

1 March 2023

Via Email: hrc-ie-olderpersons@un.org

Dear Independent Expert

Submission to the call for inputs on violence against older persons – 2023 HRC Report

Caxton Legal Centre is a not-for-profit, non-government, charitable organisation in Queensland, Australia which is accredited by Community Legal Centres Australia and provides free legal advice and social work supports to disadvantaged clients. For the past 17 years, Caxton has been at the forefront of delivering holistic services each year to thousands of older Queenslanders who are experiencing abuse and neglect, including coercive control at the hands of adult children and long-term abusive spouses.

Issue 1

Age Discrimination

In Queensland, the *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their age¹. Age discrimination can be direct or indirect². Complaints can be made to the Queensland Human Rights Commission³.

In Australia, the *Age Discrimination Act (Cth) 2004* protects against age discrimination⁴. Complaints can be made to the Australian Human Rights Commission⁵.

The Age Discrimination Commissioner leads the AHRC's age discrimination work.

In 2016 the AHRC undertook an Inquiry, *Willing to Work*, into workplace discrimination including of older workers⁶.

Many other states/territories of Australia have age discrimination protections.

Violence/Abuse/Neglect of Older Persons

Queensland

Queensland does not have an elder abuse law. There is a suite of civil and criminal laws in Queensland which are relevant to situations of elder abuse. The 'Elder Abuse – Joint Issues Paper'⁷ 2022 of the

¹ Anti-discrimination Act (Qld) 1991, section 7

² Anti-discrimination Act (Qld) 1991, sections 9, 10 and 11

³ Human Rights Act (Qld) 2019, section 75

⁴ Age Discrimination Act (Cth) 2004, section 17

⁵ Australian Human Rights Commission Act (Cth) 1986, section 11

⁶ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with a Disability*, 2016 <https://humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination>

⁷ Queensland Law Society, The Public Advocate, *Elder Abuse Joint Issues Paper*, 2022 https://www.justice.qld.gov.au/_data/assets/pdf_file/0006/707973/elder-abuse-joint-issues-paper-20220209.pdf

Queensland Law Society and The Public Advocate provides an overview of these.

Notably, Queensland has strong domestic and family violence laws. The *Domestic and Family Violence Act (Qld) 2012* captures intimate partner as well as intergenerational violence⁸. The Act recognises ‘elderly people’ as vulnerable persons⁹. Perpetrators, including abusive adult children, can be ordered to not contact or approach an older person and can be ordered to leave the home of an older person¹⁰.

The Queensland Government commissioned a ‘*Review into the Prevalence and Characteristics of Elder Abuse in Queensland*’¹¹ 2017. The Queensland Government Statistician’s *Elder Abuse 2016* report¹² includes an examination of existing data and data collections held by Queensland Government agencies and funded services.

Australia

In 2016 the Australian Law Reform Commission (ALRC) released a report, ‘*Elder Abuse – A National Legal Response*’¹³, in which 43 recommendations were made to combat elder abuse in Australia.

In 2019 Australia released the National Plan to respond to the abuse of older Australians¹⁴, a capstone recommendation of the ALRC Report. There has been limited accountability during its implementation.

A Royal Commission into Aged Care Quality and Safety was established on 8 October 2018. Their report ‘*Care, Dignity and Respect*’¹⁵ (2021) highlights the prevalence of abuse and neglect in residential aged care settings and makes 148 recommendations to reform Australia’s aged care system.

Issue 2

Caxton assists older people with six main forms of abuse, often co-occurring, in these proportions in 2021-2022: psychological 68%, physical 13%, financial 68%, social 13%, sexual and neglect 4%, with the majority of older persons experiencing abuse living in the community (as opposed to in aged care).

⁸ Domestic and Family Violence Act (Qld) 2012, section 8

⁹ Domestic and Family Violence Act (Qld) 2012, section 4

¹⁰ Domestic and Family Violence Act (Qld) 2012, section 63

¹¹ Blundell, B; Clare, J; Moir, E; Claire, M; Webb, E, Review into the Prevalence and Characteristics of Elder Abuse in Queensland, 2017 <https://www.publications.qld.gov.au/dataset/end-domestic-and-family-violence-our-progress/resource/2993b80e-1eea-4a1d-a1ee-96f966b812c8>

¹² Queensland Treasury, Elder abuse, Queensland, Report based on information sourced from administrative data collections, 2016 <https://www.publications.qld.gov.au/dataset/end-domestic-and-family-violence-our-progress/resource/664a96f7-22ef-417b-b900-bd60b5133a48>

¹³ Australian Law Reform Commission, Elder Abuse – A National Legal Response, 2017 <https://www.alrc.gov.au/publication/elder-abuse-a-national-legal-response-alrc-report-131/>

¹⁴ Council of Attorneys-General, National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019 to 2023 <https://www.ag.gov.au/rights-and-protections/publications/national-plan-respond-abuse-older-australians-elder-abuse-2019-2023>

¹⁵ Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect, 2021 <https://agedcare.royalcommission.gov.au/publications/final-report>

Case Study

Betty lived in an aged care facility. Her husband was her attorney under an Enduring Power of Attorney (EPOA). Betty disclosed a decades-long history of domestic violence by her husband. Nursing staff denied her access to our lawyer and social worker because Betty's husband had directed staff to prevent her from having contact with anyone. Staff had no awareness or understanding of Betty's rights under the *Powers of Attorney Act (Qld) 1998*¹⁶, *Guardian and Administration Act (Qld) 2000*¹⁷ or the *Charter of Aged Care Rights*¹⁸ under the *Aged Care Act (Cth) 1997*.

Case Study

Ronald, a widower and age pensioner in his 70s, had given his son Mark and daughter-in-law Maeve \$130,000 for the purchase of a home with a granny flat for him to live in. After Ronald remarried and his wife moved into the granny flat, Mark and his wife threatened to sell the home. They convinced Ronald to transfer his share of the property to them in return for a life tenancy and executed a written agreement. In a bid to force Mark out of the granny flat and motivated by 'inheritance protection', his son and daughter-in-law bullied and intimidated Ronald, smeared faeces on his car, keyed his car, hosed his dry washing, interfered with his water pressure and entered the granny flat without permission. Ronald became homeless.

Issue 3

In our experience intersectionality is relevant to our client cohort:

- 64% are older women
- 92% experience financial disadvantage
- 73% experience domestic and family violence
- 60% report a disability

We experience under-reporting of elder abuse within culturally and linguistically diverse, Aboriginal and Torres Strait Islander and LGBTQIA+ communities.

For CALD communities, it is our experience that cultural expectations, collectivism, language barriers, lack of awareness of services, and feelings of stigma and shame prevent older persons from identifying their circumstances as being elder abuse and seeking help.

Our older LGBTQIA+ clients experience elder abuse compounded by discrimination and homophobia by family members. They face a number of barriers to disclosing or reporting abuse to others and service providers, including fear of discrimination and distrust of the health, care and justice systems.

Our First Nations clients report financial abuse in higher rates than other types of abuse. Our experience is that cultural norms relating to kinship structures, as well as sharing, reciprocity and expectations around communal property complicate the way in which abuse is experienced and understood in those communities.

¹⁶ Powers of Attorney Act (Qld) 1998, section 6C

¹⁷ Guardianship and Administration Act (Qld) 2000, section 11B

¹⁸ <https://www.agedcarequality.gov.au/sites/default/files/media/charter-of-aged-care-rights-signing-template.pdf>

Issue 4

In 2021 the National Elder Abuse Prevalence Study was released, with respondents to the study limited to those living in the community without capacity impairment¹⁹.

The Elder Abuse Prevention Unit produces an annual Year in Review of elder abuse statistics in Queensland, limited to call data from their helpline²⁰.

Caxton Legal Centre captures demographic and elder abuse type data that it provides to the Queensland Government. It also holds data from a 500 elder abuse case analysis and 100 financial elder abuse case analysis (not publicly available).

Issue 5

Queensland

In Queensland there is no specialist investigative body that exists for older Queenslanders who have experienced elder abuse. Instead, the Queensland Government has made a long-term investment in community support services which respond to allegations of elder abuse:

- Elder Abuse Prevention Unit, a statewide helpline for reporting elder abuse
- Seniors Legal and Support Services to provide free multi-disciplinary social support and legal services to victims of elder abuse in various areas of Queensland

There are also a number of advocacy and information services focused on advancing the rights and interests of older persons experiencing abuse in the context of aged care and in guardianship and administration applications.

The Queensland Police Service (QPS) may be the first point of contact for older persons experiencing domestic and family violence or other forms of elder abuse which constitute a criminal offence. The QPS has developed an Elder Abuse Aide Memoir for police officers attending incidents.

The Queensland Office of the Public Guardian²¹ ('OPG') is an independent statutory office established to protect adults with impaired decision-making capacity from neglect, exploitation or abuse.

Australia

Across Australia there is a patchwork quilt of statutory bodies, community support services and law enforcement bodies which respond to elder abuse in each state or territory.

¹⁹ Australian Institute of Family Studies, Elder Abuse Prevalence Study: Final Report, 2021

<https://aifs.gov.au/research/research-reports/national-elder-abuse-prevalence-study-final-report>

²⁰ UnitingCare, Elder Abuse Statistics in Queensland: Year in Review 2021 - 22 <https://eapu.com.au/wp-content/uploads/2023/01/Elder-Abuse-Statistics-in-Queensland-Year-in-Review-2021%E2%80%9322.pdf>

²¹ Public Guardian Act (Qld) 2014, section 10

The Australian Government funds twelve community organisations to deliver elder abuse services in each of the states and territories, in addition to what the state or territory governments fund. An evaluation of these twelve sites has been completed.²²

Issue 6

Caxton produces publicly available factsheets and information about how to prevent and address elder abuse²³. It provides community legal education on elder abuse to a broad audience including via community events and online webinars. It delivers the Queensland World Elder Abuse Awareness Day campaign. Caxton contributes to and curates content for the national elder abuse website *compass.info*.

Issue 7

Secondary – Tertiary Response

Caxton Legal Centre adopts two particular models for responding to elder abuse; community based and hospital based. One responds to elder abuse noticed in the community, the other in hospitals. Both utilise a human rights framework and are multidisciplinary (legal plus social supports) to address holistic needs²⁴. They are both person-centred, strengths-based, and trauma-informed. Both models have been evaluated as highly successful²⁵.

Primary Prevention Response

Caxton also delivers two primary prevention models; community education about elder abuse and outreach community engagement to people nearing retirement to have conversations about financial planning to avoid financial elder abuse²⁶. These models are highly successful in engaging with CALD communities.

We have collaborated with the Queensland Police Service to engage in a co-response model. This includes joint home visits to older persons (with a lawyer, social worker and police officer) followed up by regular welfare checks by the police. This framework has anecdotally proven successful in making clients feel safer.

This submission was prepared by Colette Bots, Director Family, Domestic Violence, and Elder Law Practice, Helen Wallace, Director, Social Work Practice, and Cybele Koning, CEO.

²² Attorney-General's Department, Final Evaluation of the Elder Abuse Service Trials – Final Report, Australian Government <https://www.ag.gov.au/rights-and-protections/publications/final-evaluation-elder-abuse-service-trials-final-report>

²³ <https://queenslandlawhandbook.org.au/>

²⁴ Caxton Legal Centre, Specialist Elder Abuse Service, Social Worker-Lawyer Intervention Model, Seniors Legal and Support Service, 2018 <https://caxton.org.au/wp-content/uploads/2018/11/Specialist-Elder-Abuse-Service-Model-1.pdf>

²⁵ Refer note 20.

²⁶ <https://caxton.org.au/how-we-can-help/financial-protections-service/>

Please do not hesitate to contact Colette Bots by telephone on 07 3214 6333 or by email to colette@caxton.org.au if you have any questions regarding this submission or if we can be of any further assistance.

Yours faithfully



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