abuse, and should understand that a ‘one-size-fits-all’ delivery is not always appropriate. Given the diversity of types of abuse and explanations for its occurrence, more research and focus on interventions with victims and perpetrators is required to provide effective alternatives to criminal justice approaches. The high prevalence of family perpetrators and victims’ reluctance to take legal action against them suggests it may be important to provide a range of family intervention options, including mediation and family relationship counselling, in addition to those already provided.

Preventative responses and interventions to abuse should utilise a socio-ecological framework (as discussed in Chapter 6) and take into account the complex characteristics of victims, perpetrators, and the relationship between them, as well as contextual factors of family, living arrangements and community and societal influences.

## **10.4 Service and system interventions and responses**

Several issues were identified in the elder abuse sector in relation to service system interventions and responses. Face-to-face contact with older people was seen as critical in prevention and early detection of elder abuse, and research participants suggested that in-home support workers could perform the important role of monitoring the older person’s wellbeing and also provide detailed information about the home situation. Social workers in the health system were seen as having a key role in educating other staff about assessing and managing risks of abuse during discharge, and the importance of multidisciplinary approaches to dealing with elder abuse was highlighted.

Inadequate monitoring of people receiving the Carer Allowance and Carer Payment was raised as an issue. It was suggested that more could be done to ensure people were not neglected by people who were more interested in receiving these benefits than providing adequate care. Problems with the My Aged Care referrals system were reported as putting people at risk of premature entry into residential aged care.

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<sup>472</sup> Ibid

<sup>473</sup> EAPU (2016)

<sup>474</sup> Ibid



The needs of diverse and vulnerable groups<sup>475</sup> deserve recognition and organisations should be adequately resourced to deal with these because overlapping vulnerabilities, such as disability and language barriers, may have a compounding effect.<sup>476</sup>

In recent years, concerns have been raised that elder abuse intervention models in Australia lack an evidence base, though a few localised studies have investigated the efficacy of certain interventions.<sup>477</sup>

Queensland (and Australia) lacks a consistent and coherent structure or framework for responding to elder abuse. This may hinder staff responses in this area, as well as older people's ability to seek help and support. While there are well-developed national responses in place for domestic violence<sup>478</sup> and child abuse,<sup>479</sup> and some work is being done within the disability sector to reduce violence, abuse and neglect of people with a disability,<sup>480</sup> there is nothing on this scale in regard to elder abuse. To date, responses are largely state-led and fragmented across different jurisdictions. This fragmentation and lack of national leadership is a hindrance to developing integrated responses to elder abuse.

#### **10.4.1 Proposed directions**

Given the evidence of an older person's shame and embarrassment in elder abuse situations, building trust between front-line workers and vulnerable older people is essential and should occur through relationship-based processes. It is important that there is time within workload allocations to build trust and rapport with older people, and to note that face-to-face interaction with the person, rather than a phone call, may prove more effective in prevention and early detection of elder abuse. There is also value in having appropriately skilled staff members to support the older person through any intervention process. Further research is required to evaluate and validate current elder abuse preventative interventions and responses, and ensure they are achieving desired outcomes and are responsive to older people's needs.

All organisations responding to elder abuse must have adequate needs-based funding and effective interorganisational processes to respond to the needs of diverse and vulnerable groups and individuals across the state, encompassing services in regional, rural and remote areas of Queensland, as well as metropolitan areas.

Given that many elder abuse intervention models in Australia lack an evidence base, it is important to examine current approaches in Queensland and nationally to determine their effectiveness, from the perspectives of service providers and also older people and their friends, families and carers.

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<sup>475</sup> Such as Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse communities, people with a disability (including a decision-making disability), people from the lesbian, gay, bisexual, transgender and intersex community, and people living in rural and remote areas. Gender has also been identified as a factor.

<sup>476</sup> Black Blundell and Clare M.(2012); EAPU (2005, 2014, 2015); Ethnic Communities' Council of Victoria (2009); Office of the Public Advocate (WA) (2005, 2006); Taskforce on Domestic and Family Violence in Queensland (2015); Tilse et al. (2011)

<sup>477</sup> Cripps (2001); Vrantsidis et al. (2016)

<sup>478</sup> National Plan to Reduce Violence against Women and their Children 2010–2022

<sup>479</sup> National Framework for Protecting Australia's Children 2009–2020

<sup>480</sup> Council of Australian Governments (2011); Zero Tolerance Framework can be found at [www.nds.org.au/resources/zero-tolerance](http://www.nds.org.au/resources/zero-tolerance)

Further exploration of effective best-practice responses used in other jurisdictions should also be conducted.

Elder abuse response frameworks in many Australian jurisdictions lack coordination because of the complex array of systems involved. It is vital that a mandated, transparent and accountable multiagency response framework is developed to improved interagency communication, and coordinate work in this area. This is recognised in other Queensland<sup>481</sup> and national<sup>482</sup> studies and reports, and is a frequently occurring recommendation. When developing policy frameworks and strategies to address elder abuse, it is worth considering how to incorporate more well-developed responses to family and domestic violence and the abuse and mistreatment of people with a disability.

Establishing an elder abuse adult protection unit and devising relevant adult protection legislation, as suggested by a South Australian report,<sup>483</sup> may be an effective way to coordinate and centralise responses. Other models described in Chapter 8 include categorising responses into primary, secondary and tertiary categories based on levels of risk and vulnerability, similar to the child protection sector's model. Another model involved a continuum of systemic methods of intervention with individuals and families. It is hoped that the outcomes of the Australian Law Reform Commission Inquiry's Final Report<sup>484</sup> will help establish a coherent and consistent national approach.

## **10.5 Education, training and information**

Education, training and information are important in promoting recognition of elder abuse issues and responses, for front-line staff and policy makers, as well as for older people, their families, carers and the wider community. These measures may also have a protective effect, and include the promotion of financial, retirement, and estate planning, as well as advanced care planning and advanced health directives. Education, information, training and awareness raising about elder abuse continues to be a prominent theme in proactive elder abuse prevention measures, and there is evidence this approach is effective.<sup>485</sup> Other research and reports also highlight the importance of education.<sup>486</sup>

### **10.5.1 Proposed directions**

Adequately resourcing organisations such as the EAPU and Seniors Legal and Support Services (SLSS) is extremely important so they can develop and provide targeted information and education to older people, their families, carers, staff, professionals and the wider community, as well as respond to elder abuse victims.

As public awareness about family and domestic violence has increased during the past few years, it would be helpful to highlight links between domestic violence and elder abuse. Incorporating

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<sup>481</sup> Carers Queensland (2016); EAPU (2014); Jackson L. (2009); Queensland Law Society (2011)

<sup>482</sup> Clare M. et al. (2011); Kaspiew et al. (2016)

<sup>483</sup> Office of the Public Advocate (SA) (2011)

<sup>484</sup> ALRC (2017)

<sup>485</sup> Daly et al. (2011)

<sup>486</sup> Crofton (2011); EAPU (2015); Guthrie and Watters (2008); Jackson L. (2009); McCawley et al. (2006); Office of the Public Advocate (QLD) (2016b); Office of the Public Advocate and Queensland Law Society (2010); Setterlund et al. (2007); Tilse et al. (2011); The Public Trustee of Queensland (2015); Uniting Care Community (2014); Westcott (2006)

illustrative examples in training and information materials would be beneficial because often people do not label what they have been experiencing or witnessing as abusive, especially when it is part of an established pattern of behaviour within a relationship or family.

Elder abuse education must be embedded in training for staff and professionals working with older people. Universities and other educational institutions should be encouraged to include it in curricula in health sciences (for example, nursing, medicine, social work, occupational therapy, dentistry, etc.) as well as law, accounting, and other relevant disciplines to enable students to understand, recognise and respond effectively to elder abuse. Also, service providers and professional associations should promote and include elder abuse education as part of annual continuing professional development programs.

Preventative measures such as multimedia public education campaigns, retirement planning, advanced care planning and advanced health directives are also important. There is an opportunity to consider a variety of ways to raise awareness of elder abuse, educate staff, and to define the appropriate responses of JPs, and in specific industries including real estate, banking and finance and the legal profession. Opportunities exist for organisations providing elder abuse information and education to collaborate with, and support, the activities of the Queensland Law Society and its Elder Law Committee, to enhance awareness of elder abuse among practitioners and law students.

Bank employees should be obliged to report suspected property and mortgage fraud involving property owned by older people. Although the issue of mandatory reporting is controversial, banks need to enhance a culture of caring for the security of older customers. The Australian Bankers' Association encourages its members to develop financial literacy programs. However, rather than a generic approach, there must be a specific focus on older bank customers. Bank staff also need to be taught how to recognise vulnerability in older customers and what to do about it. Strategies for detecting a customer's lack of capacity must be further developed.

## **10.6 Legislative responses**

The law relevant to elder abuse matters in Queensland is comprehensive and provides a generally accessible and robust legal framework. For example, in the legislative regime affecting EPOAs, the laws are superior to those in many other states in many respects. However, the elder abuse landscape is fluid and the Queensland Government and its relevant agencies need to stay attuned to developments to ensure the law remains adequate. Other reports recommend many legislative changes,<sup>487</sup> and several recommendations are echoed in the ALRC final report,<sup>488</sup> including the call for a national register of power of attorney documents. The ALRC makes recommendations about having consistent laws across states and territories, establishing a new serious incident response scheme, a national register of power of attorney documents, conducting a national prevalence study, and training for bank tellers to enable them to recognise financial abuse.<sup>489</sup>

### **10.6.1 Proposed directions**

This report makes several suggestions in regards to strengthening Queensland's legislative responses. Although the Criminal Code seems to address all areas of potential elder abuse, elder abuse matters pursued under the Criminal Code should be monitored by relevant agencies to assess

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<sup>487</sup> Elder Abuse Prevention Unit (2014); Guthrie and Watters (2008); Hann (2010); Office of the Public Advocate and Queensland Law Society (2010); Queensland Law Society (2011); The Public Trustee (2015)

<sup>488</sup> ALRC (2017)

<sup>489</sup> As discussed in Lewis (15 June 2017)

outcomes. If it appears that the provisions do not deal adequately with elder abuse matters, consideration could be given to formulating discrete sections dealing with elder abuse.

The Queensland Government could consider adopting Recommendation 6-1 of the ALRC (2017) Final Report regarding the extension of jurisdiction to tribunals in matters involving assets for care arrangements. It is also suggested that the Queensland Government:

- monitor the provisions of the POA Act to ensure it remains adequate to address EPoA misuse
- adopt the ALRC's recommendation regarding enhanced protections for older people entering into EPoAs
- participate in the creation of a national online register of enduring documents as noted in Recommendation 5-3
- encourage greater awareness and education among potential EPoAs.

A discussion could be convened with relevant stakeholders regarding the potential for, and scope of, an elder abuse reporting regimen. Participants should draw on appropriate responses in international jurisdictions to ensure appropriate whistleblower protection exists to protect persons who report elder abuse in good faith.

JPs roles and responsibilities in relation to elder abuse could be reviewed, and where needed, appropriate training provided.

There could also be an enhanced role for mediation and conciliation services in response to elder abuse. For example, mediation could be — except in circumstances where it would be deemed inappropriate — an essential first step in raising matters and a condition precedent to any elder abuse matter brought to the Tribunal as noted previously.<sup>490</sup> The Queensland Government has committed to exploring options for the development and implementation of supported elder mediation,<sup>491</sup> and should continue to support the design and implementation of the Dispute Resolution Branch's Elder Mediation Project, as outlined in Chapter 8.

## 10.7 Concluding remarks

*“As with all social problems, both legal and non-legal responses are necessary. Both have a role to play in preventing elder abuse and facilitating access to justice for older persons. Our community needs strong legislative safeguards, robust policy frameworks, well-resourced programs and services, and public awareness initiatives.”<sup>492</sup>*

The true prevalence of elder abuse in Queensland is difficult to determine because of under-reporting and a lack of awareness of the issue among some service providers, older people and their families, and the general community. Given the absence of a meaningful measure for 'elder abuse', there are also limitations to measurement. This report recommends that the Queensland Government does not undertake a Queensland-specific prevalence study at this time, but rather

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<sup>490</sup> This was also suggested by National Legal Aid (2016, p. 19) in its submission to the ALRC Inquiry.

<sup>491</sup> *Queensland: an age-friendly community* – Action Plan and implementation schedule (action 29) available at: [www.communities.qld.gov.au/communityservices/seniors/queensland-age-friendly-community](http://www.communities.qld.gov.au/communityservices/seniors/queensland-age-friendly-community)

<sup>492</sup> Office of the Public Advocate and Queensland Law Society (2010, p. iii)

focuses on filling identified gaps in service provision, and completes research to develop targeted prevention strategies for specific elder abuse problems. Activities should focus on developing a coherent and cohesive elder abuse response framework, examining best-practice service responses, proactive prevention, and strengthening policy, legislation, and practice to improve the lives of Queensland's older population.

Given the discussion of research findings in this chapter, it must be remembered that the research data collected focused on the views of managers, staff, and professionals. The views of older people experiencing elder abuse and abuse perpetrators were not an active component of this study, so their perspectives have not been included as firsthand information. It has been suggested that elder abuse response strategies should be prioritised according to older people's wants, even when they are cognitively impaired.<sup>493</sup> However, this may be an issue when the person does not believe they are being abused, does not want to take action against friends or family members, or there are inadequate responses available to cater to their wish of being able to preserve a relationship with the perpetrator. This difficulty has been wrestled with in relation to domestic violence, and recent changes in that sector take some onus off the victim in making decisions about prosecution. It has been suggested that responses could be improved by embedding into strategies the fact that crimes should always be treated as such and that victims should be encouraged to report them to the police, as well as other criminal behaviour.<sup>494</sup> Interagency collaboration and coordinated responses would have an impact here. In the family violence and child protection sectors, integrated responses are routine and mandated. Adult Protection Committees operate in a similar vein in Scotland,<sup>495</sup> as do Safeguarding Adults Boards in the UK.<sup>496</sup> Elder abuse agencies play a significant role in responses in Australia but lack power and resources to coordinate and lead responses, and have no statutory powers to become directly involved. Instead, they work outside the abusive relationship by providing information to the victim and linking them with services. There may be a role for an adequately funded and mandated organisation to operate as a 'one-stop shop' to coordinate elder abuse under a central contact point and to unify data collection and responses.

In the national context, Queensland is among the more proactive jurisdictions in identifying and raising awareness of elder abuse through *inter alia* prompt identification of elder abuse as an issue, a proactive SLSS network and Elder Law Committee within the Queensland Law Society, a repository of high-quality academic and professional research and, more recently, government preparedness to take carriage of the issue. However, on examination of previous Queensland research reports, it was noted that many of the proposed directions discussed in this report are not new. It must be asked why these recommendations have not been adopted, and what can be done to provide further impetus and resources for needed change.

The research team is optimistic about the response to this report. Elder abuse is on the national agenda because of the recently tabled ALRC Elder Abuse Inquiry Final Report<sup>497</sup>. Furthermore, the existing frameworks and the seeming willingness of various stakeholders and government to take action, means Queensland is in a position to play a leading role in implementing new legal and policy initiatives, including any national strategy that may arise from the ALRC recommendations.

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<sup>493</sup> Chesterman (2016)

<sup>494</sup> Ibid

<sup>495</sup> Chesterman (2013)

<sup>496</sup> Age UK (2016)

<sup>497</sup> ALRC (2017)

During a forum on global violence prevention in 2014, Marie-Therese Connolly, a lawyer and elder abuse scholar, proposed seven actions to continue to progress the field of elder abuse prevention:<sup>498</sup>

1. Develop policy to recognise elder abuse as a public health issue.
2. Address research priorities critical to inform policy and practice: intervention, defining success, prevention, data collection, and cost.
3. Translate what is known into practice.
4. Address the resources issue.
5. Implement law and develop policy infrastructure.
6. Develop a political constituency.
7. Promote innovation.

Some work has already been done in individual states and federally and it is hoped that this report's findings will prompt the dedication of further resources and funding to develop overarching and integrated responses.

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<sup>498</sup> Connolly (2014)

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## Appendices

### Appendix 1 Australian legislation relevant to elder abuse

#### Criminal Legislation

Western Australia	Queensland	South Australia	New South Wales	Australian Capital Territory	Northern Territory	Victoria	Tasmania
Protection Orders							
<i>Restraining Orders Act 1997</i>	<i>Domestic and Family Violence Protection Act 2012</i>	<i>Intervention Orders (Prevention of Abuse) Act 2009</i>	<i>Crimes (Domestic and Personal Violence Act 2007)</i>	<i>Domestic Violence and Protection Orders Act 2008</i>	<i>Domestic and Family Violence Act 2007</i>	<i>Family and Domestic Violence Act 2008</i>	<i>Family Violence Act 2004</i>
Criminal Offences							
<i>Criminal Code 1913</i>	<i>Criminal Code 1899</i>	<i>Criminal Law Consolidation Act 1935</i>	<i>Crimes Act 1900</i>	<i>Criminal Code 2002</i>	<i>Criminal Code Act 1983</i>	<i>Crimes Act 1958</i>	<i>Criminal Code Act 1924</i>

#### Civil Legislation

Western Australia	Queensland	South Australia	New South Wales	Australian Capital Territory	Northern Territory	Victoria	Tasmania
Ill-Treatment / Neglect							
<i>Mental Health Act 2014</i>	<i>Mental Health Act 2000</i>	<i>Mental Health Act 2009</i>	<i>Mental Health Act 2007</i>	<i>No provision</i>	<i>No provision</i>	<i>No provision</i>	<i>Mental Health Act 2013</i>
<i>Guardianship and Administration Act 1990</i>	<i>Guardianship and Administration Act 2000</i>	<i>Guardianship and Administration Act 1993</i>	<i>NSW Trustee and Guardianship Act 2009 Guardianship Act 1987</i>	<i>Guardianship and Management of Property Act 1991</i>	<i>Adult Guardianship Act Aged and Infirm Persons Property Act</i>	<i>Guardianship and Administration Act 1986</i>	<i>Guardianship and Administration Act 1995</i>



Western Australia			
<i>Restraining Orders Act 1997</i>	Part 2 — Violence restraining order	11	Violence restraining order to specify names of person bound, and person protected by order
		11A	When violence restraining orders may be made
		12	Matters to be considered by court
		13	Restraints on respondent
		16	Duration of violence restraining order
		30	Restraints that may be made (police order)
		34	Grounds for misconduct restraining order
<i>Criminal Code Act 1913</i>	Chapter XXVI — Assaults and violence to the person generally: justification, excuse and circumstances of aggravation	221	Term used: circumstances of aggravation
		222	Term used: assault
		223	Assault is unlawful
	Chapter XXVII — Duties relating to the preservation of human life	262	Duty to provide the necessaries of life
		263	Duty of head of family
		267	Duty to do certain acts
	Chapter XXVIII — Homicide, suicide, concealment of birth	268	Killing a person is unlawful
		270	Term used: kill
		272	Causing death by threat
		273	Acceleration of death
		274	Death from bodily injury that might have been avoided or prevented
		275	Death from, or from treatment of, grievous bodily harm
		277	Unlawful homicide is murder or manslaughter
		279	Murder
		280	Manslaughter
		281	Unlawful assault causing death
		283	Attempt to unlawfully kill
284	Culpable driving (not of motor vehicle) causing death or grievous bodily harm		

		288	Procuring, etc., suicide
	Chapter XXIX — Offences endangering life or health	292	Disabling to commit indictable offence, etc.
		293	Stupefying to commit indictable offence, etc.
		294	Act intended to cause grievous bodily harm or prevent arrest
		297	Grievous bodily harm
		301	Wounding and similar acts
		305A	Intoxication by deception
		Chapter XXX — Assaults	313
	317		Assault causing bodily harm
	317A		Assault with intent
	318		Serious assault
	Chapter XXXI — Sexual offences	319	Terms used
		324	Aggravated indecent assault
		326	Aggravated sexual penetration without consent
		328	Aggravated sexual coercion
		329	Relatives and the like, sexual offences by
		330	Incapable person, sexual offences against
		331B	Sexual servitude
		331C	Conducting business involving sexual servitude
	Chapter XXXIII — Offences against liberty	331D	Deceptive recruiting for commercial sexual servitude
		332	Kidnapping
		333	Deprivation of liberty
		336	Procuring apprehension or detention of person not suffering from mental illness or impairment
	Chapter XXXIIIA — Threats	337	Unlawful detention or custody of person who is mentally ill or impaired
		338	Term used: threat
		338A	Threat with intent to gain, etc.
		338B	Threats

		338C	Statement or act creating false apprehension to existence of threat or danger
Chapter XXXIIIB — Stalking		338D	Terms used
		338E	Stalking
Chapter XXXVI — Stealing		370	Things capable of being stolen
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<b>New South Wales</b>			
<i>Crimes (Domestic and Personal Violence) Act 2007</i>	Part 1 — Preliminary	4	Meaning of ‘personal violence offence’
		5	Meaning of ‘domestic relationship’
		6	Meaning of ‘relative’
		7	Meaning of ‘intimidation’
		8	Meaning of ‘stalking’
	Part 3 — Domestic violence and other offences	11	Meaning of ‘domestic violence offence’
		12	Recording of domestic violence offences
		13	Stalking or intimidation with intent to cause fear of physical or mental harm
		14	Offence of contravening apprehended violence order
	Part 4 — Apprehended domestic violence orders	15	Application for making of apprehended domestic violence order by court
		16	Court may make apprehended domestic violence order
		17	Matters to be considered by court
	Part 5 — Apprehended personal violence orders	18	Application for making of apprehended personal violence order by court
		19	Court may make apprehended personal violence order
		20	Matters to be considered by court
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		28A	Making of provisional order by senior police officer
		29	Provisional order taken to be application for court order
		30	Recording of provisional order
		31	Service
		32	Duration
		33	Variation or revocation of provisional order on application of police officer
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		34	Purported renewal or continuance
		34A	Defects in interim apprehended domestic violence orders
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		74	Variation or revocation of final apprehended violence orders and interim court orders where more than one protected person

		75	Variation may be made on guilty plea or guilt finding for certain offences
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		77	Service of copy of apprehended violence order, interim court order or variation or revocation of any such order
		78	Orders made with the consent of parties
		79	Duration of final apprehended violence orders
		80	Enforcement of orders for payment of money
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		82	Arrangements regarding classification of orders
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<i>Mental Health Act 2014</i>	Part 16 — Protection of Patients' Rights	253	Duty not to ill-treat or wilfully neglect patients
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<i>Guardianship and Administrations Act 1990</i>	Part 9 — Enduring Powers of Attorney	107	Obligations of donee
	Part 10 — Miscellaneous provisions	114	Immunity

## Australian mandatory reporting legislation

State	Designated person	Types of abuse	Legal provisions
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>• a doctor</li> <li>• a dentist</li> <li>• a nurse</li> <li>• an enrolled nurse</li> <li>• a midwife</li> <li>• a psychologist</li> <li>• a teacher at a school</li> <li>• a person authorised to inspect education programs, materials or other records used for home education of a child or young person under the <i>Education Act 2004</i></li> <li>• a police officer</li> <li>• a person employed to counsel children or young people at a school</li> <li>• a person caring for a child at a child care centre</li> <li>• a person coordinating or monitoring home-based care for a family day care scheme proprietor</li> <li>• a public servant who, in the course of employment as a public servant, works with or provides services personally to children and young people or families</li> <li>• the public advocate</li> <li>• an official visitor</li> <li>• a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation.</li> </ul>	Physical abuse Sexual abuse	Section 356: <i>Children and Young People Act 2008 (ACT)</i>  Belief on reasonable grounds
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>• A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children; and</li> <li>• A person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of,</li> </ul>	Physical abuse Sexual abuse Emotional abuse Neglect Exposure to domestic violence	Sections 23 and 27: <i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>  Belief on reasonable grounds





	<ul style="list-style-type: none"> <li>any other person who is an employee/volunteer in a government or non-government organisation that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children, being a person who is actively engaged in the delivery of those services to children or who holds a management position in the relevant organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children</li> </ul>		
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>registered medical practitioners</li> <li>nurses</li> <li>midwives</li> <li>dentists, dental therapists, dental hygienists or oral health therapists</li> <li>registered psychologists</li> <li>police officers</li> <li>probation officers</li> <li>principals and teachers in any educational institution including kindergartens</li> <li>persons who provide child care or a child care service for fee or reward</li> <li>persons concerned in the management of a child care service licensed under the <i>Child Care Act 2001</i></li> <li>any other person who is employed or engaged as an employee for, of, or in, or who is a volunteer in, a government agency that provides health, welfare, education, child care or residential services wholly or partly for children, and an organisation that receives any funding from the Crown for the provision of such services</li> <li>any other person of a class determined by the Minister by notice in the <i>Gazette</i> to be prescribed persons</li> </ul>	Physical abuse Sexual abuse Emotional / psychological abuse Neglect Exposure to domestic violence	Sections 3, 4 and 14: <i>Children, Young Persons and Their Families Act 1997</i> (Tas.)
<b>Victoria</b>	<ul style="list-style-type: none"> <li>registered medical practitioners</li> <li>nurses</li> <li>midwives</li> <li>a person registered as a teacher or an early childhood teacher under the <i>Education and Training and Reform Act 2006</i> or teachers granted permission to teach under that Act</li> </ul>	Physical abuse Sexual abuse	Sections 182(1)(a)-(e), 184 and 162(c)-(d): <i>Children, Youth and Families Act 2005</i> (Vic.)

	<ul style="list-style-type: none"> <li>principals of government or non-government schools within the meaning of the <i>Education and Training Reform Act 2006</i></li> <li>police officers</li> </ul>		
	<ul style="list-style-type: none"> <li>any adult</li> </ul>	Sexual offence	Section 327: <i>Crimes Act 1958</i> (Vic.)
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>doctors</li> <li>nurses and midwives</li> <li>teachers or boarding supervisors</li> <li>police officers</li> <li>court personnel</li> <li>family counsellors</li> <li>family consultants</li> <li>family dispute resolution practitioners, arbitrators or legal practitioners independently representing the child's interests</li> </ul>	Sexual abuse	Sections 124A and 124B: <i>Children and Community Services Act 2004</i> (WA)
		Physical abuse Sexual abuse Neglect	Sections 5, 160: <i>Family Court Act 1997</i> (WA)

## Appendix 2 International legislation relevant to elder abuse

### Canada

**Overview\*\*** Elder abuse in Canada is treated the same as domestic and family violence and all applicable provisions to family and domestic violence can be used for cases of elder abuse. All provinces in Canada have their own corresponding state legislation that tackles elder abuse and operates on the basis of the same premise that the elderly are vulnerable persons in society who are especially vulnerable to abuse and neglect.

Varying provinces have different legislation that allows for mandatory reporting of elder abuse; there are designated agencies in each province that can respond, investigate and report on cases of elder abuse.

There are corresponding Criminal Convictions for Elder Abuse that come within the Criminal Code ambit and there are varying civil penalties under varying statutes that aim to deter elder abuse in communities and residential care facilities.

Guardianship, administration and trustee Acts provide for civil penalties to those convicted of elder abuse under corresponding legislation as well as other complimentary legislation.

#### **Criminal Code provisions:**

- S 265 Physical assault
- S 271 Sexual assault
- S 264.1 Uttering threats
- S 279 Unlawful confinement
- S 215 Failing to provide the necessaries of life
- S 334 Theft
- S 380 Fraud
- S718.2(a)(i): if a person has victimised an older adult, a judge might take the age of the victim into account when making a sentencing decision. If a person convicted of a crime has intentionally targeted an older adult because they were perceived to be vulnerable or weak, or victimised a community of older adults, then sentencing might be harsher.

### **British Columbia**

#### 1. Key legislation

- *Adult Guardianship Act*, R.S.B.C. 1996, c. 6
- *Adult Guardianship Act*, Designated Agencies Regulation, B.C. Reg. 19/2002
- *Community Care and Assisted Living Act*, R.S.B.C. 2002, c. 75 (CCALA)
- *CCALA Residential Care Regulation*, B.C. Reg 96/2009, Schedule D
- *Health Professions Act*, R.S.B.C. 1996, c.183
- *Personal Information Protection Act*, R.S.B.C. 2003, c. 63 (PIPA)
- *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 2003, c. 165 (FOIPPA)

There is no general public duty to report abuse in the province. According to the *Adult Guardianship Act* (s. 46), any person may notify a designated agency when an older adult is being abused or neglected and is unable to seek support and assistance.

Under the *Health Professions Act*, all health professionals, including nurses, occupational therapists and dental hygienists, are required to report to their registrar client or patient abuse of older adults by another health professional where:

- the abusive behaviour is a form of sexual misconduct, (s. 32.4) or
- the professional believes the person is a danger to the public (s. 32.2).

## **Alberta**

### 1. Key legislation

- *Protection for Persons in Care Act*, R.S.A., 2009, c. P-29.1 .
- *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27
- *Health Information Act* , R.S.A. 2000, c. H-5
- *Personal Information Protection Act* , R.S.A. 2003, c. P-6.5 (PIPA)
- *Freedom of Information and Protection of Privacy Act* , R.S.A. 2000, c. F-25 (FOIPPA)

## **Saskatchewan**

### 1. Key legislation

- *The Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02
- *The Public Guardian and Trustee Act*, S.S. 1983, c. P-36.3
- *The Personal Care Homes Regulations*, R.R.S. C. P-6.01 Reg. 2
- *The Health Information Protection Act* , S.S. 1999, H-0.021
- *The Freedom of Information and Protection of Privacy Act* , S.S. 1990-91, c. F-22.01 (FOIPPA)
- *The Local Authority Freedom of Information and Protection of Privacy Act* , S.S. 1990-91, c. L-27.1 (LAFOIPPA)
- *Personal Information Protection and Electronic Documents Act* , S.C. 2000, c. 5 (Federal Act)

## **Manitoba**

### 1. Key legislation

- *The Protection for Persons in Care Act* , C.C.S.M. c. P144
- *The Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c. V90 (The Vulnerable Persons Act)
- *The Personal Health Information Act* , C.C.S.M. c. P.33.5
- *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175 (FOIPPA)
- *Personal Information Protection and Electronic Documents Act* , S.C. 2000, c. 5 (Federal Act)

## **Ontario**

### 1. Key legislation

- *Long-term Care Homes Act, 2007* , S.O. 2007, c. 8
- *Long-term Care Homes Act General O.Reg. 79/10* (Long-term Care Regulations)
- *Personal Health Information Protection Act*, S.O 2004, c.3
- *Freedom of Information and Protection of Privacy Act* , R.S.O. 1990, c. F.31 (FOIPPA)

- *Municipal Freedom of Information and Protection of Privacy Act* , R.S.O. 1990, c. M.56 (MFOIPPA)
- *Personal Information Protection and Electronic Documents Act* , S.C. 2000, c. 5 (Federal Act)
- *Regulated Health Professions Act*, 1991, S.O. 1991, c. 1

## Québec

### 1. Key legislation

- *Charter of Human Rights and Freedoms* , R.S.Q. c. C-12, art. 48 (Charter)
- *An Act respecting access to documents held by public bodies and the protection of personal information*, R.S.Q. c. A-2.1 (Public Sector Personal Information Act)
- *An Act respecting the protection of personal information in the private sector*, R.S.Q., c. P-39.1 (Private Sector Personal Information Act)
- *Code of ethics of occupational therapists*, R.R.Q. 1981, c. C-26, r.78 (OT Code)
- *Code of ethics of members of the Ordre des hygienistes dentaires du Québec* , 1997 G.O.Q. 2, 2260 (Hygienists' Code)
- *Professional Code*, R.S.Q. c. C-26
- *Code of ethics of advocates* , R.R.Q. 1981, c. B-1, r.1

## Nova Scotia

### 1. Key legislation

- *Adult Protection Act*, R.S.N.S 1989, c. 2
- *Protection for Persons in Care Act* , S.N.S. 2004, c. 33
- *Protection for Persons in Care Regulations* , N.S. Reg. 364/2007
- *Domestic Violence Intervention Act* , S.N.S. 2001, c. 29
- *Freedom of Information and Protection of Privacy Act* , S.N.S. 1993, c. 5
- *Personal Information Protection and Electronic Documents Act* , S.C. 2000, c. 5 (Federal Act)

## New Brunswick

### 1. Key legislation

- *Family Services Act* , S.N.B. 1980, c. F-2.2
- *Personal Health Information Privacy and Access Act* , S.N.B. 2009, c. P-7.05
- *Personal Information Protection and Electronic Documents Act* , S.C. 2000, c. 5 (Federal Act)

## Prince Edward Island

### 1. Key legislation

- *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5
- *Victims of Family Violence Act* , R.S.P.E.I. 1988, c. V-3.2
- *Freedom of Information and Protection of Privacy Act* , R.S.P.E.I. 1988, c. F-15.01 (FOIPPA)
- *FOIPPA General Regulations*, P.E.I. Reg. EC564/02 (FOIPPA Regulations)

- *Hospitals Act*, R.S.P.E.I. 1988, c. H-10.1
- *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (Federal Act)

## **Newfoundland**

### 1. Key legislation

- *Neglected Adults Welfare Act*, R.S.N.L. 1990, c. N-3.
- *Personal Health Information Act*, S.N.L. 2008, c. P-7.01
- *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1 (AIPPA)
- *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (Federal Act)
- *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1

## **Northwest Territories**

### 1. Key legislation

- *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24
- *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c. 20 (AIPPA)
- *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (Federal Act)

## **Yukon**

### 1. Key Legislation

- *Adult Protection and Decision Making Act*, S.Y. 2003, c. 21, Sch. A.
- *Family Violence Prevention Act*, R.S.Y. 2002, c. 84
- *Access to Information and Protection of Privacy Act*, R.S.Y. 2002, c.1 (AIPPA)
- *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (Federal Act)

## **Nunavut**

### 1. Key legislation

- *Family Abuse Intervention Act*, S.Nu. 2006, c. 18
- *Family Abuse Intervention Regulations*, N.W.T. (Nu) 006-2008 (Family Abuse Regulations)
- *Access to Information and Protection of Privacy Act*, S.N.W.T. (Nu) 1994, c. 20 (AIPPA)
- *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (Federal Act)

## New Zealand

New Zealand has a single national legislative structure so laws apply nationwide. Consequently, New Zealand does not have to deal with the barrier to uniform elder abuse prevention that Canada faces as a result of having different pieces of legislation from province to province.

No legislation in New Zealand is directed specifically towards the prevention of elder abuse and neglect. However, these issues are addressed through an Elder Abuse and Neglect Prevention system, family violence prevention strategies and initiatives and, similar to Canada, the UK and Australia, through the criminal law and civil systems.

*Protection of Personal and Property Rights Act 1988*  
*Mental Health (Compulsory Assessment and Treatment) Act 1992*

As a result of its unitary government structure, the New Zealand response to elder abuse is less complex than that of Australia, Canada or the United States. New Zealand law contains power of attorney legislation, domestic violence and mental health legislation that impact on elder abuse, capturing, respectively, financial abuse, family violence and abuse of care facility residents; however, none of these laws define 'elder abuse' *per se*.

Recent amendments to New Zealand's *Crimes Act* impose obligations, a breach of which will offend the criminal law on persons in a caring role and also those living in the same home in which abuse is occurring<sup>[1]</sup>.

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<sup>[1]</sup> Section 2, 150A, 151, 195, 195A *Crimes Act 1961 (NZ)*



## United Kingdom

Sections 42-46 and Schedule 2 of the *Care Act 2014* and chapter 14 of the Care and Support Statutory Guidance address elder abuse issues.

The Act holds that local authorities are the lead safeguarding agencies and are generally the first point of contact for raising concerns. Until the Act came into force in April 2015, there was no law dealing specifically with safeguarding adults who might be at risk of abuse or neglect.

The aims of government safeguarding policy are to:

- stop abuse and neglect where possible
- prevent harm and reduce the risk of abuse and neglect
- safeguard adults in a way that supports them in making choices and having control about how they want to live
- concentrate on improving life for the person concerned
- raise public awareness so communities play a role alongside professionals
- provide accessible information and support about how to stay safe and how to raise a concern
- address the cause of the abuse and neglect.

There are three specific legal duties in the *Care Act 2014*:

- 1) A local authority has a duty to 'make enquiries' where there is 'reasonable cause' to suspect an adult with care and support needs is being abused or neglected or is at risk of being abused or neglected (Section 42).
- 2) Each local authority must set up a 'Safeguarding Adults Board', which is a multiagency body to help and protect adults in its area (Section 43).
- 3) Safeguarding Adult Boards have a duty to arrange for case reviews where there has been a serious safeguarding incident (Section 44).

In addition to more common criminal offences, the following legislation may be relevant:

**Section 44 *Mental Capacity Act 2005***; wilful neglect or ill-treatment of a person lacking mental capacity

**Section 127 *Mental Health Act 1983***; wilful neglect or ill-treatment of a patient

**Sections 135 and 136 *Mental Health Act 1983***; removal to a place of safety

***Mental Health Act 1959***; offences predating implementation of the *Sexual Offences Act 2003*, unlawful sexual intercourse with patients/residents suffering mental disorders

***Corporate Manslaughter and Corporate Homicide Act 2007***; gross breach of duty of care causing a person's death

**Sections 58 and 63 *Medicines Act 1968***; supplying/administering/altering the substance of medicinal products

**Section 4 *Fraud Act 2006***; abuse of position

**Section 5 Domestic Violence, Crime and Victims Act 2004;** causing or allowing the death of a vulnerable adult

**Health and Safety at Work Act 1974;** Sections 24 and 25 *Care Standards Act 2000*; failing to comply with conditions / contravention of regulations

**Safeguarding Vulnerable Groups Act 2006;** established the Independent Safeguarding Authority (ISA) and new vetting / barring scheme for those working with children / vulnerable adults. Replaces POVA and POCA schemes.

**Public Interest Disclosure Act 1998;** protection for whistleblowers

**National Assistance Act 1948;** removal of a person from their home if suffering chronic disease or unsanitary conditions and not receiving proper care or attention

#### **Section 44 Mental Capacity Act 2005**

A person commits an offence if they ill-treat or wilfully neglect a person who lacks mental capacity or whom they believe lacks mental capacity and that person has the care of the other person or is the attorney of a lasting power of attorney, or an enduring power of attorney created by the person who lacks capacity, or is a deputy appointed by the court for the person who lacks capacity.

The offence is triable either way and carries a maximum penalty on indictment of five years imprisonment and/or a fine.

A person lacks mental capacity if, at the material time, they are unable to make a decision for themselves because of an impairment of, or a disturbance in the functioning of, the mind or brain.

#### Section 2(1)

It is immaterial if the impairment or disturbance is permanent or temporary: section 2(2).

A lack of capacity cannot be established merely by reference to a person's age or appearance, or by a condition, or an aspect of behaviour which might lead others to make unjustified assumptions about capacity: section 2(3).

The question of whether a person lacks capacity within the meaning of the Act is to be decided on the balance of probabilities: section 2(4). Accordingly, there must be evidence to support the fact that the person lacked mental capacity at the time the offence was committed against them.

Even if the victim has capacity, it will still be an offence if the person who has the care of them reasonably believed they lacked capacity and ill-treated or neglected the victim. Reasonable belief means that, in all the circumstances, a reasonable person would believe that the victim lacked capacity.

The Act applies to everyone who looks after or cares for someone who lacks mental capacity. This includes those who have the day-to-day care of that person as well as those who only have very short-term care, whether they are family carers, professional carers or other carers. See Annex B of the Guidance and the Code of Practice for the *Mental Capacity Act* for further information.

The Act does not define 'ill-treatment' and 'wilful neglect'; therefore, these concepts should be given their ordinary meaning. For assistance on what constitutes 'wilful neglect', reference should be made to Archbold 2008 paragraphs 17-47/48 and 19-300/303 which deal with 'wilful neglect' and 'ill treatment' of children.

A person who has genuinely failed to appreciate that, for example, the other person needed medical care through, for example, personal inadequacy, is not guilty of the offence of wilful ill-treatment/neglect (see Archbold 2008 17-48.)

Offences of ill-treatment and wilful neglect are continuing offences: *R. v. Hayles* [1969] 1 Q.B. 364, 53 Cr.App.R. 36, CA.

For the indictment, 'ill-treatment' and 'wilful neglect' should feature in separate counts. Under the Code for Crown Prosecutors, if the evidential test is met in wilful neglect or ill-treatment cases; the public interest will nearly always demand that a prosecution occurs, due to the position of trust that the suspect held in relation to the victim, as well as the victim's extreme vulnerability.

See also the Legal Guidance chapter 'Offences Against the Person' for further guidance on Section 44 of the *Mental Capacity Act 2005*.

### ***Mental Health Act 1983***

A person lacking capacity will have a mental disorder; however, the converse is not necessarily true.

Where a person with a mental disorder has been the victim of ill-treatment or wilful neglect but does not lack capacity for the purposes of Section 44 of the *Mental Capacity Act 2005*, prosecutors may wish to consider whether Section 127 of the *Mental Health Act 1983* is applicable to the facts of the case.

Section 127 deals with the ill-treatment or wilful neglect of mentally disordered patients within hospitals or nursing homes or otherwise in a person's custody or care.

The Director's consent is required for such prosecutions: Section 127(4).

'Patient' is defined in Section 145 of the Act as "a person suffering or appearing to be suffering from a mental disorder".

'Mental disorder' is defined in Section 1(2) of the Act (as amended by the *Mental Health Act 2007*) as "any disorder or disability of the mind".

Section 127(1) provides that it is an offence for any person who is an officer on the staff of, or otherwise employed in, or who is one of the managers of, a hospital, independent hospital or care home to:

- a) ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an inpatient in that hospital or home; or
- b) ill-treat or wilfully to neglect on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.

Sections 127(2) and (2A) make similar provision for patients subject to after-care under supervision and patients subject to guardianship under this Act, or otherwise in the custody or care (whether by virtue of any legal or moral obligation or otherwise) of the person.

The offences are triable either way and carry a maximum penalty on indictment of five years' imprisonment and/or a fine for offences committed after 1 October 2007, or two years and/or a fine for offences committed before then.

Section 135 allows a warrant to be obtained from a JP authorising the police to enter any place within the JP's jurisdiction and remove any person suffering from a mental disorder to a place of safety if the police suspect the individual is unable to care for themselves or is being ill-treated or neglected.

Section 136 provides for the removal to a place of safety of a mentally disordered person found in a public place.

### ***Mental Health Act 1959***

For offences pre-dating the implementation of the *Sexual Offences Act 2003*, Section 128 deals with unlawful sexual intercourse with patients/residents suffering mental disorder.

### ***Corporate Manslaughter and Corporate Homicide Act 2007***

This Act came into force throughout the United Kingdom on 6 April 2008. Where any of the conduct or events alleged to constitute the offence occurred before 6 April 2008, pre-existing common law will apply.

Section 1(1) provides that an organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised (a) causes a person's death and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

Section 1(3) provides that an organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1). The offence is triable only in indictment and, on conviction, the court may impose an unlimited fine (Section 1(6) )

The Director's consent is required for proceedings: (see section.17).

Cases which may result in proceedings for corporate manslaughter, with the exception of unincorporated partnerships, must be referred to the Special Crime Division, CPS Headquarters, so an overview of all cases can be maintained. Casework location thereafter will depend on the complexity and sensitivity of each individual case.

The new offence is intended to work in conjunction with other offences, such as, gross negligence manslaughter, for individuals and other health and safety breaches.

### ***Medicines Act 1968***

Section 58 provides that, subject to the following provisions of this section:

(a) no person shall sell by retail, or supply in circumstances corresponding to retail sale, a medicinal product of a description, or falling within a class, specified in an order under this section, except in accordance with a prescription given by an appropriate practitioner; and

(b) no person shall administer (other than to himself) any such medicinal product unless they are an appropriate practitioner or a person acting in accordance with the directions of an appropriate practitioner.

Section 63 provides that no person shall:

(a) add any substance to, or abstract any substance from, a medicinal product so as to affect injuriously the composition of the product, with intent that the product shall be sold or supplied in that state, or

(b) sell or supply, or offer or expose for sale or supply, or have in his possession for the purpose of sale or supply, any medicinal product whose composition has been injuriously affected by the addition or abstraction of any substance.

#### ***Fraud Act 2006***

Section 4(1) provides that, with effect from 15 January 2007, a person commits fraud by abuse of position if they:

- (a) occupies a position in which they are expected to safeguard, or not to act against, the financial interests of another person
- (b) dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position
  - (i) to make a gain for themselves or another, or
  - (ii) to cause loss to another or to expose another to a risk of loss.

Section 4(2) provides that a person may be regarded as having abused their position even though their conduct consisted of an omission rather than an act.

#### ***Domestic Violence, Crime and Victims Act 2004***

Section 5 of this Act creates an offence of causing or allowing the death of a child under the age of 16 or of a vulnerable adult. This standalone offence imposes a duty upon members of a household to take reasonable steps to protect children or vulnerable adults within that household from the foreseeable risk of serious physical harm from other household members. It is an offence triable only on indictment and carries a maximum sentence of 14 years imprisonment or a fine, or both: section 5(7).

The phrase 'member of same household' is defined in section 5(4)(a) of the Act. People who live together in a family arrangement will clearly be members of the same household. Additionally, a person can be a member of a particular household even if he or she does not live there, provided that they visit it so often and for such periods of time that it is reasonable to regard them as a member of that household. This is a question to be judged on the particular facts of the case.

Where a victim lives in different households at different times, 'the same household as the victim' refers to the household in which the victim was living at the time of the act that caused

their death. To establish the perpetrator's liability under this offence, the prosecution must prove not only that the perpetrator was a member of the same household as the victim but also that they had frequent contact with the victim. Until some case law develops on the point, what amounts to 'frequent' contact will also remain a question of fact and degree in each case.

The term: 'household' is not defined in the Act. It is possible that the facts of a particular case could lead to, for example, a small, private care home being considered to fall within the term, given that the offence was: "*drafted with the idea that member of the household will know enough about the activities of other members that they can be expected to be aware of the risk to the victim and take action. They are 'complicit' in the offence, either directly or by proximity, through standing by during the preceding abuse or neglect and doing nothing.*" (Minister of State, Home Office, House of Lords).

For the purposes of this offence, a vulnerable adult is defined as a person aged 16 or older whose ability to protect themselves from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, old age or otherwise (Section 5(6)). This is a wider definition than that applied to vulnerable witnesses in the *Youth Justice and Criminal Evidence Act 1999*.

#### ***Health and Safety at Work Act 1974***

Health and safety offences are usually prosecuted by the Health and Safety Executive, the local authority or other enforcing authority. The Crown Prosecution Service may also prosecute health and safety offences, but usually does so only when prosecuting other serious offences, such as manslaughter arising out of the same circumstances.

#### ***Care Standards Act 2000***

A registered person or company may be cautioned or prosecuted by the Commission for Social Care and Inspection (CSCI) for an offence under Part II of the Act or associated Regulations.

Sections 24 and 25 concern the offences of failing to comply with conditions and contravention of Regulations, the penalties for which are (currently) a fine not exceeding levels four and five respectively.

Section 20 provides that where there is a serious risk to life, health or wellbeing, an order may be obtained by the Commission for Social Care Inspection for the immediate closure of the home or service.

Proceedings for offences under this part of the Act or Regulations made under it cannot, without the Attorney General's written consent, be taken by any person other than (a) the Commission or in relation to any functions of the Commission which the Secretary of State is by virtue of section 113 for the time being discharging, the Secretary of State; or (b) the Assembly.

Proceedings for an offence under this part of the Act or Regulations made under it may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings can be brought more than three years after the commission of the offence.

For example, if sufficiency of knowledge occurred two years and 11 months after the offence had been committed, the prosecutor would have to bring proceedings within the next month, that is, within the three-year limit.

### ***Safeguarding Vulnerable Groups Act 2006***

This Act created the Independent Safeguarding Authority (ISA) and introduces a new vetting and barring scheme for those who work with children and vulnerable adults, which will replace the existing Protection of Vulnerable Adults (POVA) and Protection of Children Act (POCA) schemes.

From 12 October 2009, those who are judged to pose a risk to children or vulnerable adults will be prevented from obtaining access to them via paid or unpaid work. Penalties for those employers who fail in their responsibility to carry out the necessary checks or who recruit people who are not members of the scheme include fines of up to GBP5000. It will be a criminal offence for a barred individual to seek a job in regulated activity working in close contact with children or with vulnerable adults, for example, those receiving health or social care services.

### ***Public Interest Disclosure Act 1998***

Since July 1999, whistleblowers have been protected by this Act. In particular, Section 43B(d) provides for workers to report suspicions that the health or safety of any individual has been, or is being, or is likely to be endangered.

Six types of wrongdoing are covered by the Act: a criminal offence; the breach of a legal obligation; a miscarriage of justice; a danger to the health or safety of any individual; damage to the environment; or deliberate covering up of information tending to show any of the above five matters.

The worker must reasonably believe that the wrongdoing is happening currently, took place in the past, or is likely to happen in the future. The belief need not be correct but must be reasonably held.

The Act does not apply to work covered by the *Official Secrets Act*, or to members of the Armed Forces or Intelligence Services, the self-employed or volunteers.

### ***National Assistance Act 1948***

Section 47 enables the local authority to remove a person from their home if suffering chronic disease or unsanitary conditions and not receiving proper care or attention.

## **Appendix 3 Interview schedule**

1. How does your organisation define elder abuse?

Prompts:

- explore setting — community versus residential
- consider position of trust — family/friend versus paid staff.

2. In what capacity does your organisation work directly or indirectly in relation to elder abuse?

Prompts:

- How do cases of elder abuse come to the attention of your organisation?
- What is your role in relation to elder abuse in this organisation?

3. Does your organisation have an elder abuse protocol or policy and procedure? To your knowledge, is this used and followed?

4. Can you give an example of a typical elder abuse case that is dealt with by your organisation and describe how it was handled by you/your organisation?

5. Can you give an example of a case that ‘fell through the cracks’ or was not handled well by your organisation?

6. Do you believe that your organisation has the capacity to work effectively in reference to elder abuse? (Why/why not? What is your evidence for this?)

7. Other than the list of organisations provided, what other services and interagency forums are you aware of that work with elder abuse? Are you aware of any gaps or duplications?

8. Do you believe elder abuse is under-reported in Queensland?

- If yes, why do you believe people don’t report it? (Barriers)
- If no, what makes it easier for people to report it? (Facilitators)
- On what do you base this opinion?

9. Does your organisation have the capacity to work effectively with people experiencing/perpetrating elder abuse from diverse and vulnerable groups such as:

- Aboriginal and Torres Strait Islander peoples
- people from culturally and linguistically diverse backgrounds
- people living with a physical and/or mental health disability
- people living in rural and remote areas
- others (for example, women and men or people from the LGBTI community)?

10. Suggestions:

- What suggestions do you have about ways that your organisation might respond more effectively to elder abuse?
- What suggestions do you have about the ways in which other organisations might respond more effectively to elder abuse?



- What suggestions do you have about necessary policy/legislative changes to enhance the ways elder abuse is dealt with/responded to?

11. Do you have any other comments about needs and responses to elder abuse in Queensland?

## **Appendix 4 Focus group schedule**

1. What is your role in relation to elder abuse in your organisation?
2. What issues do you believe are important for the elder abuse sector in Queensland?
3. What are some things that the Queensland elder abuse sector does well?
4. What are some of the areas that could be improved?
  - Do you have any suggestions about ways in which organisations might work more effectively with elder abuse?
5. Do you believe elder abuse is under-reported in Queensland?
  - If yes, why do you believe people don't report it? (Barriers.)
  - If no, what makes it easier for people to report (Facilitators.)
  - On what do you base this opinion?
6. Does your organisation have the capacity to work effectively with people experiencing elder abuse from diverse and vulnerable groups such as:
  - Aboriginal and Torres Strait Islander peoples
  - people from culturally and linguistically diverse backgrounds
  - people living with a physical and/or mental health disability
  - people living in rural and remote areas
  - others (for example, women and men or people from the LGBTI community)?
7. What suggestions do you have about policy/legislative changes to enhance the ways elder abuse is dealt with?
8. Do you have any other comments about needs and responses to elder abuse in Queensland?

## **Appendix 5 Online survey questions**

1. What is the name of your organisation?
2. Which of these descriptions best captures the role you play within the organisation?
  - senior management
  - supervisor/coordinator
  - front-line worker
  - other (please specify).
3. What is the postcode of where you work?
4. What area does your organisation cover? (Choose all that apply.)
  - Brisbane metropolitan area
  - statewide
  - Other (please specify the area).
5. How long have you worked at your current job?
  - fewer than six months
  - six months to one year
  - one to two years
  - two to five years
  - more than five years.
6. Have you completed any elder abuse training?
  - Yes, formal elder abuse specific training that included interactive activities and a certificate of completion or participation.
  - Yes, informal training in the form of attendance at a lecture, seminar or information session or similar.
  - No formal or informal training, but have learned about elder abuse through on-the-job experience.
  - Unsure.
  - Other (please specify).
7. How long ago did you complete this training?
  - fewer than six months
  - six months to one year
  - one to two years
  - two to five years
  - more than five years.
8. Who provided the most-recent elder abuse training you participated in?
  - the Elder Abuse Prevention Unit.
  - my own organisation.
  - other (please specify).

9. Does your organisation have an elder abuse policy, procedure or process for identifying and responding to elder abuse? (Yes / no / unsure)
10. Is this elder abuse policy, procedure or process followed within your organisation? (Yes /no / other {please specify} )
11. If a policy, procedure or process is not followed, why not?
12. Who developed this elder abuse policy, procedure or process?
  - My own organisation.
  - Other (please specify).
13. Do you deal with individual cases of elder abuse in your work?
  - Yes, I deal with individual cases.
  - No, I work in the area of elder abuse policy or prevention.
  - Other (please specify).
14. How many cases of elder abuse do you estimate you have dealt with in the past 12 months?
  - fewer than five
  - between five and 15
  - between 16 and 30
  - more than 30
  - not applicable (please specify).
15. How often do the following types of people contact your organisation to report/seek help in relation to elder abuse?
  - victim
  - family of victim
  - friend of victim
  - carer of victim
  - perpetrator
  - staff of other organisations.
16. How often do people from the following vulnerable groups contact your organisation to report/seek help in relation to elder abuse?
  - Aboriginal or Torres Strait Islander people
  - people from culturally and linguistically diverse communities
  - people with a physical disability
  - people with a mental health issue
  - people who do not have decision-making capacity
  - people living in rural and remote areas
  - people from the lesbian, gay, bisexual, transexual and intersex community.

17. How often have the elder abuse cases you have dealt with in the past 12 months involved the following types of abuse?
- psychological/emotional abuse
  - financial abuse
  - physical abuse
  - neglect
  - sexual abuse
  - social abuse/isolation.
18. How often have the elder abuse cases you have dealt with in the past 12 months involved repeat clients (clients you have seen before)?
- never
  - rarely
  - sometimes
  - often
  - very often
  - always.
19. In the elder abuse you have encountered in the past 12 months, please estimate how often the perpetrator was someone from one of the following categories:
- son/daughter of victim
  - sibling of victim
  - partner of victim
  - other relative of victim
  - friend of victim
  - stranger
  - professional/staff member
  - non paid carer.
20. Does your organisation work directly with people experiencing elder abuse (perpetrators and/or victims and/or others affected)?
- Yes, we work directly with people involved in elder abuse cases.
  - No, we refer to other organisations.
  - Other (please specify).
21. How does your organisation work with people experiencing elder abuse (victims) and do you think this is effective?
22. Does your organisation work with perpetrators of elder abuse? (Yes or no.)
23. How does your organisation work with perpetrators of elder abuse and do you think this is effective?

24. Do you refer elder abuse cases to other organisations? (Yes or no.)
25. To what agencies do you refer elder abuse cases? (Choose all that apply)
- Aged and Disability Advocacy Australia (formerly Queensland Aged and Disability Advocacy)
  - Centrelink
  - Community Legal Services
  - the Elder Abuse Prevention Unit
  - Elder Law services
  - The Office of the Public Guardian
  - The Public Trustee
  - the Queensland Civil and Administrative Tribunal
  - the Queensland Police Service
  - Seniors Legal and Support Service
  - other (please specify).
26. Does your organisation receive elder abuse referrals from other organisations? (Yes or no.)
27. From what agencies do you receive referrals about elder abuse cases? (Choose all that apply.)
- Aged and Disability Advocacy Australia (formerly Queensland Aged and Disability Advocacy)
  - Centrelink
  - Community Legal Services
  - the Elder Abuse Prevention Unit
  - Elder Law services
  - the Office of the Public Guardian
  - The Public Trustee
  - the Queensland Civil and Administrative Tribunal
  - the Queensland Police Service
  - Seniors Legal and Support Service
  - other (please specify).
28. Please estimate how many of the elder abuse cases you've been involved in during the past 12 months you know the outcome of:
- none
  - a few
  - some
  - most
  - all.
29. In your experience, how often have the elder abuse cases you have been involved in during the past 12 months were been resolved to the victim's satisfaction?
- never

- rarely
  - sometimes
  - often
  - very often
  - always
  - don't know.
30. What things help or hinder your knowledge of the outcomes of these cases? (What stops or helps you to know what happened?)
31. Do you believe elder abuse is under-reported in Queensland? (Yes / no / unsure — please specify reasons.)
32. What are some of the barriers to people (older people, friends, family, carers and staff) seeking help with elder abuse?
33. Does your organisation record data about elder abuse? (Yes / no / unsure — please specify)
34. What kinds of information about elder abuse are recorded?
35. Does your organisation collect data about the types of elder abuse experienced by clients? (Yes / no / unsure.)
36. Is the main type of elder abuse recorded only, or is data about other types of elder abuse being experienced at the same time collected as well?
- Yes, main type recorded only.
  - No, other types of abuse recorded as well.
  - Unsure.
37. Does your organisation collect data about elder abuse perpetrators? (Yes / no / unsure)
38. What kind of information about perpetrators is recorded?
39. Which of the following resources do you refer to for information about elder abuse? (Choose all that apply)
- Elder Abuse Prevention Unit publications
  - your own organisation's publications
  - Office for Seniors publications
  - Office of the Public Guardian's publications
  - Public Trustee publications
  - other government reports
  - other industry publications

- other (please specify).

40. Which resources have you found helpful and why?

41. Are you aware of the elder abuse awareness campaign conducted annually in June by the Queensland Government? (Yes / no.)

42. Do you notice any increase or variation in the type or volume of inquiries you receive about elder abuse during and following the campaign? (Yes / no / unsure.)

43. Please describe the elder abuse work your organisation performs.

44. What is your gender?

45. What language do you speak at home?



## Appendix 6 'Ice cream lady' case study

*“There was a really old lady living in an enormous old home that is hers and a Jehovah’s Witness came to the door and was knocking on the door and she was in a room where she could get to the window but the window was locked, the front door appeared to be nailed shut or boarded over, and he saw her trying to get out and unable to even get out of the room or open a window. He somehow squeezed an Elder Abuse Hotline card through the window. He should’ve called the police but at least he still did something, and then she called the elder abuse hotline and then they called the Office of the Public Guardian, and they went out to the house and found it boarded up and her locked in. She was emaciated, so she was really unable to feed herself or look after herself and she needed nursing care. And she was completely isolated. She couldn’t see anyone. Her nephew had her locked in the house and he was spending her money. All the furniture from the house had gone. There was a new Porsche apparently still sort of in wrapping or covered in something under the house that he’d bought apparently from her money, and there were hotdogs and ice cream in the fridge. And that was how she was left. She should’ve been put in a nursing home but, of course, he didn’t want to do that because he didn’t want the scrutiny of what he was doing.”*

(Interview 2 participant)

## **Appendix 7 Barriers to help-seeking and reasons for under-reporting**

Of research participants, 91 per cent (of n=54 respondents) believed elder abuse is under-reported in Queensland. Comments relating to this issue include:

- “Due to fear of repercussions (for example, violence, further isolation, being placed in residential care, shame, etc.)”
- “Not enough awareness of elder abuse services or formal networking of the relevant organisations on a regular basis to capture the data of elder abuse. The name ‘Elder Abuse’ has a negative connotation as well.”
- “Fear of retribution, fear of being put into an aged care facility, love of the abuser and fear of breaking up the family and destroying family relationships.”
- “Elderly people are afraid they will suffer more if they report abuse. They may discuss the issue with direct care workers but do not want it formally recorded, documented, or reported.”

Some of the perceptions relating to barriers to people seeking help with elder abuse include:

- “Staff too busy / time / bed pressure (for example, too long to await even an urgent QCAT application outcome), lack of awareness and compassion.”
- “Fear of family reprisal.”
- “Not recognising it in the first place as abuse.”
- “Scared. Don’t know if there is help. Ashamed and embarrassed.”
- “Lack of Police prosecution of offenders.”
- “Police consider it a civil matter. To mount a civil case in Supreme [Court] costs in excess of \$45,000 and takes more than four years to be heard.”
- “Stigma and isolation; often perpetrators are family and they have no one else. Also a vulnerability due to age-related cognitive decline so may not be aware of abuse or feel it needs to be addressed.”
- “Limited supports in remote areas. No services. No safety measures to assist the person. No safe houses. Navigating through the system for supports.”
- “From my experience, often the victim expresses feeling as though it's too difficult/too big to manage, so they would rather put up with the abuse. Also they are often afraid of the perpetrator, or feel guilty as they are their children/friends/family.”
- “Don't know what service to access or too overwhelmed to even access the service, may need self-care strategies and support before going ahead with decisions and actions.”
- “Ambivalence about identifying behaviour as elder abuse.”
- “Victims are often suffering with cognitive decline and are unaware of the level of abuse to self-report, the fact that the OPG has to be notified and they are deeply under resourced to properly investigate allegations, lack of user friendliness of QCAT and inability to obtain costs in relation to proceedings.”
- “Lack of information and resources. Lack of effective remedies that aren't based in equity. Lack of protective legislation. Lack of serious interest from government.”
- “Not sure what is considered elder abuse, unaware that it's a legal issue, unaware that they can seek help. Afraid to lose family connection (grandkids, etcetera).”

- “Legal services and other agencies that will not act for people who have impaired capacity and therefore cannot give clear instruction. Professionals only having little bits of information and giving advice. Older people having no choice in the appointment of substitute decision makers (for example, not able to enter care without having an enduring power of attorney document completed).”
- “I can provide our research on top 10 barriers to accessing assistance, if required. This derives from our 500 closed cases study.” [Respondent ID 5047490676]
- “Shame, lack of quality services, inadequate formal support services, poor and unstructured investigative framework.”
- “Older people do not want to lose relationships, especially when the perpetrator is the only relation or friend they may have; they do not wish to upset their families and are afraid of losing relationships. The comment ‘it is only money’ is not unusual”.
- “Fundamentally, a victim's priority is to preserve relationships with their children and their grandchildren (or other family members). That is the one thing we cannot guarantee in an intervention; we can protect assets, physical safety, etc., but we cannot protect the one thing that is most important to the victim, the relationship with the perpetrator, or relationships that the perpetrator has control over/influence in. I do wonder if, if there were ways that older people could have other meaningful and satisfying relationships, would that increase the uptake of elder abuse interventions? However, again this is something that cannot be guaranteed; a daughter who visits every week at the nursing home and aggressively, abusively, badgers her mother for money is still a daughter who visits. I think it is an absolute travesty that the quality of life for older people in the community and in care is so poor that this kind of blackmail is so effective. As for family, friends, and workers, I think there is a lack of clarity around what constitutes abuse; what is and isn't ok. There is a blindness to people they know (and are related to) being selfish, exploitative, etc. The assumption that others are operating from the same set of deeply held values around family, but it's just not true. I think there is also an acceptance as normal of some ideas about entitlement and 'family money' that are no longer current in today's society and in today's fiscal realities (for example, early 'inheritance').”

## Appendix 8 Australian elder abuse agencies<sup>499</sup>

### Australian Capital Territory

ACT Disability, Aged and Carer Advocacy  
Service  
(02) 6242 5060  
[adacas@adacas.org.au](mailto:adacas@adacas.org.au)

Older Persons Abuse Prevention Referral and  
Information Line (APRIL)  
(02) 6205 3535

### New South Wales

NSW Elder Abuse Helpline  
1800 628 221  
[eahru@chcs.com.au](mailto:eahru@chcs.com.au)

Seniors Rights Service  
1800 424 079  
[info@seniorsrightsservice.org.au](mailto:info@seniorsrightsservice.org.au)

### Northern Territory

Darwin Community Legal Service  
Aged and Disability Advisory Service  
1800 037 072  
[info@dcls.org.au](mailto:info@dcls.org.au)

[Elder Abuse Information Line](#)  
1800 037 072  
[info@dcls.org.au](mailto:info@dcls.org.au)

### Queensland

Elder Abuse Prevention Unit  
1300 651 192  
[epu@ucommunity.org.au](mailto:epu@ucommunity.org.au)

### South Australia

The South Australian Elder Abuse Prevention  
Phone Line  
1800 372 310  
[aras@agedrights.asn.au](mailto:aras@agedrights.asn.au)

### Tasmania

Tasmanian Elder Abuse Helpline  
1800 44 11 69  
1800 441 169  
[eahelpline@advocacytasmania.org.au](mailto:eahelpline@advocacytasmania.org.au)

### Victoria

Seniors Rights Victoria  
1300 368 821  
[info@seniorsrights.org.au](mailto:info@seniorsrights.org.au)

### Western Australia

Advocare Incorporated  
1300 724 679  
[rights@advocare.org.au](mailto:rights@advocare.org.au)

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<sup>499</sup> Advocare Inc. (2016a)

## Appendix 9 Stakeholder mapping data from participants

### Statutory agencies

Office of the Public Guardian  
Public Trustee  
Queensland Police Service  
Queensland Civil and Administrative Tribunal  
Anti-Discrimination Commission

### Support services

Elder Abuse Prevention Unit  
Centrelink (Financial Information Service)  
Community Legal Services  
Domestic Violence Services  
Queensland Health (including directors of social work)  
Elder Mediation Project  
Seniors Legal and Support Services  
Aboriginal and Torres Strait Islander Elders and Elders groups  
Aged Care Assessment Teams  
Aged and Community Services Australia (QLD)  
Aged Care Service providers (both for profit and non/residential and community care)  
Apunipima Cape York Health Council  
Queensland Indigenous Family Violence Legal Service  
Queensland Law Society/Elder Law Services  
Wuchopperen Health Service Limited (Cairns and hinterland Aboriginal and Islander Health Services)  
Consumer Directed Care Providers  
Grandparents Queensland (and other seniors organisations)  
60 and Better (and other community organisations)  
LGBTI seniors groups, for example, GRAI  
Multicultural Seniors groups  
World Wellness Group — CALD services

### Advocacy

Queensland Advocacy Incorporated  
Aged and Disability Advocacy Australia  
The Advocacy and Support Centre  
(Toowoomba, Ipswich, and South Region)  
Australian Pensioners & Superannuants

Older People Speak Out  
Office of the Public Advocate  
National Seniors Australia  
Queensland Aboriginal and Islander Health Council  
Speaking up for You (disability group)  
People with Disability impacted by Domestic Violence (advisory group)

### Policy and strategy

Office for Seniors/Office for Women/Disability Services  
Department of Aboriginal and Torres Strait Islander Policy  
Department of Communities, Child Safety and Disability Services  
EAPU and elder abuse research reference groups  
Carers Council  
Council on the Ageing (COTA)

### Other referral agencies and support services

Legal Aid QLD  
Financial Planning Association  
Beyondblue  
Lifeline Phone Counselling  
Telecross Services — Australian Red Cross  
Aged Care Complaints Scheme  
Carers Queensland  
Sexual Assault Help Services  
Victims Counselling and Support Service  
Aged Care Australia  
Queensland Ombudsman  
Health Quality and Complaints Commission  
Legal Services Commission

### Allies

Australian Medical Association and other professional associations  
The Commonwealth Primary Health Network  
The Institute of Urban Indigenous Health  
Universities (for example, the University of Queensland)

## Appendix 10 Online Survey of Elder Abuse organisations — sources of client referrals to and from other agencies

**Table A10.1. Online survey, organisations elder abuse clients most often referred to, by estimated % (n=52)**

Organisations most referred to	%
Office of the Public Guardian (OPG)	69
Queensland Civil and Administrative Tribunal (QCAT)	65
Queensland Police Service (QPS)	65
Elder Abuse Prevention Unit (EAPU)	55
Seniors Legal and Support Service (SLSS)	53
Public Trustee	49
Aged and Disability Advocacy Australia (ADA) Australia	49
Community Legal Services	35
Centrelink	28
Elder Law	22
Other	20

**Table A10.2. Online survey, organisations elder abuse clients most often referred from, by estimated % (n=53)**

Organisations most often referred from	%
Other*	65
Queensland Police Service (QPS)	42
Elder Abuse Prevention Unit (EAPU)	42
Seniors Legal and Support Service (SLSS)	39
Office of the Public Guardian (OPG)	36
Community Legal Services	36
Aged and Disability Advocacy (ADA Aust)	32
Queensland Civil and Administrative Tribunal (QCAT)	29
Public Trustee	26
Centrelink	26
Elder Law	22

\*Other includes a wide range of government and non-government support services including- community health services, domiciliary nursing services, nursing teams, chronic disease teams, residential care facilities, community support services for the aged, Blue Care, clients and families, other lawyers, Queensland Ambulance Service, banks, hospitals, [direct quote] “local community/support groups, Aged Care Assessment Team, private companies (for example, banks), community care organisations, respite centres, Carers Queensland, doctors’ surgeries, Legacy, Allied Health services, respite services, hospitals, neighbourhood centres, seniors accommodation, People with Disability Australia, Aged and Disability Advocacy Australia, police, residential care organisations, RSL sub-branches, Seniors Enquiry Line.”

## Appendix 11 Youth offending teams: a case study of systemic intervention through interdepartmental collaboration: Borough of Slough

Professor Mike Clare

This material is offered as a metaphor for interagency and inter-disciplinary service design for elder abuse services in Queensland. It provides a recent example of multi-department government change in England which I suggest as a vision for further work in Western Australian policy development in complex services for profoundly disadvantaged children and young people and their families. Figure A11.2 shows the separate government departments in the outside ring, with their identified programs in the middle ring. The UK government introduced the inner ring — the multi-disciplinary and multi-agency Youth Offending Teams — a number of years ago. In WA, I have suggested this is a template for Leaving Care services and wonder if it could be applied to Elder Abuse service development in Queensland.

The British policy tradition is a potent mix of humanitarian concern, public fear — for example, ensuring clean water and immunisations following outbreaks of cholera and tuberculosis — and fear of litigation. Despite its colonial heritage, Australian social policy development reveals a more reactive ‘reluctant collectivism’ (George and Wilding 1976) while State-led child welfare and elder protection systems contrast with the highly centralised UK system (see Table A11.1 below).

**Table A11.1. A comparison of child welfare systems in Australian states and the United Kingdom (Clare, M. 1997)**

Australian States	United Kingdom
Fragmented policies	Integrated policies
Single issue services	Multiple issue services
Parallel competitive services	Collaborative partnership services
Reactive to enquiry and crisis	Proactive research/development
Diversity and difference in policy	Directed and uniform in policy
Advisory/consultative central direction	Inspectorial central direction
Focus on inputs and numbers	Focus on outcomes and impact

The Safer Slough Partnership — Community Safety Strategy 1999–2002 was published in 1999. It is a multi-agency study based initially on an audit of crime and disorder in Slough, a multi-ethnic West London community. The study involved a three part process with an audit of crime and disorder in the locality, the design of a Community Safety Action Plan and the implementation of the Community Safety Strategy (Borough of Slough 1999). This is an excellent example of an integrated, multi-disciplinary and multi-agency approach to address protection of the community while also addressing the disadvantaged life chances of young people, many of whom were in statutory care. Obviously, accurate data is essential for planning an integrated preventive response.

The findings included:

- Slough's 15–19 year olds were responsible for 35.8 per cent of recorded crime, even though they represent only 6 per cent of the local population.

- Slough's school exclusion rates were relatively high for the UK; the chief reason for exclusion were disruptive and anti-social behaviour.
- Slough's most deprived electoral wards had the highest rate of unemployed young people between the ages of 16 and 24 who form 12.3 per cent of the total population of Slough but 24 per cent of the unemployed population.
- Drug and/or alcohol problems among young people were a significant concern.
- There were local projects dealing with homeless young people whose numbers were on the increase.

The primary intervention was to prohibit the exclusion of young people from school; alternative methods were introduced to stop moving students. There are numerous short-term and long-term risks when children are out of school, including petty crime, experimenting with drugs and alcohol and severely diminished life chances. This project illustrates the complexity of interagency partnerships put in place to develop a systemic intervention addressing the numerous offences being committed by young people excluded from school, and prevent their transition into crime and incarceration at huge costs to the community. The UK's Youth Justice system now has three main components, namely:

1. Multi-departmental Youth Offending Teams with 157 Youth Offending Teams working across more than 400 local authorities in England and Wales
2. Youth Justice Plans developed by each local authority each year to outline how local targets aligns with national targets
3. Reporting to the national Youth Justice Board based in the Home Office which provides a pivotal link between national legislation and local authorities.

Local authorities in England are now required to act as integrated corporate bodies rather than a cluster of individual departments. The integrated Youth Offending Team is comprised of professional staff from the government departments of Careers, Education, Health, Police, Probation (Community Corrections), Social Services (Child Protection) and Victim Support; a significant challenge to collaborative policy and practice. The outer ring of the diagram lists the government agencies; the middle ring lists their services for young people; the inner ring lists the professional staff of the integrated Youth Offending Team — a 'one-stop shop'.

The key aims of the government's Youth Crime Action Plan (2008) are to:

- reduce the number of young people entering the criminal justice system for the first time by preventing youth offending
- reduce re-offending by young people
- build public confidence, supporting victims and making children and young people safer
- ensure that young people in the youth justice system achieve the five Every Child Matters outcomes to give them the best chance to turn their lives around.

During a study leave visit, I learned that the corporate budget for the Youth Offending Team (2008–09) in Brighton and Hove came from Police, Probation, Health, Education, the Youth Justice Board and a combined source backed by five other funders. There are specialist workers (careers officers, drug workers, educational psychologist, nurses, police, probation officers, consultant psychiatrist



and social workers) as well as management and administrative staff. The Team work in a large open-plan office designed to enhance collaborative working with individual offenders and in programs.

The Youth Offending Teams in England and Wales (West and Heath, 2010) provide a range of relationship-based services including:

- appropriate adults to support youth in contact with police
- evidence-based assessments for rehabilitation and/ or support programs
- supporting youth on remand
- securing placements in local authority accommodation
- providing court reports for criminal proceedings
- allocating responsible officers for various parenting orders, reparation orders and action plan orders
- supervising young people sentenced to supervision, community rehabilitation, community punishment and rehabilitation orders, detention and supervision orders
- post-release supervision
- working with multi-agency panels designed to provide support for eight to 13 years olds at risk of offending.

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George, V. & Wilding, P. (1976). *The Ideology of Public Welfare*. London: Routledge and Kegan Paul.

West, D. & Heath, D. (2010). *Youth Justice in England*. Unpublished paper for the National ARC Study of Children's Courts in Australian Jurisdictions.

Figure A11.2. Unitary youth offending context map, Safer Slough Partnership (Community Safety Strategy 1999-2002, p.33).

