

2 September 2016

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Thank you for the opportunity to contribute to the ALRC's consideration of this important area of policy.

We appreciate that the Commission will receive many submissions in response to this Inquiry's discussion paper. We also have had the benefit of viewing the comprehensive submission of the Townsville Community Legal Service (TCLS) and recognise that a great deal of work has already been contributed in the area of elder abuse by various organisations in other reports and inquiries, including, to name but a few:

- *Inquiry into Older People and the Law*, 2007 Standing Committee on Legal and Constitutional Affairs;
- *Elder Abuse: How well does the law in Queensland cope?*, June 2010, Queensland Law Society and Office of the Public Advocate;
- *Responding to the financial abuse of older people*, August 2008 Loddon Campaspe Community Legal Centre;
- *Inquiry into the adequacy of existing financial protections for Queensland's seniors*, Report no 2, 2015, Communities, Disability Services and Domestic and Family Violence Prevention Committee;<sup>1</sup>
- *Elder abuse in New South Wales*, General Purpose Standing Committee No. 2, June 2016.

Our intention therefore has been to limit the scope of our submissions to succinct observations drawn from our practical experience in assisting the vulnerable elderly clients of our specialist programs.

We respectfully consider that the ALRC should pay particular attention to areas of Commonwealth jurisdiction where there is scope for the Australian Government to actively pursue and implement the Commission's recommendations, as part of the Prime Minister's recently announced national plan to protect the rights of older Australians.<sup>2</sup> Investment in the national plan is a prudent strategy for the Commonwealth government concerned with protecting the significant assets held by Australia's ageing population, particularly considering the desired structural reform of moving that cohort of Australians toward self-funded retirement.

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<sup>1</sup> Appendix 1 is a copy of our submission to this Inquiry.

<sup>2</sup> <http://www.malcolmturnbull.com.au/media/coalition-to-invest-15-million-protect-older-australians>

### **Caxton's Elder Law Practice**

Caxton Legal Centre (Caxton) first identified the difficulties faced by older people in accessing justice when conducting an audit of files in the late 1990s. Some rudimentary research revealed a plethora of physical, social, cultural and financial barriers confronting older clients when accessing legal assistance at various critical life stages or other urgent times of need. In response to this identified gap, Caxton developed a program entitled Legal Outreach for Older People, targeting existing hubs of service delivery in four distinct communities with known concentrations of older people. This program ultimately led to the establishment of the Seniors Legal and Support Service (SLASS) which has been developed in Queensland by the Department of Communities to address elder abuse and exploitation. In addition to Caxton, SLASS services have been 'bolted on' to existing community legal centre infrastructure in Cairns, Townsville, Hervey Bay and Toowoomba. Recently the Queensland Government announced plans to expand services to the Gold Coast and Sunshine Coast regions.

Last year Caxton created a Family and Elder Law Team (FELT) with a compliment of experienced lawyers and social workers able to offer integrated services in elder abuse and family law. Caxton's General Practice Group is also able to assist in the provision of specialist advice for example in insurance law and consumer credit issues.

### **Audit of 500 cases from 2010-2014**

In 2015 we conducted an audit of 500 elder abuse cases. Appendix 1 to this submission is a summary of the audit which highlighted:

- A majority of our elder abuse clients were 75 years and older;
- Male perpetrators were only 4% higher than female perpetrators;
- 63% of perpetrators were family members, with sons (20%) just outnumbering daughters (18%).
- Financial and psychological abuse were the most prevalent types of abuse, and in most cases multiple types of abuse were present.
- There are significant barriers and factors contributing to some of our clients' resistance to resolve abuse, usually to their own detriment.

**Question 1**     *To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse:*

- *harm or distress;*
- *intention;*
- *payment for services?*

Caxton considers that the definition of elder abuse adopted by the World Health Organisation in 2002 should be updated so that it is extended to relationships where there is an *implication* of trust<sup>3</sup>. This would therefore include informal and formal carers (a significant cohort of perpetrators identified in the Caxton 2015 file audit).

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<sup>3</sup> The Australian Network for the Prevention Of Elder Abuse, *Preventing elder abuse in an aging world is everybody's business* (2007)

In the case of financial abuse, the definition could also be cast broader, in so far as there ought to be no need to describe the abuse in terms of the legal character of any relationship, but simply by virtue of the offending behaviour itself e.g. scams effecting older people.

The definition of elder abuse also needs to account for:

- the varying degrees of vulnerability that often are associated with the process of ageing;
- age alone is not a reliable, or desirable, predictor of vulnerability. For example Indigenous people often prematurely experience heightened vulnerabilities associated with age and disability. In recognition of this and reduced life expectancy, our SLASS service guidelines provide for services to Indigenous clients aged 50 and over and we admit other clients who are under the age bracket when we consider that they are prematurely aged by virtue of illness, disability, homelessness etc.
- the United Nations Principles for Older People: independence, participation, self-fulfilment, dignity and care. The definition of harm needs to embrace these principles.

Intention to cause harm may be relevant to any criminal sanction associated with elder abuse however for the purposes of identifying and responding to the societal problem of the mistreatment of older people, intention to cause harm should not be a necessary pre-condition. Aside from the difficulty in proving intent, there have been many occasions where perpetrators of harm have started out with the best intentions however have inadvertently mistreated older people (including by neglect) in response to extenuating circumstances.

**Question 2      *What are the key elements of best practice legal responses to elder abuse?***

We will respond to this question in two parts:

- a. To the extent this question relates to legal service delivery responses to the needs of elderly victims of abuse, the social worker/lawyer model (SLASS model) developed in Queensland has proven over an extended period to be a beneficial approach to dealing with the myriad complexity of dynamics in abusive relationships (see below).
- b. In terms of best practice legislative and systemic responses to elder abuse, we have observed that reliance on the domestic violence framework to address elder abuse has proven to be problematic in Queensland.

**a. Service Delivery Responses - The SLASS Model Explained**

The SLASS model developed by Caxton is a joint social work-lawyer intervention. The social workers and lawyers literally work side by side with each client. This is not the norm in legal services. The relationship between lawyers and social workers has historically been by way of referral from one to the other.

When an older person is referred to our service, the first person they speak to is one of our social workers. The social worker does a psycho-social assessment and either a brief or more detailed capacity assessment depending on how the older person presents. Geriatrician or specialist capacity assessments are sometimes sought before case plans can be made.

The Co-ordinating lawyer will then read the assessment, consult with the social worker and develop a case plan. The case plan identifies the legal issues at hand and the social work supports required.

Shortly thereafter the social worker who has already commenced establishing a trusted relationship with the client introduces the lawyer to the client. Future communications with the client are usually via joint conferences with the social worker, lawyer and client or individual attendances as required.

The work is usually performed using a combination of telephone conferences and home visits to overcome communication or mobility barriers. Interpreters, hearing and sight impairment services are utilised.

If the lawyer is no longer providing services to the client, the social worker may provide ongoing supports to the client as they recover from abuse or deal with other challenges of ageing, especially if local services are unavailable.

At the end, there is a review to measure the outcomes achieved for that client. At present we are working on 98 matters comprised of 36 advices and 62 casework files. Approximately 100 legal advices are given per month to clients experiencing or at risk of elder abuse.

#### *The Importance of the Initial Client Contact*

The initial contact with a client who has experienced elder abuse is critical. Services that specialise in responding to domestic violence talk about the importance of creating a safe environment in which a person can tell their story of abuse, not feel judged, and begin to trust. This learning can be extrapolated to elder abuse services. Our review of cases confirms that clients form an early connection of trust with our social workers, maintain continuous connection with them, ask for them by name when contacting our service and understand that from the outset we are interested in supporting them and addressing their wider needs, not just their legal needs.

The types of questions that could be asked in considering the right mix of social work and legal services are:

- What is the nature of the relationship that intake staff form with the client?
- How easily does the client relay their story? Do they have to repeat it?
- Do they have an ongoing relationship with that person?
- What is happening for the client if they are moved around to different people?
- If the intake staff member is not a social worker or like-trained person, what is the client experience of talking to the other person?
- If it is a lawyer, is the lawyer asking too many closed questions looking for legal issues or are they looking at the whole person?
- What is the intake format – is it tailored to the type of questions being asked?
- Is the client feeling safer/calmer after the first conversation?

#### *Case Planning*

There is a real difference between proactive and reactive case planning. Our service model is one of designing a case plan for our client which is borne out of a psycho-social and legal needs assessment

which we can then use to measure our stipulated outcomes. This is because our service involves a lot of ongoing casework. On the other end of the service delivery spectrum, there are services that do not do this (i.e. an elder abuse hotline) particularly if the core business is to quickly assess the issues and make an onward referral. In this case a more reactive case plan may be warranted.

A proactive case plan not only assesses presenting needs but predicts future and related needs. This is not possible if the case plan is reactive. For example, a reactive case plan reacts to the current presenting needs – a client expressing their need as *‘I want my adult son to stop treating me this way and move out’* would prompt an application for an ouster order. A proactive case plan anticipates replacing care supports that were provided by the adult son, with in-home supports. It anticipates providing the adult son with alternate housing options or rehab facility details, it anticipates changing the Enduring Power of Attorney. It predicts issues that may arise and prepares for that (eg: where capacity is declining, getting authorities to speak to others in place, getting instructions to pass on to the Office of the Adult Guardian(OAG)).

### Client Interaction

Another issue is how the different professions interact with the client in service delivery model i.e. individually, together or a fluid combination. Our review of the file notes of the closed cases study shows that where there have been joint attendances upon the client, the client gets the ‘best of both worlds’ as they raise the issues at hand. The lawyer is giving the legal advice and the social worker is providing wrap around supports and alternative suggestions if the client is currently unable or unwilling to act on the legal advice. The strengths of each profession shines through at different stages of the interaction.

Many of our SLASS attendances also take place individually. The client comes to know that their main point of daily contact is with the social worker and the lawyer comes in and out of that at varying levels of involvement depending upon the intensity of legal advice and assistance being provided.

We therefore advocate for very flexible involvement of the two professions based on the client’s needs.

### Service Delivery

The question here is what type of service delivery model is desired? A *client-centred service model* puts itself in the shoes of the client and explicitly asks the client how the service can overcome the barriers that client is experiencing in trying to access the service. There are two pertinent issues to be considered:

1. *“To what lengths is the service prepared to go to make the service accessible to the older person experiencing the abuse”?*, for example home visits, away from home visits (eg: doctor’s surgery) where safety is a priority, providing practical supports to overcome physical, sensory, language issues, using translators, including support persons; and
2. *“What resources do we have to reach those lengths?”* In service delivery planning there ought to be intentional consideration of how the management of resources best meets the needs of the clients.

Tied up with the concept of a service being client-centred is also the question of whether the service is capable of delivering “*Whole-of-client advice and support*” i.e. services being provided across multiple areas of law and social work supports. If the legal advice and assistance can cross a number of relevant areas then this is often best for the client. If the social work support is linking the client to as many formal and informal supports as required then this also will deliver better results to the client. Trying to meet a number of needs under the one roof is beneficial for the client as it reduces the number of ways and times in which a client has to access other services, retell the story, link up the solutions.

Caxton recognises that best practice responses require accessing elderly at risk clients at the earliest possible opportunity and to the extent possible, prevention is better than cure.

#### Health Justice Partnerships

In recent years there has been a growing recognition of the potential for health justice partnerships between health and legal practitioners to play a preventative role in addressing elder abuse, and/or allowing for timely interventions in cases where elder abuse has occurred.

Health practitioners are critical to the early detection of elder abuse because they are in proximate relationships with older people and likely to develop and hold the necessary levels of trust to enable disclosures of either incidents of actual abuse or of circumstances creating a high risk environment for abuse.

#### ***b. The problem of fitting the square peg of elder abuse into the round hole of domestic violence***

One of the difficulties in approaching intimate partner violence in older people and elder abuse is that the two forms of family violence are frequently conflated because of the complexities in definition. Does domestic violence “grown old” amount to elder abuse? The Seniors Legal and Support Services across Queensland and older persons’ legal services across Australia, take the view that the two forms of family violence are distinct, although some of the behaviours may be similar.

Domestic violence is predominantly motivated by the need for control and power, whilst elder abuse is apparently motivated by greed in the majority of cases. One of the serious consequences of confusing these two forms of violence and abuse is that elder abuse attracts few sanctions, and indeed appears to be widely tolerated or at least regarded by many police, institutions and community generally as a ‘family matter’. Therefore protections for older people are difficult to find and to implement regardless of the nature of the abuse.

#### Elder abuse and domestic violence legislation

Elder abuse is acknowledged as a form of family violence in the *Domestic and Family Violence Protection Act 2012* (the Act) by reference to the forms of psychological and emotional abuse<sup>4</sup> and economic abuse<sup>5</sup>. However a gap in the protection of elderly people arises from abuse occurring within relationships of dependency that are not caught by the Act. In particular, formal care providers, boarders or lodgers, and some forms of ‘companion relationships’ are not covered by the

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<sup>4</sup> s11

<sup>5</sup> s12

Act. Formal care providers can include those taking on responsibility for receiving a carer's pension, persons acting under an enduring power of attorney, and persons nominated by older people to be on Centrelink or banking documents. Formal care relationships can exist between non-commercial service providers such as charitable organisations and their clients.<sup>6</sup>

The audit of 500 of our elder abuse cases conducted in May 2015 indicated that paid service providers ranked just behind adult sons and daughters as the most common perpetrators of abuse and violence against older persons. This was consistent with the findings of a similar case audit by Townsville Community Legal Service in a similar time period.

Traditionally the Act and family violence services have focused on younger women and children and this is understandable. However this does present a number of issues for older people experiencing violence and abuse in that most elder abuse is perpetrated by adult children; almost half the abusers are female; about one third of the victims are male; and victims are often dependent on the abusers for their care.<sup>7</sup>

#### Domestic and Family Violence Services

Domestic and Family Violence (DFV) services have historically been, and are currently tailored, for the needs of younger women and their children. There are no appropriate emergency accommodation services for older women escaping violence, other than emergency hostels for homelessness which can be very challenging and difficult environments, or respite care for which an older person must have an existing entitlement within aged care services.

We are not aware of any reliable services in existence for male victims of abuse, and DFV services which operate on feminist principles and a gendered basis are not equipped to deal with male victims of family violence.

Many older people do not identify abuse from their adult children as "family violence" and will choose to protect or shield their children or even enable them, in order to preserve the relationship.

#### Intimate partner violence in older couples

Violence does also occur between intimate partners in older couple relationships. The most common pattern is that of long standing domestic violence in a long term relationship, but it also occurs within more recent second marriages/relationships. Many older women have continued to live with their abusive spouses – usually they see no other option, particularly when there is no available family support and they are on fixed incomes. Some, after decades of surviving and adapting to a life with a violent spouse, feel that it is too late to make a major change.

Fear of losing a home, becoming homeless or being forced into aged care are potent reasons for older women to stay in abusive spousal relationships particularly when employment is not available or possible, affordable housing is scarce, and public housing may have very long wait times even where the violence is severe. There may be limited choices of location on offer where there is public housing, and we have found that problems of bullying and harassment particularly of single older

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<sup>6</sup> s20(4)(a)

<sup>7</sup> Elder Abuse – the forgotten Family Violence Issue: Submission to the Royal Commission into Family Violence – Eastern Elder Abuse Network and Eastern Community Legal Centre Victoria May 2015.

women by male residents are common. Some of our clients have left their spouse, gone through property settlement and found that their share of the marital pool means they are ineligible for social housing, can no longer afford to buy a dwelling and that rents consume most of their income, eating in to the remaining nest egg for as long as they live. From an expectation of living out their days in their own family home and familiar neighbourhood, they face the prospect of a competitive rental market (often without companion pets allowed) and an uncertain financial future. For people who have always been renters, the change to a single-person household is frighteningly and often impossibly costly.

There is a correlation between exposure to long term domestic violence and later life chronic diseases of the major organs (heart, bowel etc.) as well as to depression, anxiety, PTSD<sup>8</sup>— we have seen a significant number of female clients who had been in severely violent spousal relationships, who were suffering terminal illnesses (and subject to elder abuse from adult children whilst terminally ill).

There is much public interest in spousal related deaths from domestic violence which have been occurring at the rate of one a week in Australia; however the hidden deaths and resulting costs to later life health are largely unacknowledged.

#### A need for a policy response framework

There is therefore a significant gap in policy development and legislative responses to the problem of elder abuse.

Consideration could be given to targeting elder abuse in state based domestic violence legislation, by either including reference to it in the definition of domestic violence and/or by expanding the types of relationships set out in the Act by including such formal relationships of dependency.

It may be that the Queensland Government considers the gap in protection against elder abuse would more appropriately be addressed by the introduction of dedicated elder abuse legislation<sup>9</sup> which might provide a suite of protections including a power to QCAT to make orders prohibiting parties (including formal carers) from engaging in acts of 'elder abuse'.

#### **Question 3 and 4      Case Studies and Evidence**

We have attached a number of case studies involving clients from culturally and linguistically diverse communities in Appendix 2 and refer to the case studies highlighted in our submission to *Inquiry into the adequacy of existing financial protections for Queensland's seniors*.

#### ***Prevalence and current issues***

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<sup>8</sup> Kristen Fraser, Domestic Violence and Women's Physical Health, Australian Domestic and Family Violence Clearinghouse 2003; Penhale, B. (1999) "Bruises on the Soul: Older Women, Domestic Violence, and Elder Abuse" Journal of Elder Abuse & Neglect; Vol. 11 (1), pp.1-22. S. Fisher and B. Regan; "The Extent and Frequency of Abuse in the Lives of Women and their Relationship with Health Outcomes," The Gerontologist 46.2 April 2006, pp 200-209; Hightower, J. (2002) Violence and Abuse in the Lives of Older Women: Is it Elder Abuse or Violence Against Women? Does It Make Any Difference? Background paper for INSTRAW Electronic Discussion Forum - Gender Aspects of Violence and Abuse of Older Persons;

<sup>9</sup> As proposed for NSW by Rodney Lewis, Solicitor in his unpublished paper presented on 26 June 2013 *Taking Action Against Abuse of Older People: Pathways out of the Maze*



International studies and our own observations

International prevalence studies<sup>10</sup> indicate that likely prevalence ranges from 5% to 10% for older people suffering from abuse and violence, most of which is never disclosed or reported. In light of the ageing of the population (by 2050 the number of 65 year old+ Australians will double) the magnitude of the problem is growing. International research confirms what we see, that vulnerability factors include low financial status, poor education, social isolation, impaired capacity or other disability.

Financial abuse is the most common form of abuse and is almost always partnered with a range of other forms of other abuse – psychological, emotional and social. It typically takes the form of social isolation of the older person – withholding phones, medication, and money and also often involves other abusive behaviours such as harassment, insults, shoving and pushing. Financial abuse ran at 47% of all of our cases in the 2014 – 2015 period, and anecdotally seems much higher.

The recent Aged Care Reforms and the transition to consumer directed care has meant that we are starting to see cases where the older person is being prevented from accessing aged care because family members do not want the older person's property sold.

Older women particularly in the 80+ age group are most likely to be victims of financial abuse. Reasons may include psychosocial factors connected with the adult child such as marital breakdown, business failure, mental health issues or addictions, and vulnerability of the victim is exacerbated when the older person has a disability (cognitive or physical). The culture of entitlement is very strong when it comes to an older person's assets and their adult children.

**Social security**

We hold concerns about the apparent lack of accountability measures in place, or enforced, to ensure that carers in receipt of Centrelink allowances:

- a. adequately perform their caring functions; or
- b. are prosecuted in instances of demonstrable fraud.

We are also concerned about the apparent lack of controls in place to prevent fraud and or abuse by nominees receiving payments on behalf of older clients.

Also, with more services on-line, there is a question about how Centrelink is tackling the obvious inaccessibility issues for older persons who have little technological literacy?

We consider that there is potential for Centrelink to play a stronger role in the prevention of elder abuse. In particular, there is an opportunity for Centrelink to require that arrangements for the divestment of assets toward the construction of 'granny flats' are formalised in writing by way of family agreements. This would provide a degree of protection to older people who are regularly left with only equitable remedies in expensive and inaccessible jurisdictions. It would also overcome the dynamic of the older person feeling guilty for asking to formalise arrangements with family members

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<sup>10</sup> Abuse and Neglect of Older People in Ireland 2010 (prevalence estimated at 2.2%); UK Study of Elder Abuse and Neglect 2007 (prevalence estimated at 5%); "Under the Radar: New York State Elder Abuse Prevalence study 2007 (prevalence estimated at between 2% and 10%) – see p.11 for summary of previous US prevalence studies)

who are supposed to be loving and trustworthy. They would thus be shielded from difficult and uncomfortable conversations if the formalisation is merely part of a simple compulsory Centrelink requirement.

Further there is a need to review the impact of the existing requirements that 'allowable investments' be for a minimum period of 5 years. This requirement could be forcing victims of elder abuse to endure intolerable family dynamics.

Gifts and loans could be similarly addressed with requirements for a written loan agreement or gift acknowledgement.

The development of pro forma family agreements (in a manner similar to the now common use of will kits and EPoAs) and education packages to make sure they are used properly, would represent a prudent investment by government in the protection of assets held by Australia's ageing population.

### **Aged care**

We refer to and endorse the submissions made by TCLS about elder abuse issues occurring in aged care settings.

In addition we note that aged care is an area that would benefit significantly from the introduction of an effective Commonwealth human rights protection scheme.

Case study 3 in Appendix 2 provides an excellent example of the scope for human rights abuses against older persons who have impaired capacity and therefore little or no capacity to complain about their treatment within a residential care facility. In that case, our client who was incorrectly diagnosed with dementia suddenly experienced a dramatic improvement in the quality of personal care (e.g. regular changing of a colostomy bag) simply as a result of being moved out of a locked dementia ward into the general living area of a residential facility. The clients comments upon being 'released' from the dementia ward were extraordinarily poignant:

*I feel like a human again. I thought I was going crazy when I was in the dementia ward as everyone there was not right in their minds. The staff get frustrated being asked the same things all the time so they ignore the residents including me. Now they are answering my questions and they are being nice to me. You have no idea how good it feels to have people talk to me. I am the same person I was last week but since they moved me, I am treated differently, with respect. I am so thankful to have my freedom again.*

The effectiveness of the aged care complaints regime was the subject of criticism in the Queensland Law Society 2010 report.<sup>11</sup> In our respectful view the ALRC inquiry presents a timely opportunity to consider the merits of how a comprehensive human rights protection scheme could either replace or strengthen the existing regime, which is essentially self-regulatory.

We also consider that all deaths occurring in aged care should be considered 'reportable' deaths within the meaning Queensland's coronial laws.

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<sup>11</sup> p20.

### **Financial institutions**

Banks are ideally placed to help identify and prevent financial abuse and there should be detailed consideration given to how this opportunity can be better utilised for the protection of older people. We support the TCLS suggestions that:

- elder abuse be added to responsible lending guidelines of the *National Consumer Protection Act 2009*; and
- a requirement for record keeping of transactions undertaken by a POA holder.<sup>12</sup>

Banks need to have consistent approach towards dealing with EPoAs. It is important for banks to understand and foster independent and supported decision making wherever possible and to consider evidence regarding whether an EPoA is active. It is essential that the approach to taking and keeping such evidence is consistent across the industry. There is also a need for guidelines for financial institutions regarding their approach to customers who are in need of support in their decision making to ensure those people are still able to have appropriate levels of access (including to information about their own accounts) according to their individual needs and ability. Where there is a joint account the banks should have rules in place to require a bank to have the consent of the other joint holder before an EPoA can withdraw funds from the joint account (this is a major problem with blended families where the step-child EPoA withdraws all the money from a joint account for their parent, leaving the step-parent with nothing).

Another significant issue has been created by internet banking – the abuser sets up internet banking for the older person and uses it to take the money without authority – the bank has divested itself of all responsibility when it comes to safeguarding older people from internet banking fraud/financial abuse. Banks could be more encouraging of the use of direct debits for bills so that dependency on the abuser to have access to finances is reduced.

### **Family agreements and Forums for redress**

As noted above in our response to social security issues we consider that family agreements have an important role to play in protecting the interests of older people.

To strengthen the practicality and enforceability of agreements, QCAT could be given jurisdiction over formal and informal family agreements up to the sum of \$250,000 to:

- resolve disputes about the types of interest held; and
- award remedies including orders for the sale of property where necessary.

The existing jurisdiction in the case of many family disputes lies in the Supreme Court which is arguably the most inaccessible jurisdiction in the country. This is particularly problematic for older people facing the urgency of requiring money to move into aged care.

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<sup>12</sup> para 188 of TCLS submission.

### **Appointed decision-makers**

Caxton Legal Centre is presently participating in a reference group considering reforms to Queensland's EPoA regime. The issues that we have raised with the Reference Group include:

- Registration – whether there should exist a formal mechanism for registering an EPoA (outside of land title matters) and if so, what should it include;
- Activation – where “capacity” is the catalyst for commencement of powers, should there be an industry minimum standard test;
- Education – what education could be provided to Principals and Attorneys regarding their respective rights and responsibilities;
- Execution – whether the existing requirements for validly executing an EPoA are sufficient or need to be more stringent;
- Attorneys Duties – whether there is any need to expand/amend the duties of Attorneys and increase protections for the Attorney;
- Breach of Attorney Duties – whether there is any scope to improve the outcome for the Principal where there has been a breach of Attorney duties or increase the penalties to deter future breaches;
- Protection vs Authority – is the balance between providing an alternate decision maker with sufficient authorities and the need to protect the Principal's rights achieved with the EPoA in its current form;
- Institutions/Organisations and EPoAs – what role can institutions/organisations play in maintaining the balance of authority vs protection;
- Supported decision-making/Supportive Attorney – discussion of this role and its potential use alongside EPoAs.

***Are health-justice partnerships a useful model for identifying and responding to elder abuse? What other health service models should be developed to identify and respond to elder abuse?***

As noted above in the discussion of best practice responses, there is great potential for the role of health justice partnerships to address elder abuse, particularly through preventative medical and legal strategies.


In addition to the existing models that are developing, we consider that there is scope for the Law Council of Australia and the Australian Medical Association to lead a campaign to engage their members in implementing procedures to screen elderly patients for the presence of elder abuse risk factors and making appropriate referrals to service providers.

### **Criminal law**

We consider existing criminal laws are most likely adequate to cover the types of abuse warranting criminal sanction. Where there is scope for considerable improvement is the prioritisation of existing police resources toward the enforcement of some of these existing laws, particularly in

cases of financial abuse involving elements of fraud, theft or false pretences. On many occasions complaints to police about misuse of funds etc, have been dismissed as 'civil' or 'family' disputes.

Yours faithfully

  
Scott McDougall  
Director

- Appendix 1     *Inquiry into the adequacy of existing financial protections for Queensland's seniors, Report no 2, 2015, Communities, Disability Services and Domestic and Family Violence Prevention Committee;*<sup>13</sup>
- Appendix 2     Case Studies
- Appendix 3     Note on Closed Case Review from Seniors Legal and Support Service (SLASS), Caxton Legal Centre, 2015

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<sup>13</sup> Appendix 1 is a copy of our submission to this Inquiry.