

## 2. National Plan

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### Summary

2.1 The ALRC supports the commitment that a national plan be developed to address elder abuse.<sup>1</sup> It is a capstone proposal and provides the basis for a longer term approach to the protection of older persons from abuse. The plan will provide the opportunity for future planning and policy development in an integrated way. The proposals throughout the Discussion Paper can be seen as strategies in implementation of such a plan. The plan also offers the opportunity to develop strategies to combat elder abuse that extend beyond legal reforms, such as: national awareness campaigns; elder abuse hotlines; training for people working with older people; and future research agendas.

2.2 Perhaps most importantly, there is a need for a prevalence study, to identify, among other things, rates and types of abuse; who commits it and who suffers it. Real progress is difficult without this information.

### Why there should be a National Plan

<b>Proposal 2–1</b> A National Plan to address elder abuse should be developed.
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1 The ALRC notes the announced Coalition policy that includes a national plan: *The Coalition's Policy to Protect the Rights of Older Australians* <[www.liberal.org.au/coalitions-policy-protect-rights-older-australians](http://www.liberal.org.au/coalitions-policy-protect-rights-older-australians)>.

2.3 National plans to guide reform and action have facilitated long-term strategic and whole-of-government responses to a diverse range of issues.<sup>2</sup> A plan provides a framework for action, identifying priority reform areas, performance indicators and appropriate responsibility and oversight for such reform. The momentum for national approaches in relation to child protection and family violence has led to frameworks and plans developed through the Council of Australian Government (COAG) processes.<sup>3</sup>

2.4 Many issues that arise in a consideration of ‘elder abuse’ sit across the federal/state jurisdictional lines. National consistency of laws, such as state and territory powers of attorney and guardianship and administration laws is one matter, among many, that could be led through a national plan process.

2.5 In the 2015 report of the Australian Institute of Family Studies, *Elder Abuse: Understanding Issues, Frameworks and Responses*, Rae Kaspiew, Rachel Carson and Helen Rhoades, identify the importance of a national plan in relation to elder abuse, with an appropriate evidence base.

The WHO emphasised the importance of having comprehensive data-driven national action plans to ensure effective violence prevention. However, it noted that while many of the surveyed countries reported having national action plans for child maltreatment (71%) and intimate partner violence (68%), fewer than half (41%) had addressed elder abuse. The report noted that such plans are an important ‘way for countries to articulate how violence impacts the health, economic viability and safety and security of a nation’, and provides direction for policy makers about what needs to be done, including the identification of objectives, priorities, assigned responsibilities, a timetable and an evaluation mechanism.<sup>4</sup>

2.6 The development of a National Plan would squarely place elder abuse ‘on the national agenda’, as the family violence plan has done. As the Welfare Rights Centre (NSW) observed:

Child abuse and family and domestic violence are now firmly at the centre of public policy debates ... Placing elder abuse on the national agenda must also be a priority. Elder abuse is an issue that, finally, has come of age. The ALRC’s current inquiry is an important step along this path.<sup>5</sup>

2 See, eg, National Council to Reduce Violence Against Women, *National Plan to Reduce Violence Against Women and Their Children 2010–2022* (2011). The inquiry that led to the report, Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Improving Legal Frameworks*, ALRC Report 117 (2011), was one of the strategies for action under the preliminary work undertaken by the National Council: National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (2009).

3 See, eg, Department of Social Services (Cth), *National Framework for Protecting Australia’s Children 2009–2020—Third Three-Year Action Plan, 2015–2018: Driving Change: Intervening Early* (2015); Department of Social Services (Cth), *Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and Their Children 2010–2022* (2016).

4 Rae Kaspiew, Rachel Carson and Helen Rhoades, ‘Elder Abuse: Understanding Issues, Frameworks and Responses’ (Research Report 35, Australian Institute of Family Studies, 2016) [8.5].

5 Welfare Rights Centre NSW, *Submission 184*.

2.7 The National Plan would:

- establish a national policy framework to guide government, industry and community policies, initiatives and programs with respect to safeguarding the rights of older persons;
- outline a plan for action by government and the community; and
- establish specific performance indicators and monitoring mechanisms to ensure accountability and establish a basis for measuring progress.

2.8 A National Plan will capture the momentum and consolidate the work that has been undertaken or is currently in train across state and territory governments and research bodies.<sup>6</sup> The development of a National Plan will also provide the opportunity for a national conversation and engagement.

2.9 The National Plan could be developed by a steering committee under the imprimatur of the Law, Crime and Community Safety Council of COAG, expressing the commitment of all governments. Commonwealth, state and territory Attorneys-General have agreed to establish a working group to discuss current activities to combat elder abuse in jurisdictions, consider potential national approaches, and consider the findings of this Inquiry.<sup>7</sup> Such a group could lead the development of a National Plan. The Age Discrimination Commissioner may be well placed to lead a number of strategies and actions of the plan, in consultation with key stakeholder groups.

## Components of a National Plan

2.10 The *National Plan to Reduce Violence against Women and their Children 2010–2022* could be used as an instructive model.<sup>8</sup> It sets a ‘framework for action’ over a 12 year horizon to be implemented through four three-year plans, called ‘Action Plans’: to bring together ‘the efforts of governments across the nation to make a real and sustained reduction in the levels of violence against women’.<sup>9</sup>

2.11 A principal goal of the National Plan to address elder abuse should be promoting the autonomy and agency of older people. Using the Family Violence approach as a guide, the National Plan could be developed to address, among other matters, additional strategies with goals such as:

- promoting respectful intergenerational relationships;

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6 See, eg, the work by organisations such as Australian Institute of Family Studies, the Age Discrimination Commissioner of the Australian Human Rights Commission, Offices of Public Advocates and Public Guardians, the National Ageing Research Institute and state and territory departments responsible for elder abuse strategies.

7 Law, Crime and Community Safety Council, *Communiqué*, 21 October 2016. See also *The Coalition’s Policy to Protect the Rights of Older Australians*, above n 1.

8 Council of Australian Governments, *National Plan to Reduce Violence against Women and Their Children 2010–2022* (2011).

9 *Ibid* foreword.

- making systems work together effectively;
- improving responses to elder abuse; and
- improving the evidence base.

2.12 Such goals are not completely discrete areas. Strategies may well address a number of goals at the same time.

2.13 In developing the National Plan, national consultations should be undertaken to provide opportunities for contributions by individuals and relevant organisations. The consultation and National Plan should take into account the different experiences and needs of older persons, including across gender, sexual orientation, disability, cultural and linguistic diversity; and those who live in regional and remote communities.

2.14 The National Plan should identify a range of strategies and actions towards supporting older persons in exercising their rights and stopping elder abuse.

### **Promoting respectful intergenerational relationships**

2.15 Stakeholders identified a range of attitudinal problems concerning older persons that a strategy of promoting respectful intergenerational relationships might focus on. As the Law Council of Australia observed, ‘changing attitudes to behaviour’ was critical.<sup>10</sup> ‘Ageism’ was identified as an underlying issue that contributes to abuse.<sup>11</sup> Common manifestations of ageism include ‘stereotyping, prejudice, discrimination, harassment and vilification as well as abuse, exploitation, neglect and violence and it is often intersectional’.<sup>12</sup> UnitingCare Australia, for example, suggested that ageism ‘lies at the heart of elder abuse’ and that ‘effective elder abuse prevention can only be achieved with the support of education and awareness programs that deal with the negative perceptions and assumptions about ageing and older people’.<sup>13</sup>

2.16 Research undertaken by the Age Discrimination Commissioner in 2013 drew attention to the damaging effects of negative stereotypes or misconceptions about older people; and that ageist attitudes were deeply ingrained and evident in all aspects of Australian society.<sup>14</sup> ‘We are invisible’, said Adam Johnston, referring to the experience of older people with disability.<sup>15</sup>

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10 Law Council of Australia, *Submission 61*.

11 See, eg, National Older Persons Legal Services Network, *Submission 180*; Seniors Rights Victoria, *Submission 171*; UnitingCare Australia, *Submission 162*; Office of the Public Advocate (Qld), *Submission 149*; Aged and Community Services Australia, *Submission 102*; Quality Aged Care Action Group Incorporated, *Submission 28*.

12 National Older Persons Legal Services Network, *Submission 180*. A particular example was the labelling of older people as ‘bed blockers’ in hospitals and somehow less deserving of hospital resources: Quality Aged Care Action Group Incorporated, *Submission 28*.

13 UnitingCare Australia, *Submission 162*. The Respect for Seniors program was referred to as a program that ‘focuses on building respect for older people, valuing their contributions and challenging common assumptions’.

14 Australian Human Rights Commission, *Fact or Fiction? Stereotypes of Older Australians, 2013* (Research Report, 2013).

15 A Johnston, *Submission 45*.

2.17 Addressing stereotypes and enhancing understanding could involve education and training for people working with older people; and broader community education and awareness campaigns to improve knowledge and understanding of the rights of older persons and pathways for support. It would also include strategies for improving understanding of those who provide support for older persons: in particular, what is the extent and limit of their roles.

2.18 The Townsville Legal Community Service noted the prevention programs introduced in states and territories ‘aimed at raising awareness, educating those at risk of abuse or offending and offering remedial and support services’, but ‘wider rollout’, ‘greater visibility’ and improved resourcing were needed.<sup>16</sup>

2.19 Promoting respectful relationships would also require strategies that are directed towards understanding the dynamics and experiences of particular groups, including: older persons from Aboriginal and Torres Strait Islander and culturally and linguistically diverse (CALD) communities; from lesbian, gay, bisexual, transgender and intersex (LGBTI) communities; and people living in regional and remote communities. The Australian Securities and Investments Commission observed that ‘Senior Australians are a diverse cohort’:

A large proportion (around 31%) of seniors aged 65+ come from CALD backgrounds. A third (34%) are entering their older years without a spouse, and the proportion living alone is almost double that of the pre-war generation (11% versus 6%).<sup>17</sup>

2.20 The Ethnic Communities’ Council of Victoria stressed the importance of culturally informed awareness campaigns:

ECCV highlights the effectiveness of elder abuse prevention and legal rights awareness campaigns designed for culturally and linguistically diverse people. It is suggested that such campaigns are developed through a co-design process and by working in partnership with culturally and linguistically diverse community members, their organisations and service providers. It may include communicating key messages through ethnic and multicultural media outlets, and would be mindful of culturally appropriate use of language and the need for information to be provided in preferred language of different groups.<sup>18</sup>

2.21 The Townsville Legal Community Service urged that a life-course approach, advocated by the World Health Organization, should be ‘a cornerstone of any structural reform agenda’.

Law reform must be driven by the need to combat ageism in all manifestations: Stereotyping (incompetence, illness, and irrelevance); Prejudice (benevolent or hostile); Discrimination, harassment and vilification; and Abuse, exploitation, neglect and violence.

Benevolent prejudice is among the most entrenched forms of ageism. It is the tendency to pity, seeing older people as friendly but incompetent. It is superficially positive but ultimately reinforces inferiority. It positions older persons as frail, easily

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16 Townsville Community Legal Service Inc, *Submission 141*.

17 Australian Securities & Investments Commission, *Submission 143*. (Citations omitted).

18 Ethnic Communities’ Council of Victoria Inc, *Submission 52*.

duped and needing protection rather than vital, active and independent. It keeps older persons in an inferior position. It is embedded in public policy.

The impact of ageism is amplified where it also involves another 'ism'. Much of the research on elder abuse validates that gender and race can exacerbate ageism as is common with intersectional discrimination.<sup>19</sup>

2.22 The Northern Territory Anti-Discrimination Commission identified as crucial, a campaign 'addressing societal attitudes to older people':

elevating the value we place on older people rather than seeing them as a burden, plus education to raise awareness of the signs of elder abuse and to suggest ways to prevent it including inclusion and support of older people in the day to day life of the community.<sup>20</sup>

### **Making systems work together effectively**

2.23 Consistency was identified as a key element in addressing elder abuse: a consistent national approach, with consistent laws and coordinated responses.

2.24 A need for consistent laws was a dominant theme among stakeholders.<sup>21</sup> As National Seniors observed:

It makes little sense that the legal frameworks to protect older Australians from abuse differ across the various states and territories. National laws or at the least nationally consistent laws are required to reduce confusion and improve protections for older people.<sup>22</sup>

2.25 The Townsville Community Legal Service suggested that a 'consistent national approach' should combine a number of measures, including:

- a suite of federal laws for matters within the constitutional responsibility of the Commonwealth parliament;
- a guiding national policy framework;
- model and uniform state and territory laws for matters outside Commonwealth constitutional responsibility;
- a national public awareness and education campaign; and
- training to key areas of industry, professions and the community.<sup>23</sup>

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19 Townsville Community Legal Service Inc, *Submission 141*.

20 Northern Territory Anti-Discrimination Commission, *Submission 93*.

21 See, eg, Seniors Rights Victoria, *Submission 171*; Seniors Rights Service, *Submission 169*; Queensland Law Society, *Submission 159*; National LGBTI Health Alliance, *Submission 156*; National Seniors Australia, *Submission 154*; Townsville Community Legal Service Inc, *Submission 141*.

22 National Seniors Australia, *Submission 154*.

23 Townsville Community Legal Service Inc, *Submission 141*.

2.26 ‘Without a consistent national approach’, remarked the Office of Public Guardian (Qld),

the governing legal framework will remain a combination of inconsistent and disconnected Commonwealth and state or territory law, amounting to a piecemeal approach to the protection of the interests and rights of persons who are vulnerable to abuse, and will likely result in gaps in safeguards.<sup>24</sup>

2.27 Stakeholders drew attention to a range of issues concerning responses to elder abuse affected by a lack of consistency. People with Disability (Australia), for example, advocated that there be a ‘clear and nationally consistent definition and response’ and ‘no wrong door’.<sup>25</sup> The Commissioner for Senior Victorians urged that there should be ‘clear reporting pathways and responses to ensure abuse, when identified and reported, is addressed’.<sup>26</sup> The Office of the Public Advocate (Qld) stressed that ‘complaints mechanisms are integral to a comprehensive system of safeguards for older people’.<sup>27</sup>

2.28 The Older Women’s Network (NSW) said that what was necessary was ‘a national framework and protocols enabling interagency and collaborative work between older people, community based agencies and service providers’: this would assist ‘in ensuring consistent and constructive responses to older people experiencing violence and abuse across Australia’.<sup>28</sup>

### **Improving the response**

2.29 Essential elements in improving the response to elder abuse, in addition to national consistency, are: training of all those who deal with older people to recognise and respond to elder abuse; improved accessibility of services and forums; and better response to perpetrators.

2.30 The advocacy group, TASC, observed, ‘[d]elivering best practice means ensuring accessibility to our and other legal services and facilitating opportunities for support’.<sup>29</sup> The Legal Services Commission of South Australia said that ‘often there was confusion or misunderstanding about where an individual can seek recourse’.<sup>30</sup> The Housing for the Aged Action Group said that older people ‘want services that are easy to access and engage with’ and that ‘[f]ew organisations are able to take the time that older people need to work through a legal issue’.<sup>31</sup> For CALD groups, accessing services is difficult because of the ‘limited culturally proficient mainstream services

24 Office of the Public Guardian (Qld), *Submission 173*. See also NSW Trustee and Guardian, *Submission 120*; Law Council of Australia, *Submission 61*.

25 People with Disability Australia, *Submission 167*.

26 Commissioner for Senior Victorians, *Submission 187*.

27 Office of the Public Advocate (Qld), *Submission 149*.

28 Older Women’s Network NSW, *Submission 136*. The OWN said there were sound state based frameworks, including, in NSW: Department of Family and Community Services (NSW), *Preventing and Responding to Abuse of Older People: NSW Interagency Policy* (2014). This document guides service responses and provides the framework under which service providers can develop their own policies and guidelines, to ensure protection, support for care recipients.

29 TASC National, *Submission 91*.

30 Legal Services Commission SA, *Submission 128*.

31 Housing for the Aged Action Group, *Submission 21*.

and ethno-specific services with limited capacity that are accessible to provide assistance to seniors who experience elder abuse’:

Many mainstream services are not adequately funded or resourced to provide culturally appropriate or language specific services to culturally and linguistically diverse seniors.<sup>32</sup>

2.31 Particular challenges are presented in improving the response to abuse of older persons in remote Aboriginal and Torres Strait Islander communities. The National Aboriginal and Torres Strait Islander Legal Services stressed the importance of ‘culturally safe and joined up services’.<sup>33</sup> Michelle Alexander, for example, observed that

The biggest difficulty for governments looking at yet more policy and legislative reform related to remote indigenous communities is understanding what it means to incorporate traditional normative systems into western paradigms of community and service administration. Governments and researchers understand at a broad level that local engagement and consultation is imperative but do not understand beyond this how to drive such engagement through traditional decision making structures nor how to envelop these decision making processes to maximize the effectiveness of services in remote communities. In coming to terms with this, governments will need to come to terms with the intrinsic value that lies in indigenous law and culture.<sup>34</sup>

2.32 Improving responses to elder abuse may also include expanding the range of forums and remedies,<sup>35</sup> ensuring accountability of those who abuse older persons; and identifying areas for further improvement.

### Improving the evidence base

**Proposal 2–2** A national prevalence study of elder abuse should be commissioned.

2.33 Policy change to address elder abuse requires a sound evidence base. Kaspiew, Carson and Rhoades observed that, as responses ‘are spread across different legal, policy and practice frameworks, the evidence available from these sources offers a piecemeal empirical understanding of elder abuse’.<sup>36</sup> Hence there is ‘very limited evidence in Australia that would support an understanding of the prevalence of elder abuse, and there is emerging recognition of the need for systematic research in this area’.<sup>37</sup> National Seniors also emphasised the lack of a clear picture particularly as it relates to specific populations.<sup>38</sup> Older persons ‘are not a homogenous group’,

32 Ethnic Communities’ Council of Victoria Inc, *Submission 52*.

33 National Aboriginal and Torres Strait Islander Legal Services, *Submission 135*. A case study was included supplied by the Central Australian Aboriginal Legal Aid Service.

34 M Alexander, *Submission 64*.

35 The Caxton Legal Centre observed that the Supreme Court is ‘arguably the most inaccessible jurisdiction in the country’: Caxton Legal Centre, *Submission 174*.

36 Kaspiew, Carson and Rhoades, above n 4, [3.1].

37 Ibid [3].

38 National Seniors Australia, *Submission 154*.

observed the Townsville Legal Community Service Inc.<sup>39</sup> The Northern Territory Anti-Discrimination Commission, for example, said that

any prevalence studies must include a focus on Aboriginal and Torres Islander people in all settings, urban, rural and remote, as the anecdotal evidence we are aware of is that elder abuse is occurring but takes different forms and has different solutions in specific communities.

Also NT CALD communities which are smaller and more dispersed need to be reflected in research. As do the experience of current older LGBTI community members who are a generation who experienced a world where homosexuality was a criminal offence etc and have very particular place in history and may be particularly vulnerable to be re-traumatised in an aged care setting or when needing to invite providers into their homes.<sup>40</sup>

2.34 Without an appropriate evidence base to guide best-practice models, there is the potential ‘that strategies which lack evidence could cause more harm’.<sup>41</sup> As the National Ageing Research Institute (NARI) and the Australian Association of Gerontology explained, most current data about elder abuse comes from phone lines, longitudinal studies (physical abuse of women) and individual research projects, ‘which makes it impossible to extrapolate to the wider population’.<sup>42</sup> Additionally, a number of stakeholders suggested that elder abuse is underreported.<sup>43</sup> While data from the helpline provides a constructive starting point,<sup>44</sup> a carefully constructed national prevalence study, designed to provide the appropriate evidence base to inform coordinated responses across the Commonwealth, states and territories, is needed.<sup>45</sup>

2.35 While there is a sense that elder abuse is widespread, just how widespread is unclear. Western Australia Police noted the problem of determining the prevalence of elder abuse due to underreporting. They suggested that some of the reasons include:

that the victim is dependent on the perpetrator for their daily care and is fearful that reporting may see them placed in a residential care facility, the shame associated with being a victim of elder abuse, fearful of jeopardising relationships with family, and fear of retaliation. There may also be the inability of the older person to access police

39 Townsville Community Legal Service Inc, *Submission 141*.

40 Northern Territory Anti-Discrimination Commission, *Submission 93*.

41 Cochrane Public Health Group, *Submission 54*.

42 National Ageing Research Institute and Australian Association of Gerontology, *Submission 65*.

43 WA Police, *Submission 190*; L Barratt, *Submission 155*; State Trustees Victoria, *Submission 138*; Macarthur Legal Centre, *Submission 110*.

44 For example, the National Elder Abuse Reports, providing a summary of statistics and key elder abuse agencies form around Australia, prepared by Advocare in Western Australia and Ceallaigh Spike, ‘The EAPU Helpline: Results of an Investigation of Five Years of Call Data’ (International Association of Gerontology and Geriatrics Asia & Oceania Regional Congress, 2015). While useful, helpline data are not sufficient of themselves to provide the full picture on prevalence: Relationship Australia, *Submission 185*.

45 Gaps in evidence were also noted in People with Disability Australia, *Submission 167*. PWDA observed that this was ‘due in part to the exclusionary methodologies of surveys and a failure to disaggregate data by disability’, noting, for example, that the Personal Safety Survey, administered by the Australian Bureau of Statistics, is not performed in residential and institutional settings and that the experiences of people who may require some form of communication support are excluded from this survey. PWDA recommended that the ABS modify its research methodology, sampling techniques and research design to ensure that people with disability are comprehensively included in the collection of data.

services to be able to report crime, and the inability to be able to communicate what has been happening to a police officer due to the abuser being the primary carer, the presence of cognitive impairment, or language and cultural barriers. Due to the lack of awareness, individuals may not be aware that elder abuse is a crime. The presence of these factors will impact on the distortion of prevalence of elder abuse and the ability of policing organisations to adequately respond and implement strategic responses.<sup>46</sup>

2.36 Another stakeholder observed that ‘the underreporting of elder abuse is the norm’.<sup>47</sup> Macarthur Legal Centre suggested that significant gaps in reporting occur because of ‘the familial nature of much of this abuse’, and that ‘[m]any people may simply not be aware of the support services available’.<sup>48</sup>

2.37 While state-wide studies are valuable, as the Office of the Public Advocate (Qld) observed,

they are not a substitute for a national prevalence study, particularly if such a study collects data about the characteristics of perpetrators, victim, the specific abusive behaviours and the circumstances in which elder abuse has occurred.<sup>49</sup>

2.38 NARI and the Australian Association of Gerontology pointed to a number of things to be considered in establishing a prevalence study:

- Data collection needs to distinguish between suspected, reported and confirmed abuse and consideration of who is reporting the incident. ...
- Elder abuse occurs in a variety of settings (home, community, aged care, hospitals, etc) and each have unique challenges for data collection.
- Lack of awareness around what constitutes elder abuse—some older people may not recognise their situation as abusive, while some professionals may not be able to identify abuse being experienced by their clients.
- Staff from agencies identifying potential abuse can be reluctant to label a situation abusive without further investigation or evidence, which could lead to under reporting.
- How to identify occurrence of neglect and self-neglect.
- How a person’s cognition and capacity can affect their ability to identify and act on abuse.
- Diversity of older people and communities (including people in rural and regional areas; people with diverse gender and sexual identities; people from culturally and linguistically diverse backgrounds; Aboriginal and Torres Strait Islander people; people with disabilities)—What is considered abusive behaviour may differ depending on cultural norms of different communities, which can affect knowledge of extent. ...

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46 WA Police, *Submission 190*.

47 L Barratt, *Submission 155*. See also People with Disability Australia, *Submission 167*; Consumer Credit Legal Service (WA), *Submission 112*.

48 Macarthur Legal Centre, *Submission 110*.

49 Office of the Public Advocate (Qld), *Submission 149*.

- The consequences of reporting abuse—the inherent power imbalance between individuals and institutions may discourage people from reporting abuse, making it difficult to accurately measure.
- Types of abuse—prevalence is likely to vary between different types of abuse.
- Any attempt to establish prevalence of various types of elder abuse should also try to gather as much information about perpetrators or potential perpetrators as possible.<sup>50</sup>

2.39 Mapping existing sources of data relating to abuse of older people, ensuring that these are consistently collected and collated is also an important part of improving the evidence base.<sup>51</sup>

2.40 Data collection is assisted by a common definition of elder abuse. The WHO description of ‘elder abuse’ is a common reference point:

Elder abuse can be defined 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’. Elder abuse can take various forms such as physical, psychological or emotional, sexual and financial abuse. It can also be the result of intentional or unintentional neglect.<sup>52</sup>

2.41 As noted in Chapter 1, this description is used across a range of government and non-government bodies and was used in the Australian Institute of Family Studies (AIFS) study. As one stakeholder observed, any definition of elder abuse ‘should be comprehensive enough to capture the full range of abuse practices’, but it also needed to be ‘simple enough for workers and potential reporters to understand’.<sup>53</sup> The Financial Services Institute of Australasia noted that

A clear, agreed definition of elder abuse is also important in researching the prevalence of elder abuse and from this developing tools and guidance so that service providers build awareness and develop strategies to identify and report suspected cases.<sup>54</sup>

## Building on other work

2.42 This Inquiry provides the opportunity to build on the work of others. As the Australian and New Zealand Society for Geriatric Medicine observed, ‘[w]hilst more research is required, it is equally important to fully utilise the data that is currently collected’.<sup>55</sup> The AIFS report provides a thorough and up-to-date analysis of the existing evidence about elder abuse in Australia.<sup>56</sup> The National Plan will provide a

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50 National Ageing Research Institute and Australian Association of Gerontology, *Submission 65*.  
 51 Organisations and government departments have ‘different data collecting systems and differing criteria as to what is elder abuse’: Office of the Public Advocate (SA), *Submission 170*. An ‘agreed minimum dataset and a process for sharing of information across States’ was identified as crucial to expanding knowledge: Australian and New Zealand Society for Geriatric Medicine, *Submission 51*.  
 52 World Health Organization, *The Toronto Declaration on the Global Prevention of Elder Abuse* (2002). See discussion in Chapter 1.  
 53 NSW Nurses and Midwives’ Association, *Submission 29*.  
 54 Financial Services Institute of Australasia, *Submission 137*.  
 55 Australian and New Zealand Society for Geriatric Medicine, *Submission 51*.  
 56 Kaspiew, Carson and Rhoades, above n 4.

framework to bring all this work together and to prioritise a number of the excellent recommendations included in them.

### **New South Wales Legislative Council Report 2016**

2.43 In June 2016 the report, *Elder Abuse in New South Wales*, was concluded by the New South Wales Legislative Council, General Purpose Standing Committee No 2.<sup>57</sup> The first recommendation was for a ‘comprehensive, coordinated and ambitious approach to elder abuse’. The elements identified are examples of strategies and outcomes that could be incorporated into a National Plan:

- a rights based framework that empowers older people and upholds their autonomy, dignity and right to self-determination
- a major focus on prevention and community engagement
- legislative reform to better safeguard enduring powers of attorney and to establish a Public Advocate with powers of investigation
- an ambitious training plan to enable service providers to identify and respond appropriately to abuse
- an active commitment to building the evidence base for policy
- an enhanced role for the NSW Elder Abuse Helpline and Resource Unit.<sup>58</sup>

2.44 In addition, the Committee recommended that there be a ‘significant new investment of resources in the prevention of elder abuse, including the development and funding of ‘a new prevention framework’ that provides for ‘substantially enhanced primary prevention, community education, awareness and engagement, carer support and life planning initiatives’ and ‘specific resources for strategies targeting culturally and linguistically diverse and Indigenous communities’.<sup>59</sup>

### **Senate Community Affairs References Committee Report 2015**

2.45 In November 2015, the Senate Standing Committee on Community Affairs published its report on violence, abuse and neglect against people with disability in institutional and residential settings. A number of recommendations in this report express themes that could be reflected in the proposed National Plan, including, for example, recommendations concerning:

- a national system for reporting and investigating;<sup>60</sup>
- national consistency in disability worker training;<sup>61</sup>

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57 Legislative Council General Purpose Standing Committee No 2, Parliament of New South Wales, *Elder Abuse in New South Wales* (2016).

58 Ibid rec 1.

59 Ibid rec 2.

60 Senate Community Affairs References Committee, Parliament of Australia, *Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability* (November 2015) rec 2.

61 Ibid rec 3.

- a disability worker registration scheme;<sup>62</sup>
- a national approach to service deliver7 accreditation programs;<sup>63</sup> and
- national consistency in the administration of guardianship laws.<sup>64</sup>

### House of Representatives Report 2007

2.46 In September 2007 the House of Representatives Standing Committee on Legal and Constitutional Affairs published the report, *Older People and the Law*. Its 48 recommendations provide similar and further matters that could inform the development of a National Plan, including matters such as:

- the development of a national awareness campaign dealing with financial abuse of older Australians;<sup>65</sup>
- national initiatives to promote financial literacy particularly among older people;<sup>66</sup>
- uniform legislation on powers of attorney across states and territories;<sup>67</sup>
- a nationally consistent approach to the assessment of capacity;<sup>68</sup>
- a national register of enduring powers of attorney;<sup>69</sup>
- national awareness campaigns on powers of attorney;<sup>70</sup>
- advance health care planning;<sup>71</sup>
- national consistency and coverage of legislation governing advance health care planning;<sup>72</sup>
- nationally consistent legislation on guardianship and administration;<sup>73</sup>
- investigation of legislation regulating family agreements;<sup>74</sup> and
- a resource service and media education campaign for older people.<sup>75</sup>

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62 Ibid rec 4.

63 Ibid rec 5.

64 Ibid rec 12.

65 House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Older People and the Law* (2007) rec 7.

66 Ibid rec 8.

67 Ibid rec 16.

68 Ibid rec 19.

69 Ibid rec 20.

70 Ibid recs 18, 22.

71 Ibid rec 24.

72 Ibid rec 25.

73 Ibid rec 28.

74 Ibid rec 30.

75 Ibid rec 40.

**Reports on specific areas**

2.47 In addition to the parliamentary reports identified above, there have been state reports focused on particular areas of concern relevant to potential areas of abuse of older persons. These include:

- the April 2016 report of the Office of the Public Advocate (Qld), *Decision-making Support and Queensland's Guardianship System—A Systemic Advocacy Report*;<sup>76</sup>
- the October 2011 report by the Office of the Public Advocate (SA) and the University of South Australia, *Closing the Gaps: Enhancing South Australia's Response to the Abuse of Vulnerable Older People*;<sup>77</sup>
- the 2011 report on *Guardianship* by the Victorian Law Reform Commission;<sup>78</sup> and
- the current work of the New South Wales Law Reform Commission on the *Guardianship Act 1987* (NSW).<sup>79</sup>

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76 Office of the Public Advocate (Qld), *Decision-Making Support and Queensland's Guardianship System* (2016).

77 Office of the Public Advocate (SA), 'Closing the Gaps: Enhancing South Australia's Response to the Abuse of Vulnerable Older People' (2011).

78 Victorian Law Reform Commission, *Guardianship*, Final Report No 24 (2012).

79 Other examples were provided by stakeholders: Seniors Rights Victoria, *Submission 171*; Australian Securities & Investments Commission, *Submission 143*; Capacity Australia, *Submission 134*; NSW Trustee and Guardian, *Submission 120*.